people, on the day named, the planting of trees and shrubbery in public school grounds and along public highways throughout the State.

Extract from the journal of the Senate.

THOS. B. COCHRAN,

Chief Clerk of the Senate.

IN THE HOUSE OF REPRESENTATIVES,

March —, 1885.

The foregoing resolution concurred in.

GEO. PEARSON,

Chief Clerk, House of Representatives.

APPROVED—The 17th day of March, A. D. 1885.

ROBT. E. PATTISON.

No. 19.

IN THE SENATE, *March 31st, 1885.*

Preamble.

WHEREAS, It has been represented, in the petition of a large number of the members of the bar of Allegheny county, that the Honorable John M. Kirkpatrick, additional Law Judge of the Court of Common Pleas, No. 2, of said county, is unable to perform the duties of his office by reason of physical and mental disease, which is believed to be incurable, and that said inability has existed for so long a time that the business of said court has been delayed, to the injury of suitors and the public in general; therefore, be it

Appointment of a committee to investigate the physical and mental condition of Judge John M. Kirkpatrick.

Resolved, (If the House concur,) That a special committee be appointed, consisting of three Members of the House and two Members of the Senate, to investigate and ascertain the condition of said the Honorable John M. Kirkpatrick, and report whether sufficient cause exists for his removal, in accordance with section fifteen, of article five, of the Constitution of this Commonwealth, and that said committee report on or before 27th day of April, A. D. 1885.

When committee to report.

Extract from the journal of the Senate.

THOS. B. COCHRAN,

Chief Clerk of the Senate.

IN THE HOUSE OF REPRESENTATIVES,

March 31st, 1885.

The foregoing resolution concurred in.

GEO. PEARSON,

Chief Clerk of the House of Representatives.

APPROVED—The 8th day of April, A. D. 1885.

ROBT. E. PATTISON.

INVESTIGATION

INTO THE CONDITION OF THE

HON. JOHN M. KIRKPATRICK,

A Judge of the Court of Common Pleas of Allegheny County, with a view to his removal.

THE PETITION, RESOLUTION, AND APPOINTMENT OF THE COMMISSION.

IN THE SENATE, *March 31, 1885.*

Mr. Aull presented the following petition, which was read, viz:

To the Honorable the Senate and House of Representatives of the Commonwealth of Pennsylvania:

The petition and memorial of the undersigned, members of the bar of Allegheny county, respectfully represents:

That the Hon. John M. Kirkpatrick, associate law judge of the court of common pleas, No. 2, of Allegheny county, is, and has been for six months last past, physically and mentally incapacitated for attending to the duties of his office; and it is alleged, by persons familiar with his condition, that he never again will be able to sit upon the bench.

That the president judge of said court, by reason of overwork, is now, and has been for some time past too ill to attend to his duties, and that the business of said court of common pleas, No. 2, of Allegheny county, is greatly hindered and delayed by reason of the facts abo e set forth.

Your petitioners respectfully ask the Legislature to appoint a joint committee of the Senate and House to come to Pittsburgh to inquire into the condition of Judge Kirkpatrick, and if the facts set forth above are found

to be true by such committee, then upon their report to that effect that the Legislature take such steps as are necessary under the laws of this Commonwealth to have Judge Kirkpatrick removed from office, and to have his successor appointed.

And they will ever pray.

Frank Whitusell,
R. B. Parkinson,
D. Watson,
G. P. Graver,
A. B. Hay,
H. F. McGrady,
W. J. Curran,
H. D. Watterson,
G. J. Leightenheld,
James F. Gildea,
Alex. McFarland,
W. I. Craig,
Joseph Crown,
John M. Rourke,
Joseph Hays,
John F. Mally,
John M. Mitchel,
John J. Mitchel,
J. Charles Dicken,
W. B. McClellan,
Henry A. Davis,
W. B. Vates,
George N. Monro,
Richard A. Kennedy,
Noah W. Shafer,
D. M. Alston,
William Yost,
R. C. Rankin,
A. E. Weger,
F. H. Davis,
J. P. Hunter,
George H. Quaile,
A. H. Mercer,
Frank W. Smith,
T. S. Vanvorheis,
William P. Negley,
Knox & Reed,
J. H. Reed,
F. M. Magee,
William S. Pur,
J. C. Golden,
Bruce, Negley & Shields,
J. M. Shields,
J. C. Haymaker,
William Blakely,
John E. O'Donnell,
H. H. Moeser,
John Warron,
E. S. Newlin,
J. E. McKelvy,
Lawrence Johnson,
George E. Moore,
W. C. Erskine,
George Hudfield,
F. W. McKee,
S. A. Will.
Frank C. Osburn,
W. W. Whitesell,
J. C. McCombs,
E. A. L. Jones,
B. C. Christy,
Morton Hunter,
Albert York Smith,
William M. Swaney,
Andrew S. Miller,
J. H. Emery,
Edwin W. Smith,
George H. Woods,
D. F. Patterson,
J. P. Harp,
Thomas J. Ford,
H. I. Riley,
Smith H. Shannon,
S. A. Johnson,
Marshall Johnson,
Thomas B. Alcorn,
Edward S. Craig,
M. A. Woodward,
H. W. Weir,
J. M. Garrison,

William R. Blair, J. M. Cook,
J. H. White, W. S. Patterson,
William H. Ellis, L. M. Plumer.
J. M. Stull,

Whereupon, the following action was taken, viz:

IN THE SENATE, *March 31, 1885.*

WHEREAS, It has been represented in the petition of a large number of the members of the bar of Allegheny county that the Hon. John M. Kirkpatrick, additional law judge of the court of common pleas, No. 2, of said county, is unable to perform the duties of his office by reason of physical and mental disease, which is believed to be incurable, and that said inability has existed for so long a time that the business of said court has been delayed to the injury of suitors and the public in general; therefore,

Be it resolved, (if the House concur,) That a special committee be appointed, consisting of three members of the House and two members of the Senate, to investigate and ascertain the condition of the said John M. Kirkpatrick, and report whether sufficient cause exists for his removal in accordance with section fifteen of article five of the Constitution of this Commonwealth; and that said committee report on or before 27th day of April, A. D. 1885.

Extract from the Journal of the Senate.

THOMAS B. COCHRAN,
Chief Clerk.

IN THE HOUSE OF REPRESENTATIVES, *March 31, 1885.*

The foregoing resolution concurred in.

(Signed)

GEORGE PEARSON,
Chief Clerk House of Representatives.

APPROVED—The 8th day of April, A. D. 1885.

(Signed)

ROBT. E. PATTISON.

Ordered, That Messrs. Hood and Biddis be the committee on the part of the Senate.

Ordered, That Messrs. Sponsler, Faunce, and John B. Robinson be the committee on the part of the House.

D. T. WATSON, Esq.:

SIR: You will please take notice that the within-named committee will meet in the court-house in the city of Pittsburgh at ten o'clock, A. M., Tuesday, April 21, 1885, to attend to the duties of the within appointment, when and where you may attend, if you see proper.

WILLIAM HENRY SPONSLER, *Secretary.* GEORGE W. HOOD, *Chairman.*

FRANK WHITSELL, Esq.:

SIR: You will please take notice that the within-named committee will meet at the court-house in the city of Pittsburgh, at ten o'clock, A. M., Tuesday, April 21, 1885, to attend to the duties of the within appointment, when and where you may attend, if you see proper.

GEORGE W. HOOD,
Chairman.

WILLIAM HENRY SPONSLER,
Secretary.

To the Hon. JOHN M. KIRKPATRICK:

SIR: Please to take notice that the within-named committee will meet at the court-house in the city of Pittsburgh, at ten o'clock, A. M., Tuesday, April 21, 1885, to attend to the duties of the within appointment, when and where you may attend, if you see proper.

GEORGE W. HOOD,
Chairman.

WILLIAM HENRY SPONSLER,
Secretary.

To WILLIAM H. KIRKPATRICK, Esq.:

SIR: You will please take notice that the within-named committee will meet in the court-house in the city of Pittsburgh, at ten o'clock, A. M., Tuesday, April 21, 1885, to attend to the duties of the within appointment, where and when you may attend, if you see proper.

GEORGE W. HOOD,
Chairman.

WILLIAM HENRY SPONSLER,
Secretary.

TESTIMONY

Taken in the matter of the inquiry by the joint committee of the Senate and House of Representatives to ascertain the physical and mental condition of the Hon. John M. Kirkpatrick, associate law judge of the court of common pleas, No. 2, of Allegheny county.

Pursuant to notice, the committee met at Pittsburgh, April 31, 1885, and, after roll-call, Senator Hood, the chairman, said: "As chairman of the joint committee of the Senate and House of Representatives, acting under their joint resolution to inquire into the physical and mental condition of Judge Kirkpatrick, it becomes my duty to state that we are now here in accordance with that resolution and for that purpose. I have been informed that proper notice has been given to Judge Kirkpatrick or some of his intimate relatives. This inquiry is for the purpose of ascertaining his condition, and we will take such testimony as bears upon that matter.

The first inquiry I should make is, does anybody appear here for Judge Kirkpatrick?"

Mr. GEORGE SHIRAS, Jr. Judge Kirkpatrick will be represented by friends and counsel. Thomas M. Marshall, S. A. McClung, and myself appear for him.

Senator HOOD. Does anybody appear for the petitioners?

Mr. F. M. MAGEE. I understand that Mr. D. T. Watson will appear for the petitioners. He is not in the room, but will come in a few moments.

Mr. Watson, on coming into the room, declined to appear for the petitioners. Thereupon, the committee proceeded to take testimony.

A. J. MCQUITTY, being sworn, said, in answer to questions put by the several members of the committee, as follows:

Q. You are the clerk of the court?
A. Clerk in common pleas, No. 2.
Q. When were you elected clerk?
A. Never was elected. I was appointed by the prothonotary.
Q. How long have you been in that office?
A. Ten years.
Q. State whether or not you know the Honorable J. M. Kirkpatrick.
A. Yes, sir; I do.
Q. When was he first elected judge?
A. Well, I can't tell you that, I don't just exactly know.
Q. Well, about how long ago, as near as you can recollect, when was he first elected judge?

A. Well, I think it was about twelve or fourteen years ago, I am not certain about that. I think he was elected the second time this last time.

Q. State when he was reëlected judge.

A. I think it was in 1878 or 1879, probably 1879.

Q. State what court he presided over?

A. Court of Common Pleas, No. 2, the assistant law judge, that is associate law judge.

Q. Did he preside over the court.

A. Yes, sir; he did.

Q. How long has it been since he sat upon the bench?

A. He was on the bench last, October 29, 1884.

Q. October 29, 1884?

A. Yes, sir.

Q. Up to what time had he been holding court regularly?

A. Well, he was on the bench regularly up until March, 1884.

Q. He was regularly on the bench until March, 1884—from that time to October, 1884, how many times did he sit?

A. Well, he sat twice.

Q. Twice?

A. Yes, sir.

Q. During that time, how many courts were running?

A. Well, sir, there were two.

Q. How long were their sessions?

A. From 9.30, A. M., until 3, P. M.

Q. Through how many weeks would the term extend?

A. Well, generally, we sit regularly right along, except in the summer, when we have an intermission of, probably, three months.

Q. Three months' intermission in the summer time; state when your intermission begins in the summer.

A. It generally begins about June. We stop jury trials then, but we have motions and arguments through the whole summer. We have jury trials, except for about two months.

Q. Well, how much of this time did Judge Kirkpatrick sit on the bench from March until October?

A. I think he was on the bench twice during that time; during March, probably the 25th, and from that time until October he was on two or three times.

Q. What do you mean when you say "two or three times?"

A. I mean two or three days.

Q. Did he hold court during the regular hours of actual session?

A. No, sir; he sat upon the bench, and listened to an argument, but not during the whole session.

Q. State, if you know, what his condition was during that time

A. No, sir; I don't know; personally, I don't; only from hearsay.

Q. State if you have seen Judge Kirkpatrick frequently during that time.

A. No, sir; I have not; I was over to see him once, and I met him once during that time.

Q. Mr. McQuitty, can you state the days between March, 1884, and October, 1884, at which Judge Kirkpatrick sat upon the bench? Have you no record?

A. On October 20, he was on the bench, and October 29; I have a record of that.

Q. Any other days between those times?

A. I can't state from my recollection, but from the record, he was on the bench October 15, 20, and 29, 1884.

Q. Any other times between March and October?

A. No, sir; that is all.

Q. State if he has been upon the bench since October 29, 1884.

A. No, sir.

Q. State if you know his condition then.

A. No, sir; I don't recollect.

Q. Have you seen him since that time?

A. I have not seen him since that time.

Q. When did you meet Judge Kirkpatrick?

A. It was previous to October 29.

Q. What was his condition when you saw him last?

A. Well, he was sick.

Q. Just give a description of him as you saw him.

A. Well, I don't know as I can tell.

Q. What was the character of his illness?

A. Well, he was sitting up when I saw him, talking rationally, and seemed to be complaining of one of his arms. He said it was paralyzed that he had stroke or something.

Q. Which hand was that?

A. I think it was the right.

Q. Where was this?

A. At his house, in Allegheny.

Q. Where does he live?

A. I don't know the street; it is in Allegheny, handy to the parks.

Q. State if you know if he has been confined to his house since that time.

A. I don't know.

Q. Have you never seen him out since that time?

A. Yes, sir.

Q. On this occasion when you mentioned Judge Kirkpatrick being on the bench, was there any person with him?

A. Yes, sir; Judge Ewing.

Q. Any others?

A. Yes, sir.

Q. Will you be kind enough to state whether Judge Kirkpatrick had any cause in hearing at those times?

A. Yes, sir; he listened to an argument.

Q. Did he make his observations to counsel?

A. Yes, sir; I believe he did.

Q. What was the character of those observations?

A. Oh, I don't know; talking to counsel about the case.

Q. Did he make any observations?

A. Yes, sir.

Q. How did he seem as to mental vigor and capacity?

A. I don't know, he was only there a short time.

Q. I wish you would state, Mr. McQuitty, whether or not from your observation and knowledge of Judge Kirkpatrick, you consider him incapacitated to perform the duties of his office, from any mental or physical incapacity?

Mr. SHIRAS. If the committee please, I don't understand that it could be possibly suggested or claimed in an inquiry of this kind that a question of that nature could be passed upon, at least at this stage of the inquiry.

We submit that in inquiry into the facts of what Judge Kirkpatrick said or did or how he acquitted himself would, perhaps, be within the rule, but to convert every witness into an expert as to his capacity of mind or body, we believe to be irregular and improper. I supposed that all that would be proved would be as to the Judge's attendance at court, and we would like to suggest to the committee whether the scope of their inquiry here should not be restricted to that question entirely, or whether Judge Kirkpatrick has been guilty of any misdemeanor in office such as would disqualify him from continuing to act as judge.

In other words, we would wish to suggest, and I raise the question, whether, under the Constitution as it now stands, the inquiry of the committee here should not be restricted to offenses against the law or good morals, or something that would disqualify a judge or render it improper for him to continue in office, although that conduct might not be sufficient ground for impeachment.

Impeachment, as we understand it, is restricted in our law here, our State law, to very considerable offenses, as they have been in other constitutions and as set forth in the Constitution of the United States to be bribery, treason, and other high crimes and misdemeanors.

We suppose and suggest impeachable offenses in Pennsylvania consist in similar crimes, such as bribery, corruption in office, treason, &c. But there is no doubt that in the Constitution recently adopted by the good people of this State there is a provision under which this committee is acting, and that no doubt that provision makes a change, and the question that we raise is as to the nature and extent of that change. It may be supposed that, under the Constitution, this committee can consider physi-

cal disability as a disqualification of his continuing in office, and as warranting a report of the two Houses, and an action by them looking to his removal by the Governor. Now, we do not wish to be understood as admitting that such physical condition would be such a disability as would be within the scope of this inquiry. I understand that the question I am now raising is raised for the first time in Pennsylvania, under this Constitutional provision, and say that the inquiry must still be to some offense against morality, or some moral obliquity indicated by some overt act, of which he may be tried and convicted. I don't necessarily say that a high crime or misdemeanor, but something that amounts to a charge under the language of the Constitution in this particular.

That language says in effect, that judges shall be subject to impeachment. and it goes on to provide that for reasonable cause not sufficient ground for impeachment, he may be removed on a vote of the two Houses by the Governor.

I would suggest that the phraseology shows that it was intended to refer to grades of offense on reasonable cause of that character, but not affording sufficient ground for impeachment. We think the interpretation of this clause is opening the door to try judges for physical disability, so that thereby committees appointed by the two Houses shall, from time to time, when one or the other of our judges happens to fall sick, inquire into his physical condition as a cause unfitting him for performing the duties of his office. In this view, the question asked the witness would be irrelevant and improper, and I think it proper to raise the question for the consideration of the committee.

Senator BIDDIS. The two Houses have instructed us by their joint resolution to investigate and ascertain the condition of Judge Kirkpatrick.

Mr. SHIRAS. If the committee will pardon me, I would like to observe upon the resolution, while I admit, on a casual reading, it might appear that the committee were to examine into his physical condition, and an ordinary reading of the provision, at least, would point to such view, but if we are at all right in the view we take of the Constitutional provision under which the committee is acting, it will not be at all improper to report his condition as to whether the case comes within it.

By Senator HOOD. The constitutionality of this question will be decided by the Attorney General. Under the Constitution, the Governor may remove upon address of two thirds of the members of the General Assembly; now, we are sent here by the Legislature, and the only desire we have is to inform the two Houses of Judge Kirkpatrick's condition.

By Mr. SHIRAS. I would like to make this suggestion, in reply to the remarks of the committee: That if it be true that this inquiry has only the scope that I have suggested, then, I suppose, the two Houses, when they appointed a committee to examine the matter for them, would be deemed to have done so within the true meaning and effect and purport of the

Constitution, and that, while a committee might, without any obvious impropriety, be appointed, as this committee has been——

By Representative FAUNCE. We came here expecting that the petitioners would have appointed a committee to conduct this prosecution, and to listen to the evidence without conducting the proceeding at all. We are here, then, in the capacity of a commission to take testimony, and will note any objection by those conducting the proceeding on behalf of Judge Kirkpatrick, and report back to the Legislature. Still, we look at the question you have presented, yet, in the case of a judge, elected for a period of ten years, falling into mental and physical incapacity after election, if the people cannot be relieved under this provision of the Constitution, what are they to do? We are very much surprised that the petitioners are not represented by a committee to conduct these proceedings.

Mr. SHIRAS. I will reduce our objection to the question asked the witness in writing.

Senator HOOD then re-stated the question asked the witness and read the objection submitted as follows:

Q. State whether or not, from your observation and knowledge of Judge Kirkpatrick, you consider him incapacitated to perform the duties of his office from any mental or physical disabilities.

Objection, as follows: The counsel appearing on behalf of Judge Kirkpatrick object to any inquiry as to mere physical or mental disability involving no moral unfitness or positive misconduct or willful neglect of the duties of his office. The mere misfortune of ill-health does not afford grounds for removal from judicial offices.

A. I don't know.

Q. Who are the other judges presiding on the same bench?

A. Judges Ewing and White.

Q. When he was on the bench in March and October, was his conduct the same that it had been formerly when he first went on the bench—his apparent interest in the case, his knowledge of the relevancy of what was occurring as far as you observed, and what was his conduct in relation to matters before the court?

A. Well, in October, he didn't take much interest. About the 15th, he came over there—we had an argument list—and sat on the bench and listened to one or two arguments, and seemed to be interested in regard to what was going on.

Q. Well, did he seem to have a capable knowledge of what was going on?

A. I don't recollect whether he did or not. In March, he tried the last case that he tried.

Q. In March, how did he seem? What did his conduct seem to be in regard to what was going on before him?

A. Well, the last case he tried he didn't seem to take the same interest that he would have had he been well.

Q. Before, when he was in good health, was his conduct that of a vigorous, healthy man?

A. Yes, sir.

Q. Then, by comparison with that, what was his conduct the last two or three times he was on the bench?

A. He was not so attentive as he was before, on account of his health.

Q. What was his physical appearance then, as to his health?

A. His physical appearance was delicate, that is, he was taking medicine, and complaining as to his head.

Q. When did you last see him?

A. I could not say. I think it was October 29.

Q. How long did you converse with him then?

A. I don't think I spoke with him at all that time.

Q. When did you have a conversation with him last?

A. I can't remember that; it was over at his house, on October 15, I think.

Q. During that period he sat on the bench, was there any act done or anything said by him, that conveyed to your mind the impression that he was impaired mentally?

A. I don't know that I am able to answer that.

Q. Well, the last case he tried was on March 25; do you know whether there was any decision in that case?

A. No, sir; there was no opinion.

Q. During the last time that Judge Kirkpatrick was on the bench, do you know whether he took part in any deliberation in the matter before them?

A. He did during March.

Q. You don't know whether he did in October?

A. No, sir; I don't think that he did during that time; that is, after October 15; he did then, of course.

Q. Mr. McQuitty, what is the general rumor, statement, and speech of the people in the community in which Judge Kirkpatrick resides, as to his mental fitness to perform the duties of his office?

Mr. SHIRAS. The question is objectionable.

Senator BIDDIS. The committee will not press the question at present.

Q. Can you tell me about the age of Judge Kirkpatrick?

A. No, sir; I could guess, that is about all; I suppose that it would be between fifty and sixty years.

Mr. SHIRAS. Judge Kirkpatrick is fifty-nine years of age.

Q. Was he married or unmarried?

A. He is unmarried.

Q. He has no family?

A. No, sir; I believe not.

Cross-examination by Mr. Shiras:

Q. Mr. McQuitty, if I understand you, Judge Kirkpatrick sat on the bench regularly up until March 25, 1884?

A. Yes, sir.

Q. And from that time up to the present time on two or three occasions?

A. On three occasions.

Q. Last time was on October 29.

A. Yes, sir.

Q. Was the case then in hearing an equity suit, a jury trial, or argument?

A. I think the last time he came over it was on Monday——

Q. They were having jury trials then?

A. That was on the 29th of October.

Q. On the 15th they had arguments?

A. Yes, sir.

Q. Do you know whether or not Judge Kirkpatrick consulted with Judge Ewing in the case on argument?

A. They had some talk—I don't know what their decision was——

Q. During the summer of 1884, there was very little business during the months of July, August, and September?

A. Yes, sir; nothing only motions and argument list.

Q. Is it not a fact that the court is only in session during that time of the year only one day in the week?

A. They met during the week, but generally on Saturday for motions. We generally wind up jury trials in June.

Re-direct examination by members of the committee:

Q. What is the condition of the business of the court of common pleas, No. 2, as to being up in their work or behind.

A. Well, we have some, I suppose, about four hundred cases on the list.

Q. When?

A. At the present time.

Q. Are they cases that should have been heard before this time in the ordinary course of business with three judges on the bench?

A. Well, probably we would have had list No. 2, that is the next list on, if we would have had another judge on the bench.

Q. Then, I understand, the business is behind?

A. Yes, sir.

Q. For what reason?

A. For the reason that only one room is running.

Re-cross-examination by Mr. Shiras:

Q. Is the number of cases undisposed of and unheard in this court larger than at a corresponding period in years heretofore?

A. It is larger than it was last year. We have had at times as many cases, and at other times more.

Q. Is it not a fact that the conveniences for hearing and trying cases in No. 2, with respect to the room, is very much restricted in this building?

A. Yes, sir; very.

Q. And is it not a fact that this lack of convenience has something to do with the backward condition of the business?

A. Yes, sir; the air is very bad in there; it is not a pleasant place to be.

Q. And, likewise, is it not a fact that the backward state of business is due to the illness of Judges White and Ewing at times?

A. Yes, sir; of course.

Q. And is it not a fact that during the fall, beginning with the first Monday in October and running for upwards of two months, one of the rooms of the court of common pleas, No. 2, is occupied by the Supreme Court?

A. Yes, sir.

Q. What effect has the sitting of the Supreme Court upon the business?

A. Well, it throws it back.

Senator HOOD, chairman. Upon consultation, the committee have concluded that the manner in which this inquiry has thus far been conducted will cause it to fail to accomplish its end. We expected that the petitioners would be represented by a committee of counsel to present the evidence on their behalf. The members of this committee are strangers to the facts upon which this inquiry is based, and ask that the petitioners be represented by a committee or counsel who will be able to produce the proper evidence and witnesses.

Mr. D. T. WATSON said: C. F. McKenna and B. B. Christy have consented to represent the petitioners. Mr. McKenna stated that Mr. Christy and himself had consented to represent the petitioners. Whereupon, on motion, committee adjourned to meet at two o'clock, P. M.

And now, to wit, Tuesday, April 21, at two, P. M., committee met pursuant to adjournment.

Present, Senators Biddis and Hood, Representatives Faunce, Sponsler, and Robinson.

C. F. McKenna and B. F. Christy, Esq., of counsel for petitioners, and Messrs. Shiras and McKenna, and Brown and Marshall, of counsel for respondent, and witnesses.

Senator HOOD. The committee desire to state, after consultation, that the scope of their investigation will be confined entirely to the joint resolution, one of the important requirements of which is an investigation as to the physical and mental condition of Judge Kirkpatrick. The question as to whether the testimony we will take will apply under the fifteenth section of article five will be one that the committee will consider in making up their report, and will be a question to be considered by the Legislature before they make their request to the Governor. In the line of our investigation we think it best to expedite matters by noting any objection that the counsel on either side may make, and at the close of the taking of testimony in Harrisburg, before we make our report, an opportunity will be given to either side to be fully heard on all questions as to the competency of the testimony.

D. T. WATSON, a witness called on behalf of petitioners, who, being duly sworn, testifies as follows, in answer to interrogatories propounded by Mr. McKenna:

Q. How many years have you been practicing at the Allegheny county bar?

A. Since 1867.

Q. You have practiced in No. 2, of course?

A. Some, yes, sir.

Q. How long have you known His Honor, Judge Kirkpatrick?

A. Well, I should say since at least 1870.

Q. Do you remember when you had a case last before him for trial?

A. I think the last case I tried before him, that is, a jury trial, was an action for the death of a boy by falling into a well, in which Mr. Bruce was with me, and Mr. Carpenter on the other side. My recollection is that that was a year ago last fall, although I would not pretend to fix exactly that date.

Q. Have you seen the Judge since?

A. Well, don't misunderstand me, I was in a case where Judge Kirkpatrick was on the bench in October, 1884.

Q. That was not a jury trial?

A. No, sir, and there was no argument, at least that I took part in.

Q. How long, then, with the exception of the motion last spoken of, in October last, about how long is it since you recognized Judge Kirkpatrick as being on the bench?

A. Well, I have not seen Judge Kirkpatrick since that date, to the best of my recollection.

Q. Was there a considerable intermission before that suspension of his duties?

A. Well, I should say so; for a number of months before that he had not been sitting on the bench, although he may have occasionally been there when I was not in court.

Q. Mr. Watson, you are at liberty to state from your observation, either in that last case or any case that you tried toward the end of Judge Kirkpatrick's sitting, as well as the case mentioned that you spoke of in October last to this commission, your opinion of his mental capacity as exhibited on those occasions as judge.

A. I do not think, in that last case, that he was fit to sit upon the bench as judge; that is, I refer to the case in 1884.

Q. Were his eccentricities marked on that occasion, or slight? just describe them.

A. Well, I don't know as I can give you an exact description. When he sat upon the bench and signified that he was to take part in the consideration of the case, I left the court-room.

Q. Had you been aware, up to that time, of his illness and absence from court?

A. Not by personal contact, but from general understanding, and the fact that I did not see him around the court.

Q. I suppose you saw his intimate friends and neighbors during that period and got those reports from them. The question is how you got your information—from those who were intimate and had opportunities of observing him?

A. Well, I don't know that I could individualize, Mr. McKenna, only it was, as I think, and as I still think, the general opinion, both at bar and the persons who knew him.

Q. Just describe what that opinion was.

A. That he was mentally incapacitated from sitting on the bench.

Q. Did the information you received apply only to his mental capacity, or physical, as well?

A. Well, when he came upon the bench in October, he evidently was suffering from some physical attack; that, I understood, was an attack of paralysis, one of his arms he seemed unable to have free use of.

Q. Is that the extent of yonr information, Mr Watson?

A. I have not seen Judge Kirkpatrick since then, unless it was possibly to see him pass upon the street, but, to the best of my recollection, I have not seen him since that day.

Q. You say you left the court-room shortly after you discovered he had taken his seat upon the bench?

A. Yes, sir; I did.

Q. You can describe to the commission here if he exhibited on that occasion, in the morning before he went on the bench or after he was there, any strange conduct not judicial.

A. Well, as I say to you, I left the court-room; I had met the Judge coming up the steps, or he had come up, and I saw him in the court-room, and saw him take his seat upon the bench, and I didn't stay to hear any remarks that he made. It was something that he said, but I don't remember now what the language was he used—

Q. It was from some expression of language that he used that you derived—

A. It was from his general appearance, and from the fact the language that he used, and the impression that I had at the time that he was mentally incapacitated from sitting.

Q. Just describe his general appearance on that occasion.

A. Well, I don't know that I could do that satisfactorily; he had a haggard, worn appearance to me, as if he had been suffering greatly.

Q. This language that he used to you—can you remember the substance of it sufficiently to say whether he was laboring under hallucinations?

A. No, I didn't have sufficient conversation with him to state that.

Q. Just state to the commission here whether on that occasion he seemed a changed man from his former ordinary behavior as a judge.

A. I thought so, decidedly.

Q. Was there a marked departure?

A. I thought so.

Q. From his ordinary behavior?

A. So it seemed to me.

Q. And I understand you to say that that was so evident and so extensive as to, in your opinion, destroy his capacity for judicial work?

A. I thought at the time, undoubtedly, that he was not fit to take part in the consideration of that case.

Q. And you acted at that time on your views?

A. Yes, sir.

Q. From your extensive practice in the various courts here, I think probobly you would be enabled to offer an opinion to the commission as to whether or not the business of the court has been retarded by the continued illnes of Judge Kirkpatrick and his absence.

A. It is a matter of general knowledge that one of the judges of the court of common pleas, either No. 1 or 2, have to take in rotation seats in the quarter sessions, which sits nearly during the entire year; this spring, Judge White being judge of the quarter sessions, Judge Ewing being unable to hold court, No. 2 was closed for some time, I don't know how long.

Q. At the season of the year when the closing of the court took place, I wish you would state whether or not that was a very serious public inconvenience?

A. For a disposition of the business, of course, it is necessary to have the court open, and, of course, it delayed business.

Q. More so than at the vacation period, of course?

A. Oh, yes.

Cross-examination by Mr. Shiras:

Q. During the period between the times spoken of when you last saw Judge Kirkpatrick officiating on trial in jury cases, and the time when he appeared in October, and your quitting the court-room on seeing him take the bench, hadn't you been absent yourself some two or three months?

A. I was absent in the summer; yes, sir.

Q. For two or three months?

A. I don't remember the exact length of time—not quite so long as you were.

Q. I was gone three months and one day, and I think you were gone three months.

A. No, I think it was about two——

Q. And didn't you go away that fall; didn't you disappear from your accustomed haunts here?

A. I was out of town three or four days—left town on Thursday night and came back Sunday night.

Q. On but one occasion?

A. That is my recollection.

Q. Now, with respect to this occasion you spoke of, when you quit the court-room without waiting to see whether Judge Kirkpatrick would acquit himself properly or not as judge, hadn't Judge Kirkpatrick taken part in the preliminary hearing of that very same case on the motion for a preliminary injunction?

A. Yes, sir.

Q. And he had decided the case in a method not to meet with your approval, did he not?

A. Yes, sir; both you and I thought he was not fit to sit there, Mr. Shiras.

Q. I didn't ask that, but whether his decision was one that met your approval, or not.

A. No, it did not.

Q. Wasn't it your opinion, when you left the court-room that day, didn't you leave it because you had an opinion that he was going to decide that case against you?

A. I left because both you and I thought that he was not fit to sit on that case, and we thought of filing a protest, and both thought of leaving—

Q. If you will say that, I will say that you did suggest such a thing to me, but I didn't think for a moment of accepting it.

A. Merely on the ground of courtesy?

Q. No, on the ground of propriety and other causes; you say you didn't wait to hear that case argued?

A. No, sir.

Q. Aren't you aware that it was argued to some extent?

A. Not as I heard.

Q. You say you are not aware of the fact that it was argued that day?

A. I am not aware that it was.

Q. What was the observation that Judge Kirkpatrick made to you on that occasion when he came up that led you to think he was not fit to sit there?

A. I didn't say it was one observation; it was an opinion formed from observation of his general appearance, the impression I had at the time, his conduct and talk, taken altogether.

Q. Did he talk when he came up? What was his talk?

A. I now don't know whether he said this when I was in the court-room or not—

Q. My question is the talk he made to you; you say he made some observation to you?

A. I am going to give you now all I can recollect in reference to it; I take occasion to say that I am not sure whether I heard him say it, or whether he said it to you gentlemen after I left.

Q. That is not what I am asking you, if you are not aware whether Judge Kirkpatrick said it to you or anybody else, you should not undertake to

state it. My question now is to you, under oath, what Judge Kirkpatrick said to you.

A. What he said to me? I don't know that I would pretend to state his language.

Major WILLIAM B. NEGLEY, a witness called on behalf of the petitioners, who, being first duly sworn, testified as follows in answer to interrogatories by Mr. Christy:

Q. You are a member of the Pittsburgh bar?

A. Yes, sir.

Q. For how long?

A. Since 1849.

Q. Are you acquainted with Judge Kirkpatrick?

A. Yes, sir.

Q. For how long?

A. Since 1847 or 1848.

Q. State, if you know, what his physical and mental condition was along about October, 1884.

A. I have not seen Judge Kirkpatrick to talk to him but once since his sickness, that was some time last fall, I do not remember the month or the day. I met him down street. I had heard the general rumor in regard to him, and when I met him and conversed with him my mind was satisfied that he was mentally weak as well as physically weak. That is the only time I had any conversation with him since his sickness.

Q. That was in the fall of 1884?

A. That was in the fall of 1884.

Q. At that time you saw him in the fall of 1884, did you consider him physically or mentally able to perform the duties of a judge of a court of common pleas, No. 2?

A. I did not.

Q. Do you know, of your own knowledge, how long it has been since he has performed any duties of that office?

A. It has been about a year that I have missed him from the court-room.

Q. From your knowledge and from your experience as a lawyer, what is your judgment as to the necessity of having three judges on the bench?

A. Well, I think there ought to be three judges there.

Q. Do you consider or not that the failure of Judge Kirkpatrick to perform his duties has retarded the business of that court?

A. I do, and for that reason instead of bringing suits in the court of common pleas, No. 2, I have, since his sickness, brought them in No. 1, so as to get them more speedily tried, as I thought.

Q. Do you think that this delay has been of such character as to have been injurious to the suitors and to the public in general?

A. That is my judgment, for the court needs three judges and we ought to have them, and when we do not have them, it retards the business of the public.

Q. From general rumor or reputation, as you may call it, concerning his mental or physical condition, do you know what it is at present?

Objected to by Mr. Shiras.

Senator HOOD. The sense of the committee is that the witness's opinion should be given from the knowledge possessed by the witness himself, or from the knowledge he may have obtained directly from some person who does know, but not from mere rumor.

Mr. CHRISTY. Then, Major, have you had any conversation with any one recently whom you believed had knowledge concerning his physical and mental condition?

A. No, only with my partner, Mr. Bruce.

Mr. SHIRAS. I suppose Mr. Bruce is living accessible and can be called as a witness, and I suppose he is sane?

Senator HOOD. The committee decides the proper question to ask would be what the witness's opinion is from his general knowledge.

Mr. CHRISTY. From your general knowledge, what is your opinion as to his physical and mental condition?

A. What am I to understand by the general knowledge?

Q. From everything that goes to make up that knowledge.

A. Well, as to that, if I am to interpretate general knowledge for myself, I will answer that he is unfitted for the position of a judge of a court of common pleas, No. 2, or any other court.

Mr. MCKENNA. You are at liberty to explain here what singularities, differences, from his ordinary every-day life before his sickness was manifested in his talk with you.

A. Oh, well, he was one of those jovial fellows, met every person in a social, cheerful way, but I don't know what you gentlemen want to know ——.

Q. That was his ordinary every-day way and talk when he was well. Now, I am glad you have defined that to the commission. Since sickness in these conversations which you have had with him on the street, what is it that causes you to form this opinion. Describe how that talk differs from his ordinary every-day talk when he was well.

A. Well, any one could see by looking at him that he was physically very weak, and disabled in one of his arms; how much I do not know, for he was leaning against a counter or desk in Clark's bookstore on Wood street. He was mentally very weak. It was some common conversation, I do not know what it was. It impressed me that the general rumor or opinion that I had heard of him that he was physically or mentally weak was true.

Q. Do I understand that his physical and mental manifestations were entirely different from his jovial and free manner he had when he was well?

A. Oh, yes.

Q. There was an entire change from his normal condition?

A. Yes, sir.

Q. That was when?

A. Some time last fall; I could not give you the date.

Cross-examination by Mr. Shiras:

Q. I understand you to testify that you have missed Judge Kirkpatrick from exercising his functions here as a judge for about a year, and during that time you had seen him once, and that was in a bookstore?

A. It is to converse with; I have seen him different times, and conversed with him once.

Q. And from his manner and that conversation, you decided he was mentally weak. What was that conversation?

A. Oh, I could not say; I say, from the character I had heard from him, what I had seen and heard of his conversation there; the conversation was just something about the ordinary topics of the day——

Q. Was it very unusual, so as to impress itself on your recollection?

A. No; it was only an ordinary conversation——

Q. Do you know what Judge Kirkpatrick thought of your mental condition from that interview?

A. No, sir.

Mr. McKENNA. Do you know at present what was the subject of the conversation at the bookstore?

A. No, sir; I do not.

Q. I understand you to say that it was plain and manifest that——

A. Yes, sir.

Honorable THOMAS EWING, a witness called on behalf of petitioners, who being first duly sworn, testified as follows, in answer to interrogatories by Mr. McKenna:

Q. Please state to the commission here how long you have known His Honor, Judge Kirkpatrick.

A. About thirty years.

Q. About thirty years?

A. I have known him well about twenty-six or twenty-seven years.

Q. How long has he been your colleague on the bench in the court of common pleas, No. 2?

A. Eleven years, the first of December last. Judge Kirkpatrick went on the bench of the District Court about October, 1868, and I on the first day of December, 1873.

Q. He was an associate judge of the court of common pleas, No. 2, presided over by you?

A. Yes, sir.

Q. I wish you would state to the court here when Judge Kirkpatrick ceased his regular and usual attentions to the duties of a judge on the bench when he was first taken sick.

A. It is a little difficult to answer that question; his health was feeble about two years ago for a time in the early spring of 1883, then he was very much better in the fall and winter of 1883 and 1884, and did considerable

work, but I think that the last he held court by himself was in March, 1884. I went into the criminal court the first Monday of March, 1884, Judge Kirkpatrick and Judge White being in the court of common pleas. Judge Kirkpatrick had been unwell before; he insisted upon holding court rather more than he should have done, and sometimes during the month of March, 1884—

Q. That is the last time he held jury trials?

A. Yes, sir.

Q. Can you recollect, Judge, when his health failed in March last, how long an intermission occurred before he presented himself for duty again upon the bench?

A. He sat with me in argument list three or four days in October last, brother White being on the quarter sessions.

Q. And since October last, I presume, he has been confined to his house unable to—

A. No, sir; it was the latter part of November. In October and the early part of November he was in pretty good condition. He was feeble, he had been improving, apparently improving rapidly, and, if I recollect right, it was not until the middle of November that he began to get evidently worse and go down, and perhaps it was not until the last of November.

Q. At all events, since October last, the time you fix he has not been discharging the duties of a judge?

A. No, sir.

Q. And not visited the court for judicial purposes?

A. No, sir.

Q. Can you tell us how often since March last you have visited Judge Kirkpatrick?

A. No, sir.

Q. Or about how often?

A. Oh, I could not tell; when he was specially sick I usually visited him about once a week and sometimes oftener, and sometimes not nearly so often, and on two or three occasions it was a month or six weeks that I did not see him.

Q. You say, when he was sick—

A. When we looked on him as suffering and requiring some attention, requiring the visits of his friends.

Q. That is all since March a year ago?

A. Yes, sir.

Q. When did you last visit him, do you remember?

A. About three weeks ago.

Q. At his home in Allegheny city?

A. Yes, sir; it is three weeks, either to-day or to-morrow; I think it was the first of April.

Q. Were your visits of long or short duration?

A. Some of them were of considerable time, some were short, and occasionally I did not see him; he was asleep.

Q. Why?

A. Well, if he were sleeping or likely to go asleep, I always refused to go to see him.

Q. That was the reason assigned?

A. Well, it was my reason for not going; I believed he wished to see me, and always insisted on seeing me if he knew I was there; it was understood, so they told me——

Q. Judge, I wish you would explain in your own way from your various opportunities and interviews you have had with Judge Kirkpatrick, whether or not he is suffering from mental incapacity, or physical incapacity, or both, in your opinion.

A. Well, I guess you had better get the physician on that; he was a very sick man at different times.

Q. We, of course, Judge, appreciate your delicacy in this matter; at the same time the commissioners here and we would like to have a direct answer upon the various visits and interviews that you have had to and with Judge Kirkpatrick. I wish you would give an opinion whether he is suffering from mental or bodily incapacity, or both.

A. Well, I would say at different times, beginning, would say, last February or the first of March, 1883, that he was a very sick man, very seriously sick and worse than he himself thought he was, and he undertook to do things that he had better not have done, should have rested, and, like almost any person in that condition, when very weak and feeble and sick, it would affect his nerves and affect his judgment, perhaps. Beginning with March last to when he came home from Philadelphia, he was very sick, physically sick I mean, and was apparently threatened with paralysis.

Mr. SHIRAS. About what time of the year was that?

A. That was in March last year or April, I could not fix the precise dates, but my impression is that his worst condition then was about the latter part of April or the first of May. I am very certain that by the middle of May he was better, or by the last of May and June very much better, and in July. When he was at his worst, he had some difficulty in hearing at times and difficulty in articulation, so that I think it was very difficult for those even intimate with him and around him to tell whether or not his ability to answer questions was inability to coördinate ideas or inability to articulate. I was not able to form an opinion satisfactory to myself at times in regard to that, as I say he was very much better in June and July, and as he got better physically, that difficulty disappeared. I did not see him from the latter part of July until about the first of December he was away part of the time and I was absent part of the time. He was not so well in September. He began to improve, according to my recollection, about the first of October, it may have been earlier, probably was earlier than that, and he was very much better, and I think visited

several places; he was at Cumberland, Maryland, I recollect, and he was at various offices, and was, I thought, in very good mental condition. During the month of October, he was able to converse very intelligently about everything; as I stated before, to the best of my recollection, it was about the middle of November when there seemed a stand-still or a cessation of that period, he himself thought he was getting worse before I thought he was. The first indication was his own assertion that he was not only not improving, but getting worse, and I think about the last of November or the first of December he was confined to the house and was so for considerable time and was very sick at the time.

Senator BIDDIS. Has he since March, 1884, done any work of his position which required him to write an opinion or decision or anything of that nature in the line of work on the bench?

A. No, sir; he has not written any opinions, but he has discussed very fully and intelligently his own cases, those he was concerned in. For instance, in June, last year, brother White and I heard the motion for new trials and reserved questions on cases that had been tried before him without intending to let him know it, but he kept the run of the newspapers, and when I visited him he discussed those cases very fully.

Q. Orally?

A. Yes, sir. Judge Kirkpatrick had virtue that perhaps it would be well for more judges of the lower courts to have. He was not in the habit of writing very long opinions, he decided his cases without giving very long opinions.

Representative FAUNCE. What was his condition on your last visit three weeks ago?

A. Well, it was peculiar; my visit was but a short one, I had not seen him for about five weeks, having been sick myself. I had been visiting him about once a week or ten days up until the latter part of Februry, when I was taken sick and was not here until, I think, the first day of April. He was very much changed from what he had been, say in December or January, at which time he was suffering greatly; he could not sleep without strong opiates; chloral was the principal thing given. He was apparently going down physically and mentally both. The first that I observed of physical improvement was about the middle of January. He slept better and with less chloral, and I think by the first of February he was sleeping without any drugs, and he appeared to improve, and about the middle of February I noticed a decided change in his mental condition. He was quiet, not troubling himself about many things that he had been doing. I saw a still further change on the second visit, which was the last before I myself was taken sick, and on my last visit three weeks ago, instead of being talkative, &c., he was disposed to be very quiet, and I think had decidedly improved physically. He talked very little, and his answers to my questions were intelligent enough, what he would answer, but he was not disposed to talk much. I did not remain long. It so hap-

pened that none of his family were there with whom I had been accustomed to converse and inquire about his condition, and I remained a shorter time than otherwise I would have done. He came down to the door with me, and would have come outside, but said very little except when I would put questions to him about anything, he appeared to answer that question intelligently and then stop.

Representative FAUNCE. Was his mental condition such as to qualify him for the duties of his office independent of his physical condition?

A. Well, scarcely, not at that time; no, sir. I would say not.

Mr. MCKENNA. On that question of his remarkable reticence, I wish you would explain to the commission his ordinary manifestation—desire to talk when he was well.

A. When Judge Kirkpatrick was entirely well, and in good health physically, he was, I think, one of the best conversationalists I have ever known—a man of great magnetic power in conversation; perhaps a little demonstrative in his manner, but he had a happy faculty of making every person who came in contact with him feel comfortable and pleasant.

Q. And since his sickness and absence from the court, do I understand you to say that he has changed in that respect?

A. Only at this last visit it was that I noticed that remarkable change.

Q. Was he very sociable and talkative on the former visits?

A. When not suffering he was.

Q. Can you state to the commission whether his conversations on former occasions gave evidence of hallucinations?

A. When do you mean?

Q. You say prior to this last visit, when he was not laboring under intense suffering, that he retained his faculty of conversation.

A. He had some hallucination running through December, January, and February; he had none at this last meeting——

Q. Was that because of his reticence?

A. No, I think not, because I mentioned one or two matters to him that two months before would have started him at once—matters that troubled him, but there was not a remark made at my last visit that indicated that he was laboring under any hallucination.

Q. The hallucinations that he did express, were they of a despondent character? Describe them to the commission here, some of them.

A. Well, for the most part they were. He suffered a great deal; he suffered physically, I think, and suffered mentally, and was in a nervous, excitable condition, and very small things troubled him.

Senator BIDDIS. For how long a time back does his ill health date? Has it been growing on him, or did it come suddenly?

A. Well, the first that I discovered anything that I thought was serious ill health with Judge Kirkpatrick, was at the last of February or first of March, 1883. As I stated before, I looked on him as being so sick that he required rest, and urged him to take a few months of absolute rest, and he

did, during the summer take some—not enough—came back and went to work, and he was not able to do it with justice to himself, the work that he undertook to do at times. In the fall of 1883, and the spring of 1884, I still thought if we could get him to take absolute rest at the time that he would have been much better.

Q. Before his illness, did the work in the court of common pleas, No. 2, press all three of you—keep you pretty busy?

A. I think there is very full work for three. Along from 1873 to 1878, there was a very large increase in the legal business of this county, probably more suits entered than in any ten years of the previous history of the county. Then it fell off a great deal, and while we had been a year and a half behind our time, two years ago every case that was at issue at the first Monday of April could have had a chance of trial before the last of June. We thought we were very well up, and therefore our work was easy.

Q. Is that so now?

A. We are falling behind some, business has incresed with us.

Senator BIDDIS. Is it not still increasing?

A. It is increasing now. From 1879 to 1880, and 1881, there has been a change; the increase is not so much in the number of cases as the class of cases. I think there are more important cases. As I believe, two hundred cases at the present day would have more litigation than three hundred had before.

Mr. MCKENNA. Explain in reference to the quarter sessions, if the remanets continued from one term to another are not very much behind and in arrears.

A. I held the March term of the criminal court last year, that was my term; at this time I happened to be sick, but I can say this: when I left the court the first of June last year the list was clean.

Q. You mean by that you tried all the cases that could be tried?

A. Substantially so; every case that could be tried.

Q. Don't you know it is a fact that there are many bail cases remanets, and are so for years, and that they are unable to be tried for months and months after the time?

A. No, sir; on the contrary I know that I have never tried a term in the criminal court that I did not try every case that was thoroughly ready, and in some instances I tried cases that had better not been tried. Take my last term there, probably there were not a half dozen cases left on it to be tried.

Q. Is there not a sufficient accumulation of jail cases from one court to another nearly sufficient to occupy the attention of one session of the court?

A. I think not.

Q. Does not that cause an accumulation or remanets?

A. Cases out on bail are frequently continued because the attorneys come in and file affidavits that we cannot well get over, or the district

attorney cannot find a witness, and they pass it. In very many of them there is not anything, and they should never have been brought; there are some cases which should not be tried. I would say there is more work for one judge than he really can do; there ought to be two judges for that court unless we are relieved by some minor court to take a great deal of this petty business.

Q. Then, Judge, the fact of two judges being required in the court of common pleas, No. 2, and the liability of one being detailed to quarter session business, leaving but one judge in No. 2, is a serious inconvenience to the public?

A. It necessarily stops that court. I would say, in regard to the business, that I have no doubt there will be more that six judges required here. If we were to have a wave of business come in like there was in 1873, if every judge were in good health and able to work, we would be swamped.

Mr. CHRISTIE. The fact that one judge was incapacitated in the court of common pleas, No 2, does not that throw additional labor on the remaining judges in the quarter sessions court?

A. Yes, sir.

Q. To what extent?

A. Our court has September term three months, and the March term of three months, which happens to be a little the heaviest, half of the work at the June term is usually light, and ordinarily changing around a judge would take three months out of every eighteen, but we, only having two judges, have to be detailed alternately; it takes one judge three months out of every twelve, in addition to that it takes from our court beginning with the first of September, it takes six months of solid work holding court every day out of what we call our court year; it is physically impossible to hold court the whole year through without some rest, and, in addition to that, one of the worst things is our badly-ventilated court-rooms. They are too small, and in the winter time, when we cannot have the windows thrown open, it is physically impossible to get them ventilated. That is the cause of my sickness.

Mr. CHRISTY. At any of the times when you say you visited His Honor, Judge Kirkpatrick, did you have any conversation with him in which it appeared he had forgotten that he was or had been a judge?

A. There was one in which I could not tell whether he had forgotten or pretended to have forgotten it. It was in the beginning of a change which I have seen ran very much for the better; I could not hardly tell. He seems to me at that time like people I have seen who have been sick with fever, raving, and just as they were getting well waked up with a kind of a doubt as to who they were, what had been occurring, and as I have seen a half awake boy or man.

Q. On any of these occasions, did he count up his wealth with you?

A. I don't think he did. I think I did once.

Q. At his request?

A. No, sir; it was rather at my own instance.

Q. Who gave you the date from which to enumerate?

A. Oh, I could hardly tell; I knew pretty well what his property was, and the valuation of it, and its situation, and he knew that; I could hardly tell you.

Q. Was that enumeration made at that time for the purpose of driving away any hallucination that he had concerning his condition, or probable future condition?

A. Well, it was to convince him that he was wrong with regard to the amount of his wealth.

Q. What was his hallucination on that point?

A. Well, there was a time when he was at his worst, that he thought he was likely to come to poverty; he was disposed to under-estimate his property.

Q. After the enumeration of his work had been completed, was he satisfied that that was correct?

A. I can't tell you.

Q. Did he express himself on that subject at all?

A. Well, I do not now recall about that part particularly.

Q. Do you know what the figures amounted to?

Objected to.

Senator BIDDIS. It was not a fact that he was poor?

A. I think not; that is a relative term.

Q. So far as you know?

A. As I have stated before that my visit three weeks ago there was not directly or indirectly any indication of hallucinations——

Mr. SHIRAS. What was that?

A. As I stated before, at my visit three weeks ago there was not, directly or indirectly, any indication of hallucination.

Cross-examination by Mr. Shiras:

Q. I understand you to testify that at your last interview there was a marked improvement in his physical condition in respect to his having the power of speech, and there was entire freedom from any mental hallucination?

A. There was nothing to indicate mental hallucination, and he was improved physically.

Q. At one time his power of articulation was imperfect.

A. Yes.

Q. That has disappeared?

A. Yes, sir, to a great extent. I really cannot answer that positively, but I have no recollection of noticing or having any difficulty in hearing and understanding everything that he said.

Q. At the time when he was in that condition of mind, when you say you observed some wandering of mind or hallucinations, do you know that he was undergoing severe medical treatment at that time?

A. I so understand. I understood that he was taking heavy doses of chloral to make him sleep, or some drug.

Q. At the last occasion he sat on the bench here as you testified to, did you observe any distraction of mind, or hallucination, or mental unfitness?

A. None whatever. I think in October last he was in very complete possession of his mental faculties; while I don't think he was physically able to undergo long study or investigation of a subject, his grasp of the subject as presented to him was very good; he understood it very well.

Q. On the occasion of your last visit, Judge, do you know whether there had been any change in respect to his taking chloral, or medicine of that nature, I mean?

A. I understood that he hadn't taken any from the time I had been there before. I think about the middle of February he ceased to require anything to make him sleep.

Q. From whom did you learn about him sleeping?

A. I learned it from him. Sometimes, you know, while Judge Kirkpatrick was as well as any man in this room, he was disposed to think he did not sleep as well as the rest of us; but I understood from himself he was sleeping very well.

Q. He was sitting up in his library, was he, Judge, at your last visit?

A. Yes, sir; and he came down stairs to the door, and would have come out if I had been willing that he should, but as none of the family were there, I did not, in fact, know whether it was proper for him to come outside or not.

Mr. MCKENNA. You footed his wealth up from the data he furnished you?

A. As I say, I don't think he furnished me the data. My impression is he did put a value on some of his property and on some of it I did. I cannot recollect, but I think it was $50,000 or $60,000 that it amounted to—a rough estimate.

Q. You thought it a very fair estimate?

A. Yes, sir; he was disposed to estimate some of it lower than I would.

Q. And you say your footings did not remove the hallucinations?

A. I cannot tell you.

Q. Did he express himself as convinced by your figures?

A. Not entirely; he said I was estimating his property too high.

Q. Well, had you?

A. Oh, I think not; that is a matter of opinion.

Mr. SHIRAS. It was chiefly real estate, was it not?

A. Yes, sir; one piece I think he estimated a little more than I would have done.

Mr. MCKENNA. You have stated that in June last Judge White and yourself disposed of his cases on the argument list and he reminded you of it; is that correct?

A. Yes, sir; I had disposed of——

Q. Will you explain to the commission why you disposed of his cases on the argument list if he was able to do it himself?

A. He was sick at that time and his doctor would not let him go out.

Q. Were not a great many new trials granted on those cases?

A. I can't tell you; there were new trials granted on some, on others there were not.

Representative ROBINSON. Were these hallucinations about his property and wealth the only ones you noticed on your visits?

A. There were times—short times—he had others.

Q. What others had he?

A. I do not know as it should be called hallucination, that would be the word, he was troubled about some business matters away back, a good while ago; he thought he had taken advantage of a party, where in fact he had only taken a fair compensation, and where the circumstance of the property rising, after fifteen or twenty years, had paid him well.

Q. Do you think the hallucinations were the result of awakening from the stupor of these drugs, or were they the direct results from—

A. I cannot tell you that; the physicians can give you a much better opinion in regard to that.

Mr. MCKENNA. How long did you state you were with him on the last visit you made to the house?

A. I cannot tell; it was a short visit.

Q. How long?

A. Fifteen or twenty minutes.

Q. Did you converse with him on ordinary affairs or law affairs?

A. No, sir; I did not introduce any law questions.

Q. Just commonplace talk?

A. Yes, sir. I did introduce a subject, though, that would have been at the time I speak of, when you asked me about him having believed that he was worth less than he was, would have brought that up directly, it was so directly on the question that he would have indicated any hallucination.

Q. You say he exhibited a marked improvement on that occasion.

A. Yes, sir.

Q. And did he physically, also?

A. Yes, sir.

Q. Did he express any desire to return to the bench?

A. We had no talk in regard to that.

Q. Did he speak of himself as being a judge at all on that occasion?

A. I cannot recollect.

Q. That was the occasion on which he was more reticent than usual?

A. We talked about myself being sick; I cannot recollect what all it was.

Q. I understood you to say that he was unusually reticent on that occasion.

A. Yes, sir; and quiet.

Q. You struck none of his hobbies or hallucinations to arouse him at all?

A. No, sir.

Senator BIDDIS. Was his language in monosyllables? did he display a lack of interest?

A. No. Yet for Judge Kirkpatrick, entirely well, he was reticent, but his expression was far from being in monosyllables. He spoke of Eugene Sue being the author of the Wandering Jew, and he spoke about reading Dickens, and about Sam Weller and the old Weller being great characters in Pickwick, and also of Mr. Robb, his special friend, being sick, and not having been there for some time.

Q. From your observation, do you think that his mental condition such as to have qualified him to come over here on the bench even if he had been physically able?

A. That day?

Q. Yes, sir.

A. Scarcely; if he was to get entirely well in three months from this time, I would say he ought not to have been out at this time.

Mr. CHRISTY. In answer to a question by Mr. Shiras, you spoke concerning an idea that he had that he did not sleep well, even when he was in good health; do I understand you, in answer to that question, to mean that he had been off for some time?

A. Oh, no; it was only a peculiarity when he was well, as well physically and mentally as any gentleman here, he simply thought he didn't sleep as well as he did.

Honorable J. W. F. WHITE, a witness called on behalf of petitioners, testified as follows, in answers to questions propounded by Mr. Christy.

Before being sworn, Judge White stated as follows: I desire the committee to excuse me from giving testimony here, as I think it would be indelicate and unpleasant for me to give testimony in reference to Judge Kirkpatrick.

Senator HOOD. The committee are of the opinion, while fully appreciating the delicacy of the witness' position, that they are powerless to excuse him from giving testimony. The committee themselves feel that they also are placed in a delicate position by their appointment, and trust that the parties on both sides appreciate the same, but they are very desirous of having the testimony of Judge Kirkpatrick's associates on the bench; having heard Judge Ewing's testimony, they desire to have Judge White's as well.

Q. What is your position at present?

A. I am one of the judges of the court of common pleas, No. 2, of this county.

Q. How long have you known Judge Kirkpatrick?

A. I have known him over thirty years.

Q. How long has he been your associate on the bench?

A. Over eleven years.

Q. How long has it been since the judge has performed his duties with you as associate judge on this bench?

A. It was his term to hold the criminal court, commencing the first of March, 1883, two years ago. He commenced holding the term, but he broke down and was unable to carry it through, and I had to take the term and finish it. He has done no effective work, as a judge, since that time.

Q. Since March, 1883?

A. Perhaps in April. It was during that term he broke down.

Q. March term, 1883?

A. Two years ago. It was sometime during the term; the term runs from the first of March to the first of June; I think he did not act more than half of the term, and I took it.

Q. He has been on the bench at times subsequent to that?

A. He was not on the bench during the summer of 1883. I have not looked at our record at all, because I did not want to give this testimony here, and did not prepare for it. My own impression is that he was not on the bench during that spring and summer, but was a little during the fall, and in January, I think, of last year he tried some cases; was, perhaps, two or three weeks in court, and, I think, he has not been on the bench since the early spring of last year, except one day.

Q. State, if you please, on motions for new trials for the last cases that he tried, what was the result, when the argument was had before yourself and Judge Ewing, in a large majority of those cases?

A. New trials were granted in them. If you will allow me to state briefly what I know, I will do so. I have not seen Judge Kirkpatrick since last fall. When he broke down during the March term of the criminal court, in 1883, I saw him very frequently in that time until last fall—met him very frequently, and I never considered him mentally capable of holding court for the last two years. I think all that time there was a giving away—a weakening—a gradual impairment of his mental faculties. The reason I did not call to see him for the last two months is that I live out of the city, and could only see him in the morning before court, or shortly after court. He was not an early riser, and I never could see him before court, and, therefore, generally called after court, when very frequently he was asleep, and the physicians had ordered or requested that many persons should not visit him. Many times I did not go to see him on account of it. My visits were always unpleasant and painful, although he frequently talked rational. I did not feel that I could do him any good, and since last fall I have not called to see him, so that I cannot speak from my own personal knowledge of his mental condition since then; but for the last two years I have not regarded him as mentally capable of deliberately considering any question of law, or closely applying his thoughts or mind to any legal question.

Cross-examination by Mr. Shiras:

Q. I understand you to say that, not expecting, or in all events not wishing, to be called in this inquiry, you have not undertaken to refresh your recollection by looking at the records of your court; aren't you mistaken,

Judge, with respect to Judge Kilpatrick not trying cases regularly as late as the 25th of March, 1884?

A. I say that in the early spring of 1884 he quit and has not held court since.

Q. The prothonotary, or rather his clerk, spoke from the records as to the Judge not having been regularly at his duties since the 25th of March, 1884.

A. That may be; I have not looked at it.

Q. What is the length of the summer vacation usually in your courts?

A. In the neighborhood of two months we have no jury trials.

Q. And you have not yourself, you say, seen Judge Kirkpatrick since last fall?

A. No.

Q. Can you give us the date of your last seeing Judge Kirkpatrick?

A. No, I cannot give that date. My own best recollection now is that I don't think I was there after September of last fall.

Q. Judge Kirkpatrick was in court, was he not, after September?

A. Not that I know of, not that I recollect.

Q. Weren't you absent in October, when the argument list was heard?

A. I was absent. I went away that day. It was only one case that was argued.

Q. Did you visit him after that?

A. I think not; if that was in October, I don't think I was there after that, October.

Q. Isn't it a fact that during the entire spring of 1884 that Judge Kirkpatrick tried cases regularly, like any other judge of the court of common pleas, No. 2?

A. He was a great deal in court, and for weeks trying cases, when I thought he was utterly incapable of trying a case properly, and I told him so and requested him not to try them, but he seemed anxious—anxious to do his duty and to work, when I thought he was both mentally and physically incapable of doing so, and advised him not to try any cases, but advised him to try and recuperate his health.

Senator BIDDIS. During the two months' vacation that you speak of, you do have arguments, do you not?

A. During July and August, we have no regular argument list, but we frequently have court on Saturday to attend to that business; for nearly the whole months of July we come in court every week.

Mr. CHRISTY. You say during the whole period during which you held your trials, you were satisfied he was incompetent, and you so advised him; was that opinion concurred in by the president judge?

A. Well, he can speak for himself.

Mr. MCKENNA. I do not desire to ask any question in relation to Judge Kirkpatrick's condition at all, but desire you to state to the commission here the condition of that court with respect to its business, whether there is enough work for three judges or not.

A. I do not believe your court is much behind time, but I think Judge Ewing and I have been called upon to do far more than we ought to have done. We have to hold one half of the criminal court. March and September terms fall on our judges. For two years Judge Ewing and I have had to hold these terms. We have endeavored to keep up the business and have done so.

Senator HOOD. Is there enough business for three judges?

A. Yes, sir.

Mr. MCKENNA. Were you not required, on account of the absence of Judge Kirkpatrick, to close one of the courts?

A. I was by myself. Judge Ewing was sick when it was closed.

F. M. MAGEE, a witness called on behalf of the petitioners, who, being duly sworn, testified as follows in answer to questions by Mr. McKenna:

Q. How long have you been a member of the Allegheny county bar?

A. Since the fall of 1867.

Q. How long have you enjoyed the acquaintance of Judge Kirkpatrick?

A. About thirty years.

Q. Were you pretty intimate with him?

A. I have been at times.

Q. I wish you would state how often you saw him since his last appearance in court.

A. I have seen him about four times in the last year since the 25th of March, the time that the prothonotary testified to here that he left off holding court regularly.

Q. Where did you see him?

A. I saw him out driving once; on Wood street, another time; and I saw him in Diamond alley the third time—three times that I recollect of.

Q. Did you hold any conversation with him?

A. Yes, sir.

Q. Each time?

A. Yes, sir.

Q. I wish you would state what the manifestations of intellect were on those occasions.

A. Well, he didn't appear to understand what he was talking about; he would jump from one subject to another; didn't appear to have any continuity of thought the last time I talked to him.

Q. When was the last time?

A. In the winter last, on Wood street.

Q. He recognized you, did he?

A. Yes, sir.

Q. How long was the duration of that conversation?

A. About five minutes.

Senator BIDDIS. When was this?

A. November last, on Wood street.

Mr. MCKENNA. Can you recall the topics?

A. Yes, sir.

Q. State to the commission, please, what they were.

A. Well, one of the topics I would not like to state at all; it referred to Judge Kirkpatrick's family, and I don't think it has any business in this inquiry.

Q. It was uttered so incoherently that it exhibited unsoundness of mind?

A. To my mind it did.

Q. Was it the sole subject of conversation, or did you touch upon any other subject?

A. We talked upon three or four different subjects; talked about the election, about the courts, and about other subjects; would go rapidly from one to another, and did not seem to have any idea two or three minutes afterwards of what he had been talking about at all.

Q. What impressed you most of his mental peculiarities?

A. I thought it was the result of his paralysis. I had been told that it frequently is the case with people becoming paralyzed.

Q. In the former conversation, Mr. Magee, did he express any strange hallucination, and if so, just state what was said?

A. Well, sometimes he talked very funny.

Q. Just explain, now, your idea of the funny talk in that conversation.

A. In the last three or four times I talked to Judge Kirkpatrick, I don't think he was mentally sound. I think he was mentally off his base, to use a common expression.

Q. Could you explain to the commission here, in these various interviews you have had with him, how his condition contrasted with his normal condition before his present state came on?

A. Yes, sir. He was genial, very even-tempered; met one in a "hale-fellow-well-met" manner, while last year he seemed to be despondent and broken down.

Q. You judge that from his utterances and expressions?

A. From his utterances, expressions, and movements. His whole general demeanor, his talk, showed the condition of his mind, and his movements his physical condition.

Q. You noticed the difficulty in his physical condition?

A. Yes, sir. Instead of walking along in a level manner, as he usually did, he ambled along like a man partly broken down.

Q. You say you met him out riding?

A. I did.

Q. Did you have any conversation with him then?

A. Yes, sir; he stopped his man in the buggy, and talked.

Q. His servant was with him?

A. Yes, sir.

Q. Did he talk himself, rationally?

A. The last time I saw him was on Hiland avenue; he appeared to be more rational than the year before.

Q. When was that?

A. That was last fall, sir; I think it was the last day he was in court.

Q. Did you ever see him at his house?

A. I didn't; it was painful for me to talk to him there; he invited me there, but I didn't go out to see him.

Q. Then it was his mental condition which made you reluctant to visit him?

A. Yes, sir. When Judge Kirkpatrick was at himself he was always pleasant, and it was a pleasure to visit him.

Q. Did you notice him the last days of his holding court here, anything about his infirmity then?

A. I saw him for a week or ten days in New York, after he had ceased to hold court—no, it was in the spring of 1883, and at that time he appeared to be very despondent and broken down; that was two years ago this spring.

Q. Was that preceding the fall sickness which Judge Ewing testified to here?

A. Preceding it, sir.

Q. From your observations of him and conversations extending over the past year, Mr. Magee, could you give an opinion as to his capacity or fitness for holding court?

A. I don't think he ought to hold court, that it would create a great deal of dissatisfaction among members of the bar and suitors to have him sit upon the bench in the condition he has been in for the last year or six months.

Q. From his appearance, do you think he is likely to recover soon and go on the bench?

A. I do not believe he will recover, but that is a question for the physicians.

Q. As a practicing lawyer, Mr. Magee, could you give an opinion as to the necessity for the accumulation of business here in the court of common pleas, No. 2, requiring the presence of another judge?

A. Well, another judge could be worked ten months in the year if they attended to their business.

Q. Public necessity requires it?

A. I don't know, if they would work a little harder two judges might get along.

Q. Don't you think two judges ought to do the work?

A. No, sir; but I think two judges might do the work if they worked the way judges used to do.

Cross-examination by Mr. Shiras:

Q. I understand you to speak of having seen Judge Kirkpatrick on four occasions that you enumerate?

A. On four occasions that I remember of.

Q. Did you try any cases before him during the last year he was on the bench?

A. No, sir.

Q. The four cases that you remember of, one was on Wood street and the other on Diamond alley, and then you have mentioned the time that you met him when he was out with his servant riding.

A. He was out at my house on Hiland avenue that afternoon that I speak of.

Q. When was that?

A. The early part of November or the latter part of October.

Q. This last fall?

A. Yes, sir.

Q. You say you haven't seen him since?

A. Yes, sir; twice since.

Q. Where?

A. One day on Wood street, I think, just after the election, shortly after the time when I saw him out riding, once after that.

Q. So that your recollection is that that last time you saw him was then about the middle of November?

A. It may have been and may have been later. I will state this: I think the last two times I saw him was in the month of November.

Q. These occasions were all of them on the street?

A. Yes, sir.

Mr. McKENNA. Two years ago, when you met him in New York, do you know whether he had suspended court or no?

A. I don't think he was trying cases regularly at or about that time; he was very weak physically and very despondent. I was stopping at the same hotel in New York, and saw him every day while he was there.

C. C. TAYLOR, a witness called on behalf of the petitioners, who, being first duly sworn, testified as follows in answer to interrogatories by Mr. Christy:

Q. Mr. Taylor, you are a member of the Pittsburgh bar?

A. I am.

Q. For how long have you been such?

A. Since 1861.

Q. How long have you known Judge Kirkpatrick?

A. Since 1859.

Q. Were you present in the court of common pleas, No. 2, on or about the month of October, 1884, when Judge Kirkpatrick was on the bench for the argument of a case? I believe it was the bond case, I am not sure about that.

A. I was, I believe.

Q. Did you hear any member of the bar on that occasion express an opinion or refuse to proceed with the argument of the case on account of his condition?

Objected to.

A. I heard Mr. Shiras refuse to argue the case, but I did not hear him say it was on account of Judge Kirkpatrick being on the bench.

Q. Did any of the other members of the bar refuse to proceed with the argument?

A. I don't know. There was a good deal of talk back and forward, but the case was not argued while I was there. I think Mr. Watson was concerned in the case, but he had gone out.

Q. Was it not the fact, Mr. Taylor, on that occasion that the argument was really postponed on account of his mental condition?

A. That I don't know.

Q. Was not that opinion expressed at the time by the members of the bar for not proceeding?

A. Not to my knowledge. I heard Mr. Shiras say that he declined to argue the case, and Judge Kirkpatrick made the remark that he had better argue the case because he might be able to convince the Court that the master, Mr. McClung, was right in the case; that is all the remark that I remember of being made.

Q. Mr. Taylor, from your knowledge of the Judge at that time, what is your opinion as to his condition?

A. Mr. Christy, I have not seen Judge Kirkpatrick but twice since before the holidays, in 1883; on that occasion, and once I saw him in Diamond alley, and I don't think that I would be competent to form an opinion. The time I saw him, both those times, I don't think he was fit to try cases, or to perform judicial functions at that time. I had not seen him; I never was at his house, and have not seen him but twice since 1883.

Q. And his conduct on those two occasions, you do not think he was fit to perform the duties of a judge?

A. At that time I did not.

Q. At the time you saw him on the bench or met him on Diamond alley, was that afterwards?

A. No, sir; that was before. I think it was early in the fall or in the summer, he was sitting in a buggy, and I went across the street and shook hands with him.

Q. At that time what was his condition?

A. At that time I don't think he was either physically or mentally strong.

Q. Will you state how his conduct differed at that time from his usual conduct?

A. Well, he seemed to be weak, both physically and mentally.

Q. It was a decided departure from his ordinary normal condition?

A. He was not in his normal condition at all.

Senator BIDDIS. You have attended court and you have been practicing at these courts?

A. Yes, sir; I have.

Q. He has not been on the bench for what length of time?

A. Well, I was in the house myself for nine weeks. For some time in January until after Judge Kirkpatrick left, until some time in March, and when I came back Judge Kilpatrick had been off the bench, and he has not been there but on the one occasion I spoke of.

C. A. ROBB, a witness called on behalf of the petitioners, who, being first duly sworn, testified as follows, in answer to questions by Mr. Christy:

Q. What is your business?

A. I am a student.

Q. In whose office?

A. My father's office—C. W. Robb.

Q. A student in law office?

A. Yes, sir.

Q. What age are you?

A. I am twenty-two.

Q. Do you know His Honor, Judge Kirkpatrick?

A. Yes, sir.

Q. How long have you known him?

A. Well, that I would not be able to state correctly. I have known him ever since I was a very small boy.

Q. Have you seen him of late?

A. Yes, sir.

Q. Frequently?

A. Frequently.

Q. In the last six months, how often have you seen him—that is, about how frequently?

A. Well, I suppose, in the last six months I have seen him from twenty-five to thirty times, as near as I could judge; I cannot say exactly.

Q. That is, in the course of every two weeks or ten days?

A. Yes, sir; I did not make any regular periodical visits there.

Q. But about that, on the average?

A. Yes, sir.

Q. When did you last see him?

A. I saw the Judge about one week ago.

Q. When you first began your visits to Judge Kirkpatrick, what was his condition, physically and mentally, so far as you know?

A. Well, when I first began my visits——

Q. That is, I mean within the last six months.

A. Well, I never made it my business to call there until he was taken sick; when I went to see him after he was taken sick, he was, undoubtedly, very sick, so far as I understand; I am not an expert in medical matters.

Q. Did you see him every time you called?

A. Almost every time; yes, sir.

Q. You say he was very sick. He was confined to his bed?

A. Not to my certain recollection.

Q. What was his mental condition?

A. His mental condition at first—when I first went to see him after he was first taken sick, after he was unquestionably an invalid—was, undoubtedly, very bad.

Q. How long did that very bad condition continue?

A. Well, that I couldn't state.

Q. When did you notice any improvement on him?

A. To my certain knowledge, I noticed an improvement, and then I noticed a sort of what I considered a partial relapse, and then I noticed an improvement.

Q. When did that partial relapse occur?

A. Well, I suppose that would occur maybe two months ago, as near as I can estimate.

Q. Then you think he has improved since that?

A. I think he has undoubtedly improved.

Q. What was his condition the last time you saw him?

A. His condition the last time I saw him, physically he was undoubtedly better, mentally he was not worse, if anything, better.

Q. No worse——

A. According to my judgment, I mean.

Q. No worse than when?

A. No worse than——

Q. Than he had been ordinarily?

A. Than he had been ordinarily; that is, than on my visits preceding that time.

Q. You are a law student?

A. Yes, sir.

Q. And it is to be hoped some day you will be a lawyer?

A. I hope so myself.

Q. From your knowledge of the bar and the business of the courts, what is your opinion as to the ability of Judge Kirkpatrick at present to hold court?

A. At present the whole court——

Q. Yes, sir.

A. Well, I don't think at the present time Judge Kirkpatrick is competent to hold court, although I do not feel that I am experienced enough

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Q. I am merely asking your opinion; taking everything into consideration, on the visits you made to the Judge, you say he was very sick, and his mind was in a bad condition. Did he have any hallucinations of any kind?.

A. None that I know of.

Q. None that you know of?

A. When I first went to see Judge Kirkpatrick, he would frequently tell me he was troubled, he felt troubled, but he never told me what about. I assisted in nursing him at night when he first took sick, with the colored

nurse, George Wilkinson, and I can say unquestionably that he lately is better both mentally and physically.

Q. Has he recovered completely in his speech, or was there an impediment in it?

A. At first there was.

Q. He talked incoherently?

A. Yes, sir.

Q. Was there a time when he was not able to talk at all, or talked incoherently from paralysis?

A. Not to my certain knowledge he has not.

Q. During that time, he has had partial paralysis, has he not?

A. Yes, sir; had a partial paralysis of his right arm.

Q. How was his hearing during this time?

A. It was normal, so far as I know.

Q. His speech is perfect, did you say?

A. Recently.

Q. No; at any time during these six months?

A. His speech in the beginning was far worse than it has been lately.

Q. Is his speech perfect now?

A. It is not perfect; I noticed an improvement in it. What I mean to say by perfect, is to say that he does not speak as perfectly as before he took sick.

Q. To what do you attribute that failure?

A. Well, I have no idea, not the slightest.

Q. How is that failure manifested? by an apparent want of the use of the organs of articulation, and want of the use of the tongue, or what is the difficulty?

A. Well, I could hardly answer that question; I am not a physician. Occasionally when I asked him a question he would answer me, and answer me very rationally and intelligently, although he did not seem to be disposed to talk at times, but whenever I asked a question he always gave a very sensible answer; that is, recently.

Q. What was his disposition at the last time you saw him? was it talkative or otherwise?

A. Well, not notably either way.

Q. Isn't it a fact upon the last two or three occasions that you have visited him that he only talked in answer to interrogatories and questions propounded to him?

A. Only?

Q. Yes, sir.

A. No, sir; he has not.

Q. Wasn't that principally the conversation when questions were propounded to him?

A. Yes, sir; principally, it was; though once or twice I remember he spoke to me without asking a question; one time he asked me how my

father was, and another time he asked me a question which I have forgotten.

Q. Then, generaliy, it was only in answer to questions?

A. Yes, sir.

Q. He and your father had been personal friends for a long time?

A. Yes, sir; I believe they have.

Cross-examination by Mr. Shiras:

Q. At the time you assisted in nursing him, at the time you spoke of his apparently having mental trouble, he was taking very strong medicine at the time?

A. Yes, sir; I believe he was.

Q. These recent visits you spoke of were of short duration, short visits?

A. Yes, sir; short visits.

Q. Did he seem stronger than he had been?

A. He seemed stronger not only to me but to the rest of his family, that is, to his sisters, because when I saw him he was eating his supper there.

Q. Down stairs?

A. Yes, sir; they were all at the supper table, and while I was sitting there talking to the family, he made a remark that he was done, and he would leave; he reached his hand back on his neck to untie his bib—an oil-cloth bib he had on—and his sister, Mrs. Caruthers, made a remark that he seemed to be very much stronger than he had been for a long time.

Q. He is able to go up and down stairs?

A. Yes, sir.

Q. That was about a week ago?

A. About a week ago.

Q. When you last saw him he was at the supper table?

A. Yes, sir.

Mr. MCKENNA. Do you know whether Judge Kirkpatrick writes any letters?

A. No, sir; I do not.

Q. Do you know whether he does any writing at all?

A. I do not, at all.

JOHN J. MITCHELL, a witness called on behalf of the petitioners, who, being first duly sworn, testified as follows in answer to interrogatories by Mr. MCKENNA:

Q. Mr. Mitchell, how long have you known Judge Kirkpatrick?

A. Since about 1849, I think.

Q. You have practiced at the same bar with him?

A. Yes, sir.

Q. You signed this petition with other members of the bar asking for this investigation?

A. I did, sir.

Q. You can state to the commission here when you last saw Judge Kirkpatrick.

A. I think the last time I saw Judge Kirkpatrick was in the month of October, 1884. I saw him twice afterwards, on two separate days. The first day I saw him he was in the quarter sessions; I think Judge White was on the bench, Judge Kirkpatrick came in for a few moments and took a seat on the bench and then left. A number of the members of the bar went over and shook hands with him, I among others, and I expressed my gratification at seeing him able to be out again.

Q. Did you have any conversation with him on that occasion?

A. It was very brief. He stated that he was allowed to be out that day, and he was going—had to go now.

Q. Describe to the commission here his physical condition and appearance so far as you can.

A. Well, from the reports I had heard about Judge Kirkpatrick, his appearance was better than I expected to see, and I so stated to him.

Q. How was his appearance, as contrasted with it, before his illness called him off the bench?

A. It was the appearance of a broken-down man, physically.

Q. How did his mental vigor strike you?

A. I did not have much of an opportunity of ascertaining that from the conversation I had with him. He was shaking hands with members of the bar; several others came up and shook hands with him; he seemed sad.

Q. Sad?

A. Yes, sir.

Representative ROBINSON. Was that his normal condition?

A. No, sir; it never was while he was well.

Mr. MCKENNA. Describe his temperament.

A. His temperament was genial, pleasant, happy, and jocose.

Q. It was a very notable change from his normal condition?

A. Yes, sir.

Q. When did you see him before that event?

A. I hadn't seen him before that since the early months of the year 1884—a short time before I heard that he was sick.

Q. You can state what, if anything, you noticed of his condition of health, in mind or body, at that time.

A. I didn't pay any particular attention to it.

Q. You had no cases to try before him?

A. No, sir. I saw him again after that time. I saw him again the next day——

Q. You mean after October?

A. No, sir; I think it was in the month of October, at the door of the hall leading into this building. I happened to come out of the register's office, and Judge Kirkpatrick had just come down stairs from above here. There was a carriage waiting for him at the door, and he shook hands with me. On the first occasion, he stated to me that at one time he did not expect that he would ever be able to be out again; that was on the first oc-

casion, and on this occasion, when I met him at the door leading into the hall of this building, he stated that he had been up in court on the bench, at the request of Judge Ewing. That was the only remark he made to me. He seemed, that day, to be despondent, and not at all like his former self. Several other parties came around and shook hands with him. That was the last time that I ever saw Judge Kirkpatrick.

Q. He has never been, to your knowledge, on duty as a judge since?

A. No, sir.

Q. Or about the court-house?

A. No, sir.

Q. Was the change on the second occasion very marked, or merely trivial, with his normal condition of mind?

A. Well, it was certainly. The Judge seemed to be despondent, he was not of that happy, genial turn that he was always before.

Q. Could you give an opinion from your opportunities of seeing him then, contrasting that with his former condition, whether he was fit for duty on the bench?

A. No, sir; I would not like to express an opinion on those brief interviews. The man might be sick and weak.

Q. I mean at the time you speak of.

A. I spoke of those two occasions, and I would not like to say from all the opportunities I had of observation, I would not like to express myself positively on that subject.

Q. In signing this petition, with other members of the bar, you can state if you acted upon information of your own or other reliable information in reference to the condition of Judge Kirkpatrick in body and mind.

A. My attention had been called to the condition of Judge Kirkpatrick by members of the bar and people outside; it was a subject of common conversation.

Q. Was that among members of the bar?

A. Yes, sir; and also from items that I saw in the newspapers.

Q. You can state, Mr. Mitchell, as a practicing lawyer, whether the business of the common pleas, No. 2, here is sufficient to require the constant attendance of three judges, that with the quarter sessions included.

A. I am not able to say that, sir.

Q. You can give your opinion.

A. I have seen it in this county when there was only one judge in the court of common pleas, with two associates, and Judge Grear held the district court alone until he had an associate appointed, Judge Williams.

Senator BIDDIS. Has it not greatly changed since then?

A. Yes, sir; I suppose we have greatly increased in population and also in law suits.

Mr. CHRISTY, (to the commission.) Even at the risk of being thought impertinent, I desire to call the attention of this commission to a matter of fact. I hold in my hand the return of the sergeant-at-arms of an attempt

to make a personal service upon and notification of the appointment of this commission on Judge Kirkpatrick to the effect that he was not able to see or make known the contents of this petition to him. I therefore suggest that this commission see him, and if it is not possible for the whole commission to see him, that they designate one of their number to make him a visit and report to the balance of the commission. I make this suggestion the request of a number of the petitioners, at the same time hoping that the commission will not deem it impertinent.

Mr. SHIRAS, (to the commission.) I feel that one remark would not be out of place to the effect that it would not be very improper for your Honors to defer acting on the suggestion made by Mr. Christy until you have heard the testimony of the Judge's physicians before you. There may be a very good reason why Judge Kirkpatrick is not sitting beside us, aiding us with his counsel in a matter of such importance to him. He is a great deal better than he has been, but whether he can be submitted to the interview proposed is a question for his physician, and it is a matter of which we cannot speak.

Senator HOOD. As a matter of fact, has he any knowledge of this inquiry?

Mr. SHIRAS. Yes, sir; he had knowledge of it, but we have never thought it proper to consult with him on the subject. His physician advised that he should not be seen by any officer coming with a process; but of the fact of the inquiry, I think he is aware. That communication was made to him by his physician, and the committee will probably have the benefit of his physician's statement on this topic when he is on the stand.

Representatives FAUNCE. The commission have not taken that matter into consideration; that as a matter of fact it did not know what might be done or whether he would be before us.

Adjourned to meet April 22, at 9.30, A. M.

And now, to wit, Wednesday, April 22, at 10 o'clock, A. M., committee met pursuant to adjournment.

Present, Senators Biddle and Hood, Representatives Faunce, Sponsler, and Robinson.

C. F. McKenna and B. F. Christy, Esqs., and Messrs. Shiras, McClung, Brown, and Marshall, of counsel, and witnesses.

Senator HOOD. The committee are now ready to proceed with the inquiry. Are counsel for the petitioners present?

Mr. MCKENNA. My colleague is not yet in the room, but will be here in a few minutes; and, while waiting on him, I wish to make a statement. I wish to say that we are not here for the purpose of prosecuting a case against Judge Kirkpatrick or anybody, but for the purpose of securing, as far as possible, a fair investigation of his physical and mental condition; and, with that purpose in view, will call as witnesses three medical gentlemen of character and repute in their profession; and will ask this court

this morning to designate these three gentlemen: Dr. Hutchinson, who has been connected with Dixmont for seven or eight years, and has made a special study of the treatment of the insane; Dr. C. C. Wylie, who, for a long period, was the acting superintendent of Dixmont Insane Hospital; and Dr. Samuel Ayres, a physician of this city who has served some years in the hospitals for the insane and devoted much study to their treatment, be designated by this committee as a committee of physicians to visit Judge Kirkpatrick at his home and make report in connection with their and other expert testimony to be given here this afternoon.

Mr. SHIRAS. I don't know that we have any objections to make to the suggestion except in one particular, viz: Although these gentlemen are called as witnesses, and are very respectable gentlemen in their profession, whether it would be the proper thing for them to go under the designation of this committee, or at the request of anybody, to see Judge Kirkpatrick, and subject him to such an examination. I would suggest, in respect to that, that inasmuch that the physicians who have been attending, and are attending, on Judge Kirkpatrick, and who are gentlemen of standing in their profession, have been called as witnesses to be examined, whether it should not be first ascertained from them whether such an examination could be made without detrimental effect on their patient. I would suggest this matter for the consideration of the committee, and of the physicians in charge; if the patient have no objection to the visit of these physicians, three in number, then we have none.

Mr. FAUNCE. Does counsel wish the committee to designate these gentlemen to make this examination and testify in connection with the attending physicians?

Mr. MCKENNA. Of course it would be in connection with them. My idea is that the committee would name these physicians——

Senator BIDDIS. Might it not be well to see the family physician first?

Mr. MCKENNA. They will not be here until two o'clock.

Senator HOOD. The committee would hardly like to take the responsibility of appointing these physicians to make the examination. They would like to have them sent, if possible; perhaps it would be better to hear the family physician first.

Mr. SHIRAS. They can see him and he will give them the history and the symptoms in the case, and maybe visit the Judge with them. If the family physician has no objection to their visit we have none.

Senator HOOD. Perhaps these gentlemen could hear the testimony of the family physician, and speak from that.

Mr. MCKENNA. They would then be speaking from a hypothetical case, and physical examination is always the better plan.

Senator HOOD. I would suggest that these gentlemen call upon Doctor Herron, and get the symptoms of the case from him, and visit the Judge, if he will permit them. I would suggest that they do this.

Mr. MCKENNA. They will do so at once.

D. D. BRUCE, a witness called upon the behalf of petitioners, testifies as follows:

Q. Mr. Bruce, how long have you been a member of the Pittsburgh bar?

A. Since 1846 or '47.

Q. You are well acquainted with Judge Kirkpatrick?

A. Yes, sir; very well acquainted with him.

Q. During all of that period?

A. Well, he is a younger man than I am, and came to the bar afterwards.

Q. Mr. Bruce, did you see Judge Kirkpatrick during the last day he was holding court, in March a year ago—jury trial?

A. I saw him at that time Mr. Watson refers to, as I saw it reported in the press, in Mr. Watson's testimony. The case was conducted by Mr. Watson and myself, representing the defendants, and Mr. Carpenter the plaintiff.

Q. That was in October last?

A. I don't remember; I think it was last March.

Q. Was it a jury trial or argument list?

A. It was a jury trial; I think it was in March, or in the spring.

Q. Would you know whether he held court after that?

A. I don't think I saw him on the bench since that time.

Q. Did you visit him occasionally at his house?

A. No, sir; never saw him in his house.

Q. Did you see him since that time?

A. I think I only saw him once, and that was at dusk, at my residence in Shadyside.

Q. He had called at your house?

A. No, sir; it was about dusk, and I was sitting on the porch and saw a buggy stop at my gate. I went down, supposing it was somebody wanting to see me. It was Judge Kirkpatrick in a buggy, with a man driving him. When he saw me, he says: "My God, Bruce, is that you?" I told him I was glad to see him out, and while we talked, he complained and cried about his hand. He said he was going out to see John M. Kennedy, who lives above me a little on the road. I told him Mr. Kennedy was not at home, and he remained and talked some fifteen minutes, and then turned to go home. That was about the last time I saw him.

Q. Can you fix that date?

A. Indeed, I can't.

Q. Was it after March?

A. Yes, sir.

Q. Was it in the summer?

A. It was in warm weather.

Q. Was there a man in the buggy with him?

A. Yes, sir; a man driving him—a man he called John.

Q. Just describe his condition.

A. Well, when he spoke he said, "My God, Bruce, is that you? I didn't

know that you lived on the hill." I had formerly lived on the lower side of the road. I thought it queer that he made that remark and knew that I lived on the hill. But, after thinking about it, I thought that he might know by an incident that occurred with Fred Magee; he conducted himself rationally while there.

Q. How long did you converse with him at that time?

A. I suppose about ten minutes.

Q. What was his physical condition?

A. Well, it was dusky, and I noticed that his hand was marked as if they had been putting silver on it; while there, he complained and cried about the condition of his hand.

Q. Was it his right hand?

A. I couldn't say; I don't remember about that exactly, and as to his manner, of course we all know Kirk's manner, but the committee don't; and as to that I would say he was a little more Kirk than usual—a little more ecstatic.

Q. Did you ever see him afterwards?

A. Never saw him afterwards.

Q. What impression did that make upon you?

A. The impression that he was not in as good health as he formerly had been.

Q. Does that apply to his mental health, too?

A. He was fretted and worried about his hand, and the paralysis of his arm, thinking that he was going to break down.

Q. Was there anything peculiar in his conduct during the trial that you speak of in March, 1884—a marked change in the Judge's deportment or capacity?

A. Well, Judge Kirkpatrick, as long as I have known him on the bench, has not had, in my opinion as a lawyer, the power to fix his judgment upon a legal question without great difficulty; he would vacillate, and if a lawyer of some ability made an argument before him they carried him along; and another one of equal ability would carry him a little the other way the next time; we knew at the time this case was tried that he had been sick for a year, and was, at times, perhaps not quite as strong as he had been before; he certainly decided properly in that case, for he non-suited the other side.

Q. What was his condition on the occasion of that trial?—was his physical condition such as to indicate him to be in a fit condition of health for the discharge of the duties as judge?

A. Well, that is a very hard thing to answer.

Q. Well, as to his prevailing condition of worriment, and fretfulness about his paralysis in March, a year ago, did, or did it not, make an impression upon you as to his fitness to discharge the duties of a judge?

A. Well, from the way he cried and talked to me, I thought his disease

had had a serious effect upon him. That was the evening he was at my house. I have not seen him since.

Q. You can state whether the absence of the Judge has, or has not, seriously inconvenienced the public in the transaction of business in that court?

A. Well, for two or three years back, business has been very well up in that court; we could get a case tried in two or three months.

Q. Would the absence of the Judge seriously inconvenience the business of that court?

A. It would be a detriment of about one third.

Cross-examination by Mr. Shiras:

Q. You have stated, Mr. Bruce, I believe, at the final conversation at your house with Judge Kirkpatrick was rational?

A. Yes, sir.

Q. You have also stated that on the occasion of the trial in court there was no evidence of impairment or aberration of his mind?

A. Nothing more than that I saw he was more vacillating than he generally was.

Mr. BRUCE. I desire to state to the members of this committee that my partner signed the petition in my name. I don't object to that. I have not signed the petition to the Legislature myself, and would not in this case.

JAMES H. REED, a witness called on behalf of the petitioners, being duly sworn, testified as follows:

Q. Are you a member of the Pittsburgh bar?

A. Yes, sir.

Q. For how long?

A. About ten years.

Q. How long have you known Judge Kirkpatrick?

A. I suppose about fifteen years.

Q. You have had some experience in the trial of cases before him?

A. Yes, sir.

Q. When was the last time you appeared before him in the trial of a case?

A. The last jury case on trial before Judge Kirkpatrick was some time in March, 1884.

Q. From your observation at that time, what was his mental condition?

A. Well, I think not so active as it has been some time before; at that time he had difficulty in comprehending the ordinary rules of evidence.

Q. Did you consider him, at that time, competent to sit as judge in a case?

A. He got through with that case all right.

Q. At that time did you consider him competent to sit in a trial of a case?

A. Well, sir, I think he was hardly competent.

Q. Did you see him subsequent to that time?

A. I saw him some time in October, one of the days he was in court, I don't remember which it was.

Q. Did you have any conversation with him on that occcasion?

A. Yes, sir.

Q. From your conversation, would you say that he was competent to act as judge?

A. I don't think that day he was competent to act as judge.

Q. Was that the day of the argument of the case that has been referred to in evidence as the Pittsburgh bond case?

A. I don't remember whether it was that or not; it was near that time.

Q. You conversed with him on that case?

A. He conversed and I listened.

Q. Mr. Reed, was his conversation in the court-room on that occasion such as a sane man would have used in occupying his position?

A. A sane man might have used the same conversation, but not talked so low; his ideas did not seem to come as quickly as before; he talked very much as I have heard him talk before that.

Q. Have you seen him since that day?

A. No, sir.

Cross-examination by Major Brown:

Q. What case was that you tried last before Judge Kirkpatrick?

A. I don't know the plaintiff's name, Schooly administrators, the suit was on a book-account.

Q. Did you see anything wrong of his consideration of that case?

A. Well, he seemed to have great difficulty in comprehending the ordinary rules of evidence, as to book of entry.

Q. You don't mean to say anything was wrong with the mental abilities of the Judge at that time?

A. Well, as I told you, he didn't seem to comprehend the simplest rules that day.

Q. This was an appeal from the justice of the case?

A. Yes, sir.

Q. How much was involved?

A. About two hundred dollars.

Q. What was the date of that trial?

A. I don't remember it. My impression is, it was in February or March.

Q. Do you know that he tried the Douglass will case the last case but two that he tried a short time previous to that?

A. I don't remember whether he tried it or not; you was in the case.

Q. You remember that case occupied eight days, contained numerous rulings, and went to the Supreme Court?

A. I remember it occupied a long time.

Q. Don't you remember that it was the last case but two that he tried?

A. No, sir; I don't remember.

Q. Did you see him in court after the time of the trial of the case that you have stated?

A. I can say that I saw him in October.

Q. On what occasion?

A. One time when he was on the bench during argument list.

Q. Did you see him in court on the occasion of the argument in the city bond case?

A. No, sir; I was not at home.

Q. Did you see anything at that time, or hear anything in conversation, that led you to believe his mind was impaired at that time?

A. I can't repeat the conversation, but I was speaking with Mr. Cox, a member of the present Legislature, and I remarked that "Judge Kirkpatrick was but a shadow of his former self, and that he was attempting to exercise his old affability, and could not do it."

Q. Was your judgment based upon the declaration of Mr. Cox that the Judge was but a shadow of his former self?

A. No, sir; I can't remember the conversation exactly, but my judgment was based on the impression made upon me at that time.

Q. Can you remember a single fact or circumstance on which you base your judgment that the Judge's mind was impaired?

A. No, sir, I could hardly say that I do; my judgment was based upon the impression made on me at the time.

Q. You cannot remember a single fact on which you based your opinion?

A. As I tell you, it was on the conversation and the impression made on me at the time.

Q. Have you a good memory, Mr. Reed?

A. Yes, sir.

Q. Anything said or done by Judge Kirkpatrick on the bench, you would have remembered it?

A. Anything important I would remember.

Q. Have you seen him since?

A. No, sir.

Q. Don't you remember that the business of the court of common pleas, No. 2, is as well forward as it ought to be?

A. Yes, sir. My cases are railroad cases, and we are for the defendants and are sometimes bothered by the cases coming on too soon.

Q. Did you ever have any difficulty in getting a case tried in No. 2 when you wished to?

A. Yes, sir; one case in particular. It was continued last September by Judge Ewing, when I was out of town, and it has not been heard yet.

Q. Don't you know plenty of cases have been tried that were brought later than September?

A. No, sir; I do not.

Q. Have any cases been tried in No. 2 that were brought later than September?

A. I don't know that; the record will show it.

Q. Don't many cases lay for five years, not handled right?

A. Yes, sir; it might.

Q. Is that the only case you had trouble in bringing to trial?

A. I understand that the court is from four to five months back.

Q. Do you say that from an examination of the list?

A. Yes, sir.

Q. Well, would that be strange for that court to be back four or five months?

A. That I can't say.

Q. Was it not much more back two years ago, until Judges Kirkpatrick and Ewing brought it up?

A. That I can't remember.

Q. Did not Judges Ewing and Kirkpatrick bring the list up to where it is, and has it not been dropping back since he went off the bench?

A. I think so.

Q. Judges White and Ewing have been sick, too, and this sickness would have the same effect on the list?

A. Yes, sir.

Q. A rather unfortunate circumstance.

W. S. PIER, witness called on behalf of the petitioners, being duly sworn, testified as follows:

Q. You are a member of the Pittsburgh bar?

A. Yes, sir.

Q. For how long?

A. About five years.

Q. Are you acquainted with Judge Kirkpatrick?

A. Yes, sir.

Q. For how long?

A. About that time. Personally acquainted with him.

Q. Have you seen him recently?

A. I have not seen him since last fall.

Q. Just tell under what circumstances you saw him.

A. The time I refer to is the time the case known as the bond case was up for argument in his court.

Q, You were one of the counsel in that case?

A. Yes, sir.

Q. From your knowledge and observation of him at that time, what would you say as to his mental condition?

A. Well, I thought at that time that he was not fit and ought not to have sat in the case.

Mr. MCKENNA. The amount involved in that case was large, was it not?

A. Yes, sir; the amount was very large; it concerned the refunding of six million dollars of city bonds.

Q. You heard the testimony of Mr. Watson on that subject?

A. No, sir; I did not.

Q. You read it, then?

A. Yes, sir.

Q. Well, Mr. Pier, just explain to the committee what took place when that case was called for argument in the court-room.

A. Mr. Watson was in the court-room at the time the case was called for argument; we were all there for that purpose. Mr. Watson very suddenly withdrew, saying he would not argue the case with Judge Kirkpatrick on the bench.

Q. You were associated with Mr. Watson in the case?

A. Yes, sir.

Q. Did you observe the condition of Judge Kirkpatrick on that occasion? You have stated that, I believe.

A. Yes, sir.

Q. Did you have any talk with the Judge that morning?

A. I shook hands with him after the court had adjourned; yes, I believe that I talked with him.

Cross-examination by Major Brown:

Q. Did you observe the physical condition of Judge Kirkpatrick at that time?

A. I merely observed while he was in court.

Q. Will you please tell us any fact or circumstance on which you base your judgment that he was not fit to sit in that case?

A. The conversation at that time was a circumstance that led me very much to have that opinion. I was led, in the first place, to that opinion from the public report and from my own knowledge that he had not sat in court because he was physically disabled for a period of several months prior to that time; and, also, from the fact of his being sick, and during the summer visiting him personally at his house; and in that court that morning his actions and his remarks fully confirmed that opinion. The actions that I refer to are that he appeared to be laboring under considerable excitement when I didn't see any occasion for a judge to be excited; he used some remark or expression indicating that he had already made up his mind on the case, and that counsel would find it a difficult proceeding to make him change his opinion of the master's report.

Q. Didn't he state that he had read the report and had heard an argument in the same case of two days' duration some eight months previous?

A. He stated that he had heard the argument at the time that you stated, Major Brown, some eight months before. I don't know whether his mind was in question then or not; he said he read the report from the newspapers, but the full report was not published at the time of the argument.

Q. Did you, as a member of the bar, or anybody, question his mental fitness at the hearing of the previous argument?

A. No, sir; I believe not.

Q. Didn't he just state that he had read the master's report and you would have difficulty in changing his mind?

A. I don't think that was the remark that he made.

Q. Well, the substance of it?

A. No, sir; I don't think it was; I think he said he had read the report in the newspapers, but there was nothing but a *resumé* of the report published in the newspapers.

Q. Don't you know that Mr. Shiras and the other counsel agreed to have no argument at that time, that this was a matter of great public interest, and that there was great anxiety to get it into the supreme court, to be heard in November, this being in October?

A. I know there was some misunderstanding among counsel upon the question of submitting without argument and taking it up upon their exceptions to master's report, and it was over the misunderstanding that this argument was finally fixed by Judge Ewing.

Q. Did Mr. Watson communicate to any of the counsel on the other side of the case any objection to hearing the case before Judge Kirkpatrick?

A. He did to us.

Q. Did Mr. Watson publically communicate to counsel on the other side, or to any other person in the court-room other than yourself, his objection to arguing the case before Judge Kirkpatrick?

A. We all knew it; the counsel on our side knew it.

Q. Was any such suggestion made to any person except yourself at that time, within your knowledge?

A. I am not certain who protested against Judge Kirkpatrick's sitting; I know it was a subject of consultation among counsel.

Q. Was that communicated, either publicly or privately, to anybody outside of yourself?

A. I could not say positively——

Q. The court, Judges Ewing and Kirkpatrick, decided against you in the hearing on the preliminary injunction?

A. Yes, sir.

Q. Did you make up your mind for that reason that Judge Kirkpatrick was not fit to sit on the cases?

A. No, not from the knowledge that Judge Kirkpatrick had been opposed to us; but we came to the conclusion that he was not fit to sit in the case, because of his physical and mental condition.

Q. Didn't counsel in that case, when Judges Ewing and White were on the bench, ask and procure an adjournment until Judge Kirkpatrick could sit?

A. I don't recollect that any adjournment was asked by counsel, except at the hearing of the argument on the preliminary injunction, when Mr. Shiras suggested that we would like to have a full bench.

Q. Did not Mr. Shiras, of counsel in that case with Mr. Watson and

yourself, publicly request and obtain from the court an adjournment in order that Judge Kirkpatrick's presence could be obtained on the bench?

A. I don't recollect that Judge Kirkpatrick's name was mentioned in the request for an adjournment.

Q. Was it not a fact that there were two judges sitting, and a postponement was asked until Judge Kirkpatrick was on the bench?

A. I know that Mr. Shiras asked for a full bench——

Q. Is it not your recollection that the postponement was asked in order to procure the attendance of Judge Kirkpatrick?

A. I know that Mr. Shiras asked for a full bench; I don't remember whether Judge Kirkpatrick was on or off the bench——

Q. You recollect the fact that Judge Kirkpatrick was off the bench, and that two judges were sitting?

A. I can't remember that; I remember that Judge Ewing was on the bench; I don't recollect whether it was Judge White or Judge Kirkpatrick that was not sitting.

Re-direct examination by Mr. McKenna:

Q. Major Brown has asked you, in cross-examination, about the time, seven or eight months prior to this argument, when Judge Kirkpatrick's condition was unchallenged; can you state, as an officer of the court and a member of the bar, what the general opinion was at that time as to his fitness to sit in this case?

Objected to by Mr. BROWN.

Mr. MCKENNA. The question is clearly competent; that fact was drawn out by the other side in cross-examination.

Senator HOOD. The question will be admitted.

Mr. SHIRAS. Our exception to the admission of the question will be noted.

Senator HOOD. Yes, sir; it is noted.

Mr. PIER. I can answer that question in this way: that a number of the members of the bar expressed an opinion on that subject at that time, and the opinion that was then expressed was from all parties the same. I can only say what the general opinion of the bar was in that way.

Q. What was that general opinion?

A. Well, the opinion that was expressed at that time in reference to the matter was that Judge Kirkpatrick was not fit to sit in the case.

Q. And that owing to his mental impairment?

A. That is the understanding I would have of it. I don't recollect that anything of that kind was said specifically, but I know that a great number of attorneys expressed an opinion at that time that he was not fit to sit upon the case.

Q. You had known of his affliction?

A. Yes, sir.

Q. That was his first appearance on the bench since March?

A. Yes, sir.

Re-cross-examination by Major Brown:

Q. Was not that opinion expressed only by counsel on your side of the case?

A. No, sir; I heard a great many attorneys express such an opinion.

Q. Be good enough to tell us who.

A. I recollect beside counsel in the case—I recollect one attorney whom I heard express such an opinion, he is now in the room before me, and perhaps that is what recalls the circumstance to my mind; it is Mr. O'Brien.

Q. What did he say to you?

A. He expressed an opinion that Judge Kirkpatrick was not fit to sit in the case.

Q. Was it because he was a very sick man?

A. I don't think so.

Q. Was it because he was physically weak?

A. I suppose the reason was because his mind was unsound.

Q. Will you be kind enough to tell us what any one member of the bar said?

A. I could not tell you the exact words.

M. A. WOODWARD, a witness called in behalf of the petitioners, being duly sworn, testified as follows:

Q. You are a member of the Pittsburgh bar?

A. Yes, sir.

Q. For how long?

A. About twenty-four years.

Q. Are you acquainted with Judge Kirkpatrick?

A. I am, sir.

Q. For how long?

A. Ever since I have been at the bar.

Q. Have you tried cases before him?

A. I have tried numbers of cases before him.

Q. When did you last see Judge Kirkpatrick, and where?

A. I saw Judge Kirkpatrick the latter part of last summer; at that time I know he had been sick some time, and I think it was down on Diamond street; he had been driven over; he had not been out for a long time; I saw and spoke to him there; he was in a buggy and had been driven over.

Q. From your observation of him, and the conversation you had with him, what is your opinion as to his condition, physically and mentally?

A. Well, at that time he appeared to me to be very much prostrated, both mentally and physically; he had his senses, he was not insane, or anything of that kind, but his mind was very weak, and very much prostrated, in my judgment. I signed this petition simply in connection with information I had received from persons who had visited him during his long-continued sickness.

Q. Just there, will you be kind enough to tell us from whom you received this information?

A. Well, from Mr. Robb——

Q. C. W. Robb?

A. Yes, sir; and I think Mr. Shiras, Mr. McClung, and others. I had the impression then that he was not likely to recover from his affliction, and as I saw him there he bore all the evidence of it; whether he would recover or not I could not tell.

Q. At the time you saw him, was he physically and mentally capable of performing the duties of judge?

A. Oh, no, sir; he would not be mentally and physically capable of it at that time.

Q. You had not seen him before?

A. No, sir.

Cross-examination by Mr. Shiras:

Q. You saw him but once?

A. Once, for about ten minutes.

Q. You signed this petition from information received?

A. Principally so, and from what I saw.

R. B. PARKINSON, a witness being called for the petitioners, being duly sworn, testified as follows:

Q. How long have you been practicing as a member of the Allegheny county bar?

A. Twenty-five years.

Q. You have known His Honor, Judge Kirkpatrick, during the whole of that period?

A. Well, about since 1858.

Q. Did you see him in the last of March when he was on the bench at all?

A. No, sir; I did not.

Q. When did you see him last?

A. I can't say; I have no distinct recollection of seeing him since some time in 1883.

Q. Well, you can state what his condition was at that time, physically and mentally?

A. The last time I recollect of seeing him and having anything to do with him was in November, 1888; it was in the criminal court which was being held in the Welsh church, which is now torn down; I think he had come on the bench temporarily to relieve Judge White; I noticed then that Judge Kirkpatrick was physically very weak; the court-room had only been opened and he complained bitterly of the cold and got up and put on his overcoat and walked forward and backward to keep himself warm. He was quite pale and seemed to be physically weak, and seemed, I thought, to have some trouble in getting command of the case on trial. He didn't seemed to grasp it exactly, but at last seemed to get along all right.

Senator BIDDIS. What date was this?

A. That was in November, 1883.

Q. How did that deportment compare with his former conduct?

A. There was a great change; before he spoke to everybody on the street, and was affable.

Q. You had noticed a remarked departure from his normal condition on that occasion?

A. Yes, sir.

Q. Did you have any talk with him on that occasion?

A. Nothing more than what occurred in the course of the trial.

Q. Had you any more cases before him at that time?

A. No, sir; I had a case before the civil court——

Q. Did you notice any impairment, physically or mentally, at that time?

A. Well, I noticed that he was not a well man and came over from his home to try the case; it was a fixed case.

Q. Do you remember him to have been seriously sick?

A. Well, I don't know; he was worse in November than in October.

Q. Did you ever see him afterwards to talk to him?

A. No, sir; I don't recollect seeing him afterwards.

Q. You can give your opinion to the committee of his confused manner of deportment on the occasion you refer to in the criminal court, held in the Welsh church, as to whether he was, at that time, in a fit condition for a trial of a case?

A. Well, he was, at that time, to my notion, a man who ought to have been at home, and whose chief object in life would have been to take care of his health, perhaps for the balance of his life.

Cross-examination by Mr. Brown:

Q. You thought then he was a sick man?

A. Yes, sir; a very sick man.

Q. And that it would be wise for him to rest and not to perform the labors incident to holding court?

A. Yes, sir.

Q. Was not that time a little later than that you speak of? didn't he commence the December sessions and hold court until Judge White took his place in March, 1884?

A. It may have been later than the September term; I am not sure about that.

Q. Did you see Judge Kirkpatrick on the civil side of the court?

A. I don't know, Major, whether he sat in No. 2 or not; my business was in No. 1. I had no occasion to go into No. 2.

Q. You didn't see him on the bench after that?

A. No, sir.

After some consultation between the members of the committee and counsel as to time and place of hearing any arguments that might be made in the case, the committee adjourned to meet at two, P. M.

And now, to wit: Wednesday, April 22, A. D. 1885, at two o'clock, P. M., commission met pursuant to last adjournment.

Present, Senators Biddis and Hood, Representatives Faunce, Sponsler, and Robinson; C. F. McKenna and B. C. Christy, Esqs., of counsel for petitioners, and Messrs. Shiras, McClung, Brown, and Marshall, of counsel for respondents and witnesses.

Dr. H. A. HUTCHINSON, a witness called on behalf of petitioners, who, being first duly sworn, testifies as follows, in answer to questions by Mr. McKenna:

Q. You are the present superintendent of the Western Pennsylvania Hospital for the Insane at Dixmont, are you?

A. Yes, sir.

Q. How long have you been connected with that institution as assistant physician and superintendent?

A. I have been connected with the Dixmont Hospital a little over six years.

Q. Had you any prior experience in the treatment of the insane?

A. No, sir.

Q. That was your first school?

A. Yes, sir.

Q. You served there as assistant physician under Dr. Reed?

A. Yes, sir.

Q. You can state to the commission here if you were acquainted with Judge Kirkpatrick before his recent affliction?

A. Yes, sir. I knew Judge Kirkpatrick; met him down at Dixmont; met him at the hospital, and I have met him in court.

Q. You can state if you called this morning in company with Dr. Herron, his family physician, at his residence, and held an interview with him?

A. Yes, sir. I went to see Judge Kirkpatrick with Dr. Herron, and had an interview with the Judge.

Q. You can state, from the history of the case that Dr. Herron gave you, as well as your inspection of Judge Kirkpatrick and his condition, your opinion in regard to his capacity for the discharge of the duties of judge at present?

A. I talked with the Judge and saw him. I am inclined to think he is unable at present to act as judge, or perform the duties of his office.

Q. You can state, Doctor, and describe to the commission here, his appearance and manner, and the changes that seemed to have occurred in his deportment since you formerly saw him.

A. He looked to me like a very much broken-down man. His general health is very poor. He seemed feeble, and he looks weak. I asked him to walk for me, and he walked with a tottering movement like a very old man—a very decrepit man—and he is not inclined to talk very much, and what he does say is not altogether what he would say were he in health, I think. He cannot express himself intelligently altogether.

Senator BIDDIS. Is his talk incoherent and disconnected in any way?

A. He didn't talk enough with me for me to see that, but I asked him if he slept. He said, no, he didn't sleep at all, and the doctor tells me that he slept soundly every night, from eight o'clock in the evening until seven or eight o'clock in the morning.

Mr. MCKENNA. I wish you would define to the commission here what form of malady he suffers from.

A. I think that the Judge is suffering from *peretic dementia* — loss of mind. He seems to be suffering from that; he seems to have lost his mind.

Q. From the history of the case given to you by his attending physician, could you express any opinion as to the chances of ultimate recovery?

A. I think, taking into consideration the Judge's age, his very poor general health, the long standing of this present condition, the chances are that he may never get much better.

Q. You can state if, at the institution you have charge of, you have any patients with similar traits undergoing treatment.

A. Yes, sir. I have cases under my care down at the hospital exactly like Judge Kirkpatrick's.

Q. Is this state of mind accompanied with any evidence of physical disability, such as paralysis?

A. Yes, sir; he has paralysis of the right side.

Senator BIDDIS. To what does that seem to extend?

A. It seems to extend to his fingers; when he walks his arms go that way, [describing,] and when he walks he throws his feet out.

Q. It extends also to the lower limbs?

A. Yes, sir; extends to his foot and the leg.

Mr. MCKENNA. You can state to the commission his deportment as to conversation, that is, his geniality before his affliction, and how it contrasted with his deportment to-day.

A. When I have met him at Dixmont, he was always affable and exceedingly pleasant, remarkably good talker; this morning he would not say anything unless I asked him a direct question, and, as I told you, I asked him if he slept, and he said he did not sleep at all; I asked him over again in the course of the conversation, and he seemed to be irritated, and he said, no, he didn't sleep at all.

Q. He only talked, then, in answer to questions?

A. Yes, sir.

Q. Did he know you this morning, Doctor?

A. No; he did not show to me any evidence of recognizing me at all.

Q. You have met him on other occasions than on his visits to the institution?

A. I have met him on the street, and in the court here.

Q. He recognized you on those former occasions?

A. Yes, sir.

Cross-examination by Mr. Shiras:

Q. I noticed that your answer was quite a guarded one when you stated that, in consideration of his age and a continuance of his disability, and from what you saw of him this morning, that the chances were that he may not recover; are we to understand that you give the opinion that there is no chance at all of Judge Kirkpatrick's recovery?

A. I think, Mr. Shiras, I might; I might state quite freely, that I do not think he get well at all.

Q. How long has it been since you saw the Judge before?

A. I have never seen him until this morning for pretty nearly three years.

Q. How long was your interview with him this morning, Doctor?

A. I suppose about fifteen minutus.

Q. Did you make a thorough physical examination of him?

A. No, sir; not a very thorough one, no, sir.

Q. Did you make a diagnosis of his condition for yourself in the way of feeling his pulse, etc.?

A. I felt his pulse, examined his skin, looked at him carefully while I was with him, got him to walk to me, and asked him a few questions; I didn't care to annoy him very much, so I didn't say very much to him.

Q. Doctor, from your observation of him this morning, and from your experience in other cases, are you willing to say that a man affected as Judge Kirkpatrick appeared to be this morning may not recover?

A. I always hope, in every case, that such patients will get well; but my experience has been such that it is very difficult to cure those cases, and, I think, the Judge is just like cases I have seen in the asylum, and they don't get well.

Q. Therefore, your inference, or conclusion, is drawn from the cases that you have observed in the asylum; and, Doctor, is it not a fact—and I hope you will not take offense at this question, because none is intended—is it not a fact that men given over to die by the faculty very often get well?

A. Yes, sir.

Q. Doctor, suppose the fact were that Judge Kirkpatrick was two months ago unable to articulate; had been unable to raise his hand from his side, and been unable to walk across the room, and that he could only sleep by the aid of artificial sedatives; suppose, now, that his condition physically was what you saw it to be this morning, and that he slept without the aid of medicines, and that his appetite was improving, together with, as I stated, his natural sleep had returned to him his ability to stand and walk, although in the way as you have stated; from that improvement, say within two months, would you, or would you not, argue from that favorably, or otherwise, as to the chances of recovery?

A. I don't think that the improvement in those particulars would affect the general result.

Q. Then a man can get better, to all appearances, in such important particulars as those I have enumerated, and yet not be any better?

A. He would be better as far as those symptoms were concerned; but he manifests a great indifference, and that indifference, I understand, remains and has been continuous; and while he may walk a little better, from his improved health, I don't think it would argue that he would recover.

Q. As to the return of natural sleep, and the natural functions of the stomach, in the way of assimilation of food and return of appetite—are they not very important factors, looking to a recovery from disease?

A. Yes, sir.

Q. Is it not a fact that mental trouble, diseases from weakness of the brain and nervous depression, are apt to improve on physical recuperation, in respect to appetite and slumber?

A. Those cases, Mr. Shiras, seemed to sleep pretty well for days, then they become wakeful, and then those disagreeable symptoms return again.

Q. That is, you have seen cases in which, after a partial recovery, there were relapses?

A. Yes, sir.

Q. You don't say, however, as I understand you, Doctor, that under a partial recovery of that kind that it would be infallibly followed, necessarily, with a relapse?

A. No, sir.

Q. Is your opinion formed this morning, an opinion which you believed would not be added to or changed, that is, as to his mental condition, by further and longer opportunities of observing actually Judge Kirkpatrick's case?

A. I don't think it would; no, sir.

Q. Then your opinion, as I understand it better, Doctor, is that on a man who, upon seeing the Judge for the first time in three years, in an interview of fifteen minutes, in which you did not have an opportunity of a very careful examination, you think you would not be to add to it by any amount of subsequent or additional experience or opportunities of observations?

A. I think that the longer I would converse with him, the more I would see of him, the more convinced I would be that his case was an unfavorable one.

Q. Then, if I understand you, that having seen him for a limited period you are able to say that your opinion is that the longer you would see him and the more advantages and opportunities you might have to study his case, you would not understand it otherwise or different from what you do upon your observation already made.

A. Yes, sir.

Mr. McKENNA. You had a very full history of the symptoms of Judge Kirkpatrick's case from his family physician, had you not?

A. Yes, sir; he gave me quite a detailed statement of his case.

Q. Is it a fact, Doctor, that the impairment of Judge Kirkpatrick's mind is accompanied with paralysis, and the fact that he is over fifty years of age any factor in the opinion of experts to exclude the possibility or probability of his recovery?

A. I think that all is unfavorable to the Judge's recovery.

Q. The accompaniment with paralysis, or symptoms of paralysis, you say, increases the probability of its permanency?

A. Yes, sir.

Q. Such a case now, as has been made out from the history of the case furnished you by the physicians, and from your observation, you can state to the commission what—according to your books, and your experience—what length of time an existence of such disease would make it come under the denomination of a chronic case.

A. There is a great diversity of opinion among medical experts in insanity as to what constitutes a chronic case. I have always regarded a case as chronic when it has existed for six months or longer.

Representative ROBINSON. Is this paralysis marked and well defined?

A. Yes, sir.

Q. On which side?

A. On the right side.

Q. Where paralysis occurs, is not that presumptive evidence that it is mental impairment on the opposite side of the brain?

A. Yes, sir.

Q. Would you judge, from the paralytic condition of Judge Kirkpatrick, that there was some lesion of the brain?

A. Yes, sir.

Representative SPONSLER. Were his answers monosyllabic, or did he give you full answers to the questions?

A. Yes and no.

Q. He answered you yes and no?

A. Yes, sir.

Q. Did he seem to be distressed in mind, and despondent—heavy?

A. Yes, sir; remarkably so.

Mr. MCKENNA. Had he got beyond what you call the acute stages of the malady?

A. Yes, sir; I would consider his case a chronic one.

Q. Define what you mean by that fully.

A. I think it is chronic from long existence; it does not yield to treatment very well; it yields, in some respects, but the general condition remains the same. His mind is impaired, and has been.

Senator BIDDIS. Would an improvement, mentally, necessarily follow a physical improvement in his condition in a case of this kind?

A. Not necessarily; no, sir.

Mr. SHIRAS. You stated that where there was paralysis on one side that you would infer from that that there may be, or that there has been, some

lesion of the brain, some affection of the mental organs; suppose that that paralysis disappeared, and there was a return of physical strength and the power of coördination manifested, does not that point to the fact that there has been no lesion of the brain—that recovery?

A. No, sir.

Q. You think it does not?

A. No, sir.

GEORGE RATZKA, a witness called on behalf of the petitioners, who, being first duly sworn, testified as follows to questions propounded by B. C. Christy, Esq.:

Q. Mr. Ratzka, where do you reside?

A. On Ohio street, Allegheny.

Q. What is your business?

A. A barber, sir.

Q. Do you know Judge Kirkpatrick?

A. Yes, sir.

Q. Have you seen him frequently of late?

A. I have seen him last time in the fall.

Q. What fall?

A. Last fall.

Q. Where did you see him?

A. I seen him in the place that I work.

Q. Do you remember the date?

A. No, sir.

Q. Have you known the Judge for some time?

A. I have known him for three years.

Q. What was his condition, physically, at the time he was in your place that you referred to?

A. He was broken down in health.

Q. What was his mental condition—as to his mind—do you know?

A. He was very weak-minded. He didn't recognize me at first. I had been away from here a year, and then I seen him, and the first time he didn't recognize me, but after I talked awhile he seemed to remember me.

Q. He was just in your place to be shaved, was he?

A. Yes, sir.

Cross-examination by Mr. Marshall:

Q. Who do you work for?

A. Mr. Hughes.

A. M. Watson, Esq., a witness called on behalf of plaintiffs, who, being duly sworn, testified as follows to questions of B. C. Christy, Esq.

Q. You are a member of the Pittsburgh bar, I believe?

A. Yes, sir.

Q. For how long?

A. For thirty-five years.

Q. Are you acquainted with Judge Kirkpatrick?

A. I have been acquainted with Judge Kirkpatrick for a long time.

Q. Do you know for how long?

A. From the time he came to Pittsburgh to read law with Judge Shalor—shortly afterwards.

Q. You have been comparatively intimate with him all those years?

A. I was intimate with him sometimes, and sometimes not intimate with him; just as people are intimate. I have known him very well, though, all the time. I was on very cordial terms with Judge Kirkpatrick up to his last trouble.

Q. Mr. Watson, when did you see Judge Kirkpatrick last?

A. The last time I saw him I was not speaking to him. He was riding in his buggy from the suspension bridge coming towards Pittsburgh, and I was going to my train, about five o'clock in the evening; that was late last fall. I saw him, I think, in June last at his own house, and I saw him, I think, the first time he came to court in October last, in the court-room one day. Those are the only times that I have seen him since he left the bench early in the spring.

Q. Did you converse with him on any of these occasions?

A. I talked to him in his own house.

Q. From the conversation you had with him and from his appearance, and from what you know concerning him on those several occasions, what would you say as to his physical and mental condition?

A. He was very much changed from what he has been years before that very much broken down, and not at all like himself.

Q. Would you say that he was or was not fit to perform the duties of judge?

A. Oh, not at that time; at any of the times I spoke to him physically he would not be fit, if nothing else.

Q. Was he fit, mentally?

A. Well, there was something about him that showed a mental looseness in his appearance at all those times, and I noticed in Judge Kirkpatrick a year before he left the bench that there was something wrong with him; that he would get excited and go off half-cocked.

Q. Different from what he had been before?

A. He couldn't follow anything; couldn't follow up a line of thought; would go off at half-cock as if he were trying to get a hold of something and couldn't; he was entirely changed a year before he left the bench, and I think his rulings showed that, too.

Cross-examination by D. M. Brown:

Q. Upon the trial of what case did you come to that conclusion?

A. I could not tell you any particular case; I remember of one case last winter a year ago. I didn't try any cases before Judge Kirkpatrick a year or more before he left the bench; I brought my suits in the other court; I didn't want to go in there.

Q. What suits do you speak of?

A. Of course, it was very hard to particularize. I will give you one instance. There was a case Mr. Bruce was trying in his court one forenoon; I don't mind who was on the other side; maybe it was yourself. There was a question as to the admissibility of the testimony of a witness, and it was debated I think about half of the forenoon; Mr. Bruce was there reading his authorities, and under the authorities it was a plain case that the testimony ought to be admitted. I thought there was no doubt of it. I happened to know that much from the beginning, and Judge Kirkpatrick was listening to the argument; I saw Mr. Bruce was trying to show him how the authorities were; he didn't seem to me to comprehend one side or the other the whole time, and the adjournment came on. Mr. Bruce, it seems, was a little vexed about it, and I made the remark to him, "He will admit your evidence when the court meets again," and so it was ——

Q. When was that?

A. I could not tell you; I am not a book-keeper——

Q. Was it ten years ago?

A. It was last winter a year ago.

Q. The winter of 1883 or 1884?

A. The winter of 1884, I think. I thought at the time——

Q. Did you see him on the bench as late as March, 1884?

A. I don't know that myself. I think he was. You might know that youself.

Q. No; I want your recollection.

A. Oh, well, I couldn't tell you. I know he was on the bench sometime in the spring of 1884.

Q. Was he not a very ready and prompt man to transact business?—didn't he dispatch business with marked facility?

A. Yes, sir. Sometimes I thought he done it with too much facility.

Q. You have complained that sometimes he didn't listen to you very long and other times too long.

A. No, sir. I don't expect the judges of any of the courts to listen to my objections very long. I had my mind made up and my authority, and if their rulings are adverse I take a bill.

Q. Your objections are not exclusively, then, against Judge Kirkpatrick on that subject?

A. I am speaking about Judge Kirkpatrick now. I don't propose to go over the whole judicial family.

Q. Are your objections exclusively to Judge Kirkpatrick, or do the same objections apply to the other judges?

A. I am not classing Judge Kirkpatrick with the other judges at all.

Q. I thought you were?

A. You were mistaken.

Q. When is your last recollection of seeing Judge Kirkpatrick trying a case?

A. Well, I really could not tell you, for I don't pay much attention to other lawyers' cases, but I did not try a case before Judge Kirkpatrick for, I think, a year before he left the bench. I don't think I did.

Q. You didn't try a case before him within a year——

A. I don't think I did. I know it was a considerable time.

Q. Had you occasion to notice the operation of his mind or his conduct in the trial of a case within that year during which you tried no cases within that court?

A. I was in and out of the court the same as you might go in and out of the court and see a case on, or know and hear something of one going on, and see the judge on the bench, and some one might ask you whose case it was, and you would not know five minutes after, as we all do.

Q. Can you recollect the trial of any case as late as in the winter of 1883 and 1884 before him?

A. I could not tell you anything about that. It might have been late in the winter or early in the spring.

Q. When did you see him last?

A. The last time I saw him I didn't speak to him. The last time I spoke to him was in court, in October, the last time he came over——

Q. October of last year?

A. Yes, sir; he was sitting on the bench; I went up to shake hands with him, and had some conversation with him.

Q. Do you remember the conversation?

A. He spoke of his condition, and appeared by the tones of his voice to think that he was in a bad condition. I said to him, "Judge, just this way, don't you come to court any more; don't bother yourself any more, but be like the boy—don't care whether school keeps or not." He thanked me, and said he would obey me.

Q. He talked sensible?

A. He spoke sensible, but I spoke to him not as I would speak to him ordinarily, but as though I was trying to please him.

Q. He had lost that cheerful vivacity he had?

A. There was no vivacity in him; he was sick.

Q. He was down-hearted?

A. Yes, sir.

Q. You saw no trouble with the man?

A. Oh, I don't know; I didn't examine him.

Q. I say you didn't examine him mentally?

A. He didn't appear like he used to be.

Q. Have you seen him since?

A. Not except the time I saw him riding in a buggy one day——

Q. Did you speak to him?

A. No; I didn't speak to him; he just passed me as I was going this way [describing] and he was going that way.

Mr. SHIRAS. You stated you were discontented with No. 2, with Judge Kirkpatrick's rulings of points, and that you brought your cases in No. 1; have you any hesitancy to give your objections as to No. 1?

A. Well, Mr. Shiras, you know how that is yourself. Sometimes a judge takes a lurch on you in a certain class of cases, and you go from that court to the other one, and then the other one takes a lurch on you and you go back again; you are very often from the frying-pan into the fire.

Doctor JAMES B. HERRON, a witness called on behalf of the petitioner, who, being first duly sworn, testified as follows, in answer to questions by Mr. McKenna:

Q. How long have you been the attending physician of Judge Kirkpatrick?

A. By reference to my book, to-day, I found that in the month of November, 1883, I was called in, in consultation with Doctor Rankin, to see Judge Kirkpatrick.

Q. Had you, or did you, treat him for some months previous to that? The testimony here is that he was sick—had quite a serious spell before that.

A. I did treat him before that, but I could not specify now the time.

Q. I think it was the previous summer.

A. Probably it was; I don't know the time; I couldn't state the time.

Q. You were called to see Judge Kirkpatrick, by Dr. Rankin, sometime during the month of November?

A. Yes, sir.

Q. He has been under your joint treatment until the present time?

A. No, sir. How long he was under Doctor Rankin's care after I saw him, I cannot specify—the number of days or weeks. The case then fell into my hands; at what time I could not state, but the case fell under my special care after that time; how long I don't know.

Q. You can't tell how long you and Dr. Rankin jointly were together?

A. I saw the case with Doctor Rankin in his office. There is where we had our consultation. How long he advised with Doctor Rankin after that I can't tell. Doctor Rankin is here——

Q. He was first an office patient?

A. What do you mean—with reference to the first attention prior to that time?

Q. No, no; in November.

A. At this time he was an office patient of Doctor Rankin.

Q. How long after that were you called upon to attend upon him at his house?

A. Whatever time it was, I attended him at his house. He was at my office occasionally, but I attended him at his house; I was out a great deal, and I would call there and see him; I attended him at his house.

Q. Can you give the commission any idea of the regularity of your visits—how often per week?

A. Well, at this time I don't think my visitations were regular; I didn't look over my books; I intended to examine them, but I was very busy, being kept here yesterday all day, and I had a good deal to do to-day, but my visitations were regular; it may be that my visits were more regular than need be.

Q. Is he now under your treatment?

A. He is now under my treatment, at the present time.

Q. Doctor, be good enough to describe his mental and physical condition, commencing with the time of the consultation.

A. At the time of the consultation he was mentally well. He was not physically well.

Q. What was his ailment?

A. Failure on the right side—an apprehension of paralysis—which eventually occurred on the right side, involving the right side, tongue, right arm, and right leg; at the time I saw him that had not yet occurred, but afterward that did occur; that was his conditon.

Q. About how long afterwards?

A. Well, I think it was a gradual development—I could not specify the time; it did not come on him that way [here the witness snapped his finger,] at all, it was a slow process.

Q. Did you notice any mental deterioration?

A. I noticed a large amount of mental distress, that is all.

Q. Was that mental distress, as you term it, continued?

A. I think not. I saw him to-day and saw him yesterday; he is reticent, not disposed to talk; that has never been his history.

Q. When did this reticence, which you say is foreign to his history, first manifest itself in this case?

A. I suppose—well, I could not give you the exact time, it occurred some time, I think, about February, or probably before that, that he has not been disposed to talk much. He might talk to a friend who would call in to see him; day before yesterday, to his brother-in-law, he talked to him considerably, and did not talk to me to-day. Doctor Hutchinson was there with me to-day.

Q. At times, therefore, he is better than others; mentally, do you mean?

A. I do not know that for some time back there has been any particular or special change in his case.

Q. You may describe to the commission here the extent of that mental impairment, or distress, as you term it.

A. He says very little, and the amount of mental disturbance does not become apparent. If he talks, it would be more apparent, as a matter of course.

Q. Is this mental distress, or impairment, developing by reticence?

A. It is very stationary; his condition has been so for some time.

Q. For how long has it been stationary?

A. Since it first occurred. That occurred after the time that he had

the delusions which were spoken of here yesterday. This occurred afterwards. The delusions antedated this reticent condition that he is in at the present time.

Q. Are the delusions an insanity or impairment of the mind in what they call the acute period of the disease?

A. Well, I could hardly specify. The acute trouble, or the acute period of trouble, is when the paralysis occurred, but on up to this time when he began to have doubts as to his financial transactions in the past ten or fifteen years were wrong. I tried to talk to him about the impropriety of coming to a conclusion of that kind. "Property bought ten or fifteen years ago," I told him, "to-day it was altogether a very different piece of property, on account of the development of the city." Those were the delusions—that he had lost his money, that he had no property, that he hadn't had property. These were the delusions. These were the first evidences of impairment—special mental impairment—in his case. Up to that time, he was out a great deal. He had been in Maryland some place—Cumberland—and he had been upon the Monongahela river. He visited his friends in Allegheny, and was out a great portion of the time, and he was taken out by his friends. He was at a wedding, the silver or golden wedding, I don't remember which, of Mr. Gillespie. My brother took him up there. He seemed to be able to appreciate it. I was not along——

Q. You have no idea of the date of it?

A. I don't know the date of it at all. I never expected a thing of this kind to occur, or I would have been more careful. I didn't anticipate a thing of this kind at all.

Q. These delusions you have mentioned—did they produce on his part melancholy or sadness?

A. That was a feature in his case—the distress, fear of coming trouble, physical trouble.

Q. Has he got beyond that?

A. He seems to be indifferent; he don't talk about his case; that is all I know about the man; he don't talk to me; I may get him to make a response——

Q. Then it is only in reply to questions that he talks?

A. In reply to questions, but he talks to other people.

Q. Do you know, Doctor, whether he writes any or not?

A. He dictated a note; I know that.

Q. When?

A. Some three or four week ago.

Q. Had he any assistance?

A. No, sir; he had no assistance; I was not there; I told him to write a note to Mr. Charles Robb, and he dictated the note.

Q. So you were informed?

A. So I was informed.

Q. Does this disability caused by paralysis disable him——

A. Yes, sir.

Q. Of his right arm?

A. Yes, sir; but he is better; vastly better. He walks as well and as gracefully as ever Judge Kirkpatrick walked in his life.

Q. Would the extent of that disability of his right hand prevent his writing?

A. It did prevent his writing. It prevented him from using his knife at the table. He uses his knife at the table at the present time, which improvement makes me exceedingly hopeful of a remedial improvement, which will result in an entire removal of the paralysis of his leg and the straightening out of his hand, and an improvement in his tongue. It was this kind of a motion, [describing,] a choreic motion; he could do that, [describing,] but then his hand flew around as if it was not under control, or in his volition, as you understand.

Q. How would you define, medically, the disease that he now suffers from—have you heard the testimony of Doctor Hutchinson here?

A. I did not; I was not in.

Q. You held an interview with him to-day?

A. Yes, sir; I took the doctor down with me.

Q. And introduced him to Judge Kirkpatrick; to see him; the——

A. Yes, sir; to see him; the doctor saw him.

Q. What would you define the Judge's malady—the disease he is suffering from?

A. Well, I would apprehend cerebral trouble now. I could not locate that; wiser men than I make mistakes about the localization, but so far as his paralysis is concerned he has improved largely, and while the wish may be the father to the thought, I feel that there is hope in the coming future; understand, I do not know positively what the issue of this may be; it is doubtful.

Senator BIDDIS. Have you much hope of recovery from cerebral trouble?

A. I have hopes, but I do not like his symptoms; the delusions first, and this afterwards.

Q. But the paralysis would still effect his brain——

A. I do not know what part of the brain, whether the intellectual brain or not; he might not manifest so much intellectual disturbance. At the present time he is reticent. In other words, go in there and you take Judge Kirkpatrick as an object, objectively, you have to make your conclusions, it is like prescribing for a child, or somebody that is in a comatose condition.

Q. You think that the present physical improvement indicates a marked improvement mentally—a change?

A. It gives us a hope that remedial management may dissipate or cause any slight mental disturbance to disappear, as it has dissipated the cause of his physical want of coördination—physical coördination.

Q. That is your best view of the case?

A. That is my view of the case.

Representative ROBINSON. Taking the cases of paralysis over fifty years of age, what is the percentage in which there is a recurrence of the paralysis?

A. Well, there are a very great many different kinds of paralysis, as you are aware.

Q. I mean paralysis such as the Judge is affected with.

A. Well, he might get well and it might occur again.

Q. What is the percentage of the recurrences?

A. I could not tell you that.

Q. You don't know that?

A. I could not tell you that.

Representative SPONSLER. Is the Judge aware of this proceeding?

A. Yes, sir. I told him about it.

Q. If he were to ask you of his position, whether there was a possibility of his recovering, anticipating this contemplated proceeding, would you give it, as your opinion to him, that he would recover, and that therefore he had better defend himself?

A. Would I give that opinion?

Q. Yes, sir.

A. I would hesitate, from what I said before.

B. You did not hear Doctor Hutchinson's examination; let me ask you, is there a marked paralysis of the right side?

A. Not marked—it was marked—this is more like paralysis agitans, the movement that is better——

Q. This paralysis of the arm and the hand is presumptive evidence that there is some lesion of the opposite hemisphere of the man's brain; you cannot take out a man's brain and examine it; but is not that the inference?

A. It might not be that high up. He may have had a nerve coming through some point thickened, filled up with some thickening matter, which is the cause of this paralysis. Under the influence of volition he can hold that arm still, because I told him a few days ago, "Judge, you can shut that hand; I want you to do it," and he did shut his hand—his fist—it responded absolutely to volition in that case.

Q. He has volition to resist that paralysis?——

A. It moves and he is largely better; that is the hopeful feature in his case.

Q. You think there is a possibility of his recovery?

A. There is a hope of his recovery.

Representative ROBINSON. In relation to the question I asked you a moment ago, can you tell me whether it exceeds seventy-five per cent?

Q. I could not tell you that now. Had he fallen from a railroad car, or had he had an apoplectic seizure, had he been thrown from a horse, and in

his present condition, or under the condition of things I have spoken about as being present, I would not feel hopeful about him at all.

Mr. McKENNA. In reference to the sleeplessness of Judge Kirkpatrick, did you hear him reply to Doctor Hutchinson in answer to his question twice, that he did not sleep at all?

A. Yes, sir; he said that.

Q. Do you know as a matter of fact that he does sleep?

A. He does sleep.

Q. What are his hours?

A. Well, night before last he retired between eight and nine o'clock, and got up and got his breakfast between eight and nine, going to bed again at nine o'clock. He sleeps not under the influence of anesthetics at all; he takes neither alcohol nor opiates of any kind; he sleeps quietly at night.

Representative FAUNCE. I understood you to say that he knows of this proceeding?

A. Yes, sir. I asked him a day or two before this; he said, "I am annoyed;" I spoke about this matter, and asked him if he had anything to say about this; he didn't communicate anything to me. He asked Mr. Pollock if he had seen anything about him in the papers; I don't know what reply he made; he don't read the papers, and I thought that this matter had left a little element of distress—I might be mistaken about that—I don't want to be mistaken in this matter; I know the position I occupy here—there seemed to be an element of distress, and he said, "I am annoyed." He has often told me he didn't sleep and he could not walk time and again when I knew that he could, and he can walk, and I am satisfied if Doctor Hutchinson had ever seen Judge Kirkpatrick walk, he would be perfectly satisfied that Judge Kirkpatrick was a graceful walker, although he didn't walk well to-day; whether he was embarrassed by the new doctor or not, I do not know.

Senator BIDDIS. Did he exhibit any other signs of being affected by this consultation?

A. No, sir.

Q. Didn't talk any more?

A. It was yes or no.

Mr. McKENNA. Do you know whether he reads the papers?

A. Not now. He did all last summer; particularly about the time of this suit; I don't know what you call it about the court-house; I know he was very much concerned about that syndicate, an immense amount of money over here—

Q. The bond case?

A. The bond case; he was very much excited about that, and I thought he was very level-headed about; it I thought it was an easy matter to understand; but, then, I am not a citizen here and ought not to be heard, may be.

Q. Do you know whether his failure to read the papers lately is from his being forbidden to read them or arising from indifference?

A. I think he is indifferent about it now. He did pick up the paper which contained a notice of the death of Doctor Bittinger. I said to him, "Judge, Doctor Bittinger is dead." He said, "Is he?" and picked up the paper and read the notice and the statement made with reference to Doctor Bittinger; he put on his glasses and read it very well, and seemed to appreciate what he was reading; I saw that myself, and it seemed to give but little difficulty.

Q. Did he make any comments?

A. No, sir; it was so full of eulogy that there was nothing further to say about it.

Representative SPONSLER. Did he sit in a chair?

A. He sits in a chair.

Q. Stupidly, as if he was sleeping?

A. He sits this way, [describing,] and when I ask him to get up he gets up at once, as if propelled by a steel spring. His paralysis is better; his mind, whether it is better, or whether a cure can be accomplished or not, I could not say, but I think I have the indorsement of the best men to-day who have made a specialty of brain trouble of this kind.

Cross-examination by Mr. Shiras:

Q. If I understand you, the long and short of your testimony in this case, and your observation of Judge Kirkpatrick's case in the past, and his present condition, you are not prepared to say that Judge Kirkpatrick may not recover?

A. I am not.

Q. On the contrary, from his recent improved physical health, the disappearance of the paralysis of his right side, the return of his ability to sleep without the use of narcotics, you are disposed to base a hope of his recovery?

A. Yes, sir.

Q. Within what time would you suppose, if Judge Kirkpatrick is to recover, that recovery may be reasonably expected to manifest itself?

A. Well, it might be tedious, Mr. Shiras; I would not be able to answer that question—to specify a time. Deposits are removed slowly.

Q. This improvement of his physical condition spoken of has been a slow one, has it?

A. A slow one; yes, sir.

Q. And it has all been since about what date—when did you first perceive the improvement?

A. About February, 1883. I think when I saw him first in November was at the consultation with Doctor Rankin; in November, 1883.

Q. But when did you begin to observe this improvement from this paralytic condition?

A. During the summer months of 1884, until I went up to Canada, which was the first of October, and then Doctor William Herron took charge of the case. He was very sanguine about him improving rapidly at that time,

and since that time a gentleman called to see Doctor Herron; instead of coming to me, he went to Doctor William Herron, and Doctor Herron told him he ought to go to the attending physician at that time; Doctor Herron thought he was as qualified as he was to give answers, or anything of that kind——

Q. Where is Doctor William Herron?

A. Doctor William Herron is sick.

Q. From your observation, has this condition of Judge Kirkpatrick's been continued during the present winter?

A. Yes, sir; it has. He is walking better to-day than for weeks back. I am not there regularly—sometimes in two or three days, or for four days, I am not there; he is under medication; his improvement is marked; it is not every person who sees Judge Kirkpatrick; I am about the only party, unless it is a relative, or David Pollock, or friends that would come; they see him.

Q. Has there been any improvement in respect to his appetite?

A. Appetite? He has a good appetite.

Q. Does he assimilate his food?

A. He assimilates his food; he does not suffer from indigestion.

Q. Take a case of a man of Judge Kirkpatrick's age, and suppose a return of the natural appetite, the taking and assimilation of food, and of natural sleep, without the aid of narcotics; can you, from such condition of improvement, base any expectation of an improved mental condition in the future?

A. Well, I do not know. Many men with impaired intellect eat largely, digest well and assimilate well, procreate well, get fat.

Q. Is that the case where they have once lost the power of sleep, and the power of assimilating food, or are you speaking of cases of *dementia* where, to all appearances, the physical powers remain unimpaired?

A. Well, I speak of a case of *dementia* of that kind.

Q. Of the latter kind?

A. Yes, sir.

Q. Suppose a given patient has lost his appetite, and has lost his ability to sleep except by the aid of narcotics, and under medical treatment he is brought back to a condition in which he would take and assimilate food, and sleep without artificial aid; from that course of improvement under medication, can you predicate any expectation or reasonable hope of return to health in the future?

A. I do.

Q. Both mentally and physically?

A. Both mentally and physically. That is what I hope for; what I hope to accomplish by medication; the question whether that will be consummated or not I don't know.

Q. Dr. Herron, I ventured with some modesty a little while ago, the following question, or one like it: whether men given over to die or hopeless invalidism by the faculty do not sometimes recover?

A. Well, they do recover sometimes.

Q. Altogether, then, I understand your evidence to be this: that in the case of Judge Kirkpatrick here, there is nothing in his past and present condition, manifested by the improvements which you have spoken of, that forbid his friends hoping for a return of mental and physical health.

A. That is what I say; I think that it is possible for Judge Kirkpatrick to be restored; his mental condition to be restored; that is what we hope for and what I treat him for at the present time. About the issue of this I don't think I can say positively.

Q. Do you consider it possible?

A. I base my hopes and my testimony is based on this: that subjects such as we are talking about, and cases such as we are conversing about, have not been abandoned by the highest authorities, even where there was perfect coma, an impaired hearing, impaired seeing, and where there was mania, they would not still abandon hope.

Representative FAUNCE. Your judgment is that there is still hope——

A. In my judgment that is——

Q. That it is probable?

A. Possible. They would not abandon hope; I would not give up a patient with a hope of doing him good.

Senator BIDDIS. Taking the Judge's mental and physical condition in the summer of 1884, and his present mental and physical condition, do you have as much hope now, or more, than you did then of his ultimate mental recovery?

A. His mental condition then was hardly taken into consideration.

Q. You were then taking his physical condition?

A. His physical condition was what we were treating him for specially. I said I wished to be understood; there was marked distress, there was alarm, and there was fear.

Q. Taking his general condition during the summer of 1884 and his general condition now, have you as much hope of his ultimate mental recovery now as you then had?

A. No, sir.

Representative SPONSLER. I put this question with some modesty: Are the chances of a patient recovering in a direct ratio with the number of physicians attending him?

A. I think not. It has not been so in the case of General Grant. Judge Kirkpatrick has never had many doctors. I attended him until November, when Doctor William Herron, a special friend, attended him for twenty-one days, while I was hunting moose in Canada.

Mr. CHRISTY. I would like, as an off-set to the question put by the other side, to ask this: If persons who have been given up by physicians to die do not sometimes recover?

A. Yes, sir.

Q. And persons whom physicians say will recover sometimes die?

A. Yes, sir; they do.

Mr. McKENNA. I do not know exactly if, with all the questions that have been put to and answered by you, you have stated what form of mental disease Judge Kirkpatrick has.

A. He had delusion.

Q. That is not a definition.

A. It is one form of insanity. Where delusions are in a case, I am satisfied there is a lesion; how much I do not know.

Q. That is a premonitory symptom, is it not?

A. Yes, sir; a premonitory symptom.

Q. How does such a case progress—develop?

A. At present he is reticent; I am unable to judge.

Q. From his appearance, can you not judge whether he has delusions or not?

A. When those delusions manifested themselves, we augured unfavorably, on the theory there was some cerebral trouble, probably not a lesion but deposits. The—

Q. The question I asked you was—and I wish you would give your best opinion—that whether these delusions and the distress you have described were not the premonitory or the early symptoms of the disease now settled on him.

A. No, sir. The distress was—the delusions occurred this year, the beginning of the year—in respect to his property, that he did not own anything, and that he was without funds, that he would be compelled to go to the poorhouse. At that particular time there was evidence of cerebral trouble—to locate that I could not do it—that may have been in a blood vessel of the brain, or it may have been in the cerebral substance of the brain.

Q. Those were the first symptoms, were they?

A. Not the first. The distress during the last summer in anticipation of some calamitous physical condition.

Q. The distress and the delusions represent different stages of the disease, don't they?

A. Yes, sir.

Q. What stage is he in?

A. He is in a stage in which he makes no communication at all. I say when you go in there you take him objectively, just as a child; you can't get a word out of him.

Q. How long has he been in this stage?

A. I think he has not been there more than four or five weeks—probably longer than that.

Q. I ask you, as a physician, to define what stage of disease he has—of mental suffering. There is certainly a medical term for it.

A. I don't know—— He is suffering from a diseased brain.

Q. Is that what he had at first?

A. No, sir. He hadn't mental disturbance. These hallucinations that he had are the evidences of cerebral trouble, which he didn't have before that. This distress that he had was not the result of brain trouble, in my judgment. It was an apprehension of grave trouble to come.

Q. That was a hallucination, was it not, and unfounded?

A. Unfounded?

Q. Yes, sir; a hallucination, a delusion, was it not—that is, about the loss of his property?

A. That was unfounded, as a matter of course, and it was the product of a brain badly balanced at the time, and no doubt some trouble about his head.

Q. Doctor, do you ever visit these insane asylums?

A. No, sir; I never was in one but a short time; never was in an insane asylum but once.

Q. Did you see men there in the possession of bodily health, regular in their eating?

A. I was once in an asylum—once, I think—and hadn't time to look at any person.

Q. Did you see men in perfect bodily health and yet with impaired intellect?

A. Yes, sir.

Q. You argue, from the return of natural sleep and appetite, and the quite marked improvement of Judge Kirkpatrick's physical health, that there is some possibility of a restoration of his mental health.

A. Allow me to put it in this shape: The character of this, and the condition this man is in, is the only thing that makes it hopeful.

Q. What do you mean by that—the condition of the man—his silence?

A. Well, now, I don't wish—— I would not want to be interrogated about that. A doctor may occupy a position towards his patient, and yet he might not want to communicate it.

Q. Don't misunderstand us; we do not want to trespass on that line at all.

A. That is why I do. It is more hopeful than any other form of head trouble. We can expect more, and that is the testimony of the profession, and I think I will be indorsed by the medical men of the city of Pittsburgh, or those that have made a specialty of that particular department.

Senator BIDDIS. I want to ask you whether there is in Judge Kirkpatrick's present condition symptoms of any indication of what we call softening of the brain?

A. I think not—that is brain trouble from overwork; I don't take much stock in overwork myself; probably there is brain trouble from overwork, but not that kind that comes through mercantile or professional work.

Q. There is such a condition of the brain?

A. Yes, sir; but there is not any such in the Judge's condition; so far as his functions are concerned it is perfect; his bowels are moved regularly,

and it is involuntary; everything goes on the way it needs to go; he answers the calls of nature of that kind which would not likely be the case if there was a softening of the brain.

Mr. McKENNA. Is not his present condition an evidence of approaching *dementia*?

A. Yes, sir.

Q. A gradual relapse into silence?

A. That is the apprehension. Still we would feel hopeful after that.

Q. For the discharge of the grave and daily duties of a judge of the court, you are aware of the importance of those duties, and the versatility of their requirements, and the demands upon one occupying the position; now, could you state, in your opinion, about the probable restoration of Judge Kirkpatrick to health if he would ever be able to discharge satisfactorily, or as satisfactorily as formerly, the great, grave, and important responsibility of a judge?

A. Well, well—it would be a long time.

Q. Are not the chances, ninety-nine out of a hundred, against a complete restoration to that extent to undertake the responsibility and tribulations of a judgeship?

A. In my own judgment, it is doubtful that he would ever fill the position.

Representative SPONSLER. Where there is a long-continued illness and some physical decay and partial paralysis in a great majority of cases until generally there is a second attack.

A. I would answer in this way: that there are incomplete recoveries; a man walks about and talks, forgets words, forgets the faces of his friends, and lives for years, and he never gets better.

Q. You generally apprehend the second attack of paralysis where there is a first one?

A. It depends on what it depends on. I propose to be explicit; it is what it depends on. It is the condition of things which I know that makes me hopeful.

Mr. SHIRAS. Suppose that Judge Kirkpatrick was to be deprived of some valuable estate, of some honorable office; if, in your opinion, he was irretrievably ill in mind and body, without a reasonable hope of recovery, would you be prepared to say that it was time to take that position or estate from him?

A. I think not. I think not. Another thing, this matter could have been the first to have suggested the propriety to the special friends of Judge Kirkpatrick to tender his resignation. I would have been the first, but they did not give me time to do it. There is an animus about this that I don't like. There are a great many gentlemen who signed that paper, as a matter of fact, of course, have no unkind feelings toward Judge Kirkpatrick, but if this matter had been postponed the honorable gentlemen from Harrisburg, from the upper and lower house, would not have been here to-day.

Doctor D. N. RANKIN, a witness called on behalf of the petitioners, who, being duly sworn, testified as follows, in answer to questions by Mr. Christy:

Q. You are a practicing physician?

A. Yes, sir.

Q. For how long?

A. I graduated in 1854.

Q. Have you attended Judge Kirkpatrick professionally within the last two years?

A. I have.

Q. Will you please state what time you began to attend him?

A. I will have to look at my note-book for the data, if you will allow me. My first attendance was in May, 1883.

Mr. MCKENNA to the commission. I desire that the commission appoint a time when Doctors Wylie and Ayers can be permitted to see Judge Kirkpatrick. They proceeded to the office of Doctor Herron this afternoon, but failed to see him owing to the attendance here, and, therefore, they are not prepared to testify, not having been able to see the Judge.

Doctor HERRON. It was agreed that they should call this morning. Doctor Hutchinson called and was informed of everything regarding the case. I can assure the commission that there was not one particular I did not state about the case, but I do not desire the Judge to be disturbed. He is my patient, and I would feel unwilling to have them go this evening, and would feel very much like not having them go at all——

Mr. MCKENNA (to Doctor HERRON). How about to-morrow?

Doctor HERRON. One gentleman has seen him; Doctor Rankin has also attended him, and Doctor Daily, and Doctor William Herron. What should have been done in this case is that it should have been brought before medical experts, in order that the honorable gentlemen from Harrisburg might get the whole history of the case.

Senator HOOD. That is what we desire to have done; we expect to be in session to-morrow.

Doctor HERRON. If these gentlemen will come over in the morning, we will talk over the matter. I acted on my own judgment to-day; I wanted the board to know all about it, and so informed Doctor Hutchinson.

Mr. MCKENNA. This commission understand that it was to avoid asking hypothetical questions here that it is suggested that these experts make an examination, and, of course, it was made expressly subject to the concurrence of Doctor Herron; we do not wish to have any professional conflict about it at all.

Senator HOOD. I am very sure that the commission would like, if not injurious to the patient, that Doctor Herron would consent to these other gentlemen to see him and be fully informed.

Doctor HERRON. I have no objection to the gentlemen.

Senator HOOD. I presume this can be satisfactorily arranged.

Mr. CHRISTY (to the witness). You say in March, 1883?

A. In May, 1883.

Q. Please state for what you attended him at that time.

A. Well, my first attendance was for nasal catarrh and ear trouble, and as he became better of those symptoms, he was troubled with pains in the limbs, shoulders, and back, and insomnia; but he was still going—moving around—walking around; he would call into my office every day, and say that he was sleepless and had violent pain in the head.

Representative ROBINSON. A pain where, Doctor?

A. In the head—back of the head. Ultimately, I succeeded in getting him quiet, and every time he would leave my office he would say: "Now, Doctor, do you think I will get well?" He seemed to be fearful that he was not going to recover, and every time—I don't think there is an exception—every time when he would go out: "Now, Doctor, do you think I will get well?" he would say; was rather low-spirited and melancholy; then he went along until—— That was in November, Doctor Herron stated that he was called in consultation to see the case in my office, which was in November, and I attended him along, pretty much in the same way, until April, 1884, and since that time I have only seen him once, with Doctor Herron, about three weeks ago; Doctor Herron asked me in to see him.

Mr. MARSHALL. You mean April, 1885?

A. No; I have not seen him since a year ago.

Mr. CHRISTY. What, in your opinion, as a physician, was the cause of this insomnia, and the difficulty he appears to have—the foreboding of evil and trouble?

A. Well, he was working pretty hard—I would rather not give that in evidence, if I could help it. I would rather not answer that question, if I could help it.

Q. Well, I will put it in this form. Was it any affection of the brain, or column of the brain?

A. No, sir; he had some, just before the case was given into Doctor Herron's hands, I think; I was absent at the time; he told me that he felt sometimes a little numbness of the hands; I could notice in his walk the drag of the limb a little, but it was not confirmed at all; I thought, possibly, that was owing to debility or exhaustion; he was very much exhausted, or run down; I could not say, positively, that it was paralysis.

Q. You say you saw him in the month of April, some three weeks ago?

A. Yes, sir.

Q. Will you please just state what his condition was at that time?

A. Well, when I went in with Doctor Herron I expected to find the Judge glad to see me, as he always had been; I found him sitting in his chair, and went to shake hands with him. He would not shake hands, and I asked him how he was feeling; he hesitated a long time before he answered me; I thought it was strange, and after awhile he said he was feeling pretty well. It took a great deal of time, a long time, to get an answer to my question, and then every answer I got to my questions were just about on a par with that.

Q. Those answers were confined to monosyllables almost?

A. Yes, sir.

Q. Doctor, from your knowledge of his difficulties, and from his condition as you saw him in your last visit, what is your judgment, as a physician, of his ultimate recovery?

A. Well, taking into consideration that I have seen similar cases come out of that condition after a prolonged treatment—now, I have a case in Allegheny City now, a gentleman just in the same condition as the Judge is, and he is all right and up to-day.

Q. Well, in your judgment, about how long would it take under ordinary circumstances for a recovery in a case such as this?

A. I could not state that.

Senator BIDDIS. Approximately, Doctor?

A. You cannot give it.

Senator HOOD. Would it be a long or a short time?

A. I would say a year, at any rate, if there is any time that you could give.

Mr. MCKENNA. From your knowledge of the case, and knowing as you do the duties devolving upon a judge, in your opinion as a physician, do you think that he will ever be able to perform the duties of his office—that it is probable, or what are the probabilities?

A. I would say most positively that he is not able now, mentally or physically, but I could not say that he would never be able.

Q. What, in your judgment, are the probabilities of his ever being able within a reasonable time?

A. If you take other cases as a criterion to go on—

Q. Please confine yourself to the Judge's case as you found him in 1883, and during the year you attended him as a physician. Then, from the examination you made of him a short time ago, from that alone, and considering his age and the duties that he would be required to perform as a judge, what is your opinion as to his ability to perform them in the future, and if so, when?

A. Well, taking his age and general condition into consideration, I would think it very improbable.

Representative ROBINSON. Very improbable?

A. Yes, sir.

Representative SPONSLER. In all cases of paralysis of that kind, what is the percentage in which there is a recurrence of the paralysis after the first case, after fifty years——

A. I don't think there is a table laid down of percentages.

Q. What is your observation and experience with regard to cases of that kind?

A. Well, in this particular case, writers upon that subject give great encouragement. They consider it good prognosis, where the person is of the proper age——

Q. Confine yourself to patients over fifty years of age; does that preclude entire mental recovery?

A. It is said to, yes, sir; the thickening of the meningitis and the bones is absorbed.

Q. Would you have any objection to giving this species of paralysis a name?

A. I would call it *hemiplegia*—paralysis of half the body.

Q. Is there any other species of paralysis that affects one half of the body only, resulting from——

A. No, sir; that is owing to where the nerves are molded—one part of the brain. In what part it is located, is owing to the nerves from the different portions of the brain.

Senator BIDDIS. Did you discover symptoms of cerebral trouble?

A. Yes, sir, oh, yes——

Mr. MCKENNA. Did you treat Judge Kirkpatrick in a former sickness?

A. Qes, sir.

Q. Were you his physician, then, a year before?

A. Yes, sir.

Q. Is there any connection between the first and second sickness?

A. I attended him for this nasal trouble. Doctor Herron attended him before that.

Q. How long before Doctor James Herron took the case was it you treated him?

A. In May, 1883. Doctor Herron was called in to see him in November. I had forgotten that date.

Q. How long was he under your treatment in 1883?

A. I don't remember now, unless I would look at my book.

Q. A month or two months?

A. From May, 1883, until March, 1884.

A. Yes, sir.

Q. You attended him for a nasal trouble and the——

A. Yes, sir; almost altogether.

Q. From the first sickness?

A. I can't tell that.

Q. You haven't them separate?

A. No, sir.

Senator BIDDIS. The catarrhal difficulty had no connection with the present?

A. Well, I guess it had; yes, sir.

Mr. SHIRAS. When you are giving a history of a man's disease and his present condition, and are asked to forecast the future, and to say whether it is probable or improbable, and how probable and how improbable it is whether he shall recover, such questions you must answer, if I understand you, with hesitancy and uncertainty?

A. Yes, sir.

Q. You have known cases of recovery with symptoms analogous to this one?

A. I have, yes, sir; there is a case in Allegheny City at the present time.

Q. Do you remember the case of Judge McCandless?

A. No, sir; I do not.

Q. Were you permitted, or had you any professional connection with the case of A. W. Loomis?

A. No, sir; I had not.

Mr. CHRISTY. Then the question that Mr. Shiras boiled down is this: what you know you know, and what you don't know you don't know; is that the idea?

A. Yes, sir; of course I may say this: the only hope in the case is from what I have seen in other cases.

Mr. MCKENNA. Will you please explain to the commission the age of that patient who has probably recovered?

A. A man of fifty, perhaps a little over fifty.

Q. Are the percentages of recovery after fifty much smaller?

A. Well, it is not so likely as to younger persons.

Q. Do you know how long that particular case had been sick?

A. About—over three months; that is just guessing.

Q. Had he any symptoms in that case approaching *dementia*?

A. Yes, sir.

Q. Did he recover his former vigor?

A. He is not entirely recovered physically; his intellect is recovered, but not physically.

Q. Was his intellect affected?

A. Yes, sir.

Q. Do you say he was attended with paralysis?

A. No, sir; no paralysis.

Q. That is a different condition from Judge Kirkpatrick's.

A. There has been some symptoms, but not decided paralysis; some numbness of the hands, but not decided paralysis.

Representative FAUNCE. It was not of so long standing?

A. Not of so long standing.

Adjourned to meet April 23, at half past nine o'clock.

And now, to wit: April 23, 1885, ten o'clock, A. M. Met pursuant to adjournment, and taking of testimony proceeds.

Present, Senators Biddis and Hood, Representatives Sponsler and Robinson; Messrs. McKenna and Christy, of counsel for petitioners, and Messrs. Shiras, Brown, Marshall, and McClung, of counsel for Judge Kirkpatrick.

Mr. CHRISTY. If the committee please, the gentlemen who were to visit

the Judge this morning have not returned. It was understood last evening if the counsel on the other side had anything to do, that they should have an opportunity to do it. We will stand aside for the present and give them such opportunity.

Mr. SHIRAS. Our desire is to offer some testimony, chiefly in the way of records and statistics, showing the late period which Judge Kirkpatrick continued to do his duties satisfactorily, down to a much later date than some of the witnesses, speaking merely from recollection, have placed it. We are having some statistics prepared in the prothonotary's office, which were to be done at ten o'clock, to show down to what date the Judge last acted in cases. We are informed they will soon be ready.

Mr. CHRISTY. Under the rulings of the commission, we shall not enter a formal objection, but we think this testimony is immaterial to the issue.

Mr. SHIRAS. I wish to ask the committee whether the counsel on either side will be provided with copies of printed testimony.

Senator HOOD. We think we will be able to leave a copy with each side this evening. Five copies are being prepared, and there will be additional copies furnished after we return to Harrisburg.

Major BROWN. We offer the minute book of the court of quarter sessions of this county, No. 39, showing that Judge Kirkpatrick held criminal court from March sessions, 1883, up to April 21, 1883; then was off the bench until May, 1883, and from that time he held court continuously until the close of the sessions, testimony which has been given by the other side that he was ill, and had to retire from the bench in March or April, and the court had to be held by another member of the bench.

The minute-book can be produced, if it is desired, and shows exactly what we state. He was off two weeks.

Mr. CHRISTY. I would prefer to see the minute-book. This can go in for what it is worth, but I desire to see the minute-book, to see whether, for a portion of that time, the court was not held in conjunction with another judge.

S. SCHOYER, Jr., a witness called on behalf of respondent, who, being duly sworn, in answer to the questions put to him by Mr. Shiras answers as follows:

Q. You are a member of the bar of Allegheny county?

A. I am.

Q. For how long a period?

A. Since 1858.

Q. Did you know Judge Kirkpatrick during that period?

A. Very well.

Q. I wish you would state whether, during the year 1884, you tried an important cause or causes before Judge Kirkpatrick; and if so, briefly state the date and nature of the case, and the Judge's bearing on the trial.

A. I took part in the trial of Hill's Administratrix *vs.* The Nation Trust Company. I think the verdict was rendered on the 4th of March, 1884.

It occupied two days in the trial, and was an important case, involving a novel principle, and was tried exceedingly well. And the position taken by Judge Kirkpatrick, the important position in the case, was confirmed by the Supreme Court last winter.

Q. The case, if I remember right—I think I was in as counsel—resulted in a non-suit?

A. It passed off; well, the principal points were affirmed by the Supreme Court; it passed off on the proposition that there was a question of fact that ought to have been submitted to the jury; there was some little question that ought to have been submitted to the jury.

Q. But the main question was dealt with by the Judge himself, and resulted in a non-suit?

A. Yes, sir; that main question was the novel one; it was to this effect: that the custom, offered to be proved of messengers and tellers of banks, certifying checks was not a good custom, and that was affirmed by the Supreme Court.

Q. During the trial and argument, what was the apparent mental condition of Judge Kirkpatrick?

A. As good as could be expected of any judge; as good as he ever manifested in my presence at any time during his judicial career.

Q. Was that the last case in which you——

A. That was the last case in which I personally participated; after that came on some other case—the Douglass will case.

Q. What was that case?

A. That case involved the construction of a will, and a great many interesting points, and occupied about eight days.

Q. Was that case subsequent to the one you spoke of?

A. Yes, sir.

Q. Who were counsel in that case?

A. Major Brown was one of the counsel, and Mr. Dalzell also.

Q. Could you give the number and term of the Nation Trust Company case that you tried?

A. I can't, sir.

Q. You can give the number and term of the supreme court list?

A. Yes, sir; 89, October and November term, 1884. The suit was brought many years before, but was not permitted by Mr. Lazear, for some reason or another, to be called for trial; I believe the check had been lost.

Cross-examination by Mr. Christy:

Q. Who was counsel on the other side of that case?

A. Mr. Lazear. Mr. Shiras was my colleague, and Mr. Herron was in also.

Q. Did I understand you to say that that case was reversed in the supreme court, finally?

A. It was reversed on some unimportant point. There was some slight

evidence that the supreme court appeared to think—about the special authorization of the messenger to certify that particular check—and it was thought by the supreme court that ought to have been submitted to the jury; but the main question in the case was in the refusal of Judge Kirkpatrick to confirm the correctness of any custom that established the right of a subordinate officer in a bank to certify checks.

Mr. CHRISTY. May I ask you, if, on the argument on the motion to take off the non-suit which took place before the court in banc—which was the judgment, of course, on which it was taken to the supreme court—was not given by Judges Ewing and White, affirming Judge Kirkpatrick?

A. It was confirmed, yes, sir; his opinion was supported.

Mr. MCKENNA. They heard nothing of the argument or discussion of the case?

A. They heard the argument on the motion to take off the non-suit.

Q. They were not present at the time of the trial of the case?

A. No, sir; they were not present at the trial. Judge Kirkpatrick tried the case.

Q. Was he complaining of ill health at the time?

A. No, sir.

Q. When was that?

A. March 4, 1884.

Q. That was among the last cases he tried?

A. He tried some additional cases; I think a case of yours afterward. How long he remained on the bench I don't know. He tried the Douglass will case, and others.

Q. Have you any recollection of the Judge complaining of being ill?

A. No, sir; he didn't complain to me. He didn't appear to be ill at that time. I think he held over the question of non-suit over night—that is my recollection—and examined the authorities on the points. They were quite numerous, pro and con.

Q. Did you and others furnish him with some considerable number of authorities on the points?

A. We gave him references to them. They were, in many cases, conflicting—that is to say, the point had not been squarely decided.

Q. You could not say what the opinion of counsel on the other side was at that time?

A. I cannot; but if you would ask me what I think, I think Mr. Lazear could not help but say that the case was well tried.

Q. You don't know what his opinion was?

A. He never mentioned it to me. I think if there was anything unusual, or out of the way, with Judge Kirkpatrick at that time, he would have mentioned it.

Q. Have you expressed an opinion concerning the mental condition of Judge Kirkpatrick to any member of this bar recently?

A. I think not, sir.

Major A. M. BROWN, witness called for the respondent, who, being duly sworn, answers the questions put to him by Mr. Shiras as follows:

Q. You are a member of the bar of Allegheny county?

A. Yes, sir.

Q. Of some years standing?

A. Yes, sir.

Q. Did you know Judge Kirkpatrick?

A. I knew him very well, very well.

Q. Did you have cases before him frequently?

A. I have tried a great many cases before him, yes, sir.

Q. I wish you would state whether you recollect of trying any important case before Judge Kirkpatrick during the year 1884, and in the spring of 1884, and if so, state the case, about the time and nature of it, and the behavior of Judge Kirkpatrick judicially.

A. The last important cause that I ever tried before Judge Kirkpatrick was what we commonly call the Douglass will case; it was taken up on the 4th of March, 1884, and terminated on the 12th of March; the verdict was rendered, I think, on the 12th of March. I saw him all that time continuously. Mr. Dalzell, with other counsel, was upon one side of the case, and I was on the other, and a young gentlemen with me. The case was one of very considerable importance, both as to the amount involved and the newness of interesting questions of law that were raised by the facts of the case. Experts were examined—it was a judicial proceeding involving the mental capacity of the testator, and a great many questions were raised. It was tried with great interest and perseverance on both sides, and many points were presented by counsel, all of which were very clearly ruled by Judge Kirkpatrick, without the assistance of any member of the court, and his rulings were confirmed unqualifiedly. I think he tried that case as well as he ever tried any case during the whole period of his judicial life, during all of which time I practiced before him. He exhibited no mental weakness; no unusual nervousness; he was a man of rather nervous character, that is, very active and very energetic; and whilst I perceived at that time that there was some evidence of physical illness, I discovered nothing that created the slightest suspicion that there was any mental defect, or any failure of his mental power; I never suspected anything of the kind; the case was well tried, very well tried, and was reviewed in the Supreme Court, October and November term, 1884, and the rulings of Judge Kirkpatrick confirmed. The last case that I ever tried before him was concluded on the 25th of March, 1884——

Q. The last jury case?

A. Yes, sir. When we finished the Douglass will case, my recollections are that he recognized that he was not well; I think perhaps Mr. Dalzell and myself, and others, insisted that he should rest, and he went to New York and remained there a few days; not as long as we anticipated, probably a week and probably ten days. I know that he was back here and

took the bench Monday morning, the 24th of March; I think it was Monday morning; I am pretty sure it was. Judge White was holding the other branch of No. 2 at the same time. He returned and took the bench again the 24th of March, 1884, and was very cheerful, but I think there was no evidence of improved health. He was advised very strongly by all of us not to take the bench—to rest—to go away again, but he was anxious to go on, and said he felt better when he was working, and preferred to remain and assist in the disposition of the cases, which he did against the advice of the members of the bar about him—quite a number at the time. He went on Monday; on Tuesday he was manifestly worse, and admitted that he felt worse than he did before; we again pressed him to rest. I had a long talk with him before he left the court. I finished the case; it was a short case; I had very long and frequent talks with him, and did not discover any mental disturbance; he was very nervous and restless, and inclined to remain on the bench; but we all insisted, jocularly, that we were not anxious to try our cases at the expense of his health; the list was well up, and there was no necessity of him making any sacrifice. We insisted that he should go home, and he determined then that he would go home and keep quiet. That was the last case he ever tried.

Q. A jury case?

A. A jury case. I saw him last October, when he came over to hear the argument on the exceptions to the master's report, in what is commonly called the city bond case. Judge White was absent, at least I was so informed; I know he was not in court. There was a sincere desire, an urgent necessity, to have the case disposed of at that time, in order to get it before the Supreme Court in November. He was present in the court that day, and I had a conversation with him, as had many others, members of the bar, who were glad to see him. He was in an exceeding pleasant humor, and in his manner reminded me of his old habits, although evidently he was suffering from an attack of paralysis and had not the use of one arm. I remember that distinctly; otherwise he was clear and pleasant. I really thought that he was in condition to sit upon the case. I saw and talked to him about some circumstances within a recent date, and some of a later date, that showed that he had memory, and his remarks in that particular case showed that he had memory, because he stated that he had read the report, and that the laboring oar would be upon the exceptants on the other side. There were exceptions on both sides; we excepted to the report on our side and there were exceptions on the other side; we regarded the report as entirely in our favor. He reminded defendant's counsel that he had not discovered anything in the master's report that would change his opinion as to the conclusion arrived at by the Court upon the original hearing, when the preliminary injunction was granted. And my understanding of the case was this: that the counsel upon both sides desired no argument of the case, and not to spend any time. We had spent two days, or three, arguing upon the motion for the injunction;

and there had been two or three days spent in arguing it before the learned master, upon the exceptions to his report, and the time was so exceeding short, and the necessity was so great upon the appeal that was proposed to be taken by the defendant, that my understanding was, that no argument was desired, Mr. Shiras, representing ———, being then leading counsel on the other side, arose and stated to the judges that they had concluded upon both sides not to argue the case, but to submit it; it was then Judge Kirkpatrick made the remark that if they expected the Court to change their opinion, he wanted them to understand that the laboring oar was on them, because he had examined the master's report, and unless they could convince him that the report was originally, they might expect an adverse decree. There was nothing in his manner showing weakness of mind or memory, or inability to comprehend the importance of the case or the principles involved; but yet I don't wish to say that physically he was unfit to sit, and should not, perhaps, have been there, although he was there once or twice on other cases—that is to say, that if I had been in his condition, with full possession of my mental faculties, I certainly would not have desired to sit upon the bench and labor in my profession, for it was unwise for him to be there. He told me at the time that he desired to remain, he was unwilling to go home, that he felt better when actively engaged upon the bench; it relieved his mind, and when he would go home to the privacy of his own room, it had a depressing effect upon him, and that the activities of the bench and the employment of his mind in the trial of causes seemed to sustain him.

Mr. MCCONNELL. Was there any application made to have this case go over in February, at the preliminary hearing?

A. Yes, sir; on the preliminary hearing, we, on our side, made an application for an injunction to restrain the issuing of bonds to a very large amount. We made the application, and it was resisted because there was not a full bench. Judges Ewing and White were present. The counsel on the other side insisted, with great pertinacity, that they desired to have the presence of Judge Kirkpatrick, and a full bench. He was absent, and his presence was necessary to constitute a full bench, and the case was postponed to enable him to have him in attendance on the argument; he did attend, and the argument was heard by a full bench. The postponement was for the very purpose of having Judge Kirkpatrick present; I can't recollect the date of the argument; it was early in the year.

Mr. MCKENNA. It seems to have been in February.

A. It was in February, I think. I think it preceded the trial of this cause I spoke of—immediately preceded this case.

Cross-examination by Mr. Christy:

Q. At the preliminary hearing, in February, of that bond case, I believe that Judge Ewing and Judge White differed, didn't they—Judge White delivered a dissenting opinion?

A. Judge White differed from his two colleagues, Judges Ewing and

Kirkpatrick; they were agreed to the same opinion; Judge White dissented.

Q. Was Judge Kirkpatrick present at the preliminary hearing?

A. Yes, sir; but would not have been present if it had not been that his presence had been insisted upon by D. T. Watson and George Shiras; we did not want a postponement; there was danger in postponement, and the case had to go over for a week, perhaps longer. Judge Kirkpatrick happened to be absent at that particular time; I don't remember what was the cause of his absence.

Q. In this Douglass will case, have you any recollection of a recess taken to give Judge Kirkpatrick a rest of a day or so?

A. During the trial of that cause?

Q. Yes, sir.

A. I know positively that is not correct. There was not the slightest foundation in any such thing:

Q. There was no recess taken?

A. There was a recess taken every day for dinner, for a few minutes; Mr. Dalzell and myself walked down with him; I think we took dinner with him for the entire eight days.

Q. You have said that in answering the points submitted on both sides, Judge Kirkpatrick derived no assistance from any other judge?

A. I think I can say that safely, because the points were presented in the morning, and he ruled them upon the same day. I feel confident that he had no advice or assistance, and saw nothing that would lead me to believe that he consulted, or had opportunity to consult, his brethren on the bench.

Q. You don't know whether that was done or not—it was not impossible?

A. I think it was impossible; I think Judge Ewing was engaged elsewhere, and Judge White was trying cases in the other room.

Q. You didn't see them together at the intermission of court?

A. I think they were not together at the intermissions of court, I was with him.

Q. You didn't see him after three o'clock?

A. No, sir. He would always go home after three o'clock, and Judge White to his home down in the country.

Q. Don't you know that in that case, lasting eight days, that the judges could have many opportunities for consulting?

A. Undoubtedly; but I don't know it——

Mr. SHIRAS. Would you regard that as evidence of mental weakness—if he did consult?

A. No, sir; it would be wisdom.

Mr. MCKENNA. We merely asked you the question.

A. Of course, it is possible, but, under the circumstances, I don't think it probable.

Q. Who was the counsel on the other side?

A. John Dalzell was the principal counsel. Mr. Bailey was with him. I don't know that there was anybody else.

Q. You won the case, I presume?

A. No, sir. Judge Kirkpatrick ruled against me, but I didn't go down to the tavern and swear against him. I made the fight as best I could, but he ruled against me, and I took it to the supreme court, and the supreme court said that he was right and I was wrong.

Q. And that ended it?

A. Yes, sir. There were rulings in my favor, many of them. There were no very pronounced ones—the points were drawn with much care, as I knew they might well be. I knew I had a desperate case; it was a case of law and fact. I don't wish to say it was not well tried, but, if it was not well tried, it was because I could not try it well, for I tried hard.

Q. Coming down to October; did you see Judge Kirkpatrick between March and October?

A. Yes, sir.

Q. How often did you see him?

A. The time I speak of is March.

Q. Between March and October.

A. Yes, sir. I saw Judge Kirkpatrick, I think, probably twice between March and October.

Q. Did you have any conversation with him?

A. When he came into the city bond case, I had called there on the day of the funeral of Mr. John Dean, my uncle. I cannot give the date, but it was prior to October. I called there with my family. He was buried in Hilldale cemetery. I rode down Sherman avenue, and called at the door, and saw his sister, but the Judge happened to be sleeping. He was asleep, and I would not permit her to awake him. She concurred in the idea, but she communicated the fact to him, and when he came into the court-room, he thanked me for that call, and told me his sister had informed him that I had called. It convinced me that he had considerable memory; he thanked me—I have a distinct recollection—he took me by the hand and thanked me for having made that call with my family; my wife and daughter were with me.

Q. On taking his seat that day in the bond case, do you remember his making a statement that, although he was not in attendance upon the court, he had read the papers and kept track of the bond controversy?

A. I don't recollect any statement of that kind. I recollect of him stating the fact that the master's report, or the substance of it, had been published in the newspapers, and that he had read it, and that he had discovered nothing to change his mind from the original determination or conclusion of the court; I recollect that distinctly.

Q. Without reflection on these veracious gentlemen of the newspapers at all, I would ask you if, as a lawyer, you would consider it proper attention, and a proper consideration of a case, for a judge to pass upon that case merely on reading a newspaper synopsis or report?

A. He didn't do that.

Q. You say that he announced that fact.

A. No, I said he didn't say that; he didn't read it in the newspapers, he said he had read the report; somebody here yesterday stated that it was published; I think that is a fact. It was an interesting case, I think, of public character, and I think I read it myself; it was a public document.

Q. Please answer my question. Would you consider, in the disposition or decision of a case involving six millions of dollars, it would be a judicial act for a judge to make up his mind, or be guided in his conduct, by a synopsis published in a newspaper?

A. No; and I am very confident that he would not have done that; and he never said he would do that. The only intimation to counsel was if they submitted the case without argument they could not expect the court, so far as he was concerned, to depart from their original conclusion.

Q. You don't know, as a matter of fact, whether he read the original report, or not?

A. My recollection is, Judge Kirkpatrick didn't say that he read the report in the newspapers, but he said he had read the master's report; that is my recollection of the statement; I don't know whether he read it in the newspapers or in the manuscript.

Q. Do you know, as a matter of fact, whether he read Master McClung's report?

A. No; I don't know whether he did, or whether any of them did; Judge Ewing stated the same thing, at the same time—that he had carefully read the report—and Judge Kirkpatrick rather intimated there ought to have been an argument if they wanted a decision; Judge Ewing made no remark.

Q. How long after that was it until you next saw Judge Kirkpatrick?

A. I can't recollect the next time I saw him.

Q. Have you seen him lately?

A. No, sir; I have not seen Judge Kirkpatrick during the winter, nor this spring; I didn't think that I could do him any good; I was very busy, and thought that quiet—I was informed by his physician that quiet and non-disturbance was the best thing for him, and, therefore, I didn't call at his house.

Q. Did you say that in March, among the last cases that he tried, that he made some remark about taking a rest and a respite?

A. The matter was suggested that he should cease and go away, and take absolute rest, with a view to his physical restoration.

Q. Was not that about the end of the Douglass will case that suggestion was made?

A. That was as late as the 24th or 25th of March; I think the 25th of March; I think that was the day exactly, and I fix that by the case and the records.

Q. His condition, from the time the will case was tried until the 25th of

March, or until the last case you have mentioned, did it deteriorate much physically?

A. Well, I thought he was not as well physically when he returned from New York as when he went away—that is, there was a general depression of his physical powers; he could walk and require no assistance; he could talk and there was no impediment in his speech, and there was no halt in his walk; I could perceive none; but I thought he was a very sick man; I thought he was sick; I didn't determine how sick.

Q. Do you know who accompanied him to New York?

A. No, I don't; I don't think that anybody accompanied him, unless it was accidental; he said he was going to New York; he was in the habit of taking trips of that kind.

Q. That was in the month of March, 1884?

A. That was after the 12th and before the 24th of March; but, I think, he was not absent more than ten days; I don't think he went to New York earlier than the 14th; I know he was back on the bench on the 24th, trying cases.

JOHN DALZELL, a witness called on behalf of the respondent, who, being duly sworn, testifies as follows:

Q. You are a member of the Allegheny county bar?

A. Yes, sir.

Q. How long have you been such?

A. Since 1867.

Q. Were you acquainted with Judge Kirkpatrick?

A. Yes, sir; I knew him very well.

Q. Did you try cases before him?

A. A great many.

Q. I wish you would state what the last important case was that you tried, the date of the trial, and as much as you recollect of the nature of the case, and the Judge's demeanor on that occasion.

A. The last important case in which I was engaged before Judge Kirkpatrick was that referred to by Major Brown; it was popularly known as the Douglass will case.

Q. Were you Major Brown's colleague?

A. No, sir; I was for the defendant. The Major was for the plaintiff. It was commenced on the 4th day of March, and ended on the 12th; the 12th was the day on which the verdict was rendered; I don't recollect particularly the day on which we finished the trial; it was an important case for many reasons; there were some nice questions involved in it. There was considerable money involved, and there was a great deal of interest taken in the case. It resolved itself into a locality fight, which is generally the bitterest kind; we had all McKeesport down here. It was tried under what I thought exceptionally adverse circumstances for both judge and counsel; it was tried in that small room over there, in which the ventilation is very bad, and owing to the character of the case the room was

crowded all the time. I don't know as I can add anything to what Major Brown has stated as to the trial of the cause; I saw nothing to indicate that the Judge's mind was not as vigorous as at any time I knew him.

Q. You spoke of the room and of the ventilation, and the way it was crowded, and the length of the trial; was there not, in all these circumstances, anything to have sickened the strongest man?

A. There was; I recollect myself as being very much depressed after the trial; and I recollect during the course of the trial that Judge Kirkpatrick remarked that any continued session in that little room, under the circumstances, was enough to kill a man. Major Brown has spoken on the points; Major Brown was my adversary; my colleague was Mr. Bailey. I think the points were exceedingly ingenuously drawn; I was afraid that the court might be misled, not because the court lacked mental vigor, but by their character they might mislead any judge; and I recollect he steered very intelligently through them, and was subsequently confirmed by the Supreme Court.

Q. It is a fact that you and the Major took the Judge to dinner?

A. We took ourselves to dinner every day, and the Judge generally went with us.

Mr. McKENNA. Who had the jury?

A. I had the jury in the end; that was what I was after principally.

Mr. CHRISTY, (to the committee.) I understand this is taken, subject to my objection, as, in my judgment, it is not material at all.

Senator HOOD. Yes, sir, certainly.

Cross-examination by Mr. McKenna:

Q. Do you remember Judge Kirkpatrick's answers to the points in that case? Did he not affirm most of your points?

A. I think he did. I think they were all good law.

Q. Do you remember of furnishing him with a brief of authorities, and his perhaps following nearly the language of the supreme court in answering those points and the authorities upon it?

A. I don't have any distinct recollection, but I think it is very likely I did give him a brief. I don't know as I gave him a brief to take away, but I cited authorities for the propositions submitted.

Q. And in ruling the case he adopted your propositions, I suppose.

A. My recollections are that he did, principally.

Mr. SHIRAS. Are you not very much in the habit of furnishing judges with briefs?

A. Generally.

Q. Is that supposed to suggest the idea of mental unsoundness in a judge?

A. Well, rather not.

Doctor C. C. WYLIE, being duly sworn on behalf of petitioners, testified as follows, in answer to questions by Mr. McKenna:

Q. Please state what medical college you are a graduate of.

A. I am a graduate of the College of Physicians and Surgeons of Baltimore, Maryland.

Q. You can state, also, to the commission what experience you have had in the various institutions on the treatment of the insane.

A. I was one year in the almshouse, six years in the insane asylum, and two years in the jail.

Q. How long were you engaged, either as assistant physician or acting superintendent of Dixmont Hospital, here?

A. Six years.

Q. Associated with the late Doctor Reed?

A. Yes, sir.

Q. You are now engaged in general practice in the city of Pittsburgh?

A. Yes, sir; located at Hazlewood, Twenty-third ward, city of Pittsburgh.

Q. You have been frequently called in courts to testify in cases?

A. Yes, sir; a common occurrence.

Q. You feel confident—I don't wish to infringe on your modesty—but do you claim to have knowledge enough to be called an expert, as we call those who treat the insane?

A. I would not like to apply that term myself. I have had considerable experience, possibly as much as some who are called experts.

Q. How many patients did you have under your charge at Dixmont Hospital?

A. Between five hundred and six hundred. In 1879 I had six hundred daily; I had a great many of those patients during my time—possibly ten thousand.

Q. Were you pretty well acquainted with His Honor, Judge Kirkpatrick?

A. Yes, sir; very well acquainted with him.

Q. Before his recent affliction you met him frequently?

A. Yes, sir.

Q. I wish you would detail to the commission here, if, in response to a request yesterday, you endeavored to procure admission to see Judge Kirkpatrick, and what was the result.

A. In connection with Doctor Ayers, I called upon Doctor Herron this morning, and he positively refused to allow us to examine him.

Q. You had some conversation with Doctor Herron as to the treatment and the symptoms of Judge Kirkpatrick?

A. I had.

Q. Were you in court yesterday while Doctor Herron was testifying?

A. I was, and heard his testimony.

Q. You heard the testimony, also, of Doctor Rankin?

A. I did; yes, sir.

Q. You heard the history of the case as detailed by them?

A. Yes, sir.

Q. I wish you would state whether you have read the stenographical report of Doctor Hutchinson's testimony.

A. Yes; I read it twice.

Q. Do you know Doctor Hutchinson?

A. Yes, sir; I have known him for years. Was associated with him for five years.

Q. You can state, if, from the facts narrated by Doctor Hutchinson, the definition he gives of the present condition of Judge Kirkpatrick, whether or not you concur in his opinion of the character of the present malady of Judge Kirkpatrick.

A. From the testimony of Doctor Hutchinson, and all the testimony that has been given that I have heard, I would concur with him; yes, sir. He gives the definition as *præritic dementia;* that is, *paræsis* or paralysis of the nerve centers of the brain attended with *dementia*, one of the lowest forms of mental activity.

Q. Is that often accompanied with the possession of, or rather restoration of, physical health?

A. Yes, sir; very often.

Q. Of appetite and sleep?

A. The appetite is, after the first stages of the disease, exceedingly good, digests and assimilates his food well, has an extraordinary good appetite, becomes obese, large, and lusty. Some men do, others do not.

Q. And may live very many years?

A. No, sir; the statistics do not show that men suffering from *paræsis* suffer very long. In cases which have come under my observation, the average was three years and four months of true *paræsis*.

Q. Accompanied with marked symptoms of paralysis of the arm, and of the foot, and of the hand, as described by the witnesses here, is this form of affliction considered any more obstinate in its cure—the chance of recovery any more difficult than ordinary affliction?

A. There is no chance of recovery in genuine, true *paræsis*; this is simply a complication of *paræsis*, from what I understand.

Q. What I mean accompanied with paralysis——

A. That is simply one of the accompanying symptoms—progressive.

Q. What would you define now, in the progress of the development of Judge Kirkpatrick's malady, as given to you by his family physician and by the testimony here, as the stage, if there is any marked stage, of his insanity?

A. I understand that you want the particular form that he is now suffering with—the stage of the disease?

Q. Yes, sir.

A. Well, he has passed through the primary or first stage of his disease, and is now, from what information I can get, in the second and bordering on the third stage of the disease. The first attended with delusions and some excitement. He has gradually drifted and left off some of his delusions and hallucinations, and is gradually drifting into the form of *dementia*, that is, without mind—the organ of the mind has become so impaired that it is impossible for the intellect to act properly.

Q. Could you state, from your treatment of persons similarly afflicted to Judge Kirkpatrick, or from your professional knowledge and studies, give us any idea whatever of the percentages of recovery in the case of men of the age of sixty years afflicted in this form?

A. There is no recovery in true *paræsis* or brain-softening. The percentage of the entire number of persons who become insane from genuine, true *paræsis* is very small, about three per cent., while the deaths in the hospital show that at least thirteen per cent. are caused from *paræsis*, but of the entire number of persons who became insane through the country there is about three per cent. only who have true, genuine brain-softening.

Q. Could you give us, from your observation and studies, an idea what length of time is considered, in the minds of the profession, to fix a case marked as Judge Fitzpatrick's is as chronic?

A. Authorities differ on that. From my reading, I have come to the conclusion that six months limit the acute stage; after that it is a chronic form.

Q. That is the result of your observations?

A. That is the result of my observation; yes, sir; after that chances for recovery are in that form of mental disease limited in proportion to the duration of the insanity

Q. There are cases of partial or incomplete recovery?

A. Yes, sir; there may be, but not absolutely restored; they may be able to go about and attend to some of the ordinary duties, but nothing requiring any great mental activity, because the brain being the organ that is diseased the effect is much more noticeable than ordinary physical labor. The upper portion of the brain, that portion directing the intellect, is diseased, the base may not be so, and a man may move about, and so on —that is, speaking of insanity in general; but if a man has *paræsis*, and it is attended with paralysis, the disease has extended to the lower portion of the brain and attacks the nerves which control the muscles by which he acts; he is unsteady in his movements.

Q. From your study and the history of this case of Judge Kirkpatrick, would you be able to furnish an opinion as to the probability or possibility of Judge Kirkpatrick's complete restoration of mind to such an extent that he could discharge the grave duties of a judge on a bench?

A. I think not, sir. I think a man to be a judge ought to be possessed of all his faculties, and every organ that controls a particular faculty ought to be in perfect health, so that his judgment would not be interfered with in any way.

Q. Do you think such complete restoration can be affected in this case?

A. Not in this case, where there has been such serious brain tension, delusions, and partial *dementia*.

Cross-examination by Mr. Shiras:

Q. You have not seen Judge Kirkpatrick since his illness?

A. No, sir; I have not. I wish I had been given an opportunity. I

would much rather examine him and testify from my own observation than from those of others.

Q. Therefore, your testimony, as given, is dependent on what you have read, or heard of the observations of others?

A. I have drawn my conclusions from the statements that have been made here, and my general knowledge of the insane.

Q. You have stated that this true *paræsis*, as you term it, is a very rare thing, three per cent. of the entire number of the insane?

A. Yes, sir; and it is a very difficult form to recognize. I don't think that an ordinary physician is capable of recognizing it in its first stages, unless he has had considerable experience in the disease.

Q. Being, then, a very rare form of the disease, and very difficult to recognize, I suppose it follows that in any given case, in a given patient, before reaching a conclusion that it was a case of true *paræsis*, it would be very important to have a careful examination made?

A. That would aid you very materially, sir.

Q. Then, I understand you further to say that in a case of true *paræsis* there can be no recovery?

A. No permanent recovery.

Q. I understand you further to say, as a reason there can be no recovery in a case of illness of that kind, is that ultimately the base of the brain becomes involved?

A. Not always; usually.

Q. When it does become involved, what are the symptoms?

A. Unsteadiness in gait, inability to articulate distinctly, and loss of memory.

Q. Suppose a case, then, of a given patient who has shown or exhibited those symptoms, namely: partial paralysis, unsteadiness of gait, some impairment of the faculty of speech, followed by a subsequent restoration of the powers in those particulars, what would such a circumstance to your mind indicate?

A. It would indicate in a case of general *paræsis* that there had been simply a cessation of hostilities; that the man was not restored at all; that the disease had simply rested for a time to make more and greater ravages.

Q. If this *paræsis* is so rare a thing as to be only three per cent. of the insane, wouldn't such a cessation of symptoms and apparent restoration to at least a better physical condition, perhaps, justify the conclusion that the diagnosis that had declared it to be *paræsis* had been mistaken?

A. You take a supposition, in the first case, whether you have a given true case of *paræsis*—

Q. That is not my question. Suppose a given physician pronounces it a case of that kind, and that it had been manifested by those symptoms as appear when the base of the brain becomes involved, and then a subsequent disappearance of those symptoms that, taken in connection with the very rare occurrence of the disease, and that, as you have stated to us, to be

difficult of detection, the high degree of experience and observation required to detect it, might you not infer, as you are depending merely on the report of others, that the conclusion that it was a case of *paræsis* might have been a mistaken one?

A. That is a long question, Mr. Shiras. That would depend entirely upon the circumstances and how a man had been treated before. If he had been excited and given remedies to quiet him, and had been given a nutritious diet and stimulants, yet the same disease would be still there; the nails would be simply removed and the holes would be there. I don't think he would have proper activity of mind.

Q. Suppose a case like the supposition that you gave: restoration of natural sleep and the natural functions of the stomach, the disappearance of hallucinations in connection now with the difficulty of detecting or deciding a case of *paræsis*; to begin with, might it not be, and very well be, that it was not a case of peritic insanity at all?

A. Well, you take away the ground that there was *paræsis* entirely in that case.

Q. In other words, take the case of this form of mental disease of which you spoke, to which Doctor Hutchinson attributed the case of Judge Kirkpatrick, it being rare, and, as I understand from you, a rare form of disease requiring skill, considerable skill, and, therefore, experience to detect it, and take the case of a single interview of a limited period by a young physician of the patient, when he didn't make a careful or protracted examination of the patient; and taking into view, also, the possibility of mistake by the most skillful in a case of that kind, may we not be warranted in the conclusion that it is quite possible that the form of insanity under which Judge Kirkpatrick is laboring is not that which is implied by Doctor Hutchinson?

A. In forming a conclusion in a case I would not only take the case itself in consideration, but I would also take into consideration the man that gave the testimony. I think Doctor Hutchinson, from his experience and what I know of him, is perfectly competent to diagnose a case of *paræsis*, although it is difficult to diagnose it in its earlier stages. It is not difficult, understand me, to diagnose in its second and third stages.

Q. But, inasmuch, as in any stage, as I understand it, it is a very rare form of insanity, and be the experience ever so great, and the natural ability of the physician ever so great, and his attainments ever so great, isn't it quite possible that this learned, and experienced, and able physician, in an examination of fifteen minutes of the kind testified to by Doctor Hutchininson, he might make a mistake?

A. In its earlier stages, most certainly, but in the advanced stages a man who has never seen a case can form an opinion, although it would not be an opinion in the mind of a man who hadn't seen a great many cases.

Q. Do you agree with Doctor Hutchinson that a further examination of the patient would not contribute to a sound conclusion or a safe conclusion?

A. I would agree with him if it was an advanced stage; yes, sir; but if it was the first or primary stage I would not, because no man is infallible. I think in the stage that the doctor saw the learned gentleman he would be able to diagnose the case in fifteen minutes. He might be satisfied in his own mind positively and conclusively, but I think he would be——

Q. Would you think in a case where an important conclusion would turn upon the result of an examination of a patient like Judge Kirkpatrick in the imperfect manner testified to by Doctor Hutchinson, by a physician of his age, would be one in which he could be mistaken?

A. I think Doctor Hutchinson has given a very good definition of the case, and I also think he has diagnosed the case properly.

Q. That is, you speak now of a patient whom you haven't seen, and of whom you take the symptoms from what you have heard others depose?

A. From the symptoms, Judge Kirkpatrick is certainly at variance from his former estate; not the learned and elegant gentleman we all knew him to be; he has fallen from that estate. It would very easy to recognize it after it has passed its primary stage; in its earlier stage his intellect would be so great as to cover up his mental defects; he would be shrewd enough to do it.

Q. Isn't it apparently the fact that a disease so rare—I mean this particular form of mental disease that at a stage when the patient is capable of walking about the house, or taking his food, of recognizing his friends, of conversing about books that he has read years before, showing the power of recollection of the characteristics of the characters, and interested in the death of a friend, and other circumstances of mental activity deposed to here by the witnesses in the case of Judge Kirkpatrick—isn't it possible that a young gentleman brought from a neighboring asylum, seeing that patient for about fifteen minutes, under the circumstances I have mentioned, might very easily be mistaken in his deduction?

A. It is possible, but not probable. I want to state one thing: the fact that the gentleman is able to remember things of a long time ago is not evidence that the mind is improved, because those earlier remembrances are impressed on the brain more indelibly than those of recent occurrence——

Q. I understand that as the memory becomes frail in advanced life the earlier impressions remain?

A. Yes, sir.

Q. You don't regard Pickwick and the two Wellers as past events, do you?

A. No, sir; they are merely descriptive of a variety, although not of one particular person, although they are given individual names.

Mr. CHRISTY. From what you have heard concerning the condition of Judge Kirkpatrick, and read of his condition, what is your opinion, as a physician, as to the effect it would have had upon him, injurious or otherwise, if yourself and Doctor Ayers made an examination of him?

A. Taking the ground that he is in a semi-demented condition, approaching *dementia* I don't think it would have any effect at all on him.

Q. It would not have affected him injuriously at all?

A. No, sir; I think not.

Dr. SAMUEL AYERS, being duly sworn on behalf of petitioners, testified as follows, in answer to questions by Mr. McKenna:

Q. Doctor you are engaged in the general practice now, I believe, in the city of Pittsburgh?

A. Yes, sir.

Q. Are you connected with any hospital?

A. With St. Francis hospital, at the present.

Q. You are in charge of the insane department there, I believe?

A. Yes, sir.

Q. At what medical college did you graduate?

A. Jefferson Medical College, Philadelphia.

Q. Before taking charge of the insane department of St. Francis hospital, state to the commission whether you had any prior experience in the treatment of the insane?

A. I had, at Dixmont asylum.

Q. For how many years were you there?

A. Five years.

Q. In what capacity?

A. As assistant physician.

Q. Associated with the late Doctor Reed and others?

A. Yes, sir.

Q. Were you present yesterday when the testimony of Doctor Herron and Doctor Rankin was given?

A. During part of the testimony of Doctor Herron, and all of Doctor Rankin's.

Q. All of Doctor Rankin's, the attending physician of Judge Kirkpatrick. Have you seen and read the stenographic report of the testimony of Doctor H. A. Hutchinson?

A. I have, sir.

Q. Read it closely?

A. Yes, sir.

Q. Would you be able, knowing Judge Kirkpatrick—I believe you knew him very well in his former days?

A. Yes, sir.

Q. Would you be able, applying the facts and the history of the case as detailed by all the witnessess, and I believe you had a conversation with Doctor Herron to-day——

A. Yes, sir.

Q. As to the treatment of the Judge, would you be able, from those facts and sources of information, to give an opinion on the case of Judge Kirkpatrick?

A. I would venture an opinion.

Q. You say you know Doctor Hutchinson very well?

A. Yes, sir.

Q. Do you agree, after the knowledge and information you have already described, and that you are in possession of, with his diagnosis of Judge Kirkpatrick's case?

A. I am not prepared to answer that. I have no doubt but that the Doctor is correct; yet I wouldn't want to agree with any one's diagnosis until I had personally examined the patient.

Q. Assuming the facts as described and detailed by Doctor Hutchinson to be true and correct, and his opportunities of observing Judge Kirkpatrick, could you express an opinion as to his diagnosis being correct?

A. Upon that ground I will agree with him.

Q. You will concur in his report?

A. Yes, sir.

Q. From the history of the case, and from your experience and studies of insanity, how would you define Judge Kirkpatrick's mental malady?

A. I am not prepared to define it exactly, not having seen him.

Q. Could you give an opinion?

A. Yes, sir; his case resembles paralytic *dementia*, peritic *dementia* very closely.

Q. You may explain very fully to the commission what that means.

A. It means a failure of all the mental faculties, with paralysis of some of the muscles, as I understand—

Q. What is *paræsis*?

A. *Paræsis* is enfeebled muscular action, paralysis total. We may have *paræsis* without paralysis. Paralysis is this: if I am unable to move my arm at all, it is paralysis; if I have a feeble movement it is *paræsis*. *Paræsis* is usually brain-softening. Paralysis or *paræsis* is generally an enfeebled condition of the muscular powers.

Q. From your experience, will you please state at what time a case such as Judge Kirkpatrick's has been described here to be would become chronic?

A. I would say after six or nine months' duration, generally six months, is considered the beginning of a chronic case. It is arbitrary.

Q. What would be the chances of a complete recovery and restoration in a chronic case in which the symptoms are such as are admitted to exist in Judge Kirkpatrick's case?

A. The chances are unfavorable.

Q. Might there be a partial recovery?

A. Yes, sir.

Q. I mean a mental restoration?

A. Yes, sir; there might be a partial mental recovery, a mental improvement.

Q. What with the full exercise of his faculties and intellect and attain-

ment, would you have any hope of the restoration sufficiently to do his duties as a judge?

A. Well, I can hardly answer that question—

Q. Taking these admitted symptoms to be correct?

A. I judge entirely from the facts I have heard; such are the facts I claim that the chances are in favor of it.

Q. Assuming further that all these facts of evidence here that have been detailed are true, can you state how far the malady has developed in Judge Kirkpatrick's case in the various stages of the disease?—what stage is his present condition?

A. I am not informed as to the duration of his present trouble; I can't tell you; I don't know just how long the present symptom has been perceived or present.

Q. What marks the initiation and development of such disease?

A. I don't know what disease you refer to exactly.

Q. Probably I can explain myself a little closer by expressing myself in this way: Taking a case marked in its inception with hallucinations and delusions, what stage do you call that in the history of insanity, followed by periods of absent mind or reticence and the absence of delusion, or they remain stationary that way for weeks?

A. It may be either acute or chronic; they may have delusion three days after the inception of the mental disorders, or they may not come on for three months.

Q. The first stage you call the acute period?

A. Yes, sir.

Q. And then what comes next?

A. The chronic—I did not understand you. I should say this was the chronic stage.

Q. There may be no recurrence of delusions that marked the earlier stages?

A. Yes, sir; there may be a recurrence.

Q. In insanity accompanied by paralysis of the side and arm and foot, does that present any aggravation of the mental disorder?

A. The paralysis?

Q. Yes, in a man sixty years of age.

A. Yes, sir; it would likely aggravate the mental disorder and it would indicate a more severe form.

Q. Is there any connection between the two?

A. Yes, sir.

Q. Might there be a recovery of the natural appetite, natural sleep, and all those evidences of physical health, without the restoration of mental health?

A. There might, sir.

Q. Have you seen many cases of that kind?

A. I have.

Mr. SHIRAS. Doctor, if we assume that Judge Kirkpatrick is now suffering from that form of insanity denominated by Doctor Hutchinson as *peritic dementia*, what length of life would you probably expect?

A. From two to ten years.

Q. What length of time after the supervening of symptoms which lead physicians to suspect that it is a case of *peritic dementia*—what length of time would it take to render that a matter of reasonable certainty? When would the disease, if *peritic dementia*, be fixed? When could it be pronounced unmistakably to exist?

A. I think within two years; probably it might within a very much shorter period of time.

Q. But there does come a time when, in the history of a patient suffering from *peritic dementia*, that condition becomes a matter of assurance to the medical examiner?

A. Yes, sir.

Q. I understand you to say, Doctor, that in a case involving a conclusion as to whether it be *peritic dementia* or not, that you would require, in order to enable you to pronounce in such a case safely and satisfactorily to yourself, a careful examination of the patient himself?

A. I would wish such an examination; yes, sir.

Here Mr. Christy announced to the commission that the testimony was closed for the petitioners.

WILLIAM SWISSHELM, a witness called on behalf of respondents, being duly sworn, testified as follows:

Major BROWN. State whether for many years you have been a clerk in the office of the prothonotary of this county.

A. Yes, sir; I have.

Q. Will you please state, sir, the number of cases tried and disposed of by Judge Kirkpatrick, say from January, 1883, to March, 1884, sitting as a judge of the court of common pleas, No. 2?

A. Well, on an examination of the trial list, I find Judge Kirkpatrick has disposed of one hundred and twelve cases.

Q. Civil cases?

A. Yes, sir.

Q. That doesn't include his cases in the quarter sessions, but only on the civil side of the court?

A. Yes, sir.

Q. You can state, sir, whether you have made a list from the record showing the number and date of cases and the date of disposal?

A. I have made this list from the trial list; it is substantially correct. I don't say it is absolutely so.

Q. During the same period of time, how many cases were disposed of by Judge White from January, 1883, to March, 1884?

Objected to as immaterial.

A. The number disposed of by Judge White is sixty-eight during the same time.

Q. Sixty-eight cases during the same period of time?

Mr. SHIRAS. I wish you would state, sir, whether several years ago a good deal larger number of cases were not docketed in the same period than there was during the last two or three years?

A. Oh, yes; a much larger number; during the years from 1874 to 1880, there was more than double what there are now.

Q. In respect to the present list, about what time does the present list in No. 2 bring the cases?

A. Well, I cannot answer that question. I am not familiar with that part of the work. Mr. McQuitty, the clerk, attends to all that.

Q. Would the printed list, the last one now issued, disclose the number and term of the cases and show how well up the business is in that court, the cases for trial?

A. That in connection with the issue docket. There are a number on the issue docket not taken off.

Senator BIDDIS. How does the number of cases now compare with the number of cases in 1881?—had it increased or decreased in that time?

A. I think it has increased a little from that time. It is gradually increasing now.

Mr. SHIRAS. We desire to offer the printed list of the cases in court of common pleas, No. 2, showing the case, the number of term, and the dates of the bringing of those suits, in order to show the present condition of the business of that court as to the disposition of cases in connection with the issued docket spoken of by the prothonotary's clerk, for the purpose of showing from those two—the issue list and the issue docket—the condition of the business of that court. At present we haven't the list, but we will have it; it is in the hands of a printer.

Objected to unless it is offered in connection with the condition of the trial list; the printed list itself does not show its condition, as the fact is that the list taken up the first of January is not disposed of at the present time, and another printed list has been issued.

Mr. SHIRAS. The fact is, the printed list of January is already disposed of except some twenty odd cases, and we ask permission of the committee to hand these papers in again.

Senator HOOD. We will receive them.

Mr. MCKENNA. I would like to find, in connection with that, the same papers relative to the court of common pleas, No. 1, in order to show the condition of the business of that court.

Mr. SHIRAS. We will put that in evidence, too; it will, however, disclose that that court is fully up.

It was, thereupon, agreed that the same papers in reference to the court of common pleas, No 1, be considered in evidence.

Mr. MCKENNA. Something has been stated here in reference to the ani-

mus regarding this case. So far as I know there is none; it is regarded simply as a public inquiry. If the committee should conclude to report that there was a hope of recovery, no one would be more glad than the petitioners, or their counsel who represent them, that such would be the case. We consider, simply, that we are representing the public and aiding a public inquiry, without any personal feeling in the matter whatever.

Senator REED. It is very proper for the commission to state that this is a matter in which the public is interested, and that the inquiry is not from any improper motives whatever. It is further proper for me to state on behalf of the committee, and I am so instructed by the committee, that we return our thanks to the members on both sides of the case, to the members of the press, and the citizens of Pittsburgh in general, that they have come in contact with, for the courtesy extended towards them. We appreciate the delicate mission on which we have been sent, and the courtesy extended to us has been highly appreciated, and we return our sincerest thanks.

Mr. MARSHALL. I would like to make a suggestion, and that is that the commission be furnished a list of names of all the active members of the bar of Allegheny county.

Senator BIDDIS. It might be well to say in regard to that that the people are represented in both branches of the Legislature by their members, they have made this a public investigation, and so far as our position is concerned, while we recognize that the original petition is only signed by, perhaps, less than one fifth of the members of the bar, yet it has put in motion the machinery which has made this at the present time a public investigation, and we must throw out all other matters connected with it.

Senator HOOD. There is no objection to admitting it.

Senator BIDDIS. Not at all. Any one man has the right to petition the Legislature in a matter of this kind.

Mr. CHRISTY. I desire to state that I have no apologies to make in this matter at all. The position of counsel for the petitioners was not of my seeking. I have tried to perform the duties to the best of my ability, and therefore have no apologies to offer.

Mr. MARSHALL. No apology has been asked for.

Adjourned to meet at Harrisburg on the 5th day of May, 1885, at eight o'clock, P. M., in the library room.

CASES DISPOSED OF BY JUDGE KIRKPATRICK.

No.	*Term.*		*Date.*
28	January,	1882, ...	January 22, 1883
30	July,	1882, ...	January 15, 1883
234	July,	1882, ...	January 22, 1883
133	July,	1882, ...	February 6, 1883
260	July,	1882, ...	January 27, 1883

No.	Term.		Date.	
204	April,	1882,	January	27, 1883
384	April,	1882,	January	9, 1883
71	July,	1882,	January	9, 1883
458	April,	1882,	January	9, 1883
367	October,	1881,	January	10, 1883
222	July,	1880,	January	22, 1883
180	July,	1882,	February	1, 1883
146	July,	1882,	January	10, 1883
337	October,	1881,	January	10, 1883
386	April,	1882,	January	10, 1883
387	April,	1882,	January	10, 1883
388	April,	1882,	January	10, 1883
387	July,	1882,	January	10, 1883
231	January,	1882,	February	5, 1883
313	October,	1881,	February	9, 1883
462	July,	1882,	January	15, 1883
50	October,	1882,	January	15, 1883
504	April,	1882,	February	6, 1883
469	July,	1882,	February	2, 1883
374	July,	1882,	January	17, 1883
422	July,	1882,	January	15, 1883
470	July,	1882,	February	3, 1883
578	April,	1882,	February	8, 1883
175	October,	1882,	January	15, 1883
60	October,	1882,	January	17, 1883
780	October,	1878,	January	17, 1883
314	July,	1882,	January	25, 1883
359	July,	1882,	February	6, 1883
414	July,	1882,	January	17, 1883
213	July,	1865,	January	17, 1883
429	October,	1877,	January	22, 1883
127	April,	1882,	February	6, 1883
300	July,	1882,	February	9, 1883
70	July,	1882,	February	9, 1883
515	April,	1882,	January	2, 1883
346	April,	1882,	January	29, 1883
237	July,	1882,	January	22, 1883
511	April,	1882,	February	7, 1883
397	July,	1882,	February	9, 1883
275	October,	1882,	February	1, 1883
219	October,	1882,	February	26, 1883
274	October,	1881,	January	26, 1883
301	October,	1882,	January	25, 1883
Ex. 44	January,	1883,	September	—, 1883

No.	Term.		Date.
482	July,	1882,	September 12, 1883
260	July,	1882,	September 17, 1883
475	January,	1880,	September 26, 1883
422	January,	1883,	November 28, 1883
307	January,	1883,	
12	January,	1882,	September 11, 1883
260	January,	1883,	September 20, 1883
281	January,	1883,	September 20, 1883
146	January,	1883,	September 28, 1883
84	April,	1883,	
436	July,	1882,	September 12, 1883
155	January,	1883,	September 26, 1883
46	November,	1883,	September 12, 1883
487	April,	1883,	September 12, 1883
430	July,	1882,	September 20, 1883
40	July,	1882,	September 13, 1883
461	January,	1882,	September 24, 1883
154	July,	1882,	November 21, 1883
234	January,	1883,	September 28, 1883
62	January,	1883,	
294	January,	1882,	November 26, 1883
603	April,	1877,	September 19, 1883
462	July,	1882,	September 24, 1883
269	July,	1883,	September 25, 1883
384	April,	1882,	November 26, 1883
397	January,	1883,	January 24, 1884
417	July,	1883,	January 22, 1884
129	July,	1883,	December 3, 1883
300	July,	1883,	December 6, 1883
307	July,	1883,	December 4, 1883
408	October,	1882,	December 5, 1883
4	July,	1883,	1884
154	October,	1882,	December 5, 1883
402	July,	1883,	December 5, 1883
124	April,	1883,	December 6, 1883
90	July,	1883,	December 14, 1883
418	April,	1881,	December 5, 1883
165	July,	1882,	December 10, 1883
329	January,	1883,	December 5, 1883
481	July,	1883,	February 4, 1884
430	April,	1883,	December 9, 1883
220	January,	1883,	January 7, 1884
438	January,	1883,	January 9, 1884
88	October,	1882,	December 14, 1883

No.	*Term.*		*Date.*
89	October,	1882, ...	December 14, 1883
382	July,	1883, ...	February 4, 1884

The number of cases disposed of by Judge Kirkpatrick, from January 1, 1883, to March 17, 1884, is one hundred and eighteen, as appears by the trial list.

CASES DISPOSED OF BY JUDGE WHITE.

No.	*Term.*		*Date.*
256	October,	1881, ...	February 27, 1883
333	July,	1882, ...	February 5, 1883
291	July,	1882, ...	February 19, 1883
375	January,	1882, ...	February 7, 1883
132	July,	1882, ...	March 17, 1883
155	July,	1882, ...	March 17, 1883
213	July,	1882, ...	March 1, 1883
411	January,	1882, ...	March 16, 1883
187	April,	1882, ...	February 2, 1883
518	April,	1882, ...	March 15, 1883
401	July,	1882, ...	February 28, 1883
59	October,	1882, ...	March 5, 1883
335	October,	1881, ...	March 6, 1883
17	October,	1882, ...	February 26, 1883
18	October,	1882, ...	February 26, 1883
279	October,	1882, ...	February 26, 1883
112	October,	1882, ...	March 5, 1883
469	April,	1882, ...	March 6, 1883
430	July,	1882, ...	March 2, 1883
145	July,	1882, ...	March 6, 1883
47	April,	1882, ...	March 6, 1883
298	October,	1882, ...	February —, 1883
261	October,	1882, ...	March 9, 1883
475	July,	1882, ...	March 7, 1883
352	October,	1881, ...	March 8, 1883
270	July,	1882, ...	March 8, 1883
120	July,	1881, ...	March 8, 1883
404	April,	1881, ...	March 13, 1883
1268	January,	1876, ...	March 28, 1883
92	October,	1882, ...	February 28, 1883
51	October,	1882, ...	January 30, 1884
297	January,	1882, ...	January 28, 1884
153	April,	1878, ...	January 28, 1884
154	April,	1878, ...	January 28, 1884
305	April,	1878, ...	January 30, 1884

No.	*Term.*		*Date.*
322	April,	1878,	January 28, 1884
120	July,	1883,	February 12, 1884
54	October,	1882,	March 10, 1884
460	October,	1882,	March 10, 1884
480	October,	1882,	March 10, 1884
254	April,	1883,	March 6, 1884
429	January,	1882,	January 30, 1884
414	July,	1883,	February 11, 1884
158	July,	1883,	March 13, 1884
200	July,	1883,	January 4, 1884
81	July,	1881,	January 31, 1884
483	July,	1883,	February 4, 1884
345	January,	1882,	February 4, 1884
48	July,	1882,	February 4, 1884

The number of cases disposed of by Judge White, from January 1, 1883, to March 17, 1884, as appears by the trial list, sixty-eight.

ARGUMENT OF COUNSEL BEFORE THE COMMISSION.

ARGUMENT OF B. C. CHRISTY, ESQ., COUNSEL FOR PETITIONERS.

To the Honorable the Members of the Joint Committee of the Senate and House of Representatives of the State of Pennsylvania:

In response to the petition of certain members of the bar of Allegheny county, presented to the Senate and House of Representatives of the Commonwealth of Pennsylvania, the following action was taken, viz:

"IN THE SENATE, *March 31, 1885.*

WHEREAS, It has been presented in the petition of a large number of the members of the bar of Allegheny county that the Hon. John M. Kirkpatrick, additional law judge of the court of common pleas, No. 2, of said county, is unable to perform the duties of his office by reason of physical and mental disease, which is believed to be incurable, and the said inability has existed for so long a time that the business of said court has been delayed to the injury of suitors and the public in general; therefore,

Be it resolved, (if the House concur,) That a special committtee be appointed, consisting of three members of the House and two members of the Senate, to investigate and ascertain the condition of the said John M. Kirkpatrick, and report whether sufficient cause exists for his removal in accordance with section fifteen of article five of the Constitution of this Commonwealth; and that said committee report on or before the 27th day of April, A. D. 1885.

Extract from the Journal of the Senate.

THOMAS B. COCHRAN,
Chief Clerk.

IN THE HOUSE OF REPRESENTATIVES, *March 31, 1885.*

The foregoing resolutions concurred in.

(Signed) GEORGE PEARSON.
Chief Clerk, House of Representatives.

APPROVED—The 8th day of April, A. D. 1885.

(Signed) ROBERT E. PATTISON.

Ordered, That Messrs. Hood and Biddis be the committee on the part of the Senate.

Ordered, That Messrs. Sponsler, Faunce, and J. B. Robinson be the committee on the part of the House."

In accordance with the terms of the foregoing resolution, your duties are first, "to investigate and ascertain the condition of the said John M. Kirkpatrick," and second, "to report whether sufficient cause exists for his

removal in accordance with section fifteen of article five of the Constitution of this Commonwealth."

As to his condition, your attention is called to the testimony produced before you at your sessions, in the city of Pittsbugh, commencing April 21, 1885:

First. To the testimony of the Hon. J. W. F. White, associate law judge of the said court of common pleas, No. 2, in which he stated that in his judgment: "For the last two years I have not regarded him as mentally capable of deliberately considering any questions of law, or applying his thought, or mind, to any legal question."

I also call your attention to the testimony of Doctor H. A. Hutchinson, superintendent of the Western Pennsylvania Hospital for the Insane, at Dixmont, who after having heard a history of the case from Doctor Herron, the attending physician, and from a personal examination, says: "I think the Judge is suffering from *peretic dementia*," and also, "taking into consideration the Judge's age, his very poor general health, the long standing of this present condition, the chances are that he may never get much better," and in answer to a question whether his opinion would likely to be changed by further and longer opportunities of observing Judge Kirkpatrick's case, he answered: "The more I would see of him the more convinced I would be that his case was an unfavorable one."

Also, the testimony of Doctor J. B. Herron, who has been the attending physician of Judge Kirkpatrick since November, 1883, who described his symptoms, that for a time he has suffered "a large amount of mental distress," "had delusions," "has now got beyond fear of coming trouble," and that his disease has now assumed a form of "reticence." That he has hopes of recovery, but does not like his symptoms; the delusions first and this afterwards, "in my own judgment it is doubtful that he would ever fill the position" of judge. The testimony of Doctor D. N. Rankin, who says, "taking his age and general condition into consideration, I would think it very improbable" that the Judge will be able to perform his duties in the future, and the testimony of Doctor C. C. Wylie, a former physician of Dixmont hospital; Doctor Ayres, now in charge of insane department of St. Francis hospital, who concur in the opinions of the other physicians that his recovery is improbable.

Also, the testimony of a large number of the Pittsburgh bar, as to the mental incapacity of the Judge, and his physical condition. From all the testimony in the case, I think this conclusion may be fairly drawn, viz: That the Judge has been unable, from physical disability and mental incapacity, since March, 1884, to perform the duties of his office, and the probabilities are that he never will be able to again perform his duties. This being the case, it becomes your duty, under the resolution of your appointment, to inquire whether this is sufficient cause for his removal, under section fifteen of article five of the Constitution of Pennsylvania. We claim that it is, and offer the following reasons in support of our position:

In the Constitution of the United States, article one, section two, No. 5, it is provided "the House of Representatives * * * shall have the sole power of impeachment." This language is identical with section one of article six of the Constitution of 1873, of the Commonwealth of Pennsylvania.

In Constitution of the United States, article one, section three, No. 6, "the Senate shall have the sole power to try all impeachments." This, with No. 7, is the same provision as contained in section two, article six, of the Constitution of Pennsylvania of 1873.

Constitution of the United States, article two, section four: "The President, Vice President, and all civil officers, shall be removed from office on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors." Article six, section three, of Constitution of Pennsylvania of 1873, provides: "The Governor, and all other civil officers, shall be liable to impeachment for any misdemeanor in office," etc. Section three of article four of Constitution of 1790, of Pennsylvania, is identical with that of section three of article six of Constitution of 1873.

Section four of article six provides: "All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office, or of any infamous crime. Appointed officers, other than the judges of the court of record, and the Superintendent of Public Instruction, may be removed at the pleasure of the power by which they shall have been appointed. All officers elected by the people, except Governor, Lieutenant Governor, members of the General Assembly and judges of the courts of record, learned in the law, shall be removed by the Governor after due notice, and full hearing on the address of two thirds of the Senate."

Section fifteen of article five of the Constitution of Pennsylvania of 1873 is as follows: "All judges required to be learned in the law, except the judges of the Supreme Court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two thirds of each House of the General Assembly."

Section two of article five of Constitution of Pennsylvania of 1790 is: "The judges of the Supreme Court, and of the several courts of common pleas, shall hold their offices during good behavior; but for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of them on the address of two thirds of each branch of the Legislature." The balance of this section provides for their compensation.

Section one of article three of Constitution of United States provides that "the judges, both of the Supreme and inferior courts, shall hold their offices during good behavior," and provides for their compensation.

I quote these several sections of the Constitution of the United States and of the Constitution of Pennsylvania for the purpose of showing their similarity and dissimilarity, and for convenience in comparison.

There is no provision in the Constitution of the United States for the removal of civil officers—which includes judges—except by impeachment. The Constitution of Pennsylvania provides for the removal of the judges by impeachment, "for any misdemeanor in office," and "on the address of two thirds of each House of the General Assembly, for any reasonable cause which shall not be sufficient ground for impeachment." Under the Constitution of the United States, "impeachable misdemeanors are determined by the Senate, just as each House of Congress and the courts having the jurisdiction to punish for contempts, determine what acts or neglect constitute them." *7 Cranch, 320.*

The Senate is the sole judge of what they are, and there is no appellate court.

Curtis, in his history of the Constitution, pages 260 and 261, says: "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 law, 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." If your inquiry was being conducted under the Constitution of the United States, there would be no doubt, that following the precedents established in such cases, that Judge Kirkpatrick would be liable to impeachment and removal for insanity, and physical inability rendering him unfit to exercise the duties of his office. "Judge Pickering, of the district court of the United States for New Hampshire, was tried and convicted on four several articles of impeachment before the Senate of the United States, and removed from office in March, 1804, although the defense in his case was that of insanity, and this defense was supported by evidence."

Annals of Congress, 2d Hildreth's History, 518.

The power of impeachment is the only mode of getting rid of a civil

officer under the Constitution of the United States, whose inability, from insanity or any other cause, renders him unfit to perform the duties of his office, and whose every act must necessarily be a misdemeanor or misbehavior in office. The Constitution of Pennsylvania of 1873 prescribes two different modes of removal, to wit: Impeachment for misdemeanor in office, under section three of article six, and for any reasonable cause which shall not be sufficient ground for impeachment on the address of two thirds of each house of the General Assembly, under section fifteen, article five.

As already shown, the Senate is the sole judge of the law and the fact as to what shall constitute an impeachable offense, and from this judgment there is no appeal. And is it not a fair inference that when the Senate joins with the House in an address for the removal of a judge for any reasonable cause not sufficient ground for impeachment, that the Senate has passed upon the question whether the offense is impeachable or not, especially when we take into consideration the fact that under section three of article six it only requires *two thirds of the members present* to convict in impeachment, and two thirds of the whole body must join in the address, under article fifteen of section five?

The Constitution provides that the Senate shall try all impeachments, and thus the jurisdiction is conferred on it to try and determine what are, and what are not, impeachable offenses; and when the Constitution provides that judges may be removed for any reasonable cause, which shall not be sufficient ground for impeachment, the jurisdiction is conferred on the two branches of the Legislature to determine what is reasonable cause.

But we are met with the assertion that section four of article five applies to the case of removal of judges, and that a conviction of misbehavior in office must be had before some tribunal, as a condition precedent to the action of the General Assembly, and that such conviction is the "reasonable cause" contemplated in article fifteen of section five. We deny this proposition, and assert that section four of article five has no application whatever to the removal of judges.

The words "all officers" are sufficiently comprehensive to cover "the Governor and all other civil officers" mentioned in the preceding section. But, in the subsequent clauses of the section, "all officers" are divided into two classes, viz: "Appointed officers" and "all officers elected by the people," and from both classes the judges of courts are specifically excepted, and upon close examination it is found that the provisions of the first clause of this article, that "all officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office, or of any infamous crime," applies only to *appointed officers other than the judges of the courts of record* and the Superintendent of Public Instruction, and only to "all officers *elected by the people*, except the Governor, Lieutenant Governor, members of the General Assembly, and judges of the courts of record learned in the law."

Section four of article six was intended to provide for the *manner* of removal on conviction of offenses, not impeachable, of all appointed and elected officers, except judges and others excepted therefrom.

As to the judges—except judges of the supreme court—for offenses not impeachable, their removal is provided for in section fifteen of article five. This construction of section four of article six is made more apparent when we remember the fact that the words "misdemeanor in office" in section three of article six, and "misbehavior in office" in section four, mean the same thing. "Misdemeanor in office and misbehavior in office mean the same thing." *7 Dane's Abridgment, 365.*

"The word misdemeanor has a common law, a parliamentary, and a popular sense. As applied to officers, it means maladministration or misconduct not necessarily indictable, not only in England but in the United States."

Impeachment of Andrew Johnson, vol. 1, page 128-9. Demeanor is behavior, and he who misdemeans misbehaves.

The argument of the counsel for Judge Kirkpatrick, as I understand it, is this: A judge "shall be liable to impeachment"—and removal—"for any misdemeanor in office," and "shall be removed on conviction of misbehavior in office, or of any infamous crime," and that, instead of reading section fifteen of article five: "But for any reasonable cause which shall not be sufficient ground for impeachment," they read: "But if he shall be convicted of any misbehavior in office, or any infamous crime, which shall not be sufficient ground for impeachment, the Governor may remove him on the address of two thirds of each House of the General Assembly." Is this a reasonable construction of the several sections? "The judges shall hold their offices for the period of ten years, if they so long behave themselves well," either in or out of office; but if the argument of counsel for respondent is correct, what shall be done with a judge who misbehaves *out* of his official station, yet not in such a manner as to make himself liable to be convicted of crime? He may be imbecile, a buffoon, or a fool, and, according to their argument, there is no power to compel him to cease to disgrace the ermine with which he has been clothed.

Can it be that a judge in a judicial district, where he is the only judge learned in the law in the district, who has been elected for a term of ten years, and having performed the duties of his office for one year, on account of physical inability or mental incapacity, becomes unable to perform his duties, and refuses to resign, can retain his office to the detriment of all the inhabitants of the Commonwealth, and that there is no power to remove him? If insane, no one except "a relation by blood or marriage, or a person interested in his estate," can make an application to ascertain the fact, and if they refuse, there is no remedy. The judge retains his office, the people suffer, and wait for the years to roll away until his term is ended, or death removes him, before relief can be afforded them. We

think the mere statement of the proposition of the counsel for respondent in this case is sufficient to show its absurdity.

This provision for removal by address is neither new or novel, as it is provided for on the address of both Houses of Parliament in the act of settlement, 3 *Hallam*, 262, and in the convention which framed our National Constitution, June 2, 1787, Mr. John Dickenson, of Delaware, moved "that the Executive be made removable by the National Legislature, on the request of a majority of the Legislatures of the individual States. Delaware alone voted for this, and it was rejected, as impeachment was deemed sufficiently comprehensive to cover every case for removal." As already stated, section two of article five of Constitution of Pennsylvania, 1790, provided for removal on address for reasonable cause, and this provision has remained in our Constitution ever since that time, except in the amendment of 1850, "may" was changed into "shall" and the Legislature of 1831-2 having put a construction upon the powers and duties of the Legislature under this provision of the Constitution, *House Journal*, 1831-2, page 688, and by their reënactment of same provision for removal of judges in Constitution of 1873, the people of this Commonwealth have adopted that construction. The reënactment of a statute, after a judicial construction of its meaning, is to be regarded as a legislative adoption of the statute thus construed.

Cotta vs. *Ross*, *66 Maine*, *165*.
Frink vs. *Pond*, *46 N. H.*, *125*.
Commonwealth vs. *Hartnett*, *3 Gray*, (*Mass.*,) *450*.
Ex parte Cathcart, *5 Law Rep.*, (*Chic'y*,) *793*.

The method of removal of judges has been judicially determined to be by a trial before the Senate on articles of impeachment duly preferred, or in case the breach amounted to *total* disqualification, by address of two thirds of each branch of the Legislature.

Commonwealth vs. *Gamble*, *12 P. F. Smith*, *345*.

By the terms of section fifteen of article five of the Constitution of 1873, the judges "shall hold their offices for a period of ten years if they shall so long behave themselves well." The words "behave well" are equivalent to the words "good behavior," and these words "good behavior" are borrowed from the English laws, and are taken from a statute of Henry VIII, providing for the appointment of a *custus rotulorum* and clerk of the peace for the several counties of England, which provides that the *custos* should hold his office until removed, and the clerk should hold his office during good behavior. The act recites that ignorant persons have got into office by unfair means, and was intended as a way of removal from office of parties who were too ignorant, or in any way incapable of performing the duties of their office. The tenure of office of judges in England, by act 13 William, runs: *Quamdiu se bene gesserit.*

Our judges hold their office subject to the condition, "if they so long

behave themselves well," and, as I have already said, a failure to perform the duties of their office is a failure to behave well, and, therefore, is misbehavior in office, and subjects the party to the powers contained in section fifteen of article five, to wit: Liability to be removed for reasonable cause; and, certainly, it a reasonable cause to fail to perform the duties of the office. Misbehavior, which is a mere negative of "good behavior," is an express limitation of the office of a judge: *North Am. Rev.*, October, 1862. I am willing to admit that the independence of the judiciary ought to be assured to them, and that they should not be subject to the whim or mercy of any branch of the Legislature.

But I do not understand that the judiciary of the Commonwealth of Pennsylvania is like the sacred white elephant of the Indies, which is sacred from the touch of all, no matter what their faults or their foibles may be. I understand that he holds his commission subject to the terms and conditions of the Constitution of Pennsylvania, and is liable to all its penal or restrictive clauses. We are met with the assertion that an attempt to remove a judge on the address of two thirds of the members of the General Assembly is without precedent, has never been attempted, and it is dangerous in its tendency, and is a remedy that ought not to be pursued. We are not without precedent for this method of procedure. In 1832, a petition was presented to the Legislature, asking that an inquiry be made, substantially the same as that we are now considering, in the case of John Young, president judge of the Tenth judicial district of Pennsylvania. The committee, in that case, reported that there was not sufficient proof to justify them in finding that the Judge was incapacitated from old age and intemperance from discharging the duties of his office, but in their report they say "there can be no doubt that the provision of the Constitution for the removal of judges on the address of two thirds of both Houses of the Legislature was intended to apply to cases where the judge has become incapable of discharging the duties of his office, from either bodily or mental infirmity arising from any cause. If from disease or accident, his physical powers should be so impaired as to render him unable to encounter the labor and fatigue incident to his station, it would be good cause for removal. So if the mind and memory of a judge should become imbecile from old age or any other cause, (although not amounting to lunacy,) and that should be satisfactorily proved, it would be the imperative duty of the Legislature to ask his removal."

"Next to performing the duties of his office with integrity, a judge ought to possess talents and qualifications sufficient to inspire confidence in his decisions and to give public satisfaction in the administration of justice. No greater evil can be inflicted upon a community than a court in which the public have lost all confidence, and that seldom happens without some good cause. When such a case is made out by proper evidence, it would be obligatory on the constituted authorities to exercise the salutary

power of removal by address intrusted to them by the Constitution, prudently but firmly."

House Journal, 1831–'32, page 688.

It is true that this proceeding was under the Constitution of 1790, but its provisions concerning removal by address for reasonable cause were identically the same as that of 1873.

But it is contended that the removal by address is a summary proceeding, and does not afford the same protection to one charged with misbehavior in office as one who could be impeached for misdemeanor in office. In the case of impeachment, a majority of the House present the articles of impeachment to the Senate, before whom the case is tried, and, on the concurrence of two thirds of the *members present*, he is convicted and removed. In the case of removal by address, it requires the concurrence of two thirds of the members of both the House and Senate, and it is then optional with the Governor to remove him or not. I respectfully submit that the removal by address gives the accused better opportunities for contesting the matter, having his case properly heard and impartially determined, than by impeachment.

It is argued by the counsel for the Judge that judges stand upon the same basis as corporations, and rely upon *The Commonwealth* vs. *P. & C. R. R. Co., 8 P. F. Smith, 26*, which decides that the granting of a charter of incorporation by the State through its Legislature is a contract between the State and the corporation, and that where the State reserves the right to forfeit the charter for misuse or abuse, *in the decision of all questions of fact which may arise upon it, the judiciary department must be invoked as in other cases.*" In this case, the Legislature not having reserved to itself the right of determining what was misuse or abuse of the franchises of the corporation, it was but right that this fact should be determined by the proper tribunal, to wit: the judiciary. But in what tribunal can it be judicially determined whether there exists a reasonable cause for the removal of a judge other than in the General Assembly, when the manner of his removal is specifically pointed out by the Constitution, and he holds his commission subject to the exercise of that power? The address of the Legislature to the Governor is only exercising the right to petition, reserved by section twenty of article one of the Constitution, and on the presentation of this petition a discretionary power is vested in the Governor to decide whether the cause set forth in the petition or address is sufficient to warrant the exercise of the power of removal.

But even in a corporation, if the grant of incorporation be a grant of political powers, if it create a civil institution to be employed in the administration of the Government, in such case the Legislature may modify its charter.

Allen vs. *McKean, 1 Sumner, (Me.,) 27.*

If, in an act of incorporation, the Legislature of a State retains the right

to revoke the grant of the charter, either absolutely or whenever in its opinion the company misuses its privilegs, the latter or its members cannot complain of the exercise of the power of revocation.

United States Circuit Court. City of Baltimore vs. *Connellsville Railroad, 4 Am. Law Reg., N. S., 750.*

Judges are not corporations; they are the servants of the people; and the people have reserved to themselves the right to dismiss them for reasonable cause, of which cause the Legislature is the judge.

Under the facts and the Constitution, petitioners respectfully ask the committee to report to the two Houses—

First. That Judge Kirkpatrick is physically and mentally disqualified from performing his official duties, and that this disability is permanent.

Second. That the condition of the courts of Allegheny county demand immediate relief.

Third. That sufficient cause exists for his removal in accordance with section fifteen of article five of the Constitution.

B. C. CHRISTY.

BRIEF OF ARGUMENT OF COUNSEL ON BEHALF OF HON. JOHN M. KIRKPATRICK.

To the Honorable the Members of the Joint Committee of the Senate and House of Representatives of the State of Pennsylvania:

Says Judge Thompson, in the case of *The Commonwealth* vs. *Gamble*, 12 Smith, 346, "An independent judiciary must ever be a cardinal principle of constitutional government," profiting by the experience of the country from which we so largely derive "our laws and many of our principles of liberty," we established, as we believed, a system of government which secured "the complete independence of the judiciary, not only in its operations among the people, but as against possible encroachments by the other cördinate branches of the Government." (Opinion of Thompson, J.)

Recognizing the weight of the observation of Judge Rogers in the case of the *Commonwealth* vs. *Mann*, 5 W. & S., 403, viz: "The independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the acts of designing men or the influence of particular conjunctures sometimes create among the people themselves, and which, although they speedily give place to better information and more deliberate reflection, have a tendency in the meantime to occasion dangerous innovations in the Government and severe oppression of the minor party in the community." It was supposed that the idea expressed was embodied in the Constitutional provisions defining the rights and privileges of the judiciary. In fact, the language is an exposition of the status of judges under the Constitution. For a century we

have boasted that the judges of the Commonwealth constituted a great conservative power; that, knowing that nothing but their own ill-behavior could jeopardize their positions, they would resist sudden gusts of passion or prejudice which are likely to sweep over any community, and which, if unresisted, may destroy in a moment the very foundation of government. Yet we are told to-day that the judges of this Commonwealth hold their offices, not during the term for which elected, if they so long behave themselves well, but during that time if the legislative branch of the Government does not within that time determine, by a two-thirds vote of each House, that there exists, in their opinion, reasonable cause for removal. And we are further told that this cause may exist without the allegation or proof of the slightest misbehavior on the part of the judge. In fact, the proposition is that a judge may be removed for anything, sickness want of legal acquirement, or anything else which the Legislature may, by a two thirds vote, determine to be sufficient cause for removal, and insufficient grounds for impeachment. There is no provision for any judicial ascertainment of the existence of the cause. The judge who has sold his judgment, or otherwise grossly misbehaved himself in his office, is entitled to a formal trial before a regularly constituted court. The judge, who, whilst faithfully performing his duties becomes sick, has no such safeguards thrown around him. He may be hurled from his office without any such formalities.

We live under a government which forbids the taking of a dollar of property from the humblest citizen without due process of law.

The judge's right to his office differs from property, in that it is of a higher and more sacred nature. It is in the nature of a constitutional grant, (see opinion of Thompson, J., in *Gamble* vs. *Commonwealth*, *12 Smith, 349;* and of Strong, J., in *McCafferty* vs. *Guyer*, *9 P. F. Smith, 109,*) yet this right has no such protection. It is said that the Legislature and Governor are the absolute judges without question or appeal as to when a judge must step down and out, and that simple ill-health leaves him absolutely at their mercy. If the Constitution makes this the condition upon which he holds his office, that is an end of controversy. In that case, however, much of the declamation which has been indulged in with respect to the independence of the judiciary must be revised. We must prepare, in times of excitement, for such judicial out-givings as will naturally result from a consciousness that the judge who attempts to stay the wave of popular fury against others may be himself overwhelmed by it. Judges cannot even rely upon the protection afforded by a faithful performance of their duties and upright lives, but are stripped of all defense the moment health fails them. As we read the Constitution, we have a more stable system of government than this implies.

We submit the following propositions:

First. The Constitution defines what is the reasonable cause, not sufficient ground for impeachment, for which the Governor may remove on the

address of two thirds of each House, to wit: conviction of an infamous crime, and in no case does mere ill-health constitute such reasonable cause.

Second. At all events the existence of the reasonable cause must be *judicially* ascertained before the Legislature can act.

Third. The facts in this case are not such as to justify at present the exercise of so doubtful a power.

The Constitution of 1776 defines the terms of the judges as follows:

"The judges of the Supreme Court of judicature shall have fixed salaries, be commissioned for seven years only, though capable of re-appointment at the end of that term, but removable for *misbehavior* at any time by the General Assembly."

5 Smith's Laws, 428, Const., Sect. 23, Ch. 2.

The same Constitution provides, with respect to impeachment, that "every officer of the State, whether judicial or executive, shall be liable to be impeached by the General Assembly when in office, or after his resignation or removal for *maladministration;* all impeachments shall be before the president or vice president and council who shall hear and determine the same."

5 Smith's Laws, 428, Const., Sect. 22, Nat. 2.

The provision of the Constitution of 1790, article five, section two, with respect to term of office is, "the judges of the Supreme Court and of the several courts of common pleas shall hold their offices during good behavior; but for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of them on the address of two thirds of each branch of the Legislature."

This Constitution defines grounds of impeachment as misdemeanor in office, which is the grounds of impeachment under all the constitutions.

The Constitution of 1838 provides, article five, section two, that the judges of the Supreme Court, of courts of common pleas, and of other courts of record, shall be nominated by the Governor, and by and with the advice and consent of the Senate, appointed and commissioned by him. Supreme judges to hold office for the term of fifteen years, if they so long behave themselves well, and the president judges of common pleas, etc., and all other judges required to be learned in the law, for the term of ten years, "if they shall so long behave themselves well;" "but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two thirds of each branch of the Legislature." This power of removal extends to judges of the Supreme Court.

In this Constitution there first appears the following: (Buchalew is in error when he credits it to the Constitution of 1790. It is section nine of article five of that of 1838.)

"All officers for a term of years shall hold their offices for the terms respectively specified, *only* on the condition that they so long behave them-

selves well, and shall be removed on conviction of misbehavior in office, or of any infamous crime."

The amendment of 1850 was of section two of article five, made the judges elective, and changed " may " into " shall," in the clause relating to removal on address of both Houses. The terms of office remained fixed as before, and the ninth section of that article remained untouched.

The Constitution of 1874 deals with judges of the lower courts in a section separate from that which relates to the supreme judges, and the clause relating to removal is attached only to the section (section fifteen of article five) which deals with "judges other than those of the Supreme Court required to be learned in the law. The clause remains unchanged, save that "shall" again becomes " may."

The general provision in this Constitution, with respect to the terms of office, is section four, article six. "All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of any misbehavior in office, or of any infamous crime:" Officers here include judges, naturally, and as is expressly declared in the subsequent clauses of this section.

Prior to 1838, judges were appointed for life, or good behavior, and were removable upon address of both Houses or by impeachment. They were impeachable only for *misbehavior in office.* They could be removed upon address for misbehavior, not in office, such as unfitted them for their position, but this cause was still, as we shall hereafter argue, misbehavior, not misfortune, and was to be *judicially* ascertained.

When the amended Constitution of 1838 was adopted, the judges became "officers for a term of years." That Constitution, still retaining the clause authorizing removal upon the address of two thirds of each House, provides in the same article that these officers, with others, shall hold their offices for the terms specified, *only* on the condition that they so long behave themselves well, and shall be removed on conviction of misbehavior in office, or of any infamous crime. Now, these two sections, two and nine, refer to the same subject-matter, and must be construed together. If this clause in section two provides for removal for cause not specified in section nine, then the two are utterly irreconcilable. If, however, we recollect that under all her constitutions the sole ground of impeachment has been misbehavior in office, and then apply the removal clause of section two to the other ground of removal specified in section nine, viz: Conviction of infamous crime, we have harmony.

Is it not absurd to specify the grounds of removal of a judge in section nine as misbehavior and conviction of infamous crime, having previously provided that anything should justify removal which did not amount to ground of impeachment, and in the minds of the Houses of the Legislature was reasonable cause, unless section nine was intended to set boundaries to the operations of section two? The interpretation for which we contend gives us a harmonious system. If a judge is convicted of misbehavior in

office, he will, of course, be removed. If he is convicted of a crime not amounting to this, then if, in the judgment of the Legislature and Governor, it is so infamous as to require his removal, it can be secured under section two. We thus give the judge, who does *not* misbehave *in office*, at least as much protection as the one who *does*. The Constitution of 1874 is, as to the matters under discussion, merely a transcript of that of 1838. The construction contended for by us alone reconciles the last clause of section fifteen of article five, and the first clause of section four of article six.

In the convention of 1873, when the question of striking out words "after due notice and full hearing" in this fourth section of article six was under discussion, Hon. H. W. Palmer denounced the proposed amendment as a proposition "in violation of the principles of our institutions—to try, convict, and sentence a man without giving him a chance to be heard." He said: "I suppose the time never will come—I sincerely hope it never will in the Commonwealth of Pennsylvania—when a man shall be removed from an office of honor, trust or profit, without an opportunity to be heard in his own defense." *See Debates, vol. 5, page 374.*

This last clause of section fifteen, article five, contains no provision for notice or hearing, and if, as the petitioners for removal contend, it is to be interpreted alone, and as they construe it, then that which Mr. Palmer hoped would never come had then been with us for eighty-three years, and the counterpart of the article which produced the state of affairs he deprecated had then been re-inserted in the very constitution which was then being considered; and the objectionable provision had existed and been retained with respect to judges—officers whose tenure was supposed to be especially secure, and in whose entire independence were supposed to be bound up many precious rights and liberties of the citizens.

Our second proposition is, that, even if physical or mental disability can be regarded as constituting reasonable cause for removal, yet the fact of such disability must be judicially ascertained and declared before the two Houses can validly act. In other words, the *power* to cause a removal depends on existence of a reasonable cause, "the power is tied to the fact, and without the fact there is no power."

The opposite view is equivalent to saying that the power of renewal is dependent upon a cause which the two Houses may deem reasonable, which is only another way of saying that the power is dependent upon the will of the Houses to exercise.

Of course, it is obvious that, if the Houses possess the power to themselves absolutely declare the fact of a reasonable cause, and if the Governor thinks fit to make the removal in pursuance of the address, there is no mode of redress, no matter how unjust or unfounded the action of the Houses may be.

We are, then, brought inevitably to face the question whether it is true that our judges hold their offices at the pleasure of the Governor and the two Houses.

In discussing this question, we are not without the assistance of adjudicated cases.

Before the constitutional amendment of 1857, it was not unusual for the Legislature, when creating a corporation, to provide that, in case of abuse or misuse by the corporation of its chartered privileges, the Legislature should have the right to revoke the same. The question arose, in several notable cases, how was the fact of misuse or abuse to be determined? Could the Legislature do so by a simple declaratory act? Or must the fact be judicially determined and declared before the Legislature could exercise the power of revocation?

On the one hand, it was argued that the Legislature had a right to grant the chartered privileges on such conditions as it should think fit to impose, and that, having declared that the company should hold its privileges upon the express condition that they should not be misused or abused, it was no infringement of the contract between the State and the corporation if the Legislature should declare and enforce the forfeiture.

To this, it was replied that the right of the State to forfeit, in case of actual abuse or misuse, was not denied, but that the right of the Legislature to find out the fact of such abuse or misuse was denied.

In the case of *Erie & Northeast R. R. Co.* vs. *Casey*, reported in 2 Casey's Reports, 287, and in 1st Grant's Cases, 274, these views were considered by the Supreme Court. The learned judges did not agree in their conclusions. Judge Lowrie held with those who regarded the power as a legislative one, not subject to judicial supervision. Judge Woodward thought that the power could not be exercised by the Legislature without a previous hearing and finding of the fact of abuse, but that such hearing and finding might be either by a court and jury, or by the Legislature. Chief Justice Lewis considered that the fact of abuse or misuse was simply a judicial one, that could only be determined by a legal proceeding, instituted by the State for that purpose.

Owing to the conflicting views of the learned judges, much uncertainty was felt by the legal profession as to the real meaning and effect of the decision in that case. These doubts were removed by the later case of *The Commonwealth* vs. *The Pittsburgh & Connellsville R. R. Co.*, reported in 8 P. F. Smith, 26. It was there declared by a unanimous Court that the law of Pennsylvania must be definitively settled, that where the power to revoke and rescind a charter was dependent upon the fact of misuse or abuse, such fact must exist in order to afford a valid basis for legislative revocation, and that the State herself could not declare or find the fact, but the fact must be judicially ascertained and declared.

Judge Sharswood, giving the opinion of the Court, said: "If this were a contract between man and man, it could not be pretended that when one party reserves the power to rescind in a certain event, he is thereby constituted the judge of whether the event has occurred. It is a condition precedent to the exercise of the power, and the party claiming it must prove affirmatively the existence of the fact. What difference does it make that

the State is one of the parties? She has entered into this contract through the Legislature, and *in the decision of all questions of fact which may rise upon it, the judiciary department must be invoked as in other cases.*"

The application of the doctrine of these cases to the matter in hand is very obvious.

If the judges can only be legally removed if and in case of a reasonable cause, and if the Constitution has not in terms conferred judicial powers upon the Houses to inquire into and ascertain the facts, then the presumption and meaning of the Constitution are that the fact must be judicially ascertained and declared before the Houses can act.

The power to vote a removal depends upon the fact of misbehavior or some reasonable cause. But who is to judge whether the contingency upon which the power depends has or has not occurred? The Constitution is silent on this point. There is not the slightest intimation that the question of fact is to be adjudicated by the Legislature. There is no provision for any notice or trial before that body. Notice to the party accused, and an opportunity for a fair trial and a full hearing, are so indispensable to the validity of a judicial sentence, that it may be presumed that these essentials would have been provided for, if the intention had been to give to the Legislature the power to try and determine the question. See opinion of C. J. Lewis, 1 Grant, 275.

Nor can these cases be distinguished by the suggestion that they arose on what are termed contracts between the State and her grantees. Substantially, the question is whether, when a certain power is given to or reserved by the Legislature, to be exercised upon the happening of a contingent event, can the Legislature, in the absence of express provision, declare and find that the contingency has happened, and the conclusion is that the question is a judicial one, and that the Legislature does not possess judicial powers, and that hence "the judiciary department must be invoked as in other cases."

Moreover, the relation between State and the judges is a contractual one. There are mutual obligations, which constitute a legal consideration, each for the other. But while there is a contract in a legal sense, there is something more. It is a contract with constitutional sanctions. The salary cannot be changed. Nor can the officer be removed during the term of his office, so long as he shall behave himself well.

The man himself has a pecuniary and personal interest in the office. The emoluments and dignity thereof cannot be taken from him, except for misdemeanor in office, of which he has been found guilty by trial on impeachment, or for some high crime and misdemeanor, of which he has been duly convicted, after full and fair hearing under the law of the land.

But the subject has larger dimensions, and more far-reaching consequences, than the mere question of the right of a single person to an office.

Following the lead of our English ancestors, we have been trained to regard the independency of the judiciary as one of the fundamental features

of our system of laws and polity. That independence has been most sedulously guarded, as we have always been led to suppose, from executive or legislative encroachment. General astonishment and alarm will be created if it be now announced that there is embedded in our Constitution a provision that our judges can be removed by the Governor at any time on an address from both Houses. It will not relieve that alarm to say that this cannot be done unless there is reasonable cause for such removal, if, at the same time we are told that the Legislature, or one of its committees, can declare the existence of such reasonable cause. We submit that this honorable committee should approach and consider this subject in a historical spirit. A constitution is not to receive a technical interpretation like a common law instrument or statute. It is to be interpreted so as to carry out the great principles of the government, not to defeat them. *The Commonwealth* vs. *Clark*, 7 Watts & Sergeant, 127.

It may be said that it is an evil calling for remedy that a judicial office should be held by an invalid judge. Granted. But that the judicial tenure should be held at the pleasure of the executive and legislative departments would be a greater evil. The former evil will only be occasional and temporary. The latter would impair the integrity of our entire system of government. Nor is there any force in the argument that our judicial history shows that there is no danger of any abuse of such a power, as seen in the fact that it has seldom, if ever, been exercised. We contend that such fact shows that it has never heretofore been thought that judges hold their offices subject to removal by the Governor and Legislature, without a trial, and without having been guilty of misdemeanor in office, or of any offense against law or good morals.

Again, the Constitution contains, in the eighth section of article five, a ready remedy for the evil of a permanently disabled judge. "The number of judges in any court of common pleas may be increased from time to time." The trifling expense thus occasionally required is not to be named as against the vice of a judiciary removal at the will of the Governor and Houses. Another remedy may be found in resorting to the temporary aid of judges from neighboring districts, as provided for by law.

See the case of *In Application of the Judges*, 14 P. F. Smith, 33.

Our last suggestion is that the committee recommend the Houses to take no further action in this matter, in view of the facts disclosed by the evidence.

Even if our previous propsitions are deemed unsound, it cannot be denied that the power to deprive a meritorious judge of his office because of illness is harsh and arbitrary, and should only be exercised in a case entirely free from doubt, and when the public interests demand it. But, in the present case, it is by no means certain that Judge Kirkpatrick will never be restored to health and activity. Two young physicians, one of whom has never seen the Judge since his illness began, and the other has seen him but once, and that for a short time, do indeed declare their belief

that he will never be fit to resume his official functions. As against those gentlemen, we have the opinions of two physicians of eminence, long familiar with Judge Kirkpatrick, and his actual medical attendants during his present illness. They speak guardedly, and do admit that the probabilities are against recovery, but they both say that recovery is not impossible—that the case is not without hope.

The evidence also clearly discloses that the public interests are not seriously suffering by reason of Judge Kirkpatrick's incapacity. The business of the court, No. 2, common pleas, to which he belongs, is about as well advanced as is usual at this time of year, and indeed much more forward than was formerly customary in that court. The cases in No. 1 are not at all in arrears, and, as that court is open to all suitors, cases at law or in equity can be brought and speedily disposed of.

Moreover, the time of the usual annual vacation is closely approaching. During the three summer months there will be no jury trials, and Judges Ewing and White can readily transact the routine business of that period. By that time the state of the sick judge will be fully developed, and point either to assured recovery, or to such a hopeless condition as to bring about a voluntary retirement. In the meantime, if any actual necessity arises, relief can be obtained by calling in the aid of neighboring judges, in the manner pointed out by the Supreme Court in the case already cited.

The counsel on behalf of Judge Kirkpatrick respectfully ask the committee to report to the two Houses:

First. That Judge Kirkpatrick is not chargeable with any offense against law or good morals, nor with any voluntary dereliction of official duty.

Second. That Judge Kirkpatrick has, since his appointment, been active and efficient in the discharge of his official duties until a period within a year past, since which time he has been incapacitated by severe illness.

Third. That the medical and other evidence leaves it uncertain whether Judge Kirkpatrick is irrecoverably ill.

Fourth. That the condition of the business of the courts of Allegheny county is not such as to at present require increased judicial force.

THOS. M. MARSHALL,
A. M. BROWN,
GEORGE SHIRAS, JR.,
C. W. ROBB,
S. A. McCLUNG.

THE REPORTS OF THE COMMISSION.

THE MAJORITY REPORT.

To the Honorable the Senate and House of Representatives of the Commonwealth of Pennsylvania:

GENTLEMEN: Your committee, appointed under the concurrent resolution of the Senate and House of Representatives, passed on the 31st day of March, A. D. 1885, to inquire into the mental and physical condition of the Hon. John M. Kirkpatrick, associate law judge of the court of common pleas, No. 2, Allegheny county, beg leave to make the following report, viz:

That on the *day of April the committee met, and having organized by electing a chairman and secretary, fixed Tuesday, the 21st day of April, at the court-house, in the city of Pittsburgh, at the hour of ten, A. M., for hearing the allegations set forth in the petition, of which they caused immediate notice to be given to Judge Kirkpatrick, and at the same time subpœnas to be issued for witnesses, at the request of petitioners and respondent.

That on the day and hour appointed, in the orphans' court-room in the city of Pittsburgh, the committee met. Petitioners were represented by Charles F. McKenna and B. C. Christy, Esqs., and respondent by Thomas M. Marshall, A. M. Brown, George Shiras, junior, C. W. Robb, and S. A. McClung.

It appearing that notice of the proceeding had been given to Judge Kirkpatrick and some of his immediate relations, the committee proceeded to take the testimony, which is hereto attached, and made part of this report.

The allegation of the petitioners is set forth in the preamble to the concurrent resolution, which reads as follows, viz: "WHEREAS, It has been represented in the petition of a large number of the members of the bar of Allegheny county that the Hon. John M. Kirkpatrick, additional law judge of the court of common pleas, No. 2, of said county, is unable to perform the duties of his office by reason of mental and physical disease, which is believed to be incurable; and that said disability has existed for so long a time the business of the said court has been delayed, to the injury of the public in general, &c."

From the nature of the charge, it became necessary to examine quite a number of witnesses, among said witnesses being the Judge's family physicians, Doctors Rankin and Herron; three medical experts, Doctors Hutchinson, Wylie, and Ayers; Judge Kirkpatrick's associates upon the bench, Judges Ewing and White, and several members of the Allegheny county bar.

It appears from the evidence that Judge Kirkpatrick is now fifty-nine years of age. That in the month of March or April, 1883, when he was holding the March term of the criminal court, he broke down and was unable to carry it through, and that from that time he has not been able to do any effective work. He, however, tried some cases, and sat with his associates upon the bench during the fall of 1883 and the winter of 1884, but his condition of health was such that in the spring of 1884 he was obliged to retire permanently from the bench, and since that time has been confined to his room and unable to perform any of the duties of his office.

The evidence as to the physical and mental condition of Judge Kirkpatrick is entirely conclusive in establishing such a weakening of body and impairment of mind as to warrant the committee in the finding that in all human probability he will never again be able to perform the duties of his office.

His Honor, Judge White, one of his associates upon the bench for the last ten years, testifies "that from the time Judge Kirkpatrick broke down during the March term of the criminal court, in 1883, he saw him frequently until last fall, *and he never considered him mentally capable of holding court for the last two years.* That during all that time there was a *giving away, a weakening, a gradual impairment of his mental faculties.*"

His Honor, Judge Ewing, Judge Kirkpatrick's other associate on the bench, testified "that beginning from the last of February or first of March, 1883, that he was a *very sick man, very seriously sick*, and worse than he himself thought he was, and he undertook to do things that he had better not have done; should have rested; and, like almost any other person in that condition, when very weak and feeble and sick, it would effect his nerves, and effect his judgment, perhaps."

Doctor Herron, who had been the family physician of Judge Kirkpatrick for some considerable time, and who had been his regular attendant, after fully describing his ailments, could only say that he entertained but "a hope" that Judge Kirkpatrick would ultimately recover.

Doctor Hutchinson, superintendent of the Western Pennsylvania Hospital for the Insane at Dixmont, who had visited Judge Kirkpatrick in company with Doctor Herron the morning he was examined as a witness, and who had made a careful examination of the Judge, testified that he found Judge Kirkpatrick suffering from *peretic dementia*, or loss of mind. That from the condition in which he found the Judge, and from the story of his increasing illness from month to month, as narrated by Doctor Herron, that it was his opinion, "taking into consideration the Judge's age, his very poor general health, the long standing of his present condition, that the chances are that he never may get much better." Doctor Rankin, who was Judge Kirkpatrick's attending physician prior to Doctor Herron, and who had recently visited the Judge, testified "that, taking the Judge's age and general condition into consideration, he thought it very improbable

that he would ever again be able to perform his duties upon the bench." Doctor Rankin in his testimony described the disease from which the Judge was suffering to be *hemiphlegia*, or paralysis of half the body.

Doctor Wylie, formerly assistant superintendent of the Western Pennsylvania Hospital, and who has had considerable experience in the treatment of the insane, and of patients similarly affected as is Judge Kirkpatrick, testified, after a full conversation with Doctor Herron as to the Judge's symptoms and treatment, and after hearing the testimony of Doctors Herron and Rankin, and reading the testimony of Doctor Hutchinson, as detailed to the commission, that it was his opinion that Judge Kirkpatrick would never sufficiently recover from his present malady so as to be able to perform his duties upon the bench. Doctor Ayers testified that if the Judge's symptoms were such as had been described by the other physicians, their diagnosis of the case was correct. From *all* the evidence, as detailed by the various witnesses, the committee is warranted in but one conclusion, viz: That Judge Kirkpatrick is unable, by reason of mental and physical disease, to perform the duties of his office, and that in all human probability he will never again be able to sit upon the bench.

The remaining question then before us is, whether this is reasonable cause for Judge Kirkpatrick's removal, under section fifteen of the fifth article of the Constitution of this Commonwealth, which reads as follows, viz: "All judges required to be learned in the law, except the judges of the Supreme Court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for a period of ten years, if they shall so long behave themselves well, but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two thirds of each House of the General Assembly."

The clause relating to the tenure of office by judges has a history dating several centuries back, and this part of the Constitution *especially* should be construed in a historical sense, in order that its true meaning may be ascertained. *Reasonable cause* means something, and as each particular reasonable cause which would be sufficient ground for removal is not enumerated or specified in the Constitution, the light of history alone, shining in upon it, can reveal its true meaning and intent.

The right to remove judges at pleasure by the sovereigns of England was, at one time, claimed to be a prerogative of the Crown, and not until the time of Charles II were judges appointed during good behavior. Neither did this idea become a principle of the English constitution until the year 1701, but shortly after the adoption of this principle in the English constitution, it was enacted that Parliament *might* remove from office by concurrence of both Houses.

The wisdom and excellence of this act of Parliament were at once seen and felt by other nations of Europe, and we find it shortly afterwards adopted in the constitution of Sweden; in the French constitution of 1791–5; in

the constitutional charter of Louis XVIII, and the Dutch constitution of 1814.

It appears that, without any assignable reason, and without notice to the judges *even*, under the English constitution during the reign of William III, Parliament had the right of removal by concurrence of both Houses. The right of removal seems to have been incorporated into the several Constitutions of Pennsylvania, with the additional limitation, however, that the Governor *may* remove any of the judges for *reasonable cause*, on the address of two thirds of each House of the General Asembly.

Section four, article six, of the Constitution provides, *inter alia*, as follows: "*All* officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office, or of any infamous crime."

It is not claimed, as we understand it, that a judge could not be removed under this section of the Constitution, on conviction of misbehavior in office, or of an infamous crime. Neither is it claimed that a judge may not be removed, *for reasonable cause*, under section fifteen, article five, of the Constitution, but the question is, what is reasonable cause, and how shall that reasonable cause be ascertained and determined? Is misfeasance in office, inability to perform the necessary duties, such reasonable cause as would justify removal, and if so, how is this fact to be ascertained? The Legislature clearly cannot remove for trivial or arbitrary causes, and when the Constitution makers framed the article entrusting this power to the Legislature, they doubtless at least presumed that that body would be composed of such wise and intelligent men, who would not act without reasonable cause, to be ascertained in such manner as is usual and customary in legislative bodies.

The only precedent we have in our State for such a proceeding is the case of Judge Young, of the Tenth judicial district, who was charged with "incompetency, by reason of old age and intemperance." In that case the committee, in making their report to the Legislature (Journal of the House, 1831–2, vol. 2, page 689,) said: "The question of incompetency to discharge the duties of a judicial office is one of great delicacy, as there is no criterion by which to ascertain the degree or extent of intellectual power necessary for that purpose. There can be no doubt but that the provisions of the Constitution for the removal of judges, on the address of two thirds of both Houses of the Legislature, was intended to apply to cases where the judge had become *incapable* of discharging the duties of his office, from either bodily or mental infirmity, arising from any cause. If from disease or accident, his physical powers should be so impaired as to render him unable to encounter the labor and fatigue incident to his station, it would be good cause for removal. So, if the mind and memory of a judge should become imbecile from old age or other cause, (although not amounting to lunacy,) and that should be satisfactorily proved, it would be the imperative duty of the Legislature to ask his removal. Next to

performing the duty of his office with integrity, a judge ought to possess talent and qualification sufficient to inspire confidence in his decisions, and to give public satisfaction in the administration of public justice. No greater evil can be inflicted on a country than a court in which the public have lost all confidence, and that seldom happens without good cause. When such a case is made out with proper evidence, it would be obligatory on the constituted authorities to exercise the statutory power of removal, by address intrusted to them by the Constitution, *prudently but firmly.*" This proceeding was had under the Constitution of 1790, but the language does not differ from that in the Constitution of 1874.

Respondents' counsel suggest that the fact of misuse or abuse of office must be judicially ascertained and deny the right of the Legislature to make the inquiry.

It certainly was not the intention of the framers of the Constitution to give the Legislature power to remove a judge for reasonable cause, and then deny the right to ascertain that cause. It is a well-established principle of constitutional law that inherent with the power to perform is the power to ascertain the cause for the performance.

It is also suggested that this is a case of *casus omissus.*

The matter of disability during the term of office has been well understood and often discussed by the men who introduced the clause into the American Constitutions. Regarding all the possibilities of the future, as they evidently did, it is fair to presume the clause in question was intended by them to apply to cases of disability by means of mental or physical disease. Any other construction than this would be to concede that there is no power given in the Constitution to remove judges from office, no matter the extent of their disability to perform the duties of their office, which would operate in cases where all or a majority of the judges became disabled to a complete blocking of the judicial systems of our State.

It is proper to state that there is not the slightest charge made against Judge Kirkpatrick's integrity, or that he has committed any offense against law or good morals, nor with any voluntary dereliction of duty, but, on the contrary, the whole tenor of the testimony is that he was industrious and anxious to perform his duties on the bench until he became seriously ill.

It is proper to state further that both the petitioners and Judge Kirkpatrick were represented before your committee by very able and distinguished counsel and that the fullest latitude, in accordance with the rules of evidence, was given both sides in their examination of the witnesses in order that your committee might be fully informed as to the Judge's true condition.

After a full hearing and serious consideration of the whole testimony, as well as of the constitutional question involved as to the power of the Legislature to recommend a removal from office, the committee are of the opinion that the incompetency of Judge Kirkpatrick to discharge the duties of his office by reason of mental and physical disease is fully made out

by the evidence, and that the Legislature, under the provisions of the fifteenth section of the fifth article of the Constitution have full power to recommend his removal, and such is their recommendation.

GEO. W. HOOD,
JOHN D. BIDDIS,
JOHN E. FAUNCE.

MINORITY REPORT.

To the Honorable the Senate and House of Representatives of the Commonwealth of Pennsylvania:

GENTLEMEN: It is with deference to the judgment of the majority of the commission and no small measure of reluctance, under the evidence adduced by the petitioners in this case, that we make this report differing from the conclusions of law of the majority of our colleagues.

We do not hesitate to report to your honorable bodies, under the testimony in this case, that His Honor, Judge Kirkpatrick, is, and has been, for some considerable time past, physically and mentally incapacitated from discharging the duties of his office, and that there is nothing in the evidence to warrant a hope, much less a belief, that he will ever be restored to his powers. We believe, that if your honorable bodies, with the Executive, have the constitutional power to remove a judge for incapacity unconnected with moral turpitude, that the case under consideration presents all the essentials to warrant, and all the necessities to induce, such action.

The request upon the part of the counsel of Judge Kirkpatrick that the commission should find "that the condition of the business of the courts of Allegheny county is not such as at present to require increased judicial force," we dismiss as irrelevant. The Constitution (article five, section six) requires that the courts of that county *shall be composed of three judges each*, and it would not be more impertinent to insist upon the same fact in the case of an actual vacancy or a proposition to totally abolish the court.

We come, then, at once to the question which has divided the commission; given a case in which a judge of a court of record in this Commonwealth is incapacitated, mentally or physically, from performing the duties of his office, such incapacity arising from no fault of his, but wholly the act of God, has the General Assembly and the Executive, in the mode of procedure indicated in the fifteenth section, article five, of our Constitution, the power to remove?

We have endeavored to state the proposition boldly, and to indicate the full measure of instances of hardship which might, in the frailty of our natures, at times inflict a constituency; and, too, in a degree of plainness, the facts of Judge Kirkpatrick's case fully warrant, and it is only upon the highest considerations of constitutional law and government that we say to you that such power does not exist.

The words of the provisions of the Constitution by which these proceedings are said to be authorized will be found in the fifteenth section, article five, and are as follows:

"All judges required to be learned in the law, except the judges of the Supreme Court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, *if they shall so long behave themselves well, but for any reasonable cause which shall not be sufficient ground for impeachment* the Governor may remove any of them on the address of two thirds of each House of the General Assembly."

Thus it will be seen that "*for any resonable cause which shall not be sufficient ground for impeachment*" the Governor, upon the address of two thirds of each of your bodies, may remove any common pleas judge of the State. What is meant by the words "*reasonable cause*," "*not sufficient ground for impeachment?*" Is the disability of a judge arising by an act of God such cause? If so, Judge Kirkpatrick can be removed by these proceedings.

In the first place, we will examine the history of this provision of the Constitution, and will endeavor to show that it is not intended to have any such reference.

It would be the merest pedantry to recount the causes which led to the English revolution in 1688. Suffice it that, as a result, the English judiciary by that political event advanced from the position of the merest servants of the Crown the first step towards independence. By the 12 and 13 William III, c. 2, it was enacted: "That after the said limitation shall take effect as aforesaid, judges commissions be made *quamdiu se bene gesserit*, and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them." (4 Ruf. St., 63.)

This was followed by 1 Anne, c. 8, (4 Ruf. St., 90,) providing that commissions should not expire until six months after the demise of the Crown, and by 1 George III, c. 23, (8 Ruf. St., 574,) in which the statute of William was reënacted, and further provided that the commission should not depend upon the demise of the Crown at all.

12 and 13 William III was the great and fundamental statute of the liberty and independence of the judiciary of England, though the 1 George III has popularly been accredited that honor, (Hal. Cons. Hist. III. 262; Hargrave's Notes to Bl. Com., Bk. I,) and is the statute from which all provisions found in our Constitution, and those of our sister-States, relative to the removal of judges by address of the General Assembly, have their origin.

When we take into consideration the position occupied by the judges of England from the Conquest and before to the revolution of 1688, commencing with the King dispensing justice in proper person in *Aula Regis*, with the judges merely as menial clerks, only compelled to resign this position by the multiplicity of causes, and learning necessary to its fulfil-

ment to these clerks, gradually advancing in learning and dignity to judges learned in the law, but still no better than the merest dependents of the Crown, appointed and removed at will, paid little or much, as more or less subservient, from the King's private purse, we cannot but believe that, under 12 and 13 William III a judge might be removed for any cause whatsoever, political, religious, criminal, mental, or physical.

This was the English power of removal at the date of the American Revolution, and the first Constitution—forming period of this State. As far as we know, this was the only light before the framers of our first Constitutions, and we will now examine what use they made of it and in what form it appeared. We discover it first in the twenty-third section, Constitution of 1776, as follows:

"The judges of the Supreme Court of judicature shall have fixed salaries, be commissioned for seven years only, though capable of reappointment at the end of that term, *but removable for misbehavior at any time by the General Assembly.*" (Cons. and Charts., p. 1545.)

In the preceding section, it is provided that judges may be impeached in office, after resignation or *removal for maladministration.*

Nothing is said about removal of common pleas judges in this crude instrument, and these were the only provisions pertaining to the subject. This, then, is the restriction put by those framers on the statute of William III. This is how they left the broad right of the King and his Parliament to remove a judge *for any cause.* They restricted that vast power to instances of *misbehavior* in or out of office only.

The Constitution of 1776 was followed by that of 1790, and it is in this latter instrument (article five, section two) we find the essential expressions of the fifteenth section, article five, of our present Constitution for the first time, as follows: "The judges of the Supreme Court and of the several courts of common pleas shall hold their offices during good behavior, but for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of them on the address of two thirds of each branch of the Legislature," &c.

We will now examine how this provision grew in the convention of 1789. In the report of the committee of nine, appointed by the convention to make a draft of the proposed instrument, we find these words from which the above was made: "The Chancellor of the Commonwealth, the judges of the Supreme Court, and the judges of the several courts of common pleas shall be commissioned and hold their offices during good behavior * * * *but the Governor may remove any of them on the address of two thirds of each branch of the Legislature.*" (Article five, section two.) (Min. Con., 1789, p. 43.)

This language was not what the convention wanted, and it is certainly not an unfair argument to say that, if the Legislature and Governor were to have the power contended for by the majority of the commission, they could not have found better language in which to have conferred it.

When the Constitution is finished and submitted to the people, we find this change to have been made: "But [*for any reasonable cause which shall not be sufficient ground of impeachment*] the Governor may remove any of them on the address of two thirds of each branch of the Legislature."

What is the meaning of the words in brackets, and how did they come to be inserted? What is the meaning of the reference to the process of impeachment? It is the first time it appears in connection with these provisions, and there is certainly a reason for its appearance. Let us examine.

We now ask your attention to the nature of the process of impeachment as existing in England prior to the American Revolution, the uses to which it was then put and the changes effected by the Constitutions of the United States.

By the English process of impeachment, all the King's subjects were impeachable in Parliament (Woodeson's Lec., 602,) whether in office or in private life. Impeachment was for all offenses of every character, whether political, official, or simply criminal. A judge might be impeached for not carrying himself in a sober manner, and not having a grave and virtuous conversation, or, as in the case of Sir William Scrogg's it was complained that "he by his frequent and notorious excesses and debaucheries, and his profane and atheistical discourses doth daily affront Almighty God, dishonor his Majesty, give countenance and encouragement to all manner of vice and wickedness, and bring the highest scandal on the public justice of the Kingdom" (13 Lord's Jour., 737). In short, anything was the subject of impeachment that the ingenuity of a parliamentary committee could suggest (15 Am. Law Reg., 265).

Under this doctrine of impeachment, where a judge could be impeached for anything from treason to incapacity, resulting from any cause, and judgment of removal pronounced at will of the Lords, the Constitution of 1776 provided, notably, that a judge could be removed for misbehavior only. In the Constitution of 1790, a great change is effected in the scope of impeachment as practiced in England. No person is to be hereafter impeached, except *officers*, only for misdemeanors in office, and judgment is to extend to removal only.

The Constitution of 1776 had narrowed the English power of removal to *misbehavior generally*, whether in office or out of it. The Constitution of 1790 narrowed the circle of English cases of impeachment to *misdemeanors in office*. Thus, under the Constitution of 1776, impeachment might have been made for any offense for which it lay in England; removals of judges could be made for misbehavior only. In the Constitution of 1776, removal of judges by the Legislature was the primary means. Under the Constitution of 1790, impeachment became the primary instrument, and removal by the Governor and Legislature a secondary, or only to be exercised in those cases in which impeachment was not proper, or in other words, where the "cause was not sufficient ground of impeachment."

These causes, sufficient and insufficient for impeachment, had been expressly confined by the Constitution of 1776 to cases of *general misbehavior*.

Some misbehaviors might not amount to a misdemeanor in office, but still might be sufficient to remove. For these cases the words, "For any reasonable cause which shall not be sufficient ground of impeachment," were inserted.

In fact, the two amendments to the draft of the committee of nine as to impeachment and the tenure of office of the judiciary moved together. The impeachment article was amended restricting the grounds of impeachments to misdemeanors in office in convention on the 13th day of February, 1790, (Min. Con., 1789, p. 96,) and the insertion of the words, "For any reasonable cause which shall not be sufficient ground of impeachment," followed on the next day. (*Ib.*, pp. 98–99.) This, then, we believe to be the proper reading of these words.

The Constitution of 1790 did not enlarge the causes for which a judge could be removed. It simply raised the loose and tyrannous system of English impeachment into a valuable and proper instrument, whose whole object was *removal from office*. This was the new character impeachment was to grace, and the primary and great ground for impeachment was laid in misdemeanor in office. Removal was fixed as the judgment, and disqualification followed as the sequence. That which is misbehavior in a judge, and not a misdemeanor in office, if reasonably flagrant, shall be a cause for removal on address by the Legislature, but does not disqualify. Thus interpreting the meaning of these words, we are able to read the second section of the fifth article of the Constitution of 1790 intelligently.

The Constitution of 1838 makes no change in the language of the Constitution of 1790, in the provisions above referred to, except that it fixes the tenure of the judiciary for a term of years. The ninth section of the sixth article, however, is new matter, and in this connection is most significant.

"All officers for a term of years shall hold these offices for the terms respectively specified *only* on the conditions that they shall so long behave themselves well, and shall be removed on conviction of misbehavior in office or of an infamous crime." This is strong to show that removals of judges for sickness or disability by act of God were further removed in the contemplation of this Constitution than of its predecessors. This language must be read in harmony with article five, section two, and is to be considered as further restricting the cases of misbehavior for which impeachment does not lie to infamous crimes only. This provision is substantially repeated in article six, section four, of our present Constitution, and is now our fundamental law. Let us now recapitulate. The statute of William allowed removals *for any cause whatsoever;* the Constitution of 1776 allowed removals for *general misbehavior*, only greatly restricting the causes under the English statute; the Constitution of 1790 did not enlarge the causes

for which removals might be made, but simply divided them into misdemeanors in office, which were to be punished by the new process of impeachment; and such other acts of misbehavior not sufficient for impeachment, but sufficiently flagrant to justify the Governor and Legislature in removing; and lastly, the Constitutions of 1838 and 1874 further restricted the acts of misbehavior not impeachable to acts which reached the dignity of *infamous crimes.*

And this interpretation seems to all the more tenable when we consider that under it every elective officer in the Commonwealth will have his removal from office directly or indirectly *determined upon hearing*, and not be subject to a deprivation of his office without a chance to say a word in his defense. The pettiest constable is guaranteed this right. Under the statute of William, no hearing was vouchsafed, no notice was to be given or even contemplated. The King and Parliament did together what the King alone could do before. Commissions prior to the statute ran *durante bene placito*, and by the statute they were to run *quamdiu bene se gesserit*, but this was only in name so far as actual removals were concerned. In truth, they ran during the pleasure of the King and Parliament instead of at that of the King only. It is this same procedure that finds a lodgment in the Constitutions of 1776, 1790, 1838, and 1874. In none is notice provided for and a hearing granted. By the first two Constitutions, a judge might be removed for misbehavior without notice and without hearing. Under the last two Constitutions, action can be taken without notice and without a hearing, but the cause of removal, *conviction* for an *infamous crime*, precludes the necessity of such notice and hearing. The judge has already been tried by a court of justice and found guilty. There is no call for notice and a chance to defend the second time.

This position, then, completely rounds the doctrince that no elective officer can be removed without notice and hearing before *some* tribunal, viz:

First. All officers guilty of a misdemeanor in office are to be impeached to be removed, and the *trial by impeachment* follow. (Article six, sections one and two, Cons.)

Second. Any elective officer, not the Governor, Lieutenant Governor, member of General Assembly, or judge of a court of record learned in the law, may be removed on address of the Senate by the Governor "*after due notice and full hearing.*" (Article six, section four, *Ib.*)

Third. Judges, other than Supreme Court judges, may be removed by the Governor upon address of two thirds of each House upon conviction for an infamous crime after *trial duly had.* (Article five, section fifteen, *Ib.*)

Fourth. The Governor, Lieutenant Governor, judges of the Supreme Court, and members of General Assembly may be removed upon conviction of an infamous crime, and though the Constitution is not plain as to what power shall remove in each case, it can be done only upon conviction

for infamous crime, which could not be without *trial*. (Article six, section four, *Ib.*

If it is asked, why, if this is the meaning of the fifteenth section, article five, the framers did not so say *in hæc verba*, we answer that they preferred not to disturb the old expression, and that the whole of the Constitution must be read together that the language of over a century is to read in the light of the tenure section of the Constitution of 1838. In discussing the fourth section of article six, Mr. Palmer said:

"I suppose the time never will come, I sincerely hope it never will in the Commonwealth of Pennsylvania, when a man shall be removed from an office of honor, trust, or profit, without an opportunity to be heard in his own defense." (See debates, volume 5, page 374.)

We do not see any force in the circumstances of the case of Judge Young, cited by the learned counsel for the petitioners. Removal for disability superinduced by drunkenness is a very different thing from disability from sickness, the visitation of the Almighty. Drunkenness not amounting to a misdemeanor in office was a ground for removal before the Constitution of 1838. Certainly not after. The Young investigation was under the Constitution of 1790.

Thus the tendency of our Constitutions from time to time has been to restrict the causes for which a judge may be removed, and it is a significant fact, and wholly in the line of this tendency, that the present Constitution removes the judges of the supreme court from the power of the Governor and the Legislature entirely, and now the only way in which they can be removed is by actual impeachment.

Again, we take it as a significant fact that no provision has, either directly or indirectly, ever been placed in any Constitution of this State which authorized removals of judges for misfortune. The case of physical and mental disability long disqualifying a judge from his duties must often have entered the minds of our framers. They make no provision for it. Nearly all the States of the Union have a similar provision as ours, and but two States have adopted these as sufficient causes of removal, and it is questionable whether they have not disappeared from the present instruments in force. By the amendment of 1835 to the Constitution of 1776 of North Carolina, article two, section two, this language is found: "Any judge of the superior court or the superior courts may be removed from office for mental or physical inability upon a concurrent resolution of two thirds of both branches of the General Assembly. The judge against whom the Legislature may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either branch of the General Assembly may act thereon," and is repeated in the thirty-first section, article four, of the present Constitution.

The Constitution of South Carolina of 1790, by the amendment of 1828, provides:

"If any civil officer shall become disabled from discharging the duties of

his office by reason of any permanent bodily or mental infirmity, his office may be declared to be vacant by joint resolution agreed to by two thirds of the whole representation in each branch of the Legislature: *Provided*, That such resolution shall contain the grounds for the proposed removal, and before it shall pass either House, a copy of it shall be served on the officer, and a hearing be allowed him." (Section 5.)

This provision, after being repeated in the Constitution of 1865, article six, section five, is rejected entirely in the Constitution of 1868—the one at present in force in that State.

These are the only two States ever enacting any provisions of this kind, so far as we know, out of all our sister-States. It will be observed how carefully they are guarded as to notice and hearing to the judge, and that one of these States has in its present instrument entirely repudiated it.

Again, the fourth section of the sixth article of our present Constitution is almost entirely new. Taking the tenure-of-office provision as found in the Constitution of 1838, article six, section nine, they have grafted it in a modified form into the provision for the removal of officers, appointive and elective. With regard to the latter class, it is provided that the Governor, for reasonable cause, may, after due notice and full hearing upon the address of the two thirds of the Senate, remove any officer elected by the people except Governor, Lieutenant Governor, members of the General Assembly, and judges of courts of record learned in the law.

The "reasonable cause" is untrammeled by any qualification whatsoever, and is intended to convey the power for any reasonable cause whatsoever. Under its provisions, judges could be removed for disability, mental or physical, not of their own default, as contended for by the petitioners in this case. It is a plain, practical instrument for carrying out their desires; but, unfortunately, they are excluded from its provisions, simply because it was not the intendment that power should be so exercised upon them. That they are excluded is very significant. Again, it will be noticed that they are excepted in a classification, each member of which can be removed from office for causes involving moral turpitude. The Governor, by impeachment and for misdemeanor in office, and for no other cause. The Lieutenant Governor, the same. Members of the Legislature, upon a two-thirds vote of their own Houses, and judges of the supreme court for misdemeanors in office, or infamous crimes.

Can it be argued that judges of the common pleas alone can be removed for causes other than those resulting from their willful default? Again, the exception of judges of courts of record learned in the law from the removal provisions of the fourth section leaves these officers to the full force of the tenure clause of the first part of the section, and we may read with regard to them the section as follows: All judges of courts "of record learned in the law shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or any infamous crime."

In closing our report, we cannot but remind you of the standing of the judiciary in the American form of government. The theory that the legislative, executive, and judicial branches of government are separate, distinct, and independent of each other, and checks upon the illegal operation each upon the other is a most substantial and salutary principle. We are not to forget that the judiciary is essentially the balance wheel of government, the corrector of the excesses of legislative and executive power. It is that which keeps the machinery of government running with a steady velocity. It is the most impartial and best judge of usurpation in either of the other departments, and the last to give way to the excitement of the hour. We do not unduly elevate it to say that it stands over and above our legislative and executive functions to correct and allay the disturbance of either.

It is the safest resort to every individual in the preservation of his life, his liberty, and his property, and it is the one department of government in which each feels the most substantial security. All history records numerous instances of tyranny of the legislative and executive branches over the judiciary, but we have yet to learn of one act upon the part of a free and independent judiciary where just complaint of encroachment might be made. In order that this department of our Government may remain free and independent, its tenure of office should not be held even by the combined legislative and executive departments, but should be free of each. An independent judiciary must ever be a cardinal principle of constitutional government. (*Commonwealth* vs. *Gamble*, 12 P. F. Smith, 346.) (*Commonwealth* vs. *Mann*, 5 Watts & Sergt., 403.)

When we remember that within a century two instances of the impeachment of the judiciary have occurred in our land for no more grievous fault than that it declared the acts of Assembly passed by its accusers unconstitutional, we should be careful to restrict the powers of removal to the narrowest construction. If there be anything certain in the attitude of the English people in their long and tenacious struggle for constitutional liberty, it is that which they assumed toward the judiciary, which they desired not only to be free, but stable and secure in their tenure.

If, in the case before us, you have not the power of removal, you have the fullest power to relieve. Not only can you establish another officer to act in the room and place of Judge Kirkpatrick, to cease at the expiration of his term of office, but may you not establish an entire new court, as the necessities of the case require?

That this is the first case in the history of the Commonwealth in which it has been necessary to invoke these extraordinary powers of Government, should the more induce us to inquire whether they really exist at all. It is better that a temporary evil of this kind should exist once in an hundred years than that we should interpret the at least doubtful powers conferred upon us by the Constitution in a way which would tend to the impairment of the independence of the judiciary, and might, in times of great political excitement, be subversive of our liberties.

We close this report without a word of advice as to what your action should be in the matter. Feeling ourselves unable to subscribe to the doctrine of the majority, we simply make this report in justification of our action, and hoping that if you, in your final action, differ from these views, your procedure shall not effect a precedent for harm to the Commonwealth.

WM. HENRY SPONSLER,
JOHN B. ROBINSON.

May 26, 1885.