

important question in the most important State trial ever held in this country, namely, the impeachment of President Johnson, and was left there as undecided as ever. There were those who believed that some specific penal offence, defined by statute, must be proved, or there could be no conviction; and on this ground several of the senators who voted for acquittal rested their judgment; while many of those who voted for conviction, constituting, perhaps, a majority of the Senate, were of opinion that there might be such dangerous exercise of unauthorized power, such total refusal to perform, and such moral delinquency in regard to the duties and requirements of the place as would amount to a high misdemeanor in the sense of the Constitution. Whichever view of that point may be right, it is very certain that after the experience of nearly a century, the remedy by impeachment in the case of judges, perhaps in all cases, must be pronounced utterly inadequate. Besides the main difficulty of deciding in each case whether the charge, if proved, is an impeachable offence, there is almost equal difficulty in obtaining a two-thirds vote in a body political rather than judicial in its character, liable to changes in its constituency during the usual delay of such a trial, and open from its very nature to appeals to party prejudice, to compassion, and to personal friendship.

It is not easy, however, to suggest a better remedy. The tribunal would be rendered more efficient and more safe by a specific definition of the causes of removal. There are many matters which ought to be causes of removal that are neither treason, bribery, nor high crimes and misdemeanors. Physical infirmities for which a man is not to blame, but which may wholly unfit him for judicial duty, are of this class. Deafness, loss of sight, the decay of the faculties by reason of age, insanity, prostration by disease from which there is no hope of recovery—these should all be reasons for removal, rather than that the administration of justice should be obstructed or indefinitely suspended.

So, also, there are offences against the law, or conduct which might be made so, that peculiarly unfit a man for the office of judge. A vile and overbearing temper becomes sometimes in one long accustomed to the exercise of power unendurable to those who are subjected to its

humors. But I think the experience of observers will bear me out in saying, that habitual intoxication is of all this class of disqualifications the most frequent.

Two things may be suggested as worthy of consideration in any effort to amend Constitutions on this subject, namely: that the causes for which a judge may be removed from office shall be described with the same precision as that which is used in defining indictable offences. Second, that whatever may be the nature of the court before which he is tried, the facts of his guilt of the impeachable offence, or disqualification charged, should be found by a jury or some similar tribunal. It is however to be remembered that a judge should, in the exercise of his functions, be trammelled as little as possible by fear of consequences to himself, and in view of the resentments of disappointed suitors the providing for removal should not be made too easy.

As occupying an important place in the machinery of the courts, the jury is next entitled to our consideration. No institution which we have inherited from our ancestors has been as little disturbed by legislative action as trial by jury; and none seems so firmly fixed in the affections of the people with all its accessories. It is the theme of the popular orator when all else fails, and a comparison of our happy condition with that of the benighted nations of Europe would fail to satisfy the public taste, if it did not dwell with emphasis on our ancient system of trial by jury, as the palladium of our liberties. Still there are indications of dissatisfaction. Illinois, by her most recent Constitution, permits the Legislature to abolish grand juries. Colorado does the same. Nevada allows three-fourths of the jury to render a verdict. Perhaps this last is a valuable innovation. It requires all the veneration which age inspires for this mode of dispensing justice, and all that eminent men have said of its value in practice, to prevent our natural reason from revolting against the system, and especially some of its incidents. If a cultivated oriental were told for the first time that a nation, which claims to be in advance of all others in its love of justice and its methods of enforcing it, required as one of its fundamental principles of jurisprudence, that every controversy be-