

Chapter CCI.

THE IMPEACHMENT AND TRIAL OF HAROLD LOUDERBACK.

1. Preliminary inquiry by the House. Section 513.
 2. Appointment of managers. Section 514.
 3. Presentation of articles and postponement of trial. Section 515.
 4. Organization of Senate for trial. Section 516.
 5. Changes in managers. Section 517.
 6. Answer and motion to make more definite. Section 518.
 7. Adoption of rules. Section 519.
 8. Amendment of articles. Section 520.
 9. Answer of respondent to amended articles. Section 521.
 10. The replication of the House. Section 522.
 11. Presentation of testimony. Section 523.
 12. Arguments and judgment. Section 524.
-

513. The impeachment and trial of Harold Louderback, Judge of the Northern District of California.

Instance wherein the local bar association initiated proceedings by recommending impeachment.

The impeachment proceedings were set in motion through a resolution introduced by delivery to the Clerk and referred to the Committee on the Judiciary.

Form of resolution authorizing investigation with a view to impeachment.

On May 26, 1932,¹ Mr. Fiorello H. LaGuardia, of New York, introduced, by delivery at the Clerk's desk, the following resolution (H. Res. 329):

Resolved, That a special committee of five Members of the House of Representatives who are members of the Committee on the Judiciary of the House, the same to be designated by the chairman of said committee, be, and is hereby, authorized and directed to inquire into the official conduct of Harold Louderback, a district judge of the United States District Court for the Northern District of California, and to report to the Committee on the Judiciary of the House whether in their opinion the said Harold Louderback has been guilty of any acts which in contemplation of the Constitution are high crimes or misdemeanors requiring the interposition of the constitutional powers of the House; and that the said special committee have power to hold meetings in the city of Washington, D. C., and elsewhere, and to send for persons and papers, to administer the customary oaths to witnesses, all process to be signed by the Clerk of the House of Representatives under its seal and be served by the Sergeant at Arms of the House or his special messenger; to sit during the session of the House and until adjournment of the first session of the Seventy-second Congress and thereafter until said inquiry is completed, and report to the Committee on the Judiciary of the House; and be it further

¹First session Seventy-second Congress, Record, p. 11358.

Resolved, That said special committee be, and the same is hereby, authorized to employ such stenographic, clerical, and other assistance as they may deem necessary; and all expenses incurred by said special committee, including the expenses of such committee when sitting in or outside the District of Columbia, shall be paid out of the contingent fund of the House of Representatives on vouchers ordered by said committee, signed by the chairman of said committee: *Provided, however*, That the total expenditures authorized by this resolution shall not exceed the sum of \$5,000.

The resolution was referred to the Committee on the Judiciary, which reported it back on May 31¹ with the conclusion that—

the committee feels that under the circumstances the matter of Judge Louderback's conduct should be investigated.

On June 9,² on motion of Mr. Hatton W. Sumners, of Texas, from the Committee on the Judiciary, by unanimous consent, the House proceeded to the consideration of the resolution and after brief debate agreed to it without division.

Mr. Sumners included as a part of his remarks a letter from the Bar Association of San Francisco reciting certain occurrences leading up to the proposal of impeachment as follows:

SAN FRANCISCO, CALIF., *May 24, 1932.*

JUDICIARY COMMITTEE,

House of Representatives, Washington, D. C.

SIRS: Under date of May 2, 1932, the Bar Association of San Francisco addressed a communication to His Excellency Herbert Hoover, President of the United States, with reference to certain matters published in the press of San Francisco concerning Hon. Harold C. Louderback, judge of the United States district court at San Francisco, Calif., accompanying said communication with clippings from San Francisco newspapers.

Under date of May 9, 1932, we received an acknowledgment of said communication from Mr. Lawrence Richey, Secretary to the President, stating that the matter "is being referred for consideration of the Attorney General," and thereafter we received a letter dated May 12, 1932, from Mr. Charles P. Sisson, Assistant Attorney General, stating in effect that our letter addressed to the President had been referred to the Department of Justice for consideration, and further stating "that the Department of Justice has no jurisdiction whatsoever over the United States judges. Criticisms of Federal judges are ordinarily addressed to the Judiciary Committee of the House of Representatives."

Pursuant to the suggestion contained in the letter from the Assistant Attorney General, we are hereby addressing your honorable committee and forwarding copies of the above-mentioned correspondence, together with duplicate press clippings, for such action as your committee may deem proper.

We feel certain that you will readily realize that the interest of the Bar Association of San Francisco in this matter is solely a public one and that it is concerned only in preserving the integrity of the bench, public confidence in, and respect for, the courts and the due administration of justice. We believe that no department of the Government should occupy a higher position in the public mind, or perform a more important function, than that of the courts, and that it is of the utmost importance they shall be maintained on a plane of the strictest honesty and efficiency and shall be above suspicion. Charges against a court or judge, especially when publicly made, require thorough investigation, not only in the interest of the public and respect for our judicial system but also in the interest of the incumbent.

¹ House report No. 1461.

² Record, p. 12470.

If your committee should undertake an investigation of the matters in question, our association will cheerfully render such assistance as is within its power, in the hope that whatever the outcome may be the result will contribute to the maintenance of public confidence in our courts. Respectfully submitted.

BAR ASSOCIATION OF SAN FRANCISCO,
BY RANDOLPH V. WHITING, *President*.

514. The special committee authorized to conduct the investigation held hearings at which Judge Louderback appeared in person and by counsel.

A resolution proposing abatement of impeachment proceedings was held to be of high privilege.

The member reporting a bill from a committee is entitled to recognition when the bill is taken up for consideration in the House.

The House, disregarding the majority report of the committee, adopted the minority recommendation and passed articles of impeachment.

The House by resolution elected five managers, chosen from the Committee on the Judiciary and from both parties, to carry the impeachment of Judge Louderback to the Senate.

Pursuant to the terms of the resolution, a special committee was appointed by the Chairman of the Committee on the Judiciary, from the membership of the committee, consisting of Mr. Sumners, Mr. Tom D. McKeown, of Oklahoma, Mr. Gordon Browning, of Tennessee, Mr. Leonidas C. Dyer, of Missouri, and Mr. LaGuardia.

The special committee held hearings in San Francisco the week of September 6, 1932, at which Judge Louderback was represented by counsel, and in Washington, January 16 and 17, at which he appeared in person.

The special committee then submitted a divided report to the Committee on the Judiciary.

On February 17, 1933,¹ Mr. McKeown, by direction of the Committee on the Judiciary, presented a report to the effect that the special committee authorized to conduct the investigation had transmitted its conclusions to the Committee on the Judiciary, and that after consideration of the findings—

The committee censures the judge for conduct prejudicial to the dignity of the judiciary in appointing incompetent receivers, for the method of selecting receivers, for allowing fees that seem excessive, and for a high degree of indifference to the interest of litigants in receiverships.

The committee, however, did not consider the circumstances sufficiently flagrant to warrant impeachment and recommended the adoption of this resolution:

Resolved, That the evidence submitted on the charges against Honorable Harold Louderback, district judge for the northern district of California, does not warrant the interposition of the constitutional powers of impeachment of the House.

The minority dissented from the majority recommendation and, after summarizing the several charges of misconduct involved, proposed articles of impeachment.

On February 24, 1933,² Mr. Sumners, who had submitted minority views, rising in the House, asked whether he as Chairman of the Committee on the Judiciary or the Member reporting the resolution by direction of the committee, was entitled to recognition to debate it.

¹ H. Rept. No. 2065.

² Second session Seventy-second Congress, Record, p. 4913.

The Speaker ¹ replied:

The usual custom is that the Member who has been directed by the committee to report the bill and who reports the legislation coming before the House is the one the Chair recognizes.

Whereupon, the Speaker recognized Mr. McKeown, who called up the resolution reported by the committee.

Mr. Bertrand H. Snell, of New York, inquired whether a resolution of this character could be considered as privileged.

The Speaker replied that, inasmuch as it related to the abatement of impeachment proceedings, it was of the highest privilege.

In the course of the debate on the resolution, Mr. LaGuardia offered the following words and figures, to wit:

Resolved, That Harold Louderback, who is a United States district judge of the northern district of California, be impeached of misdemeanors in office; and that the evidence heretofore taken by the special committee of the House of Representatives under House Resolution 239 sustains five articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Harold Louderback, who was appointed, duly qualified, and commissioned to serve during good behavior in office as United States district judge for the northern district of California on April 17, 1928.

(The substitute then set forth the articles of impeachment proposed by the minority.)

After extended debate, the substitute was agreed to on a yea and nay vote, and on February 27,² on motion of Mr. Sumners, it was—further:

Resolved, That Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Harold Louderback, United States district judge for the northern district of California; and said managers are hereby instructed to appear before the Senate of the United States and at the bar thereof in the name of the House of Representatives and of all the people of the United States to impeach the said Harold Louderback of misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment against said judge which have been agreed upon by the House; and that the said managers do demand the Senate take order for The appearance of said Harold Louderback to answer said impeachment, and demand his impeachment, conviction, and removal from office.

Of the five managers thus selected to conduct the impeachment proceedings on behalf of the House, three were of the majority party, two were of the minority, and all were members of the Committee on the Judiciary.

515. The ceremonies of presenting to the Senate the articles of impeachment.

The impeachment proceedings having been presented in the Senate during the closing days of the Seventy-second Congress, were made the special order for the first day of the first session of the succeeding Congress.

¹ John N. Garner, of Texas, Speaker.

² Second session Seventy-second Congress, Record, p. 5177.

A decision holding that a motion relating to a question of the Senate sitting as a court of impeachment is not debatable.

The Senate having been informed, on February 28,¹ by message, of the action² of the House of Representatives, transmitted to the House on the same day³ a message announcing its readiness to receive the managers appointed by the House for the purpose of exhibiting the articles of impeachment.

On March 3,⁴ the managers on the part of the House appeared before the Senate and were received with the formalities customarily observed on such occasions.

Mr. Manager Sumners read the resolution⁵ agreed to by the House appointing its managers, and yielded to Mr. Manager Browning, who read the articles of impeachment, as follows:

ARTICLES OF IMPEACHMENT AGAINST HAROLD LOUDERBACK

CONGRESS OF THE UNITED STATES OF AMERICA,
IN THE HOUSE OF REPRESENTATIVE,
February 24, 1933.

Resolution

Resolved, That Harold Louderback, who is a United States district judge of the northern district of California, be impeached of misdemeanors in office; and that the evidence heretofore taken by the special committee of the House of Representatives under House Resolution 239, sustains five articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Harold Louderback, who was appointed, duly qualified, and commissioned to serve during good behavior in office, as United States district judge for the northern district of California, on April 17, 1928.

ARTICLE I

That the said Harold Louderback, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned and while acting as a district judge for the northern district of California did on divers and various occasions so abuse the power of his high office, that he is hereby charged with tyranny and oppression, favoritism and conspiracy, whereby he has brought the administration of justice in said district in the court of which he is a judge into disrepute, and by his conduct is guilty of misbehavior, falling under the constitutional provision as ground for impeachment and removal from office.

In that the said Harold Louderback on or about the 13th day of March, 1930, at his chambers and in his capacity as judge aforesaid, did willfully, tyrannically, and oppressively discharge one Addison G. Strong, whom he had on the 11th day of March, 1930, appointed as equity receiver in the matter of Olmsted against Russell-Colvin Co. after having attempted to force and coerce the said Strong to appoint one Douglas Short as attorney for the receiver in said case.

In that the said Harold Louderback improperly did attempt to cause the said Addison G. Strong to appoint the said Douglas Short as attorney for the receiver by promises of allowance of large fees and by threats of reduced fees did he refuse to appoint said Douglas Short.

¹H. Res. 403, Record, p. 5178.

²Record, p. 5193.

³Record, p. 5195.

⁴Record, p. 5473.

⁵H. Res. 402, Record, p. 5177.

In that the said Harold Louderback improperly did use his office and power of district judge in his own personal interest by causing the appointment of the said Douglas Short as attorney for the receiver, at the instance, suggestion, or demand of one Sam Leake, to whom the said Harold Louderback was under personal obligation, the said Sam Leake having entered into a certain arrangement and conspiracy with the said Harold Louderback to provide him, the said Harold Louderback, with a room at the Fairmont Hotel in the city of San Francisco, Calif., and made arrangements for registering said room in his, Sam Leake's name and paying all bills therefor in cash under an arrangement with the said Harold Louderback, to be reimbursed in full or in part in order that the said Harold Louderback might continue to actually reside in the city and county of San Francisco after having improperly and unlawfully established a fictitious residence in Contra Costa County for the sole purpose of improperly removing for trial to said Contra Costa, County a cause of action which the said Harold Louderback expected to be filed against him; and that the said Douglas Short did receive large and exorbitant fees for his services as attorney for the receiver in said action, and the said Sam Leake did receive certain fees, gratuities, and loans directly or indirectly from the said Douglas Short amounting approximately to \$1,200.

In that the said Harold Louderback entered into a conspiracy with the said Sam Leake to violate the provisions of the California Political Code in establishing a residence in the county of Contra Costa when the said Harold Louderback in fact did not reside in said county and could not have established a residence without the concealment of his actual residence in the county of San Francisco, covered and concealed by means of the said conspiracy with the said Sam Leake, all in violation of the law of the State of California.

In that the said Harold Louderback, in order to give color to his fictitious residence in the county of Contra Costa, all for the purpose of preparing and falsely creating proof necessary to establish himself as a resident of Contra Costa County in anticipation of an action he expected to be brought against him, for the sole purpose of meeting the requirements of the Code of Civil Procedure of the State of California providing that all causes of action must be tried in the county in which the defendant resides at the commencement of the action, did in accordance with the conspiracy entered into with the said Sam Leake unlawfully register as a voter in said Contra Costa County, when in law and in fact he did not reside in said county and could not so register, and that the said acts of Harold Louderback constitute a felony defined by section 42 of the Penal Code of California.

Wherefore the said Harold Louderback was and is guilty of a course of conduct improper, oppressive, and unlawful and is guilty of misbehavior in office as such judge and was and is guilty of a misdemeanor in office.

ARTICLE II

That Harold Louderback, judge as aforesaid, was guilty of a course of improper and unlawful conduct as a judge, filled with partiality and favoritism in improperly granting excessive, exorbitant, and unreasonable allowances as disbursements to one Marshall Woodward and to one Samuel Shortridge, jr., as receiver and attorney, respectively, in the matter of the Lumbermen's Reciprocal Association.

And in that the said Harold Louderback, judge as aforesaid, having improperly acquired jurisdiction of the case of the Lumbermen's Reciprocal Association contrary to the law of the United States and the rules of the court did, on or about the 29th day of July, 1930, appoint one Marshall Woodward and one Samuel Shortridge, jr., receiver and attorney, respectively, in said case, and after an appeal was taken from the order and other acts of the judge in said case to the United States Circuit Court of Appeals for the Ninth Circuit and the said order and acts of the said Harold Louderback having been reversed by said United States Circuit Court of Appeals and the mandate of said circuit court of appeals directed the court to cause the said receiver to turn over all of the assets of said association in his possession as receiver to the commissioner of insurance of the State of California, the said Harold Louderback unlawfully, improperly, and oppressively did sign and enter an order so directing the receiver to turn over said property to said State commissioner of insurance but improperly and unlawfully made such order conditional that the said State commissioner of insurance and any other party in interest would not take an

appeal from the allowance of fees and disbursements granted by the said Harold Louderback to the said Marshall Woodward and Samuel Shortridge, jr., receiver and attorney, respectively, thereby improperly using his said office as a district judge to favor and enrich his personal and political friends and associates to the detriment and loss of litigants in his, said judge's court, and forcing said State commissioner of insurance and parties in interest in said action unnecessary delay, labor, and expense in protecting the rights of all parties against such arbitrary, improper, and unlawful order of said judge; and that the said Harold Louderback did improperly and unlawfully seek to coerce said State commissioner of insurance and parties in interest in said action to accept and acquiesce in the excessive fees and the exorbitant and unreasonable disbursements granted by him to said Marshall Woodward and Samuel Shortridge, jr., receiver and attorney, respectively, and did improperly and unlawfully force and coerce the said parties to enter into a stipulation modifying said improper and unlawful order and did thereby make it necessary for the State commissioner of insurance to take another appeal from the said arbitrary, improper, and unlawful action of the said Harold Louderback.

In that the said Harold Louderback did not give his fair, impartial, and judicial consideration to the objections of the said State commissioner of insurance against the allowance of excessive fees and unreasonable disbursements to the said Marshall Woodward and Samuel Shortridge, jr., receiver and attorney, respectively, in the case of the Lumbermen's Reciprocal Association, in order to favor and enrich his friends at the expense of the litigants and parties in interest in said matter, and did thereby cause said State commissioner of insurance and the parties in interest additional delay, expense, and labor in taking an appeal to the United States Circuit Court of Appeals in order to protect their rights and property in the matter against the partial, oppressive, and unjudicial conduct of said Harold Louderback.

Wherefore, said Harold Louderback was and is guilty of a course of conduct oppressive and unjudicial and is guilty of misbehavior in office as such judge and was and is guilty of a misdemeanor in office.

ARTICLE III

The said Harold Louderback, judge aforesaid, was guilty of misbehavior in office resulting in expense, disadvantage, annoyance, and hindrance to litigants in his court in the case of the Fageol Motor Co., for which he appointed one Guy H. Gilbert receiver, knowing that the said Gilbert was incompetent, unqualified, and inexperienced to act as such receiver in said case.

In that the said Harold Louderback, judge as aforesaid, oppressively and in disregard of the rights and interests of litigants in his court did appoint one Guy H. Gilbert as receiver for the Fageol Motor Co., knowing the said Guy H. Gilbert to be incompetent, unfit, and inexperienced for such duties, and did refuse to grant a hearing to the plaintiff, defendant, creditors, and parties in interest in the matter of the Fageol Motor Co. on the appointment of said receiver, and the said Harold Louderback did cause said litigants and parties in interest in said matter to be misinformed of his action while said Guy H. Gilbert took steps necessary to qualify as receiver, thereby depriving said litigants and parties in interest of presenting the facts, circumstances, and conditions of the said equity receivership, the nature of the business and the type of person necessary to operate said business in order to protect creditors, litigants, and all parties in interest, and thereby depriving said parties in interest of the opportunity of protesting against the appointment of an incompetent receiver.

Wherefore the said Harold Louderback was and is guilty of a course of conduct constituting misbehavior as said judge and that said Harold Louderback was and is guilty of a misdemeanor in office.

ARTICLE IV

That the said Harold Louderback, judge aforesaid, was guilty of misbehavior in office, filled with partiality and favoritism, in improperly, willfully, and unlawfully granting on insufficient and improper papers an application for the appointment of a receiver in the Prudential Holding Co. case for the sole purpose of benefiting and enriching his personal friends and associates.

In that the said Harold Louderback did on or about the 15th day of August, 1931, on insufficient and improper application, appoint one Guy H. Gilbert receiver for the Prudential

Holding Co. case when as a matter of fact and law and under conditions then existing no receiver should have been appointed, but the said Harold Louderback did accept a petition verified on information and belief by an attorney in the case and without notice to the said Prudential Holding Co. did so appoint Guy H. Gilbert the receiver and the firm of Dinkelspiel and Dinkelspiel attorneys for the receiver; that the said Harold Louderback in an attempt to benefit and enrich the said Guy H. Gilbert and his attorneys, Dinkelspiel and Dinkelspiel, failed to give his fair, impartial, and judicial consideration to the application of the said Prudential Holding Co. for a dismissal of the petition and a discharge of the receiver, although the said Prudential Holding Co. was in law entitled to such dismissal of the petition and discharge of the receiver; that during the pendency of the application for the dismissal of the petition and for the discharge of the receiver a petition in bankruptcy was filed against the said Prudential Holding Co. based entirely and solely on an allegation that a receiver in equity had been appointed for the said Prudential Holding Co., and the said Harold Louderback then and there willfully, improperly, and unlawfully, sitting in a part of the court to which he had not been assigned at the time, took jurisdiction of the case in bankruptcy and though knowing the facts in the case and of the application then pending before him for the dismissal of the petition and the discharge of the equity receiver, granted the petition in bankruptcy and did on the 2d day of October, 1930, appoint the same Guy H. Gilbert receiver in bankruptcy and the said Dinkelspiel and Dinkelspiel attorneys for the receiver, knowing all of the time that the said Prudential Holding Co. was entitled as a matter of law to have the said petition in equity dismissed; in that through the oppressive, deliberate, and willful action of the said Harold Louderback acting in his capacity as a judge and misusing the powers of his judicial office for the sole purpose of benefiting and enriching said Guy H. Gilbert and Dinkelspiel and Dinkelspiel, did cause the said Prudential Holding Co. to be put to unnecessary delay, expense, and labor and did deprive them of a fair, impartial, and judicial consideration of their rights and the protection of their property, to which they were entitled.

Wherefore the said Harold Louderback was, and is, guilty of a course of conduct constituting misbehavior as said judge and that said Harold Louderback was, and is, guilty of a misdemeanor in office.

ARTICLE V

That Harold Louderback, on the 17th day of April, 1928, was duly appointed United States district judge for the northern district of California, and has held such office to the present day.

That the said Harold Louderback as judge aforesaid, during his said term of office, at divers times and places when acting as such judge, did so conduct himself in his said court and in his capacity as judge in making decisions and orders in actions pending in his said court and before him as said judge, and in the method of appointing receivers and attorneys for receivers, in appointing incompetent receivers, and in displaying a high degree of indifference to the litigants in equity receiverships, as to excite fear and distrust and to inspire a widespread belief in and beyond said northern district of California that causes were not decided in said court according to their merits, but were decided with partiality and with prejudice and favoritism to certain individuals, particularly to receivers and attorneys for receivers by him so appointed, all of which is prejudicial to the dignity of the judiciary.

All to the scandal and disrepute of said court and the administration of justice therein.

Wherefore the said Harold Louderback was, and is, guilty of misbehavior as such judge and of a misdemeanor in office.

[SEAL.]

JNO. N. GARNER,

Speaker of the House of Representatives.

Attest:

SOUTH TRIMBLE, *Clerk.*

Mr. Manager Sumners then entered a reservation of the right to exhibit at any time thereafter any further articles of accusation or impeachment, and made formal announcement that the managers on the part of the House of Representatives—

do now demand that the Senate take order for the appearance of said Harold Louderback to answer said impeachment, and do now demand his impeachment, conviction, and removal from office.

The Vice President responded:

The Chair will state to the managers on the part of the House that the Senate will take proper order on the subject of impeachment, of which due notice shall be given to the House of Representatives.

On motion of Mr. George W. Norris, of Nebraska, the articles of impeachment were ordered printed for the use of the Senate.

Mr. Norris further submitted:

Mr. President, under the Rules of the Senate governing impeachment trials, it would be the duty of the Senate tomorrow at 1 o'clock to organize itself into a court and take the necessary oath, and then proceed with the trial.

It is evident that we shall not be able to comply with the rules now, because this session of Congress will adjourn at 12 o'clock to-morrow, and therefore I ask unanimous consent that the further consideration of the impeachment charges presented by the managers on the part of the House of Representatives be deferred until 2 o'clock on the first day of the first session of the Seventy-third Congress.

The Vice President submitted the request to the Senate, when Mr. Huey P. Long, of Louisiana, objected.

Thereupon, Mr. Norris moved that the impeachment proceedings be made the special order for 2 o'clock on the first day of the first session of the Seventy-third Congress.

Mr. Henry F. Ashurst, of Arizona, addressed the Chair and asked for recognition to debate the motion.

The Vice President held that inasmuch as the motion related to a question of the Senate sitting as a Court of Impeachment, it was not debatable, and recognized all who addressed themselves to the question by unanimous consent only.

Discussion by consent having been concluded, the motion was agreed to; the managers on the part of the House withdrew; and the Senate proceeded to its legislative business.

516. The organization of the Senate for the impeachment trial of Judge Louderback.

A Senator was designated by resolution to administer the oath to the Presiding Officer, who in turn administered the oath simultaneously to all Senators standing in their places.

Certain Senators on their statements were excused from participation in the impeachment proceedings.

Various Senators were excused from voting on a part or all of the articles of impeachment.

On March 9, 1933,¹ the Senate, sitting as a Court of Impeachment, met at 2 o'clock p.m. under its previous order.

On motion of Mr. Norris, Mr. William F. Borah, of Idaho, was designated by the Senate to administer the oath to the presiding officer of the Court of Impeachment.

¹ First session, Seventy-third Congress, Record, p. 47.

Mr. Borah administered the oath to the Vice President as follows:

You do solemnly swear that in all things appertaining to the trial of the impeachment of Harold Louderback, a district judge for the northern district of California, now pending, you will do impartial justice according to the Constitution and laws. So help you God.

Mr. Borah then announced:

Mr. President, I want to make a personal statement before the oath is taken. I feel that I ought not to sit in this matter by reason of some things which transpired at the time of the appointment of Judge Louderback. The question which I wish to submit now is, Should I make that excuse definite at this time or will it be proper after the oath is taken?

Mr. Ashurst suggested:

In my judgment, such statement should be made after Senators shall have taken the oath as members of the court; only the court should excuse Senators from duties to be performed in the court. Care should be taken as to establishing precedents. In strict practice, under the English procedure and under the American procedure, there is no such thing as an impeachment juror or Senator escaping from his responsibility to compose the court. Indeed, in the Andrew Johnson impeachment case, Senator Ben. F. Wade, then the President pro tempore, who would have become President had the impeachment succeeded, was asked to stand aside, but it was determined that there was no way by which he, Senator Wade, could be disqualified and thus made to stand aside. But I am sure, if a Senator should declare that he is disqualified, he could not and should not be required to hear evidence or to render a verdict.

Mr. Hiram W. Johnson, of California, dissented and said:

Mr. President, in order that the matter may be brought to a head, I ask unanimous consent of those who sit here as a court of impeachment or are about to take the oath as jurors or Senators in the court of impeachment, that I be permitted to stand aside in this trial. There are certain incidents which have occurred which, in my opinion, render it improper that I should sit as a judge in this case. I do not wish to detail them, of course, because I feel that in the detailing of them I might do or say something which ought not to be done or said. But while certain of myself, Mr. President, perhaps feeling that I might lean backward one way or the other in a case of this sort, I do not think that I ought to sit in the case, and I ask unanimous consent of the Senate that I may stand aside in the trial of Harold Louderback about to begin.

The question being put, there was no objection and the Vice President announced that the Senator from California was excused.

A similar request by Mr. Borah was agreed to.

Subsequently,¹ Mr. John H. Overton, of Louisiana, requested:

Mr. President, I wish to make a statement. I was a Member of the House of Representatives at the time the articles of impeachment were preferred against Judge Louderback. I voted against the impeachment. I thought that matter should be tendered to the Chair and Members of the Senate before the court convened; but other Senators occupy the same position that I occupy and I wished to consult with them before making the statement. After consulting with them and consulting with some senior Senators who are experienced in such matters, I have come to the conclusion that under all the circumstances it would be proper that I ask to be excused from sitting as a member of the court which I accordingly do.

¹ First session, Seventy-third Congress, Record, p. 49.

The request was granted.

Requests by Mr. Augustine Lonergan,¹ of Connecticut, and Mr. William H. Dieterich,² of Illinois, to be excused for the same reason were likewise agreed to.

Thereupon the Vice President said:

Will members of the court permit the Chair to make a statement? The Chair presided in the House at the time impeachment proceedings were considered by that body. The Chair did not have occasion to vote or in any way express himself concerning the merits of the case. The Chair thought that members of the court ought to know the situation so that if they have any doubt as to the qualifications of the Chair to act as the presiding officer of the court, they may act accordingly.

There was no response.

On May 23,³ at the conclusion of the testimony in the trial, Mr. Royal S. Copeland, of New York, submitted:

Mr. President, on account of illness, I have been away from the Chamber for a number of days. I have heard none of the testimony, and feel myself incompetent either to vote or to continue as a member of the court. Therefore I ask unanimous consent that I may be excused from further attendance and from voting in the Impeachment Court.

The request being submitted to the Senate by the Presiding Officer, there was no objection, and Mr. Copeland was excused.

On the succeeding day⁴ and following the deliberative session of the Senate immediately preceding the vote on the articles of impeachment, Mr. Carter Glass, of Virginia, requested:

Mr. President, on the advice of the distinguished chairman of the Judiciary Committee, the Senator from Arizona, Mr. Ashurst, I am taking the first and last opportunity to say that I shall ask the Senate to excuse me from voting on these various articles of impeachment, for the reason that other public duties have made it impossible for me to be present and hear more than fragments of the testimony adduced in this proceeding and none, of the arguments presented. Therefore I feel that under my oath I am not so advised as to be able to render a verdict as a juror, and I shall ask the Senate to excuse me from voting.

There being no objection, the Senator was excused from voting on the impeachment.

At this stage of the proceedings, by unanimous consent, Mr. Thomas P. Gore, of Oklahoma, was also excused from voting, on account of unavoidable absence, and Mr. Henrik Shipstead, of Minnesota, and Mr. Edward P. Costigan, of Colorado, were excused from voting on the first four articles.

On motion of Mr. Joseph T. Robinson, of Arkansas, by unanimous consent, the oath was administered simultaneously to all the Senators present as follows:

You do each solemnly swear that in all things appertaining to the trial of the impeachment of Harold Louderback, United States district judge for the northern district of California, now pending, you will do impartial justice according to the Constitution and laws. So help you God.

On motion of Mr. Norris it was—

Ordered, That the Secretary notify the House of Representatives that the Senate is now organized for the trial of articles of impeachment against Harold Louderback, United States

¹ Record, p. 49.

² Record, p. 1469.

³ Record, p. 3994.

⁴ Record, p. 4082.

district judge for the northern district of California, and is ready to receive the managers on the part of the House at its bar.

On March 13, 1933,¹ at the hour previously designated for the court to assemble, the Senate sitting as a Court of Impeachment convened; by unanimous consent, the journal of the court was considered as read and approved; the managers of the impeachment on the part of the House of Representatives appeared, were announced, and conducted to the seats assigned them; and proclamation of the sitting of the court was made by the Sergeant at Arms.

Mr. Ashurst announced that if it met with the approval of the managers on the part of the House he proposed to submit the following:

Ordered, That a summons be issued as required by the rules of procedure and practice in the Senate, when sitting for the trial of the impeachment against Harold Louderback, United States district judge for the northern district of California, returnable on Tuesday, the 11th day of April, 1933, at 12.30 o'clock in the afternoon.

Mr. Manager Sumners, speaking for the managers, approved the form of the order and it was agreed to.

517. Managers of an impeachment being no longer Members of the House by reason of the expiration of their terms, successors were elected.

Discussion of the power of the House to appoint managers to continue in office in that capacity after the expiration of the term for which they were elected to the House.

A resolution providing for the selection of managers of an impeachment was admitted as a matter of privilege.

Instance wherein the number of managers of an impeachment was increased after the institution of proceedings in the Senate.

On March 22,² Mr. Manager Sumners rising in the House, offered this resolution:

Whereas in the Seventy-second Congress, on the 27th day of February, 1933, Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of the House of Representatives, were appointed managers on the part of the House of Representatives to conduct the impeachment against Harold Louderback, a United States district judge for the northern district of California; and

Whereas the said LaGuardia and Sparks are no longer Members of the House of Representatives:

Resolved, That Randolph Perkins and U. S. Guyer, Members of the House of Representatives, be, and they are hereby, appointed to serve with the said Hatton W. Sumners, Gordon Browning, and Malcolm C. Tarver as the managers on the part of the House of Representatives to conduct the impeachment pending in the United States Senate against Harold Louderback, a United States district judge for the northern district of California.

Mr. Edward W. Goss, of Connecticut, submitted a parliamentary inquiry as to the privilege of the resolution.

The Speaker held it to be privileged.

Mr. Robert Luce, of Massachusetts, raised a question as to the power of the House to appoint managers beyond the term of their office as Representatives.

¹ Record, p. 260.

² Record, p. 768.

In reply, Mr. Sumners said:

My judgment, after careful examination, is that the House of Representatives may appoint managers who can continue after the expiration of the term for which that House has been elected.

I want to be very candid with the House. I am anxious to go as far as we may safely go toward establishing a precedent in that direction. We find upon examination of the Constitution that there lie between the provisions of the Constitution spaces that have to be filled in either by judicial construction or by precedent. Only precedent can occupy the space, for instance, which lies between the provision granting to the House—not as a part of the Congress, however—the power to originate and prosecute impeachments and that great constitutional guaranty of a speedy trial. Judicial construction may not enter there. We barely escaped a very difficult situation in this case. As the Members of the House here present who were Members of the preceding House will remember, this impeachment was sent to the Senate near the expiration of the Seventy-second Congress. If the Congress had not been called into extraordinary session, in the absence of any recognized right on the part of a House to empower managers to proceed after the expiration of that House, this judge would have rested under impeachment for a year, without possibility of trial, notwithstanding the general principles which run through our whole system of giving the right of speedy trial. Not only is the duty to make effective to the individual a great constitutional right but there is involved a great public interest. Precedents are not unakin to legislative enactments. When established they come to have the force of law. It is as much a duty to set helpful and proper precedents as it is to make wise and helpful laws. I am anxious to go as far in this instance as we may safely go in establishing a proper and helpful precedent.

Mr. Bertrand H. Snell, of New York, questioned the right of the House to extend the powers or privileges of such managers, or other appointees, beyond the life of the House itself, and after debate, Mr. Sumners withdrew the resolution and reintroduced it in this form:

Whereas in the Seventy-second Congress on the 27th day of February, 1933, Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of the House of Representatives, were appointed managers on the part of the House of Representatives to conduct the impeachment against Harold Louderback, a United States district judge for the northern district of California; and

Whereas the said LaGuardia and Sparks are no longer Members of the House of Representatives:

Resolved, That Randolph Perkins and U. S. Guyer, Members of the House of Representatives, be, and they are hereby, appointed in lieu of the said LaGuardia and Sparks to serve with the said Hatton W. Sumners, Gordon Browning, and Malcolm C. Tarver as the managers on the part of the House of Representatives to conduct the impeachment pending in the United States Senate against Harold Louderback, a United States district judge for the northern district of California.

The resolution as revised was agreed to; the Clerk was directed to notify the Senate; and on the motion of Mr. Sumners, it was further—

Resolved, That the managers on the part of the House in the matter of the impeachment of Harold Louderback, United States district judge for the northern district of California, be, and they are hereby, authorized to employ legal, clerical, and other necessary assistants and to incur such expenses as may be necessary in the preparation and conduct of the case, to be paid out of the contingent fund of the House on vouchers approved by the managers; and the managers have power to send for persons and papers, and also that the managers have authority to file with the Secretary of the Senate, on the part of the House of Representatives, any subsequent pleadings which they shall deem necessary: *Provided*, That the total expenditures authorized by this resolution shall not exceed \$3,230.25, being the amount of the unexpended balance of \$5,000 authorized to be expended by the special committee designated under authority of House Resolution 239, Seventy-second Congress, first session, approved June 9, 1932, to inquire into the official conduct of said Harold Louderback.

On March 27,¹ the Chair laid before the House the following communication:

HOUSE OF REPRESENTATIVES,
Washington, D. C., March 27, 1933.

Hon. HENRY T. RAINEY,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. RAINEY: I hereby submit my resignation as one of the managers on the part of the House in the pending impeachment proceedings against Harold Louderback, a United States judge for the northern district of California.

Yours truly,

M. C. TARVER.

The resignation was accepted, and on April 3,² a resolution offered by Mr. Sumners, as privileged, was agreed to and messaged to the Senate as follows:

Whereas Malcolm C. Tarver, on the 27th day of March, 1933, submitted to the House of Representatives his resignation as a manager on the part of the House in the pending impeachment against Harold Louderback, a district judge of the United States for the northern district of California, which resignation on said date was accepted by the House of Representatives,

Resolved, That J. Earl Major and Lawrence Lewis, Members of the House of Representatives, be, and they are hereby, appointed managers on the part of the House of Representatives, with the managers on the part of the House heretofore appointed and acting, to conduct the impeachment pending in the United States Senate against Harold Louderback, a district judge of the United States for the northern district of California.

518. The respondent having waived personal service, the oath was not administered to the Sergeant at Arms on the return of the writ.

Form of proclamation by the Sergeant at Arms calling. Judge Louderback to appear and answer the articles of impeachment.

Judge Louderback appeared in person, attended by counsel, to answer the articles.

The answer of Judge Louderback to the articles of impeachment.

A motion entered by respondent to make more definite and certain an article of the articles of impeachment was agreed to by the managers on the part of the House without action by the Senate.

Allowance of time in which to file pleadings.

On April 11,³ the managers on the part of the House were received in the Senate with the usual formalities and the respondent, Harold Louderback, and his counsel, James M. Hanley, Esq., and Walter H. Linforth, Esq., appeared and were conducted to the seats assigned to them in the space in front of the Secretary's desk on the right of the Chair.

Mr. Ashurst offered the following resolution:

IN THE SENATE OF THE UNITED STATES,
SITTING AS A COURT OF IMPEACHMENT.

Whereas on March 13, 1933, John N. Garner, Vice President and President of the Senate, acting under authority of the Senate, sitting as a Court of Impeachment, and in accordance with the Rules for Impeachment Trials, issued a writ of summons to Harold Louderback, United States district judge for the northern district of California, commanding him to appear before the Senate of the United States of America at their Chamber in the city of Washington on the 11th

¹ Record, p. 876.

² Record, p. 1155.

³ Record, p. 1462.

day of April, 1933, at 12:30 o'clock afternoon, to answer to articles of impeachment exhibited against him by the House of Representatives of the United States of America, and addressed to Chesley W. Journey, Sergeant at Arms of the Senate, a precept commanding him to serve true and attested copies of said writ of summons and precept upon the said Harold Louderback personally or by leaving same at his usual place of abode or at his usual place of business; and

Whereas since the recess of the Senate, sitting as a Court of Impeachment, the said Chesley W. Journey, as Sergeant at Arms, acting upon a suggestion of the Committee on the Judiciary of the Senate, with a view to securing a waiver of personal service of said writ of summons as required by the precept, communicated by telegraph with the said Harold Louderback, who consented to such waiver, and who subsequently forwarded to said Chesley W. Journey, as Sergeant at Arms, a waiver, in writing, of personal service of said writ of summons, signed by him and witnessed on the 28th day of March, 1933, agreeing voluntarily to appear in person before the Senate of the United States at the time and place specified in said writ of summons and acknowledging receipt of true and attested copies of said writ of summons and precept, transmitted to him by the said Chesley W. Journey, Sergeant at Arms: Now, therefore, be it

Resolved, That the action of the said Chesley W. Journey, Sergeant at Arms of the Senate, in securing waiver of personal service of said writ of summons upon the said Harold Louderback be, and the same is hereby, ratified and approved; that the delivery, by registered mail, of true and attested copies of the said writ of summons and precept to the said Harold Louderback, and his acceptance thereof, be deemed and taken to have been a satisfactory and sufficient compliance by the said Chesley W. Journey, Sergeant at Arms, with the said precept, and that the said Chesley W. Journey, as Sergeant at Arms, be, and he is hereby, authorized to make return of said writ of summons and precept accordingly.

The resolution having been agreed to, the Secretary, by direction of the Vice President, read the return of the Sergeant at Arms to the summons as follows:

SENATE OF THE UNITED STATES.

OFFICE OF THE SERGEANT AT ARMS.

The foregoing writ of summons, addressed to Harold Louderback, and the foregoing precept, addressed to me, were duly served upon the said Harold Louderback by the transmittal, by registered mail, to the said Harold Louderback of true and attested copies of the same, and by his receipt thereof, as shown in the attached waiver by the said Harold Louderback of personal service of summons, said waiver being made a part of this return.

CHESLEY W. JOURNEY,

Sergeant at Arms, United States Senate.

IN THE SENATE OF THE UNITED STATES, SITTING AS A COURT OF IMPEACHMENT IN THE CASE OF HAROLD LOUDERBACK, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Waiver of personal service of Harold Louderback, United States district judge for the northern district of California.

I, Harold Louderback, United States district judge for the northern district of California, do hereby waive personal service of summons issued on the 13th day of March, 1933, by Hon. John N. Garner, Vice President and President of the Senate, which commands me to appear before the Senate of the United States on April 11, 1933, at 12.30 p. m., to answer specific articles of impeachment exhibited to the Senate by the House of Representatives, and agree to voluntarily appear in person before the Senate of the United States at the aforesaid time.

I acknowledge receipt of a true and attested copy of the writ of summons issued in this case, together with a like copy of the precept.

Witness my signature this 28th day of March, 1933, at the city of San Francisco, State of California.

HAROLD LOUDERBACK,

Respondent.

Signature of witness:

JAMES M. HANLEY.

The Vice President announced that in view of the waiver of summons by the respondent, the administration of the oath to the Sergeant at Arms would be dispensed with, and directed the Sergeant at Arms to make proclamation.

The Sergeant at Arms made proclamation:

Harold Louderback! Harold Louderback! Harold Louderback, United States district judge for the northern district of California: Appear and answer to the articles of impeachment exhibited by the House of Representatives against you.

The Vice President resumed:

The Chair advises the counsel for the respondent that the Senate is now sitting for the trial of Harold Louderback, United States district judge for the northern district of California, upon the articles of impeachment exhibited by the House of Representatives, and will hear his answer thereto.

Mr. Linforth, of counsel for the respondent, announced that the respondent appeared in person and by counsel, and submitted a written appearance which he asked to have filed and which was read by the Secretary as follows:

IN THE SENATE OF THE UNITED STATES,
SITTING AS A COURT OF IMPEACHMENT.

THE UNITED STATES OF AMERICA *v.* HAROLD LOUDERBACK, APPEARANCE OF RESPONDENT.

The respondent, Harold Louderback, having been served with a summons requiring him to appear before the Senate of the United States of America at their Chamber in the city of Washington, on the 11th day of April, 1933, at 12.30 o'clock afternoon, to answer certain articles of impeachment presented against him by the House of Representatives of the United States, now appears in his proper person and also by his counsel, who are instructed by this respondent to inform the Senate that respondent is ready to file his answer to said articles of impeachment at this time.

Dated this 11th day of April, 1933.

HAROLD LOUDERBACK.

WALTER H. LINFORTH,
JAMES M. HANLEY,

Counsel for Respondent.

The Vice President directed that the appearance be placed on file, and said:

Counsel for the respondent may make a statement, or the respondent in person may do so.

Mr. Linforth then presented the answer of the respondent to the articles of impeachment which, by direction of the Vice President, was read by the Secretary as follows:

IN THE SENATE OF THE UNITED STATES,
SITTING AS A COURT OF IMPEACHMENT.

THE UNITED STATES OF AMERICA *v.* Harold Louderback, Upon Articles of Impeachment Presented by
The House of Representatives of The United States of America.

*Answer of respondent Harold Louderback to the articles of impeachment exhibited against him by the
House of Representatives of the United States*

ANSWER TO ARTICLE I

For answer to the first article the respondent says that this honorable court ought not to have or take further cognizance of the first of said articles of impeachment so exhibited and presented against him, because, he says, the facts set forth in said first article do not if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United

States, and that therefore the Senate, sitting as a Court of Impeachment, should not further entertain the charge contained in said first article.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a Court of Impeachment, as to said first article, said respondent saving to himself all advantages of exception to said first article, for answer thereto saith:

I

Admits that he is now and was at all times mentioned in said article a duly appointed, qualified, and acting judge of the United States District Court for the Northern District of California.

II

Further answering said article, the respondent admits, denies, and alleges as follows:

Admits that on the 11th day of March, 1930, by an order duly made and entered in that certain action then pending in the United States District Court for the Northern District of California, in which Gardner M. Olmstead was plaintiff and Russell Colvin Co. was defendant, he appointed one Addison G. Strong as equity receiver.

Admits that on the 13th day of March, 1930, by an order duly made and entered in said action he revoked and set aside the order appointing said Addison G. Strong as receiver in said action.

Alleges that the facts and circumstances surrounding and leading up to the making of the said order on the 13th day of March, 1930, setting aside the appointment of the said Addison G. Strong were as follows, and not otherwise:

(The remainder of Article II and Articles III, IV, and V set forth in detail the respondent's answer to the specific charges in the articles of impeachment.)

Article V of the answer includes the following:

I

That said Article V is so uncertain and indefinite as to time, place, and proceedings that respondent can not ascertain therefrom with reasonable, or any, certainty, in what proceeding or proceedings, or at what time or times, or at what place or places, his conduct was, as set forth in said Article V, and respondent can not safely proceed to trial as to said fifth article before this honorable Senate, sitting as a Court of Impeachment, at a distance of more than 3,000 miles from where respondent has presided as such judge, as aforesaid, without being apprised in advance in the particulars aforesaid, in order to procure the attendance of such witnesses as may be necessary to meet such charge or charges.

Wherefore respondent, upon the reading and filing of this answer will move the honorable Senate of the United States, sitting as a Court of Impeachment, to require the honorable House of Representatives of the United States, within a reasonable time, to be by it specified, to make said fifth article more definite and certain in the particulars aforesaid, and failing so to do, this honorable body dismiss said Article V.

And without waiving but expressly reserving his right to make said motion and to have the same passed upon by the honorable Senate of the United States, sitting as a Court of Impeachment, respondent, answering said Article V, admits and denies as follows, to wit:

The answer concluded:

V

Respondent further denies that he ever was or now is guilty of misbehavior as such judge and/or of a misdemeanor in office.

Except as hereinbefore specifically admitted, respondent denies each and every allegation in said Article V contained.

And this respondent in submitting to this honorable court this his answer to the articles of impeachment exhibited against him, respectfully insists that he is not guilty of any of the charges contained in any of the said 5 articles of impeachment, and respectfully reserves leave to amend and add to this his said answer from time to time as may become necessary or proper and when said necessity and propriety shall appear.

Dated April 11, 1933.

HAROLD LOUDERBACK,
Respondent.
WALTER H. LINFORTH,
JAMES M. HANLEY,
Of Counsel for Respondent.

Mr. Linforth then submitted written notice of a motion to make the fifth article in the articles of impeachment more definite and certain. The notice was read by the Secretary, as follows:

IN THE SENATE OF THE UNITED STATES,
SITTING AS A COURT OF IMPEACHMENT,

THE UNITED STATES OF AMERICA V. HAROLD LOUDERBACK—MOTION TO MAKE ARTICLE V OF THE ARTICLES
OF IMPEACHMENT MORE DEFINITE AND CERTAIN

The respondent, Harold Louderback, moves the honorable Senate sitting as a Court of Impeachment, for an order requiring the honorable House of Representatives of the United States, within a reasonable specified time, to make more definite and certain the charges contained in Article V of the articles of impeachment herein in the following particular or particulars, that is to say:

To specify the time and times, and the place or places, and the name or title of the proceeding or proceedings, and the circumstance or circumstances wherein in said fifth article it is claimed the said respondent was guilty of the conduct referred to and set forth therein.

Said motion is made for the reason and on the ground that it is impossible for respondent to be prepared to meet said charges and to summon witnesses in regard thereto without first being advised of the time and times, and the place and places, and the name or title of the proceeding or proceedings, and the circumstance or circumstances wherein in said fifth article it is claimed the said respondent was guilty of the conduct referred to and set forth therein.

And, in the event of the failure of said House of Representatives within the time so fixed to amend said fifth article in the particulars aforesaid, that this honorable body dismiss the charges contained in said fifth article.

Dated April 11, 1933.

WALTER H. LINFORTH,
JAMES M. HANLEY,
Counsel for Said Respondent.

In conformity with the notice, Mr. Linforth, on behalf of the respondent, moved to require the House to specify, in the particulars set forth, the fifth count of the articles of impeachment, and failing to do so within a reasonable time, that the article be dismissed.

Mr. Manager Sumners responded:

Mr. President, the managers on the part of the House, in order to comply with the suggestion of counsel for the respondent and to save the necessity of considering the motion, consent to attempt to make article 5 more specific and to procure the endorsement of the House of Representatives. It is understood that we can not of ourselves do these things. They have to be done through the House, but we will undertake to do the best we can.

Accordingly, on motion of Mr. Ashurst, it was—

Ordered. That the managers on the part of the House be allowed until the 15th day of May, 1933, at 1 o'clock in the afternoon, to present a replication or other pleading, of the House of

Representatives to the answer of the respondent. That any subsequent pleadings, either on the part of the Managers or of the respondent, shall be filed with the Secretary of the Senate, of which notice shall be given to the House of Representatives and the respondent, respectively, so that all pleadings shall be closed on or before the 15th day of May, 1933, and that the trial shall proceed on the said 15th day of May, 1933, at 1 o'clock p. m.

During the discussion occasioned by the proposed order, Mr. Long dissented and was proceeding in debate, when Mr. Sam G. Bratton, of New Mexico, made the point of order that under the rules governing impeachment trials Senators were not permitted to engage in colloquies.

The Vice President said:

The point of order is sustained.

An order having been made for printing the answer of the respondent for the use of the Senate, it was further:

Ordered, That lists of witnesses be furnished to the Sergeant at Arms by the managers and by the respondent, and said witnesses shall be subpoenaed to appear on Monday, the 15th day of May, 1933, at 1 o'clock p. m.

519. Certain rules adopted by the Senate for the trial of Judge Louderback.

Managers and counsel for respondent might submit applications orally to the Presiding Officer but if requested by any Senator should reduce them to writing.

Managers and counsel for respondent were required to address motions or objections directly to the Presiding Officer and not otherwise.

Senators might not engage in colloquies or address directly the managers, the counsel, or each other.

Stipulations in writing by parties were received by the Senate as though the facts therein agreed upon had been established by evidence.

Decisions of the Presiding Officer on questions raised by parties in the course of the trial stood as the judgment of the Senate unless a Senator made formal request for a vote thereon.

Mr. Bratton, from the Senate Committee on the Judiciary, offered the following:

Ordered, That in addition to the rules of procedure and practice in the Senate when sitting on impeachment trials, heretofore adopted, and supplementary to such rules, the following rules shall be applicable in the trial of the impeachment of Harold Louderback, United States judge for the northern district of California:

1. In all matters relating to the procedure of the Senate, whether as to form or otherwise, the managers on the part of the House or the counsel representing the respondent may submit a request or application orally to the Presiding Officer, or, if required by him or requested by any Senator, shall submit the same in writing.

2. In all matters relating immediately to the trial, such as the admission, rejection, or striking out of evidence, or other questions usually arising in the trial of causes in courts of justice, if the managers on the part of the House or counsel representing the respondent desire to make any application, request, or objection, the same shall be addressed directly to the Presiding Officer and not otherwise.

3. It shall not be in order for any Senator, except as provided in the rules of procedure and practice in the Senate when sitting on impeachment trials, to engage in colloquy or to address questions either to the managers on the part of the House or to counsel for the respondent, nor

shall it be in order for Senators to address each other; but they shall address their remarks directly to the Presiding Officer and not otherwise.

4. The parties may, by stipulation in writing filed with the Secretary of the Senate and by him laid before the Senate or presented at the trial, agree upon any facts involved in the trial; and such stipulation shall be received by the Senate for all intents and purposes as though the facts therein agreed upon had been established by legal evidence adduced at the trial.

5. The parties or their counsel may interpose objection to witnesses answering questions propounded at the request of any Senator, and the merits of any such objection may be argued by the parties or their counsel; and the Presiding Officer may rule on any such objection, which ruling shall stand as the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be without debate and without a division, unless the ayes and nays be demanded by one fifth of the Members present, when the same shall be taken.

The order was agreed to, and the Senate sitting as a court of impeachment stood in recess.

520. In response to respondent's motion to make more certain, the House revised an article of the articles of impeachment and transmitted it to the Senate as amended.—On April 17¹ the Speaker laid before the House the following communication from the Senate:

I, Edwin A. Halsey, Secretary of the Senate of the United States of America, certify that the Senate, sitting for the trial of Harold Louderback, United States district judge for the northern district of California, upon articles of impeachment exhibited against him by the House of Representatives of the United States of America, did on April 11, 1933, adopt an order, of which the following is a full, true, correct, and compared copy:

“Ordered, That the Secretary of the Senate communicate to the House of Representatives an attested copy of the answer of Harold Louderback, judge of the United States district court in and for the northern district of California, to the articles of impeachment, and also a copy of the foregoing order.”

I do hereby further certify that the document hereto attached, consisting of 38 sheets, is a photostatic copy of the answer of said Harold Louderback to the articles of impeachment exhibited against him by the House of Representatives, presented by said Harold Louderback to the Senate, sitting as Court of Impeachment, on April 11, 1933.

In testimony whereof I hereunto subscribe my name and affix the seal of the Senate of the United States of America this 12th day of April, A. D. 1933.

[SEAL.]

EDWIN A. HALSEY,

Secretary of the Senate of the United States.

Mr. Sumners called up as privileged a proposed amendment to article 5 of the articles of impeachment as follows:

AMENDMENT TO ARTICLE 5 OF THE ARTICLES OF IMPEACHMENT BY THE HOUSE OF REPRESENTATIVES
EXHIBITED AGAINST HAROLD LOUDERBACK, JUDGE OF THE UNITED STATES IN AND FOR
THE NORTHERN DISTRICT OF CALIFORNIA.

Article 5 is amended to read as follows:

“Article 5.

“It is intended by article 5 to charge, and it is charged, that the reasonable and probable result of Harold Louderback's action in his capacity as judge in making decisions and orders in

¹ Record, p. 1846.

actions pending in his court and before him as said judge and by the method of appointing receivers and attorneys for receivers, by appointing incompetent receivers and attorneys, by his relationship and transactions with one Sam Leake, and by the relationship and transactions of the said Sam Leake with such appointees of the said respondent made possible and probable by the action and attitude of the said Harold Louderback, and by displaying a high degree of indifference to the interest of estates and parties in interest in receiverships before him and his court, and by displaying a high degree of interest in making it possible for certain individuals and firms to derive large fees from the funds of such estates, has been to create a general condition of wide-spread fear and distrust and disbelief in the fairness and disinterestedness of the official actions of the said Harold Louderback, and to create by his said acts, deeds, and relationships, contrary to his individual and official duty, a favorable condition and a cause for the development naturally and inevitably of rumors and suspicions destructive of public confidence in and respect for the said Harold Louderback as an individual and a judge to the scandal and disrepute of his said court and the administration of justice therein and prejudicial generally to the public respect for and public confidence in the Federal judiciary. Wherefore the said Harold Louderback was and is guilty of misbehavior as such judge and of misdemeanors in office.

"It is hereby alleged and charged that the conduct of said Harold Louderback, as alleged in articles 1, 2, 3, and 4, and as hereinafter alleged, in its general and aggregate result has been such as reasonably and probably calculated to destroy public confidence in so far as he and his court are concerned in that degree of disinterestedness and fidelity to judicial duty and responsibility which the public interest requires shall be held by the people in the Federal courts and in those who administer them, and which for a Federal judge to hurt or destroy is a crime and misdemeanor of the highest order;

"First, specifying as indicative of and disclosing the character and judicial attitude of said Harold Louderback revealed by his acts and official conduct to the people among whom he has jurisdiction, and the cause for the loss of public confidence of the bar and people of the northern district of California and particularly of the city of San Francisco, where the principal business of such court is transacted, on or about December 19, 1929, the said Harold Louderback appointed one Guy H. Gilbert receiver of the Sonora Phonograph Co., a going concern extensively engaged in the business of receiving and distributing radios and phonographs, the said Guy H. Gilbert being a personal and political friend of the said Harold Louderback, and an intimate friend and financial contributor to one Sam Leake, hereinafter referred to, the said Harold Louderback knowing at the time of such appointment that the whole training and experience of the said Guy H. Gilbert had been as operator and employee of a telegraph company, and the said Harold Louderback at the time of such appointment knowing with certainty that the said Guy H. Gilbert was without qualification to discharge the duties of such receivership, that the said Guy H. Gilbert was appointed such receiver by the said Harold Louderback without regard to the interest of such estate in receivership and in disregard thereof and of the interest of creditors and parties in interest and in violation of the official duty of the said Harold Louderback. That the said Gilbert after said appointment continued in his regular and usual duties and employment as employee of said telegraph company, drawing his accustomed salary during his employment of approximately 6 months as such receiver and received for such services from the funds of the estate of said Sonora Phonograph Co. the sum of \$6,800, all of which facts became the subject of newspaper comments and matters of common knowledge throughout and beyond the northern judicial district of California, to the hurt of public confidence in the said Harold Louderback, judge of said court, and to the hurt and standing of the Federal judiciary.

The proposed amendment then recounted the appointment of Guy H. Gilbert as receiver in various other cases and charged that he was incompetent and had not in fact discharged the duties of receiver but had merely signed the papers in such

cases and accepted sums which were a small part of the compensation allowed by the respondent in his capacity as judge. The amendment concluded:

All of which facts and circumstances became published and known in said northern district of California. By such acts the said Harold Louderback exhibited himself to the public as being willing to obstruct the officials of the State of California in their effort to conserve for citizens of California the assets of said insurance company which they had impounded, willing to assert a jurisdiction which he did not possess, willing to defy a mandate of the circuit court of appeals and attach an illegal and unconscionable condition to said mandate in order to penalize and discourage the exercise of a constitutional right of appeal for the definite and obvious purpose of making sure, so far as possible by such illegal action and coercion, that the said Shortridge and his attorney would be paid from the assets of said insurance company so impounded the fees which he, the said Harold Louderback, had allowed, all to the scandal and discredit of the said Harold Louderback and his court and prejudicial to the dignity of the judiciary.

"Wherefore the said Harold Louderback has been and is guilty of high crimes and misdemeanors in office and has not conducted himself with good behavior."

After brief debate, the amendment was agreed to and on motion of Mr. Sumners it was—

Resolved, That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted an amendment to article 5 of the articles of impeachment heretofore exhibited against Harold Louderback, United States district judge for the northern district of California, and that the same will be presented to the Senate by the managers on the part of the House.

And also that the managers have authority to file with the Secretary of the Senate, on the part of the House, any subsequent pleadings they shall deem necessary.

521. The amended article of impeachment when received in the Senate was filed without being read, it having previously appeared in full in the Record.

The answer of the respondent to the amended article of impeachment.

The managers were excused from attendance on the sessions of the House during the course of the trial in the Senate.

On April 18,¹ in the Senate sitting as a Court of Impeachment, on motion of Mr. Ashurst, by unanimous consent, the reading of the amendment adopted by the House to Article 5 of the articles of impeachment was dispensed with, it having appeared in full in the Record of the previous day.

The respondent, by counsel, tendered his answer to Article 5 as amended by the House and proposed to enter a motion to strike out certain portions of the amended article and asked to be heard on the motion.

The answer was received and filed without reading as follows:

ANSWER TO ARTICLE 5, AS AMENDED

For answer to Article 5, as amended, the respondent says that this honorable court ought not to have or take further cognizance of said fifth article of impeachment so exhibited and presented against him, because, he says, the facts set forth in said fifth article, as amended, do not, if true, constitute an impeachable high crime and misdemeanor as defined by the Constitution of the United States, and that therefore the Senate, sitting as a Court of Impeachment, should not further entertain the charge contained in said fifth article as so amended.

¹Record, p. 1877.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a Court of Impeachment, as to said fifth article, as amended, said respondent saving to himself all advantages of exception to said fifth article, as amended, for answer thereto saith:

Further answering said Article 5 as so amended, the respondent admits, denies, and alleges as follows:

Then follow specific admissions, denials, and allegations.

The answer concluded:

And, except as hereinbefore specifically admitted herein, respondent denies each and every allegation contained in said article 5, as so amended, relating or referring to the said *Golden State Asparagus Co. case*, so called.

Wherefore respondent having fully answered said article 5, as amended, declares that he is not guilty of any of the charges therein contained and denies that he has been or that he is guilty of high crimes and misdemeanors in office, or has been guilty of any high crime or any misdemeanor in office, and likewise denies that he has not conducted himself with good behavior.

HAROLD LOUDERBACK,
Respondent.
WALTER H. LINFORTH,
JAMES M. HANLEY,

APRIL 18, 1933.

Attorneys for Respondent.

The following motion was filed on behalf of the respondent:

MOTION TO STRIKE OUT OR MAKE MORE CERTAIN PORTIONS OF ARTICLE 5, AS AMENDED

The respondent, Harold Louderback, moves the Honorable Senate, sitting as a Court of Impeachment, for an order as follows:

1. Striking from article 5, as amended, the first paragraph thereof, constituting the entire first page; and
2. Striking therefrom the following part and portion thereof contained on pages 3 and 4 and reading as follows:

"It also became a matter of newspaper comment in connection with that receivership matter and others that theretofore, about 1925 or 1926, the said Gilbert had been appointed by the said Harold Louderback when the said Harold Louderback was a judge of the Superior Court of California, an appraiser of certain real estate, the said Harold Louderback well knowing at the time of such appointments that the said Gilbert was without any qualification to appraise the value of such real estate, and in truth the said Gilbert never saw said real estate, and that the said Gilbert did not undertake to assist in the appraisal of said real estate, only signing the report which was presented to him, for which services he was snowed the sum of \$500."

The first part of said motion is based upon the ground and for the reason that it is impossible for respondent to be prepared to meet the said charge therein contained or to summons witnesses in respect thereto without being advised, first, the nature of the act or acts there attempted to be complained of; second, the time or times of said act or acts were committed by respondent; third, in what action or actions, proceeding or proceedings, such alleged acts occurred; fourth, the nature of the relationship and transactions of said Leake there attempted to be referred to and, fifth, with what appointee or appointees of respondent said "relationship and transactions" with the said Leake occurred.

And the second part of said motion is based upon the grounds that the alleged offense there referred to was not committed in the office now occupied by respondent and that this honorable Senate, sitting as a Court of Impeachment, has not jurisdiction to inquire into the transaction attempted to be complained of in said article 5, as amended, in that the act there attempted to be complained of is not and can not be the subject of this article of impeachment, and is not

and can not be a high crime or misdemeanor as defined by the Constitution of the United States, but if true is an act committed by respondent while an officer of a State and not a Federal court.

And, in the event of the denial of said motion, or either part thereof, then and in such event, respondents moves this honorable Senate, sitting as a Court of Impeachment, to require the House of Representative of the United States within a time so to be fixed, to further amend said article 5 in the particulars and each thereof specified herein as the reason and grounds for the making of said motion to strike therefrom the portions of said article 5, as amended, above specified.

Dated: April 18, 1933.

WALTER H. LINFORTH,

JAMES M. HANLEY,

Counsel for Said Respondent.

Mr. Hanley, of counsel for the respondent, being recognized, said that an agreement had been reached with the managers on the part of the House under which the reference in paragraph 1 of the amended article 5 should refer only to matters set out in articles 1, 2, 3, and 4 and the rest of the amended article 5, and that no testimony relating to other matters would be offered.

Mr. Hanley cited a reference in paragraph 1 of the articles of impeachment referring to the conduct of the respondent while he was serving as a State judge and submitted that the conduct of the respondent as State judge was not within the jurisdiction of the Senate.

Mr. Manager Sumners, in reply, corroborated the statement of respondent's counsel with reference to the terms of the agreement between counsel for respondent and the managers on the part of the House; disclaimed any intention on the part of the managers to impeach the respondent on the strength of his conduct as a member of the State judiciary; and justified the inclusion of the matter referred to as admissible under "at least two well-recognized rules" governing the admissibility of evidence.

In the House on May 9,¹ on motion of Mr. Sumners, by unanimous consent, the managers on the part of the House in the impeachment proceedings before the Senate were excused from attendance upon the sessions of the House until the conclusion of the trial.

522. The replication of the House to the answer of the respondent in the Louderback trial.

On motion of the managers, a clerk and additional counsel were authorized to sit with them in the conduct of the trial.

The managers announced that they had omitted the presentation of certain formal evidence, customary to impeachment proceedings, as relating to facts too obvious to require proof.

The Senate, by resolution, limited the opening statements to one person, on each side.

The Vice President was authorized to name a Senator to preside in the absence of the President pro tempore.

Questions of order raised in the course of an impeachment trial are decided without debate.

A question put by a Senator to a witness in an impeachment trial is reduced to writing and put by the Presiding Officer.

¹ Record, p. 3084.

On May 15,¹ in the Senate, sitting for the trial, Mr. Manager Sumners submitted the replication of the House of Representatives to the answer of the respondent as follows:

REPLICATION OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA TO THE ANSWER OF HAROLD LOUDERBACK, DISTRICT JUDGE OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, TO THE ARTICLES OF IMPEACHMENT, AS AMENDED, EXHIBITED AGAINST HIM BY THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA

The House of Representatives of the United States of America, having considered the several answers of Harold Louderback, district judge of the United States for the northern district of California, to the several articles of impeachment, as amended, against him by them exhibited in the name of themselves and of all the people of the United States, and reserving to themselves all advantages of exception to the insufficiency, irrelevancy, and impertinency of his answer to each and all of the several articles of impeachment, as amended, so exhibited against the said Harold Louderback, judge as aforesaid, do say:

(1) That the said articles, as amended, do severally set forth impeachable offenses, misbehaviors, and misdemeanors as defined in the Constitution of the United States, and that the same are proper to be answered unto by the Said Harold Louderback, judge as aforesaid, and sufficient to be entertained and adjudicated by the Senate sitting as a Court of Impeachment.

(2) That the said House of Representatives of the United States of America do deny each and every averment in said several answers, or either of them, which denies or traverses the acts, intents, misbehaviors, or misdemeanors charged against the said Harold Louderback in said articles of impeachment, as amended, or either of them, and for replication to said answers do say that Harold Louderback, district judge of the United States for the northern district of California, is guilty of the impeachable offenses, misbehaviors, and misdemeanors charged in said articles, as amended, and that the House of Representatives are ready to prove the same.

HATTON W. SUMNERS,
On Behalf of the Managers.

In response to the motion of the respondent that certain allegations in article 5 of the articles of impeachment be made, more certain, Mr. Sumners presented the following:

MAKING MORE SPECIFIC AN ALLEGATION CONTAINED IN ARTICLE 5, ARTICLES OF IMPEACHMENT, AS AMENDED

Whereas on April 17, 1933, the managers on the part of the House of Representatives, in the impeachment against Harold Louderback, filed an amendment to article 5 of the Articles of Impeachment, which contains the following language:

"It also became a matter of newspaper comment in connection with that receivership matter and others that theretofore, about 1925 or 1926, the said Gilbert had been appointed by the said Harold Louderback when the said Harold Louderback was a judge of the Superior Court of California, an appraiser of certain real estate, the said Harold Louderback well knowing at the time of such appointment that the said Gilbert was without any qualification to appraise the value of such real estate, and in truth the said Gilbert never saw said real estate, and that the said Gilbert did not undertake to assist in the appraisal of said real estate, only signing the report which was presented to him, for which services he was allowed the sum of \$500."

And whereas said language and allegation was objected to by counsel for Harold Louderback by a motion to strike out said language on the ground that the said Harold Louderback was not advised of "the time or times (of) said acts were committed by respondent," or "in what action or actions, proceeding or proceedings such alleged acts occurred; "whereupon the managers agreed with counsel for the said Harold Louderback that they would endeavor to give to said counsel more exact information with regard to said transaction, and filing to do so by the 5th of May the said allegations would be withdrawn and no evidence offered in their support, counsel

Record, p. 3394.

for the said Harold Louderback agreeing that they would exert themselves to try to ascertain the facts with regard to the transaction referred to and advise the managers.

Since such agreement and understanding, the managers have ascertained more definite information with reference to this transaction, and now allege the facts to be that on or about April 5, 1927, in the matter of the estate of Howard Brickell, No. 46618, pending in probate that said Harold Louderback appointed the said Guy H. Gilbert an appraiser of property of said estate and also appointed with him as appraiser of said property Sam Leake, referred to in said article 5 of the Articles of Impeachment as amended; that on or about December 21, 1927, the said Harold Louderback made an order awarding to the said Guy H. Gilbert and to the said Sam Leake the sum of \$500 each for their services; which information has been furnished to the said counsel for Harold Louderback.

HATTON W. SUMNERS, *Chairman,*

On Behalf of the Managers.

Mr. William H. King, of Utah, offered a resolution which was agreed to as follows:

Ordered, That the opening statement on behalf of the managers shall be made by one person, to be immediately followed by one person who shall make the opening statement on behalf of the respondent.

The managers on the part of the House requested the privilege of having with them in the trial the clerk of the House Committee on the Judiciary to assist them in handling the documents in the case; and that Mr. Bianchi, a member of the bar of San Francisco, also be permitted to sit with them.

Mr. Hanley inquired whether Mr. Bianchi was to be called as a witness, and Mr. Manager Sumners, in reply, proposed to discuss the question, when Mr. Bratton raised the question of order that under the rules of the Senate the point should be decided by the Chair without comment or debate from the floor.

The Vice President sustained the point of order.

The Vice President, having entertained the request of the managers that the clerk of the House Judiciary Committee and Mr. Bianchi be permitted to sit with them, preferred to submit it to the Senate; and the question being put, it was decided in the affirmative, and the permission was granted, as requested.

By direction of the Vice President, on request of counsel for the respondent, the Secretary of the Senate read the answer of the respondent to article 5 as last amended, as follows:

Answer of respondent to Article V as last amended.

Respondent admits that on or about the 5th day of April, 1927, while acting as judge of the Superior Court of the State of California in and for the city and county of San Francisco, in the matter of the estate of Howard Brickell, deceased, he made an order appointing Guy H. Gilbert, W. S. Leake, and R. F. Mogan appraisers; that in said matter Crocker First Federal Trust Co., of San Francisco, was special administrator of said estate; that in the first and final account of said trust company was included the sum of \$500 each paid to said Gilbert and said Leake as appraisers' fees therein; that upon the hearing of the settlement of said account, an officer of said trust company testified that said account was in all respects true and correct; that the inventory on file in said estate showed its appraised value to be \$1,020,804.38; that thereupon respondent, as judge of said superior court, made an order settling and allowing said account. Other than as hereinabove specifically set forth, respondent denies that he made any order awarding said Gilbert and said Leake, or either of them, \$500 for their said services as such appraiser.

HAROLD LOUDERBACK,

Respondent.

WALTER H. LINFORTH,

JAMES M. HANLEY,

Attorneys for Respondent.

In his opening statement, Mr. Manager Sumners informed the Court that he would deviate from the practice usually observed in such proceedings and would not introduce the commission of the respondent or make specific reference to the preliminary action on the part of the House of Representatives, taking it for granted that the respondent was known to be a Federal judge for the northern district of California, and that it was understood that the ordinary routine has been followed in the House leading up to the proceedings in the court of impeachment.

In the course of the opening statement in behalf of the respondent, Mr. Ashurst addressed the Chair and asked recognition to offer a resolution.

The Vice President inquired:

Will counsel suspend for that purpose?

The counsel for the respondent having answered in the affirmative, the resolution was offered by Mr. Ashurst and agreed to as follows:

Ordered, That during the trial of the impeachment of Harold Louderback, United States district judge for the Northern District of California, the Vice President, in the absence of the President pro tempore, shall have the right to name in open Senate, sitting for said trial, a Senator to perform the duties of the Chair.

The President pro tempore shall likewise have the right to name in open Senate, sitting for said trial, or, if absent, in writing, a Senator to perform the duties of the Chair; but such substitution in the case of either the Vice President or the President pro tempore shall not extend beyond an adjournment or recess, except by unanimous consent.

Under the provisions of the resolution, the Vice President called Mr. Bratton to the Chair, and the counsel for the respondent resumed his statement.

During the further course of the statement Mr. Long addressed the Chair and desired to submit a question to be answered by the counsel for the respondent.

Mr. Ashurst interposed the point of order that all questions propounded by Senators should be in writing.

The Presiding Officer sustained the point of order.

523. Witnesses in an impeachment trial were required to give their testimony standing, but this requirement was held not to apply to counsel.

In the Louderback impeachment trial witnesses were sworn as called and not en banc.

In the Louderback impeachment the Senate ordered process to compel the attendance of a witness who declined to appear in response to subpoena.

Evidence relating to events occurring prior to Sudge Louderback's appointment to the Federal bench were admitted to establish matters pertinent to the impeachment proceedings.

Exhibits relating to the case at bar but also embodying extraneous and irrelevant material were admitted in full over the objection that only the pertinent matters should be read into the record.

The issuance of process for the attachment of a witness was held not to bar the admission of depositions by such witness pending his arrival.

The opening statements having been concluded, on the proposal of Mr. Ashurst it was—

Ordered, That the witnesses shall stand while giving their testimony.

In response to an inquiry by Mr. Manager Sumners, as to whether counsel should also stand while examining the witness, the Presiding Officer¹ held—

It is the judgment of the present occupant of the chair that counsel may sit or stand, according to their convenience.

Mr. Manager Sumners further inquired if each witness should be sworn as examined or if all witnesses should be called and sworn at once.

The Presiding Officer said:

The Chair thinks that the business of the court would be expedited by swearing each witness as he enters the Chamber. The oath can be administered quickly.

The introduction of testimony on behalf of the managers then began and continued through May 15, 16, 17, and 18. On May 18² Mr. Manager Sumners announced that the managers had no further evidence to offer at that time, and the introduction of testimony on behalf of the respondent began and continued until May 23, when both parties rested.

On May 16³ the Vice President laid before the Senate the return of the Sergeant at Arms which was printed and noted in the Journal as follows:

SENATE OF THE UNITED STATES,
OFFICE OF THE SERGEANT AT ARMS,
Washington, DC., May 15, 1933.

Hon. JOHN N. GARNER,
Vice President and President of the Senate,
Washington, D. C.

MY DEAR MR. VICE PRESIDENT: There are attached hereto a list of witnesses for the Government submitted to me by the managers on the part of the House of Representatives, and a list of witnesses for the respondent submitted to me by his counsel, all of said witnesses to be subpaned for the trial of Harold Louderback, United States district judge for the northern district of California.

There are also attached hereto original subpoenas personally served by me on the witnesses desired by both parties, said subpoenas being duly served and return made according to law.

Respectfully,

CHESLEY W. JURNEY,
Sergeant at Arms.

(Then followed the list of witnesses for the Government and the list of witnesses for the respondent.)

On motion of Mr. Ashurst it was—

Ordered, That the daily sessions of the Senate sitting for the trial of the impeachment of Harold Louderback, United States district judge for the northern district of California, shall, unless otherwise ordered, commence at 10 o'clock in the forenoon.

Mr. Hanley, of counsel for the respondent, moved that commission issue for taking the deposition of one W. S. Leake in San Francisco, and in support of his motion read this telegram:

¹ Sam G. Bratton, of New Mexico, Presiding Officer.

² Record, p. 36,33.

³ Record, p. 3444.

HON. JOHN N. GARNER,
Vice President of United States and President of Senate,
Washington, D. C.:

Mr. Leake, under subpoena Louderback trial, quite weak physically, due age and cerebral arteriosclerosis. Been his family doctor many years. Travel to Washington impractical, but if imperative should be accompanied by a nurse. Please instruct.

RUSSEL C. RYAN, M. D.,
Fairmont Hotel.

Mr. Manager Perkins resisted the motion and submitted the following excerpt from stipulations, previously entered into by counsel for the respondent and the managers on the part of the House, relative to certain testimony elicited before the special committee of the House of Representatives in San Francisco, in September, 1932.

It is further stipulated that the testimony of W. S. Leake and Miriam McKenzie, hotel maid, taken at the hearing above referred to, may be read upon said trial by either party hereto with the same force and effect as if said witness were present and testified in person. This stipulation, however, in so far as the said W. S. Leake is concerned is without waiver by either party hereto to insist upon the attendance of said Leake before the court above referred to, and shall become operative only in the event of the nonappearance of the said Leake at Washington before the said Court of Impeachment.

Dated May 3, 1933.

GORDON BROWNING,
RANDOLPH PERKINS,
For the House Managers.
WALTER H. LINFORTH,
JAMES M. HANLEY,
Attorneys for Respondent.

The question being submitted to the court by the Vice President it was ordered, on motion of Mr. Bratton, that the Vice President be authorized to arrange for the attendance of the witness, to be accompanied by a nurse if that was deemed necessary.

Subsequently,¹ Mr. Manager Browning proposed to offer the testimony referred to in the stipulation before the arrival of the witness.

Mr. Hanley, of counsel for the respondent, objected on the ground that the witness would shortly arrive for examination in person.

The Vice President ruled:

The Chair overrules the objection. It seems to the Chair that reading the testimony, in view of the fact that Mr. Leake may be present in the Chamber, will not injure the cause of the respondent in any way.

In the course of the proceedings Mr. Manager Perkins proposed to offer in evidence certified copies of orders made by Judge Louderback appointing W. S. Leake and G. H. Gilbert appraisers in cases which had come before him in 1927 while on the State bench and prior to his appointment and confirmation by the Senate as a Federal judge.

Counsel for the respondent objected to the admission of the evidence on the ground that it related to matters occurring prior to the respondent's appointment as

¹ Record, p. 3503.

Federal judge and which for that reason were without the jurisdiction of the Court of Impeachment.

Mr. Manager Perkins rejoined that the orders were offered for the purpose of showing the long and intimate relation existing between Judge Louderback and W. S. Leake and G. H. Gilbert with whose appointment by respondent the case in trial was largely concerned.

The Presiding Officer ¹ ruled:

The present occupant of the chair is very clear that it is admissible for whatever it may be worth for the purpose stated by the manager on the part of the House.

The orders being produced, respondent's counsel objected to their being admitted in full and contended that the announced purpose for which they were offered was fully served by the reading into the Record of the material parts germane to the case and that to admit them in full would admit many irrelevant matters not pertinent to the issues of the case at bar.

The Presiding Officer submitted the question of admissibility to the Court and in stating the question said:

The managers on the part of the House offered these papers for the record. Objection was made, and, after argument, the Chair held that these records were pertinent for one purpose, namely, to show the connection between the persons named in the papers and the respondent. The Inn sought to have the counsel on both sides agree that the material parts should be read into the record; but that was not satisfactory to the managers on the part of the House, who insisted that the whole records should be admitted. Counsel for the respondent objects to that because there are many things in the records themselves that are not in any sense material; and the question is whether or not the papers offered for the record shall be admitted.

The question having been taken, the Presiding Officer announced:

On this vote the yeas are 67 and the nays are 4, so the papers are admitted.

The Vice President laid before the Senate the following communication:

SENATE OF THE UNITED STATES,
OFFICE OF THE SERGEANT AT ARMS,
Washington, D. C., May 17, 1933.

Hon. JOHN N. GARNER,

Vice President and President of the Senate, Washington, D. C.

MY DEAR MR. VICE PRESIDENT: I was commanded to serve and return a subpoena issued in the impeachment trial of Harold Louderback on one W. S. Leake, of San Francisco, Calif. Said subpoena was personally served by me on the said W. S. Leake on May 2, 1933, at San Francisco, and a return was duly made by me.

W. S. Leake was commanded to appear and testify on the 15th day of May, 1933, at 1 p. m., at the Senate Chamber in the city of Washington, and he has not appeared and refuses to appear and testify for the reason as stated by him to me personally on this day, that he is physically unable to do so.

This information is given to you so that the Senate of the United States may be officially informed in the matter.

Respectfully,

CHESLEY W. JURNEY,
Sergeant at Arm.

¹ Daniel O. Hastings, of Delaware, Presiding Officer.

Thereupon, a resolution presented by Mr. Ashurst was agreed to, as follows:

Whereas the Senate of the United States pursuant to House Resolution 403, Seventy-second Congress, second session, and orders of the Senate of the United States adopted in relation thereto, has authorized that witnesses be summoned as required by the rules of procedure and practice of the Senate; and

Whereas it appears from a letter of Chesley W. Jurney, Sergeant at Arms of the United States Senate, to Hon. John N. Garner, Vice President and President of the Senate, dated May 15, 1933, that one W. S. Leake, of San Francisco, Calif., was duly served with a subpoena on May 2, 1933, to appear on Monday, May 15, 1933, at 1 p. m., before the Senate of the United States at Washington, D.C., and then and there to testify his knowledge in the cause which is before the Senate in which the House of Representatives have impeached Harold Louderback, district judge of the United States for the Northern District of California; and

Whereas it appears from a letter of Chesley W. Jurney, Sergeant at Arms of the United States Senate to Hon. John N. Garner, Vice President and President of the Senate, dated May 16, 1933, that said W. S. Leake has not appeared in response to said subpoena, duly issued and served, and the said W. S. Leake has failed, in disobedience of such subpoena, so to appear and answer; and

Whereas the appearance and testimony of said W. S. Leake is material and necessary in order that the Senate of the United States may properly execute the functions imposed upon it by the Constitution of the United States, and other action as the Senate may deem necessary and proper: Therefore be it

Ordered, That the Vice President and President of the Senate issue his warrant commanding the Sergeant at Arms or his deputy, to take into custody the body of the Said W. S. Leake, where-ever found, to bring the Said W. S. Leake before the bar of the Senate, then and there to answer such questions pertinent to the matter under inquiry; and to keep the said W. S. Leake to await the further order of the Senate.

On May 22,¹ the Vice President laid before the Senate a further communication as follows:

SENATE OF THE UNITED STATES,
OFFICE OF THE SERGEANT AT ARMS,
Washington, D. C., May 20, 1933.

Hon. JOHN N. GARNER,
Vice President and President of Senate, Washington, D.C.

MY DEAR MR. VICE PRESIDENT: In pursuance of the order of the Senate dated May 17, 1933, commanding me to forthwith arrest and take into custody and bring to the bar of the Senate W. S. Leake, of San Francisco, Calif., I did, acting through my deputy, W. A. Rorer, on May 17, 1933, arrest and take Mr. Leake into custody.

The said W. S. Leake is now in my custody, and I await the further order of the Senate.

The original warrant issued in the case is attached hereto.

Respectfully yours,

CHESLEY W. JURNEY,
Sergeant at Arms.

Whereupon counsel for respondent called the witness W. S. Leake who appeared and testified.

524. The respondent in impeachment proceedings attended throughout the trial and was present when the articles were voted on and judgment rendered.

In the Louderback impeachment trial the respondent appeared and testified at length in his own behalf.

¹ Record, p. 3844.

After testimony had been closed and the opening argument concluded in the Louderback trial, further questions were propounded in writing and were answered by the respondent.

The Senate limited the time but did not restrict the number participating in the final arguments in the Louderback impeachment.

The counsel for the respondent having touched on extraneous matters in his final argument in the Louderback trial, was admonished by the presiding officer to confine himself to the record.

In the Louderback trial the Senate deliberated behind closed doors before voting on the articles of impeachment.

Form of question prescribed for ascertaining the judgment of the court in the Louderback trial.

It was announced that pairs would not be arranged or recognized in the final vote on the articles of impeachment in the Louderback trial.

Senators were permitted to excuse themselves from voting on articles of impeachment as they were reached without having given notice of such intention prior to the vote on Article 1.

Two-thirds not having voted guilty on any article, the presiding officer declared Judge Louderback acquitted.

On May 23,¹ the respondent, Harold Louderback, was called and testified in his own behalf on direct examination by his counsel and on cross-examination by the managers. At the conclusion of his testimony, Mr. Linforth announced that the respondent rested. After brief testimony in rebuttal introduced by the managers, Mr. Manager Sumners on conference with Mr. Linforth, informed the court that all testimony had been concluded.

Whereupon, on motion of Mr. Ashurst, an order was entered finally excusing all witnesses from further attendance, and it was further—

Ordered, That the time for final argument of the case of Harold Louderback shall be limited to 4 hours, which said time shall be divided equally between the managers on the part of the House of Representatives and the counsel for the respondent, and the time thus assigned to each side shall be divided as each side for itself may determine.

On May 24,² Mr. Manager Browning opened the argument on behalf of the House of Representatives. At the conclusion of his remarks, Mr. Tom Connally, of Texas, addressed the Chair and asked, as a parliamentary inquiry, if it would be in order to propound further questions in writing to the respondent.

The Vice President replied:

The Chair does not think so. The case has been closed, as the Chair understands it, unless the Senate orders otherwise. If there is no objection on the part of the respondent, the Chair will admit the question.

There was no objection and Mr. Connally submitted certain questions in writing which were answered by the respondent.

¹ Record, p. 3971.

² Record, p. 4064.

Mr. Linforth then argued in behalf of the respondent. In the course of Mr. Linforth's argument, Mr. Manager Sumners interposed and said:

Mr. President, I do not desire to interrupt counsel, but I give notice that if this is going to be the line of argument we shall endeavor to some degree to avail ourselves of it. We say that counsel is testifying at this time. I do not desire to object. I merely desire to serve notice now that we are going to avail ourselves of that line of argument.

The Presiding Officer admonished:

Counsel will confine themselves to the record.

Mr. Manager Sumners concluded the argument on behalf of the managers.

Thereupon, a motion presented by Mr. Ashurst that the doors of the Senate be closed for deliberation was agreed to; the managers on the part of the House and the respondent with his counsel withdrew from the Chamber; the galleries were cleared; and at 3 o'clock and 5 minutes p.m. the Senate proceeded to deliberate with closed doors.

At 4 o'clock and 45 minutes p. m. the doors were reopened, and the managers on the part of the House and respondent with his counsel appeared in the seats provided for them.

Mr. Joseph T. Robinson, of Arkansas, announced:

I have been requested to state that on these votes pairs will not be arranged or recognized.

The following order submitted by Mr. Ashurst was agreed to:

Ordered, That upon the final vote in the pending impeachment of Harold Louderback, the Secretary shall read the articles of impeachment separately and successively, and when the reading of each article shall have been concluded the Presiding Officer shall state the question thereon as follows:

"Senators, how say you? Is the respondent, Harold Louderback, guilty or not guilty as charged in this article?"

Thereupon the roll of the Senate shall be called, and each Senator, as his name is called, unless excused, shall arise in his place and answer "Guilty" or "Not guilty."

In response to a parliamentary inquiry from Mr. Alben W. Barkley, of Kentucky, as to whether a Senator could be excused from voting on any article as it was reached in its order or whether notice should be given in advance of the reading of the first article, the Vice President held:

The Chair is of opinion that a Senator can ask to be excused from voting on any article at any time.

On motion of Mr. Ashurst, it was further—

Ordered, That upon the final vote in the pending impeachment of Harold Louderback, each Senator may, within 2 days after the final vote, file his opinion in writing to be published in the printed proceedings in the case.

The Vice President directed the Secretary to read the first article of the articles of impeachment, and following the reading, put the question:

Senators, how say you? Is the respondent, Harold Louderback, guilty or not guilty as charged in this article? The secretary will proceed to call the roll, and as the name of each Senator is called, he will rise in his place and deliver his vote.

The roll having been called, the Vice President announced:

On the first article of impeachment 34 Senators have voted "guilty" and 42 Senators have voted "not guilty." Less than two-thirds having voted in favor of his guilt, the Senate adjudges that the respondent, Harold Louderback, is not guilty as charged in the article. The clerk will read the next article.

In like manner the vote was taken and announced on each of the remaining articles, with the following results:

	Guilty.	Not guilty
Article I	34	42
Article II	23	47
Article III	11	63
Article IV	30	47
Article V (as amended)	45	34

The Vice President summarized:

That completes the articles of impeachment, and, with the permission of the Senate sitting as a court, the Chair will enter in the record the following judgment, which the clerk will read.

The legislative clerk read:

JUDGMENT.

The Senate having tried Harold Louderback, judge of the District Court of the United States for the Northern District of California, upon five several articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein: It is therefore

Ordered and adjudged, That the said Harold Louderback be, and he is, acquitted of all the charges in said articles made and set forth.

And then,

On motion of Mr. Ashurst, at 6 o'clock and 5 minutes p.m. the Senate sitting as a court of impeachment in the case of Harold Louderback adjourned sine die.