

Chapter CCII.¹

IMPEACHMENT PROCEEDINGS NOT RESULTING IN TRIAL.

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525. The inquiry into the conduct of Lebbeus R. Wilfley, Judge of United States Court for China.

A Member having risen in his place and impeached Judge Wilfley and offered a resolution providing for an investigation, the House referred the matter to the Judiciary Committee.

In the investigation into the conduct of Judge Wilfley, he appeared before the committee and testified under oath.

The report of a subcommittee was disregarded and was not included as a part of the report of the committee to the House.

The committee, after conducting an investigation, acted adversely on a proposition to impeach Judge Wilfley and the House declined to take further action.

A Member being criticized by the President for instituting impeachment proceedings, rose to a question of personal privilege.

¹Supplementary to Chapter LXXIX.

On February 20, 1908,¹ Mr. George E. Waldo, of New York, presented as a privileged matter the following:

I desire to impeach Lebbeus R. Wilfley, of the United States court of China, of mal and corrupt conduct in office, and of high crimes and misdemeanors, and I present the following articles of impeachment and ask that they may be read at the Clerk's desk.

The Clerk read the articles of impeachment, which detailed at length the charges upon which the proposed impeachment was based.

Mr. Waldo then submitted a resolution authorizing and directing the Committee on the Judiciary to investigate the charges, and, after debate, made the following motion, which was agreed to:

I move that this resolution and the articles be referred to the Committee on the Judiciary, to report back by resolution within ten days what, if any, proceedings should be taken.

The motion was agreed to.

The investigation was delegated to a subcommittee of the Committee on the Judiciary, which reported to the committee in part as follows:

It is obviously true that an aggregation of entirely legal acts may develop into a system of tyranny and oppression; and that an inequitable exercise of judicial discretion may convert the machinery of justice into an engine of despotic and autocratic power. This may be accomplished without the taint of individual corruption and with a laudable purpose of purifying a community and of inaugurating civic reform.

Terror to evil doers if purchased at the price of judicial fairness and overstrained legal authority is achieved at too great an expense, for it defeats its own high aim and warps the very fabric of the law itself.

Such sets of legal oppression and of abuse of judicial discretion lie at the base of these charges. They are made before the House of Representatives in the form prescribed by law and custom, and are presented as a question of high privilege upon the solemn responsibility of a Member of the House. Charges so presented against this court have a peculiar and dangerous significance. In this case they are dismissed as falling short of impeachable offenses, by what we believe to be sound principles of legal construction, and Judge Wilfley is therefore denied any opportunity of defense. He can file no answer, make no denial, nor explain to the House the legality or necessity for his action.

These charges therefore stand uncontroverted, and if Judge Wilfley's judicial acts in the future are marked by the rigorous and inflexible harshness imputed to him they will hang as a portentous cloud over this new court, impairing his usefulness, impeding the administration of justice, and challenging the integrity of American institutions.

During the investigation Judge Wilfley appeared before the committee and testified under oath.

On May 8, 1908,² Mr. Reuben O. Moon, of Pennsylvania, from the Committee on the Judiciary, submitted the following report:

The Committee on the Judiciary, to whom was referred the articles of impeachment of Lebbeus R. Wilfley, judge of the United States court for China, in compliance with the action of the House, begs leave to report that, after investigation, it is the opinion of the committee that no proceedings should be taken on the said resolutions.

¹First session, Sixtieth Congress, Journal, p. 497; Record, 2262.

²House Report 1626.

The report was referred, under the rule, to the Committee of the Whole House.

On March 3, 1909,¹ Mr. Waldo rose to a question of personal privilege and said:

Mr. Speaker, on February 20, 1908, at the request of Hon. Lorrin Andrews, late attorney general of Hawaii, and who represented the American lawyers and other American citizens, residents of Shanghai, China, I presented to the House articles of impeachment against Lebbeus R. Wilfley, judge of the United States court for China.

These articles charged judicial outrages and gross abuse of power which, in my judgment, showed Judge Wilfley to be utterly unfit to hold judicial office.

The President, without any investigation of the facts, except to hear Judge Wilfley and his friends, sent to the subcommittee of the Judiciary Committee, which was then investigating the facts, a copy of a letter from himself to Secretary Root, in which the President used this language:

"I have received and read your report of February 29 upon the charges submitted by Lorrin Andrews, under date of November 19, 1907, against Judge Wilfley; it appearing from your report that Congressman Waldo stands sponsor for the charges."

And concluded letter as follows:

"It is not too much to say that this assault on Judge Wilfley in the interest of the vicious and criminal classes is a public scandal."

This was evidently an intentional reflection upon the uprightness of my motives and conduct and an invasion of my privileges as a Member of this House.

Mr. Sereno E. Payne, of New York, made the point of order that the gentleman was not stating a question of personal privilege.

The Speaker² sustained the point of order, and Mr. Waldo continued his remarks by unanimous consent.

526. The inquiry into the conduct of Judge Cornelius H. Hanford, United States circuit judge for the western district of Washington, in 1912.

A Member on his authority as a Member of the House impeached Judge Hanford and offered a resolution providing for investigation of charges.

Pending motion to refer a resolution providing for an investigation looking to impeachment the resolution is not open to amendment.

The House referred the charges made against Judge Hanford to the Judiciary Committee for investigation.

During the investigation of Judge Hanford with a view to impeachment, he was represented by counsel who cross-examined witnesses and produced evidence in his behalf.

Judge Hanford having resigned his office, the House discontinued its investigation into his conduct.

The report of the subcommittee, while recommending the discontinuance of impeachment proceedings against Judge Hanford, declared him to be disqualified for his position and recommended acceptance of his resignation.

On June 7, 1912,³ Mr. Victor L. Berger, of Wisconsin, presented, as a matter of privilege, the following:

Mr. Speaker, I rise to a question of the highest privilege and also of the greatest importance. By virtue of my office as a Member of the House of Representatives, I impeach Cornelius H.

¹ Second session Sixtieth Congress, Record, p. 3813.

² Joseph G. Cannon, of Illinois, Speaker.

³ Second session Sixty-second Congress, Journal, p. 772; Record, p. 7799.

Hanford, judge of the western district of the State of Washington, of high crimes and misdemeanors.

I charge him with having annulled, on May 13, 1912, in violation of the Constitution and on a frivolous charge, the naturalization papers of Leonard Oleson.

I charge him with having been guilty of a long series of unlawful and corrupt decisions.

I charge him with having issued in the collusive suit of Augustus Peabody *v.* The Seattle, Renton & Southern Railway, in August, 1911, an injunction in the interests of the company and against the interests of the citizens of Seattle, flagrantly in violation of justice and law.

I charge him with being an habitual drunkard.

I charge him with being morally and temperamentally unfit to hold a judicial position.

Mr. Berger then submitted the following resolution and moved that it be referred to the Committee on the Judiciary:

Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is necessary concerning the official misconduct of Cornelius H. Hanford; whether he has been in a drunken condition while presiding in court; whether he has been guilty of corrupt conduct in office; whether his administration has resulted in injury and wrong to litigants of his court and to others affected by his decisions; and whether he has been guilty of any misbehavior for which he should be impeached.

That this committee is hereby authorized and empowered to send for persons and papers, to administer oaths, to employ, if necessary, an additional clerk and stenographer, and to appoint and send a subcommittee whenever and wherever necessary to take testimony for the use of said committee.

That the subcommittee shall have the same powers in respect to obtaining testimony as are herein given to the said Committee on the Judiciary.

That the expenses incurred in this investigation shall be paid out of the contingent fund of the House.

Mr. Samuel W. McCall, of Massachusetts, proposed to amend the resolution by inserting the word "alleged" before the word "misconduct."

A point of order by Mr. James R. Mann, of Illinois, that in view of the motion to refer the resolution it was not open to amendment, was sustained.

Thereupon Mr. Berger asked unanimous consent to amend the resolution as proposed by Mr. McCall. There was no objection and the resolution was so modified. The motion to refer the amendment to the Committee on the Judiciary was then agreed to.

On June 13¹ Mr. Henry D. Clayton, of Alabama, from the Committee on the Judiciary, presented as privileged the report of that committee, with the recommendation that the resolution be amended to read as follows:

That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Cornelius H. Hanford, United States judge for the western district of the State of Washington, and say whether said judge has been in a drunken condition while presiding in court; whether said judge has been guilty of corrupt conduct in office; whether the administration of said judge has resulted in injury and wrong to litigants in his court and others affected by his decisions; and whether said judge has been guilty of any misbehavior for which he should be impeached.

And in reference to this investigation the said committee is hereby authorized to send for persons and papers, administer oaths, take testimony, employ a clerk and stenographer, if necessary, and to appoint and send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee. The said subcommittee while so employed shall

¹House Report No. 880.

have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the process of said committee and the process and orders of said subcommittee, and shall attend the sitting of the same as ordered and as directed thereby, and that the expense of such investigation shall be paid out of the contingent fund of the House.

The report was adopted and the resolution as amended was agreed to.

On August 6¹ Mr. Clayton, from the Committee on the Judiciary, submitted the unanimous report of the committee, incorporating the report of an investigation made by a subcommittee pursuant to the following resolution passed by the committee:

Resolved, That James M. Graham, Walter I. McCoy, and Edwin W. Higgins, members of this committee, be appointed the subcommittee by virtue of the authority given under House Resolution No. 576, passed by the House of Representatives on June 13, 1912, authorizing an inquiry into the alleged misconduct of Cornelius H. Hanford, United States judge for the western district of the State of Washington, and that the said subcommittee shall have all the powers authorized by said resolution hereinbefore named.

This report relates:

In pursuance of said resolution, the subcommittee left Washington on June 21, 1912, and reached Seattle the evening of June 25. Wednesday, June 26, was spent in making the necessary preliminary arrangements for proceeding with the hearings, and on Thursday, the 27th, the taking of testimony was begun in a court room of the Federal Building in Seattle, and was concluded on Monday, July 22, 1912. The subcommittee sat every day between those days except Sundays and the Fourth of July, making in all 21 days of actual work, including several evening sessions. Two hundred and three witnesses were examined and 3,291 typewritten pages of testimony were taken.

Immediately upon the arrival of the subcommittee in Seattle, the following Communication was addressed to Judge Hanford by Mr. Graham, chairman of the subcommittee.

SEATTLE, WASH., *June 26, 1912.*

DEAR SIR: The subcommittee on the Committee of the Judiciary of the House of Representatives, Washington, D.C., will convene to-morrow June 27, in the court room, Federal Building, in Seattle, for the purpose of taking testimony under House Resolution 576, a copy of which is attached hereto. You can, of course, be present at the session of the subcommittee, in person and by counsel, if you so desire.

JAMES M. GRAHAM, *Chairman.*

Hon. C. H. HANFORD.

The report says:

The subcommittee further reports that Judge Hanford was represented during the hearings by able and learned counsel, namely, Mr. E. C. Hughes, Mr. Harold Preston, and Mr. C. W. Dorr, and that they were given wide latitude in the examination of all the witnesses and in the production of evidence on behalf of Judge Hanford, so that the record contains such evidence in defense as counsel desired to offer, as well as the incriminating evidence.

The report continues:

The subcommittee had almost, but not quite, completed the taking of testimony when, at the morning session on Monday, July 22, counsel representing Judge Hanford asked for a conference with the members of the subcommittee, and the request was granted. They then

¹House Report No. 1152.

informed the subcommittee that Judge Hanford had concluded to send his resignation to the President.

The subcommittee thereupon decided:

That there was no good reason why the resignation of the judge should not be accepted. And it appears to the committee that the further prosecution of the impeachment proceedings is inadvisable. Among the reasons for this conclusion may be stated in substance the reasons assigned by the subcommittee:

(1) The chief good which successful impeachment proceedings could effect would be the removal of Judge Hanford from the bench. That good his resignation accomplished.

(2) The record of the evidence shows that he is 64 years old his next birthday, and hence not entitled to retire on pay. Therefore, his resignation brings him no emolument or reward and involves no expenditure of public money.

(3) The committee do not think it necessary or advisable to pursue the impeachment further merely for the purpose of making him ineligible to hold office in the future, as his age and the circumstances disclosed by the testimony render such a contingency highly improbable.

(4) Bringing the witnesses from Seattle and vicinity to Washington, a distance of over 3,000 miles, to prosecute an impeachment proceeding before the Senate would involve an expenditure approximating \$70,000. This expenditure of public money could not be justified in this case where the judge is now out of office and doubtless will never again be appointed to office.

The subcommittee further concluded:

On the whole record it clearly appears that Judge Hanford's usefulness as a Federal judge is over; that his personal and judicial conduct disqualify him for that position and that this committee recommend that his resignation be accepted.

The committee therefore recommended the following resolution:

Resolved, That the Committee on the Judiciary be discharged from further consideration of and action under House Resolution 576.

Resolved further, That the testimony taken by the subcommittee of the Committee on the Judiciary under the authority conferred by House Resolution 576 be printed as a part of this report and transmitted by the Clerk of the House of Representatives to the Attorney General for his consideration and with the recommendation that the Department of Justice take cognizance thereof, and take whatever action may be deemed advisable in case said testimony discloses or tends to disclose any infractions of the laws of the United States.

On the same day, after brief debate, Mr. Clayton moved to amend the resolution by inserting after the word "printed" the words "as a part of this report." The amendment was agreed to and the resolution as amended was adopted without division.

527. The investigation into the conduct of Judge Emory Speer.

A resolution proposing investigation with a view to impeachment was referred, under the rule, to the appropriate committee.

A resolution proposing investigation with a view to impeachment was considered by unanimous consent.

A subcommittee, with power to send for persons and papers, was sent to Georgia to investigate the conduct of Judge Speer.

During the investigation of Judge Speer, looking to impeachment, he attended each session, accompanied by counsel, and cross-examined witnesses.

The most liberal latitude was allowed in the examination of witnesses before the committee which investigated Judge Speer.

While declining to recommend acquittal, and declaring Judge Speer's acts merited condemnation, the Judiciary Committee reported satisfactory evidence was not obtainable and recommended that no further proceedings be had in the matter.

On August 26, 1913,¹ Mr. Henry D. Clayton, of Alabama, asked unanimous consent for the consideration of the following resolution:

Whereas on the 16th day of August, 1913, the Attorney General of the United States transmitted to the Committee on the Judiciary of the House of Representatives a report of a special examiner duly designated by the Attorney General to investigate various charges of alleged misconduct of Emory Speer, a United States district judge for the southern district of Georgia, which charges had been brought to the attention of the Department of Justice; and

Whereas the charges embodied in said report are accompanied by exhibits and affidavits and are of such grave nature as to warrant further investigation: Therefore be it

Resolved, That the Committee on the Judiciary be, and it is hereby authorized to inquire into and concerning the official conduct of Emory Speer, United States district judge for the southern district of Georgia, touching his conduct in regard to the matters and things set forth in said report; and further to inquire whether said judge has been guilty of any misbehavior for which he should be impeached and report to the House of Representatives the conclusions of the committee in respect thereto, with appropriate recommendations; and said committee is hereby authorized to send for persons and papers, administer oaths, take testimony, employ a clerk and stenographer if necessary, and to appoint and send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee; the said subcommittee, while so employed, shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the process of said committee and the process and orders of said subcommittee and shall attend the sittings of the same as ordered and as directed thereby, and that the expense of such investigation shall be paid out of the contingent fund of the House; that said Committee on the Judiciary, or subcommittee thereof, shall have power to sit during the sessions of this House or in vacation.

Mr. James R. Miron, of Illinois, objected and, under the rule, the resolution was referred to the Committee on Rules.

On the following day Mr. Clayton again submitted a unanimous-consent request for consideration of the resolution. There was no objection, and after debate the resolution was agreed to, with the following amendment:

Amend, page 2, by inserting after the word "House," in line 19 and before the semicolon, the following: "On vouchers ordered by the Committee on the Judiciary, signed by the chairman thereof and approved by the Committee on Accounts and evidenced by the signature of the chairman thereof."

On October 2, 1914² Mr. Edwin Yates Webb, of North Carolina, from the Committee on the Judiciary, submitted the report of the majority of that committee on the investigation authorized by the resolution.

The committee incorporate as a part of their report the report of the majority of a subcommittee which conducted the investigation, signed by Mr. Webb and Mr. Louis Fitzhenry, of Illinois. The history of the investigation is thus detailed in the majority report:

Your special subcommittee made a trip to the southern district of Georgia, leaving Washington on the evening of Saturday, January 17, and arriving at Macon, the seat of the court,

¹First session Sixty-third Congress, Journal, p. 254; Record p. 3777.

²House Report No. 1176.

on the evening of the following day. Monday morning, January 19, at 10 o'clock, the subcommittee opened its public hearings in the United States court room in the Federal Building at Macon, and examined witnesses who were caused to appear for the purpose of giving testimony. These hearings were held continuously throughout the week, ending Saturday, January 24. The committee then went to Savannah, Ga., in said district, and examined witnesses during the entire of the following week, concluding its hearings there on Saturday, January 31.

All of the hearings were public. Judge Speer attended each session of the committee and was accompanied by counsel, who were permitted to cross-examine the several witnesses.

A digest of the testimony of the witnesses examined is appended, and the committee thus summarize the evidence:

The conclusion of the subcommittee, deduced from the evidence taken and from the construction of the precedents of impeachment trials, is that at the present time satisfactory evidence sufficient to support a conviction upon a trial by the Senate is not obtainable.

The report continues:

A phase of the record is that it details a large number of official acts on the part of Judge Speer which are in themselves legal, yet, when taken together, develop into a system tending to approach a condition of tyranny and oppression. There has been an inequitable exercise of judicial discretion, many instances of which have been frequently criticized where the cases in which they were committed have been reviewed by the courts of appeal, while in others litigants were unable, financially, to prosecute appeals. That the power of the court has been exercised in a despotic and autocratic manner by the judge can not be questioned.

As to examination of witnesses and admission of evidence, the committee say:

In the conduct of the hearings the committee was extremely liberal and did not confine the witnesses to the giving of technically legal evidence. Some evidence of a hearsay nature was received. The committee felt justified in such a course in the light of the fact that it came to the attention of the committee that many witnesses were apprehensive of the consequences of giving evidence against Judge Speer in the event of his acquittal.

The committee also say:

The record shows instances where the judge, sitting in the trial of criminal cases, apparently forced pleas of guilty from defendants or convictions and there is strong evidence tending to show that in one case, at least, he forced innocent parties to enter such pleas through a fear of the consequences in the event of an unfavorable verdict at the hands of a jury presided over by the judge in the manner peculiar to himself.

The committee, however, decide:

The subcommittee regrets its inability to either recommend a complete acquittal of Judge Speer of all culpability so far as these charges are concerned, on the one hand, or an impeachment on the other. And yet it is persuaded that the competent legal evidence at hand is not sufficient to procure a conviction at the hands of the Senate. But it does feel that the record presents a series of legal oppressions and shows an abuse of judicial discretion which, though falling short of impeachable offenses, demand condemnation and criticism.

If Judge Speer's judicial acts in the future are marked by the rigorous and inflexible harshness shown by this record, these charges hang as a portentous cloud over his court, "impairing his usefulness, impeding the administration of justice, and endangering the integrity of American institutions."

The committee therefore recommend the adoption of the following resolution:

Resolved, That no further proceedings be had with reference to H. Res. 234.

Mr. Andrew J. Volstead, of Minnesota, a member of the subcommittee, in an accompanying minority report concurs in recommending the adoption of the resolution reported by the majority, but takes sharp issue with other conclusions set out in the majority report. After discussing in detail each charge considered in the majority report and warmly controverting conclusions reached by the majority, the minority views say:

While I concur in the recommendations made in the majority report, that no further proceedings be had upon the charges against Judge Speer, I desire to express in as emphatic language as possible my protest against the methods that have been pursued; but I desire to have it distinctly understood that I do not criticize the motives of my associates; for them I have the highest personal regards. In this investigation no effort was made to protect the judge against mere slander and abuse that could serve no other purpose than to disgrace and humiliate him. Every enemy that 29 years on the bench had produced was invited and eagerly encouraged to detail his grievance and to supplement that with all sorts of innuendoes, insinuations, and insulting opinions, utterly illegal as evidence and incompetent for any proper purpose. To add to this, the methods pursued in framing the majority report are equally reprehensible. It is apparent throughout that nothing has been considered pertinent that did not support some charge against the judge. As matters of explanation or denial do not meet this requirement, they are quite generally omitted, not only from the findings, but also from the summary of the evidence. Still this is not all. Although the majority report announces that there is not sufficient evidence to support any of the charges, that announcement is in the nature of a "Scotch verdict," or worse, because it is accompanied in almost every instance with an insinuation that the judge may be guilty, notwithstanding such finding. If anything could be more unfair or unjust, it is difficult to imagine what it could be.

The minority views conclude:

It is not necessary to say anything in commendation of Judge Speer. The last line in the majority report, recommending no further action upon the charges, is, despite all criticism to the contrary, a complete vindication. It would not have been written if the evidence had pointed to anything worthy of real criticism. In conclusion let me add, the day will come when Judge Speer will be remembered with pride by the people of Georgia, not only for his ability and integrity, but especially for what Mr. Wimberly called his many beautiful acts of mercy to the oppressed.

On October 21, 1914, the House agreed to the majority report without debate or division.

528. The investigation into the conduct of Daniel Thew Wright, associate justice of the Supreme Court of the District of Columbia.

A Member, rising in his place, impeached judge Wright on his responsibility as a Member of the House.

A committee charged with an investigation looking to impeachment delegated the inquiry to a subcommittee.

During the investigation of Judge Wright with a view to impeachment he was permitted to appear before the committee with counsel.

Judge Wright having resigned his office before final report by the committee charged with the investigation, the House agreed to the recommendation of the committee and that it be discharged.

On March 20, 1914,¹ Mr. Frank Park, of Georgia, rose in his place and proposed as a matter of privilege the impeachment of Daniel Thew Wright, an associate justice of the Supreme Court of the District of Columbia. In the absence of a quorum, the House adjourned.

¹Second session Sixty-third Congress, Record, p. 5204.

On the following day, immediately after the reading of the Journal, Mr. Park again rose and presented, as privileged, the following:

Mr. Speaker, at the adjournment hour on yesterday I brought to the attention of the House certain charges which I was about to deliver to the House.

Mr. Speaker, I rise to a question of the highest privilege and of the greatest importance. By virtue of my office as a Member of the House of Representatives I impeach Daniel Thew Wright, an associate justice of the Supreme Court of the District of Columbia of high crimes and misdemeanors.

I charge him with having accepted favors from practitioners at the bar of his court and of having permitted counsel for a street railway company to indorse his notes while said counsel was retained by said street railway company in business and causes before his court.

I charge him with performing the service of a lawyer and accepting a fee during his tenure or judicial office, in violation of the statute of the United States.

I charge him with collecting and wrongfully appropriating other people's money.

I charge him with purposely changing the record to prevent reversal of causes wherein he presided.

I charge him with bearing deadly weapons in violation of law.

I charge him with judicial misconduct in the trial of a writ of habeas corpus to an extent which provoked a reviewing court of the District of Columbia to justly characterize the trial as a "travesty of justice."

I charge him with arbitrarily revoking, without legal right, the order of a judge of concurrent jurisdiction, appointing three receivers, so as to favor his friend by appointing him sole receiver.

I charge him with being guilty of various other acts of personal and judicial misconduct for which he should be impeached.

I charge him with being morally and temperamentally unfit to hold judicial office.

Mr. Park continued:

Mr. Speaker, in accordance with former proceedings before the House in like cases, I submit the following resolution which I send to the Clerk's desk.

The resolution was as follows:

Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is necessary concerning the alleged official misconduct of Daniel Thew Wright; whether he has accepted favors from lawyers appearing before him; whether he has permitted counsel for a street railway company to indorse his notes while said counsel was retained in business and causes before his court; whether he has performed the services of lawyer and accepted a fee during his tenure of judicial office, in violation of the statutes of the United States; whether he has collected and wrongfully appropriated other people's money; whether he has purposely changed the record in order to prevent reversal of causes wherein he presided; whether he has borne deadly weapons in violation of law; whether he is guilty of judicial misconduct in the trial of a writ of habeas corpus to an extent which provoked a reviewing court of the District of Columbia to justly characterize the trial as a "travesty of justice"; whether he has arbitrarily revoked, without legal right, an order of a judge of concurrent jurisdiction, appointing three receivers, so as to favor his friend by appointing him sole receiver; whether he is morally and temperamentally unfit to hold judicial office; and whether he has been guilty of various other acts of personal and judicial misconduct for which he should be impeached.

That this committee is hereby authorized and empowered to send for persons and papers, to administer oaths, to employ, if necessary, an additional clerk and stenographer, and to appoint and send a subcommittee whenever and wherever necessary. to take testimony for the use of said subcommittee,

That the subcommittee shall have the same power in respect to obtaining testimony as is herein given to the said Committee on the Judiciary; and the Speaker shall have authority to sign and the Clerk to attest subpoenas for any witness or witnesses.

That the expenses incurred in this investigation shall be paid out of the contingent fund of the House.

On motion of Mr. Park, the resolution was referred to the Committee on the Judiciary without debate.

On April 10¹ Mr. Henry D. Clayton, of Alabama, from the Committee on the Judiciary, submitted, as privileged, the following:

The Committee on the Judiciary, having had under consideration House resolution No. 446 report the same back with the recommendation that it be amended to read as follows, and as so amended that it be adopted:

Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is necessary concerning the alleged official misconduct of Daniel Thew Wright, an associate justice of the Supreme Court of the District of Columbia; whether he has corruptly accepted favors from lawyers appearing before him; whether he has corruptly permitted counsel for a street railway company to indorse his notes while said counsel was retained in business and causes before his court; whether he has performed the services of a lawyer and accepted a fee during his tenure of judicial office, in violation of the statute of the United States; whether he has collected and wrongfully appropriated other people's money; whether he has purposely and corruptly changed the record in order to prevent reversal of causes wherein he presided; whether he has borne deadly weapons in violation of law; whether he has arbitrarily revoked, without legal right, an order of a judge of concurrent jurisdiction appointing three receivers, so as to favor his friend by appointing him sole receiver; and whether said judge has been guilty of any misbehavior for which he should be impeached.

"And in making this investigation the said committee is hereby authorized to send for persons and papers, administer oaths, take testimony, employ a clerk and stenographer, and is also authorized to appoint a subcommittee to act for and on behalf of the whole committee whenever and wherever it may be deemed advisable to take testimony for the use of said committee. The said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the process of said committee or subcommittee and shall attend the sitting of the same as ordered and directed thereby. The Speaker shall have authority to sign and the Clerk to attest subpoenas for any witness or witnesses.

"The expense of such investigation shall be paid out of the contingent fund of the House."

In response to an inquiry as to wherein the resolution proposed by the committee differed from the original resolution, Mr. Clayton said:

It does not differ in any material respect, but it puts it in better form.

On October 14² Mr. Jack Beall, of Texas, from the Committee on the Judiciary, submitted, through the Clerk of the House, the final report of that committee.

The committee reported the delegation of the inquiry to a subcommittee, the report of which is appended to and made a part of the report of the committee.

The subcommittee report says:

On May 1, 1914, the subcommittee began the examination of witnesses and held sessions on 43 days, including three night sessions, as well as numerous conferences with Mr. Justice Wright and his counsel, the taking of testimony being concluded on August 26, 1914. Such of the testimony and exhibits pertinent to the charges affecting Associate Justice Wright's official conduct

¹ House Report No. 514.

² House Report No. 1101.

that your subcommittee deemed necessary to print have been printed and a copy thereof is submitted herewith. Associate Justice Wright was duly notified and was present at each session of the subcommittee in person and was represented by counsel, Mr. J. J. Darlington, who was given opportunity to cross-examine the witnesses. Several witnesses were called on behalf of Mr. Justice Wright and examined by his counsel.

The committee report adds:

On October 6, 1914, Mr. Justice Wright tendered his resignation to the President, which was duly accepted October 7, 1914, to become effective November 15, 1914, and that because Judge Wright is not eligible under the law to retire with pay this resignation, when it becomes effective, will entirely separate him from the public service. Because of this fact the committee is of the opinion that further proceedings under House resolution 446 are unnecessary.

The committee therefore recommend the adoption of the following resolution:

Resolved, That the Committee on the Judiciary be discharged from further consideration of and action under House resolution 446.

The report of the committee was, under the rules, referred to the Committee of the Whole House on the state of the Union. On March 3¹ Mr. Beall moved the adoption of the report. The motion was agreed to without debate or division.

529. The investigation into the conduct of Alston G. Dayton, United States district judge for the northern district of West Virginia in 1915.

A Member having presented charges against Judge Dayton, the House ordered an investigation.

In the investigation of Judge Dayton the respondent appeared before the subcommittee charged with the investigation and made an extended statement concerning the matters involved.

The Judiciary Committee authorized to make an investigation committed the matter to a subcommittee, the report of which was made a part of the committee report to the House.

A subcommittee visited West Virginia and took testimony in the case of Judge Dayton.

While the subcommittee, in its report, criticized Judge Dayton, it concluded there was little possibility of maintaining impeachment proceedings.

Minority views, although agreeing with the majority, report in the findings of fact, held that the evidence warranted further proceedings toward impeachment.

The committee and the House acted adversely on the proposition to impeach Judge Dayton.

On May 11, 1914,² Mr. M. M. Neeley, of West Virginia, submitted a resolution directing the Committee on the Judiciary to make an investigation of the official conduct of Alston G. Dayton, United States district judge for the northern district of West Virginia. Under the rule, the resolution was referred to the Committee on Rules.

¹Third session Sixty-third Congress, Journal, p. 301; Record, p. 5485.

²Second session Sixty-third Congress, Record, p. 8417.

On June 12¹ Mr. Neeley rose in his place and presented as a privileged matter, the following:

Mr. Speaker, I rise to a question of the highest privilege. By virtue of my office as a Member of the House of Representatives, I impeach Alston G. Dayton, Judge of the District Court of the United States for the Northern District of West Virginia, of high crimes and misdemeanors.

At the conclusion of his arraignment, which consisted of 26 separate charges, Mr. Neeley offered the following:

Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is necessary concerning the alleged official misconduct of Alston G. Dayton; whether he has unlawfully conspired with certain corporations and individuals to bring about the removal from office of the late John J. Jackson, judge of the District Court of the United States for the Northern District of West Virginia; whether he has shown marked favoritism to certain corporations having extensive litigation in his court; whether he has had summoned on juries in his court persons connected with certain corporations to which he has shown marked favoritism during his term of office; whether he has assisted his son, Arthur Dayton, in the preparation of the defense and trial of numerous cases against certain corporations for which the said Arthur Dayton is attorney, which cases were tried before him, the said Alston G. Dayton, and whether he has unlawfully used his high office and influence in behalf of said corporations; whether he has abused his power and influence as judge to further the interests of his son, Arthur Dayton; whether he has used the funds of the United States for an improper purpose; whether he has violated the acts of Congress regulating the selection of jurors; whether he has actively engaged in politics and used his high office as judge to further the political ambitions and aspirations of his friends; whether he has lent his services as judge to the coal operators of West Virginia by improperly issuing injunctions; whether he has shown hatred and bitterness toward miners on trial in his court; whether he has used his office as judge to discourage and prevent said miners from exercising their lawful right to organize and peacefully assemble under the laws of the United States and the State of West Virginia; whether he has wrongfully expressed his own opinions in charging grand juries in his court; whether he has conspired with certain corporations and individuals in the formation of a carbon trust in violation of law; whether he has unlawfully had an order entered staying a proceeding the object of which was the condemnation of a lot in Philippi, W. Va., for a site for a Federal building; whether he has publicly denounced the President of the United States from the bench and before a jury; whether he has unlawfully used the funds of the United States Government for his own private use; whether he has wrongfully collected from the Government funds as expenses not due or allowed to him under the statute; whether he has wrongfully kept open the books of his court at Philippi, W. Va.; whether he has, in open court and before a jury, accused witnesses of swearing falsely in cases then on trial before him; whether he has directed the marshal of his district to refuse to pay the fees of witnesses whom he had accused of testifying falsely; whether he has refused to enforce certain laws of the United States; whether he has openly denounced and criticised the United States Supreme Court; whether he has discharged jurors for rendering verdicts not agreeable to him; whether he has openly stated that he would not permit the United Mine Workers of America to exist within the jurisdiction of his court; whether he has refused to permit certain defendants in a case in his court to have an interpreter; whether he has stated in open court that the United Mine Workers of America are criminal conspirators; whether he is so prejudiced as to unfit him temperamentally to hold a judicial office; and whether he has been guilty of various other acts of personal and judicial misconduct for which he should be impeached.

That this committee is hereby authorized and empowered to send for persons and papers, to administer oaths, to employ, if necessary, an additional clerk and stenographer, and to appoint and send a subcommittee whenever and wherever necessary to take testimony for the use of said subcommittee.

¹Journal, p. 645; Record, p. 10327.

That the subcommittee shall have the same power in respect to obtaining testimony as is herein given to the said Committee on the Judiciary; that the Speaker shall have authority to sign and the Clerk to attest subpoenas for any witness or witnesses.

That the expenses incurred in this investigation shall be paid out of the contingent fund of the House.

Mr. Neeley moved that the resolution be referred to the Committee on the Judiciary without debate, and on that motion demanded the previous question.

The motion was agreed to without division.

On February 9, 1915,¹ Mr. Edwin Yates Webb, of North Carolina, from the Committee on the Judiciary, reported the resolution back, with the recommendation that it be amended to read as follows:

Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is necessary concerning the alleged official misbehavior of Alston G. Dayton, United States district judge for the northern district of West Virginia; whether he, the said Alston G. Dayton, has unlawfully conspired with certain corporations and individuals to bring about the removal from office of the late John J. Jackson, judge of the District Court of the United States for the Northern District of West Virginia; whether he has shown marked favoritism to certain corporations having extensive litigation in his court; whether he has summoned on juries in his court persons connected with certain corporations to which he has shown marked favoritism during his term of office; whether he has abused his power and influence as judge to further the interests of his son, Arthur Dayton; whether he has violated the acts of Congress regulating the selection of jurors; whether he has lent his services as judge to the coal operators of West Virginia by improperly issuing injunctions; whether he has shown hatred and bitterness toward miners on trial in his court; whether he has used his office as judge to discourage and prevent said miners from exercising their lawful right to organize and peaceably assemble under the laws of the United States and the State of West Virginia; whether he has conspired with certain corporations and individuals in the formation of a carbon trust, in violation of law; whether he has openly stated that he would not permit the United Mine Workers of America to exist within the jurisdiction of his court; whether he has stated in open court that the United Mine Workers of America are criminal conspirators; and whether he has been guilty of any misbehavior for which he should be impeached.

And in making this investigation the said committee is hereby authorized to send for persons and papers, administer oaths, take testimony, employ a clerk and stenographer if necessary, and is also authorized to appoint a subcommittee to act for and on behalf of the whole committee whenever and wherever it may be deemed advisable to take testimony for the use of said committee. The said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the process of said committee or subcommittee, and shall attend the sittings of the same as ordered and directed thereby.

The Speaker shall have authority to sign and the Clerk to attest subpoenas for any witness or witnesses.

The expense of such investigation shall be paid out of the contingent fund of the House on vouchers approved by the chairman of the Judiciary Committee and approved by the Committee on Accounts and evidenced by the signature of the chairman thereof.

The amendment recommended by the committee was agreed to, and the resolution as amended was unanimously adopted.

On March 3,² Mr. Warren Gard, of Ohio, from the Committee on the Judiciary, submitted a report incorporating the report of a majority of the subcommittee to

¹ House Report No. 1381.

² House Report No. 1490.

which the investigation had been committed, accompanied by minority views signed by Mr. Daniel J. McGillicuddy, of Maine, a member of the subcommittee.

The report of the majority of the subcommittee is prefaced as follows:

The subcommittee appointed by the Committee on the Judiciary to make investigation of the charges contained in the foregoing resolution heard the testimony of numerous witnesses in Parkersburg and Wheeling, W. Va., and in Washington, D.C., on February 12, 13, 15, 16, 17, 22, 23, 24, and 26, at all of which hearings, except that of February 26 last, the Hon. A. G. Dayton, respondent, was present in person and attended by legal counsel; and on February 26 the hearing was had with the consent and approval of said Hon. A. G. Dayton, who was represented at that hearing by legal counsel.

The Hon. A. G. Dayton appeared before the subcommittee and made full and extended statement of and concerning the matters involved in said investigation.

The witnesses and respondent were each and all sworn, their evidence taken by shorthand reporters, the evidence reduced to writing and is on the file with this committee.

The report then takes up the items of impeachment in their order and summarizes the evidence adduced on each charge.

The conclusion reached by the majority, after hearing the testimony, is that:

This evidence shows many matters of individual bad taste on the part of Judge Dayton, some not of that high standard of judicial ethics which should crown the Federal judiciary, but a careful consideration of all the evidence and attendant circumstances convinces us that there is little possibility of maintaining to a conclusion of guilt the charges made, and impels us therefore to recommend that there be no further proceedings herein.

Mr. McGillicuddy filed the following minority views:

I concur with my colleagues in the above findings of fact, but I do not concur in the recommendation that no further proceedings be had, as it is my opinion that the evidence taken by the subcommittee and findings of fact above made warrant further proceedings looking toward impeachment.

The committee recommend:

The Committee on the Judiciary considered the report of said subcommittee and the evidence thereon and came to the conclusion that no further proceedings should be had with reference to said resolution, and the Committee on the Judiciary beg to report the same to the House and recommend that no further proceedings be had with reference to said resolution.

The report was agreed to without debate or division.

530. The investigation into the conduct of H. Snowden Marshall,¹ United States district attorney for the southern district of New York.

The House declined to order an investigation of District Attorney Marshall on evidence presented by a Member and referred the subject to a committee.

Form of resolution providing for an investigation by the Judiciary Committee and authorizing a subcommittee to exercise powers delegated to the committee.

On January 12, 1916,² Mr. Frank Buchanan, of Illinois, presented, as a privileged matter, a resolution detailing at length numerous charges alleging official misconduct on the part of H. Snowden Marshall, United States district attorney for the southern

¹ For preliminary proceedings in this case see section 468 of this volume.

² First session Sixty-fourth Congress, Journal, p. 204; Record, p. 963.

district of New York, and directing the Committee on the Judiciary, to conduct an investigation of the charges and report their conclusions to the House.

After debate, on motion of Mr. John J. Fitzgerald, of New York, this resolution was referred to the Committee on the Judiciary.

On January 27¹ Mr. Edwin Yates Webb, of North Carolina, from the Committee on the Judiciary, offered, as privileged, the following resolution:

Resolved, That the Committee on the Judiciary in continuing their consideration of House Resolution 90 be authorized and empowered to send for persons and papers, to subpoena witnesses, to administer oaths to such witnesses, and take their testimony.

The said committee is also authorized to appoint a subcommittee to act for and on behalf of the whole committee wherever it may be deemed advisable to take testimony for said committee. In case such subcommittee is appointed it shall have the same powers in respect to obtaining testimony as are herein given to the Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall attend the sittings of such subcommittee and serve the process of same.

In case the Committee on the Judiciary or a subcommittee thereof deems it necessary it may employ such clerks and stenographers as are required to carry out the authority given in this resolution, and the expenses so incurred shall be paid out of the contingent fund of the House.

The Speaker of the House of Representatives shall have authority to sign, and the Clerk thereof to attest, subpoenas for witnesses, and the Sergeant at Arms or a deputy shall serve them.

Mr. Finis J. Garrett, of Tennessee, raised a question as to the privilege of the resolution, when, on motion of Mr. Webb, the resolution was considered by unanimous consent.

Mr. Webb said:

Mr. Speaker, the Committee on the Judiciary has had under consideration House Resolution No. 90, which was referred to that committee some 10 days ago. The committee has not come to any conclusion yet on the resolution, but feels that it should ask the House for the authority to subpoena some witnesses before it that might throw some light upon the charges made. The resolution was unanimously adopted by the Committee on the Judiciary to-day, and I trust that it may pass and that the committee may secure the authority, which it will immediately exercise.

The resolution was agreed to.

531. The case of H. Snowden Marshall, continued.

A witness having refused to testify before a subcommittee was arrested and detained in custody.

The action of a subcommittee in arresting a recalcitrant witness having been criticized in a letter addressed to the chairman, the committee reported the proceedings to the House, with recommendations for an investigation.

Instance in which the House authorized an investigation of purported violations of its privileges and its power to punish for contempt.

On April 5, 1916,² Mr. Edwin Yates Webb, of North Carolina, from the Committee on the Judiciary, as a question of privilege, reported:

While considering House Resolution 90 and House Resolution 110, on the 31st day of January, 1916, the Committee on the Judiciary authorized the chairman to appoint a subcommittee of three to execute the purposes of House Resolution 110 to act for and on behalf of the full committee

¹ Record, p. 1658.

² First Sixty-fourth Congress, House Report No. 494.

wherever it may be deemed advisable to take testimony for said committee, and on February 1, 1916, the chairman appointed Messrs. Charles C. Carlin, Warren Gard, and John M. Nelson as members of such subcommittee.

Thereafter the said subcommittee organized and heard the testimony of certain witnesses in the Judiciary Committee rooms in the city of Washington. The subcommittee determined, for its further information and in carrying out the duties assigned it under the resolution of the House of Representatives, that it should hear the testimony of certain other witnesses in the city of New York, and on the 28th day of February, 1916, the said subcommittee, under subpoenas duly signed by the Speaker of the House of Representatives and attested by the Clerk thereof, caused certain witnesses to be brought before it, in the Federal post-office building in the city of New York, and continued the examination of witnesses upon said charges up to and including the 4th day of March, 1916.

On the 3d day of March, 1916, there appeared in a New York newspaper an article containing among other things, the following language:

"It is the belief in the district attorney's office that the real aim of the Congress investigation is to put a stop to the criminal investigation of the pro-German partisans."

On the 3d of March, 1916, the subcommittee called before it one, Leonard R. Holme, who testified to the subcommittee that he wrote the article containing the foregoing language, but when asked whether or not he conferred with anybody in the district attorney's office before the article was written replied that he declined to give the source of his information. The chairman of the subcommittee then propounded this question to the witness, "Did you confer with Mr. Marshall before you wrote this article?" To which the witness replied, "I respectfully decline to answer the question, Sir." The chairman of the subcommittee then propounded the following question to him, "Did you confer with anybody in Mr. Marshall's office?" To which the witness replied, "I respectfully decline to answer that question, sir."

Whereupon, the Sergeant at Arms was directed by the chairman of the subcommittee to take charge of the witness and keep him in custody until the further order of the committee.

The report appends an excerpt from the transcript of the testimony by Witness Holme before the subcommittee and continues:

On Saturday, the 4th day of March, 1916, the said H. Snowden Marshall, as district attorney for the southern district of New York, caused to be transmitted to C. C. Carlin, chairman of said subcommittee, then in the performance of its duties, as required by the House of Representatives, the following letter:

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY'S OFFICE,
New York, March 4, 1916.

Sir: Yesterday afternoon, as I am informed, your honorable committee ordered the arrest of Mr. L. R. Holme, a representative of a newspaper which had published an article at which you took offense. The unfortunate gentleman of the press was placed in custody under your orders. He was taken to the United States marshal to be placed in confinement (I do not understand whether his sentence was to be one day or a dozen years). The marshal very properly declined to receive the prisoner. This left you at a loss, and I am advised that you tried to work your way out of the awkward situation by having Mr. Holme brought back and telling him that you were disposed to be "kind" to him and then discharged him for the purpose of avoiding unpleasant consequences to yourselves.

You are exploiting charges against me of oppressive conduct toward a member of your honorable body who is charged with a violation of law and of oppressive conduct on my part toward shysters in the blackmailing and bankruptcy business.

I may be able to lighten your labors by offering to resign if you can indicate anything I ever—did that remotely approximates the lawless tyranny of your order of arrest of Mr. Holme.

The supposed justification of your order that Mr. Holme be placed in custody was his refusal to answer the question you asked as to where he got the information on which was based on the article which displeased you.

It is not necessary for you to place anyone under arrest in order to get the answers to the question which you asked Mr. Holme, because I can and will answer it. I gave Mr. Holme information, part of which he published and from which he made deductions, so that if your honorable committee has a grievance it is against me and not against him.

What I told him was about as follows:

I said that your expedition to this town was not an investigation conducted in good faith, but was a deliberate effort to intimidate any district attorney who had the temerity to present charges against one of your honorable body.

I said that your whole proceeding here was irregular and extraordinary; that I had never heard of such conduct of an impeachment proceeding; that charges of this sort were not usually heard in public until the House of Representatives had considered them and were willing to stand back of them.

I pointed out to him that you, contrary to usual practice, had come here and had held public hearings; that among your witnesses you had invited every rogue that you could lay your hands on to come before you and blackguard and slander me and my assistants under the full privilege of testifying before a congressional committee.

I told him that you had called one of my junior assistants before you and had attempted to make it publicly appear that his refusal to answer your questions as to what occurred in the grand-jury room in the Buchanan case was due solely to my orders. I said that at the time you attempted to convey this public impression you knew that it was misleading because I had been asked by you to produce the minutes of the grand jury and had been instructed by the Attorney General not to comply with your request, as you well knew. I showed him the telegram of the Attorney General to me and showed him a copy of my letter to you, dated February 29, 1916, in which I sent you a copy of the telegram of the Attorney General instructing me not to give you the grand-jury minutes.

I told him that you were traveling around in your alleged investigation of me with Buchanan's counsel, Walsh and David Slade, in constant conference with you. I said that I believed that every word of the evidence, whether in so-called secret sessions or not, had been placed at the disposal of these worthies, and that I would be just as willing to give the grand-jury minutes to a defendant as to give them to your honorable subcommittee.

I told him that I did not share the views which seemed to prevail in your subcommittee on this subject. I said that I regarded a Member of Congress who would take money for an unlawful purpose from any foreign agent as a traitor, and that it was a great pity that such a person could only be indicted under the Sherman law, which carries only one year in jail as punishment.

I said that it was incomprehensible to me how your honorable subcommittee should rush to the assistance of an indicted defendant; how you had apparently resolved to prevent prosecution by causing the district attorney in charge to be publicly slandered.

I told him that I would not permit the prosecution of the persons whose cause you had apparently espoused to be impeded by you; I said that if you wanted the minutes of the grand jury in any case, you would not get them as long as I remained in office.

You will observe from the foregoing statement that what Mr. Holme published may have been based on what I said. If you have any quarrel, it is with me, and not with him.

It is amazing to me to think that you supposed that I did not understand what you have been attempting to do during your visit here. I realized that your effort was to ruin me and my office by publishing with your full approval the complaints of various persons who have run afool of the criminal law under my administration. Your subcommittee has endeavored by insulting questions to my assistants and others, by giving publicity and countenance to the charges of rascals and by refusing to listen to the truth and refusing to examine public records to which your attention was directed, to publicly disgrace me and my office.

I propose to make this letter public.

Respectfully,

H. SNOWDEN MARSHALL,
United States Attorney

Hon. C. C. Carlin,
*Chairman Subcommittee of the Judiciary Committee
of the House of Representatives, 323 Federal Building, New York, N. Y.*

The report continues:

At the same time or before this letter was sent to the subcommittee, it was given to the newspapers and published by them.

On the 9th day of March 1916, the subcommittee aforesaid, through its chairman, Hon. C. C. Carlin, submitted to the Committee on the Judiciary the foregoing letter of H. Snowden Marshall.

On or about the 11th day of March, 1916, the following letter was received by the chairman of the Judiciary Committee and immediately laid before the full committee:

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY'S OFFICE,
New York, March 10, 1916.

DEAR SIR: Referring to my letter of March 4, addressed to the chairman of the subcommittee which has recently taken testimony in New York concerning my administration of my office, I notice from the press that some persons appear to have construed my statements as directed toward your honorable committee as a whole. I beg to advise you that the criticism in that letter were addressed to the methods pursued by the subcommittee. I do not retract nor modify any of those criticisms. But I did not intend (nor do I think my letter should be so construed) to reflect in any way upon the Judiciary Committee, nor did I question the power of the House of Representatives to order such an investigation.

If you and the other members of your committee, for whom I have high respect, have gained the impression that my letter carried any personal reflection upon your honorable committee, it gives me pleasure to assure you that I had no such purpose.

Respectfully,

H. SNOWDEN MARSHALL.

Hon. EDWIN Y. WEBB,

*Chairman of the Judiciary Committee,
House of Representatives, Washington, D.C.*

The report of the committee concludes:

The Judiciary Committee has carefully considered said letters in the light of congressional and judicial precedents as touching the prerogatives of the House of Representatives and its Members, and the committee has come to the determination that said letters, their publication and attendant circumstances, are of such nature, that they should be called to the attention of the House. For obvious reasons the committee deems it advisable to take this step rather than to report directly upon the facts and the law in the case. I am, therefore, directed by the committee to report the whole matter to the House of Representatives, with the recommendation that a select committee of five be appointed by the Speaker to report upon the facts in this case; the violations, if any, of the privileges of the House or the Committee on the Judiciary or the subcommittee thereof; the power of the House to punish for contempt; and the procedure in contempt proceedings, to the end that the privileges of the House shall be maintained and the rights of the Members protected in the performance of their official duties.

The House agreed to the following resolution:

Resolved, That a select committee of five members be appointed forthwith by the Speaker to consider the report, in the nature of a statement, from the Judiciary Committee with reference to certain conduct of H. Snowden Marshall, and to report to the House of Representatives the facts in the case; the violations, if any, of the privileges of the House of Representatives or of the Committee on the Judiciary, or of the subcommittee thereof; the power of the House to punish for contempt; and the procedure in contempt proceedings, in case they find a contempt has been committed, to the end that the privileges of the House shall be maintained and the rights of Members protected in the performance of their official duties.

The select committee shall have the power to send for persons and papers and shall submit its report to the House not later than April fourteenth, nineteen hundred and sixteen.

The Speaker appointed as members of this committee Messrs. John A. Moon, of Tennessee; John N. Garner, of Texas; Charles R. Crisp, of Georgia; John A. Sterling, of Illinois; and Irvine L. Lenroot, of Wisconsin.

532. The case of H. Snowden Marshall, continued.

By direction of the House, the Speaker issued and the Sergeant at Arms served a warrant for the arrest of a person charged with contempt of the House.

A person arrested by order of the House secured a writ of habeas corpus and was released on his own recognizance.

Discussion of the delegation of power to subcommittees.

On April 14, 1916,¹ Mr. Moon, from the select committee, presented the report of that committee, accompanied by a transcript of testimony.

The report quotes the following letter addressed to H. Snowden Marshall by direction of the committee:

APRIL 7, 1916.

Hon. H. SNOWDEN MARSHALL,

*United States District Attorney for the
Southern District of New York, New York City.*

DEAR SIR: Inclosed is House Resolution 193 and Report No. 494, which explain themselves. The select committee appointed by the Speaker of the House of Representatives are now engaged in the investigation of the matters referred to herein. We will be glad to have you appear before us, if you so desire, at the rooms of the Committee on the Post Office and Post Roads of the House of Representatives, in the Capitol Building, Washington, D.C., on Monday, April 10, 1916, at 10 o'clock a. m., and make such statement as you may desire before the committee touching this matter. As the time of the committee is limited in which to report, you will oblige us by advising by wire whether you desire to be present or not. This communication is made to you by order of the select committee.

Very truly yours,

JOHN A. MOON,
Chairman Select Committee.

In response to this letter, Judge Marshall appeared before the committee, and the report incorporates the following findings reached by the committee after hearing his testimony:

We conclude and find that the letter written and published by said H. Snowden Marshall to Hon. C. C. Carlin, chairman of the subcommittee of the Judiciary Committee of the House of Representatives, on March 4, 1916, is as a whole and in several of the separate sentences defamatory and insulting and tends to bring the House into public contempt and ridicule, and that the said H. Snowden Marshall, by writing and publishing the same, is guilty of contempt of the House of Representatives of the United States because of the violation of its privileges, its honor and its dignity.

We find that Mr. Marshall's testimony is an aggravation of his contempt.

In discussing the delegation of power to subcommittees, the report says:

No legislative body consisting of a large number of members can move from one place to another to take testimony in cases where its power and authority or dignity is called into question. Its power in this respect must, therefore, necessarily be delegated to one of its committees or a subcommittee by a proper resolution, as was done in this case. This delegation of power

¹First session Sixty-fourth Congress, H. Rept. 544.

to a subcommittee is lawful, and carries with it all of the authority belonging to the House in the execution of the immediate purpose for which the committee was called into existence.

Any conduct that would be a violation of the privileges of the House if directed against the House in the first place, would be a contempt against the House and a breach of its privileges when directed against one of its committees or subcommittees appointed by authority of the House to do a specific thing and acting within its delegated power and in the scope of its authority. Any other view would leave the House powerless to protect its honor and dignity and its constitutional rights. It would set at defiance the sovereignty of the people represented by the House. That the House as a representative body has the inherent power to protect itself from defamation and all slanderous and lawless conduct that would bring it into reproach and popular contempt, whether uttered or committed in the presence of the House or elsewhere, has not been disputed since the case of *Anderson v. Dunn*. Offensive, abusive, and defamatory language against a committee of the House acting within its authority is offensive, abusive, and defamatory against the House, and is just as dangerous to the integrity of that body as if had been committed in its presence.

As to the power of the House to punish for contempt, the committee decides:

We find, therefore, that the House has full power to punish for contempt committed in its presence, or not within its presence, by publication of matter that is defamatory against it or its committee lawfully constituted and acting within its authority. We find as stated that the privileges of the House in this case were breached by H. Snowden Marshall by the letter which he wrote to the subcommittee. This letter as a whole is insulting, defamatory, and a clear expression of contempt. The purpose for which it was written and printed was to defame—to bring into ridicule and contempt—the subcommittee of the Judiciary Committee having under investigation the impeachment charges against H. Snowden Marshall. It was as much a violation of the privileges of the House to have directed a scurrilous and offensive letter of this character against one of its committees, as if it had been addressed directly to the House.

It is proper for us to say that Mr. Marshall was given every opportunity to retract or apologize or in some way modify his statements contained in the letter. Parts of the letter containing the most defamatory matter were read to him, and he was asked if he meant to still say that that was true. He reaffirmed and reasserted the same, only with the statement that it was intended to criticize the procedure of the subcommittee and was not intended as a contempt of the House. It is clear that if the House could tolerate such a construction of this letter and could tolerate such vile and defamatory language against one of its committees, it would be powerless to conduct impeachment trials or perform any other duty without living under the disgrace of the contempt that would necessarily come to a body so unmindful of its duties to the people as to permit such insult and injury.

The committee therefore recommend:

As to the method of procedure that should be followed in the House in trial of the said H. Snowden Marshall for the contempt which the committee finds that he has committed, we recommend the passage of the following resolution:

Resolved, That the Speaker do issue his warrant, directed to the Sergeant at Arms, commanding him to take in custody, wherever to be found, the body of H. Snowden Marshall, of the State of New York, and to proceed forthwith to bring the said H. Snowden Marshall to the bar of the House of Representatives, to answer the charge that he, on March 4, 1916, in the city of New York, did violate the privileges of the House of Representatives of the United States by writing and causing to be published the following letter. (The letter is here quoted in full.)

Resolved, That the said H. Snowden Marshall, in writing and publishing said letter, was guilty of a breach of the privileges and a contempt of the House of Representatives, and that the said H. Snowden Marshall be furnished with a copy of this resolution, and a copy of the report of the select committee of the House of Representatives, appointed to investigate the charges made against him in the House of Representatives.

Resolved, That when H. Snowden Marshall shall be brought to the bar of the House, to answer the charge of having violated the privileges of the House of Representatives, as afore set out, the Speaker shall then cause to be read to said H. Snowden Marshall the findings of fact and findings of law by the special committee of the House, charged with the duty of investigating whether or not the said H. Snowden Marshall had violated the privileges of the House of Representatives, or was in contempt of same; the Speaker shall then inquire of said H. Snowden Marshall if he desires to be heard, and to have counsel on the charge of being in contempt of the House of Representatives for having violated its privileges. If the said H. Snowden Marshall desires to avail himself of either of these privileges, the same shall be granted him. If not, the House shall thereupon proceed to take order in the matter.

This report was considered in the House on June 20. In the course of the debate, Mr. Andrew J. Montague, of Virginia, said:

Mr. Speaker, I beg to submit to this House, without fear of successful contradiction, that neither this House nor the Senate has ever heretofore undertaken to exercise jurisdiction in contempt proceedings of a case of the character we are now considering. No slander or libel of this body has ever heretofore been treated as contempt by this body. This statement can not be controverted. Therefore we are driven to the unfortunate predicament of making a new law to fit a new case. The report attempts to declare that to be contempt which has never heretofore been adjudged to be contempt by either House of Congress. In other words, Mr. Speaker, we now seek to declare that unlawful which when heretofore done was lawful.

After extended debate, the resolutions recommended by the committee were agreed to—yeas 209, nays 85.

On June 22 the Speaker announced:

The Chair directs the reporter to record the fact to go in the Record that the Speaker signs this warrant for H. Snowden Marshall in the presence of the House.

The Chair does not think it necessary, but some gentlemen did.

On June 26¹ the Sergeant at Arms addressed a letter to the Speaker advising him that in compliance with this warrant he had arrested Judge Snowden, who had thereupon secured a writ of habeas corpus and had been released on his own recognizance. On the same day the House agreed to the following:

Resolved, That the Sergeant at Arms of the House is hereby authorized to employ legal counsel in the matter of the proceedings against H. Snowden Marshall, United States district attorney for the southern district of New York, for contempt, the expenses to be paid out of the contingent fund of the House.

The hearing in the habeas corpus proceedings was held in the United States District Court for the Southern District of New York, which dismissed the writ of habeas corpus, remanded Judge Marshall to the custody of the Sergeant at Arms and directed that he be brought before the House.² The relator thereupon appealed the case to the Supreme Court.

533. The case of H. Snowden Marshall, continued.

A committee, after investigation of impeachment charges referred to it by the House, recommended that no further action be taken thereon.

On August 4, 1916,³ Mr. Webb, from the Committee on the Judiciary, submitted the report of the committee on the resolution, proposing impeachment of H. Snowden

¹ Record, p. 10372.

² First session Sixty-fourth Congress, Record, p. 11691.

³ House Report No. 1077.

Marshall, recommending that no further proceedings be had in the matter. The report was referred to the House Calendar and was not considered by the House.

534. The case of H. Snowden Marshall, continued.

Decision by the Supreme Court on the power of the House to punish for contempt.

The House is without constitutional jurisdiction to punish summarily for contempt in certain cases.

The power to punish contempt vested in the House of Commons is not conferred by the Constitution upon Congress.

While power to punish contempt is not expressly granted to Congress by the Constitution, it has the implied power to preserve itself and to deal by way of contempt with direct obstruction to its legislative duties.

The implied power to punish for contempt is limited to imprisonment and such imprisonment may not extend beyond the session of the body in which the contempt occurred.

In cases of contempt which it is not authorized to redress, the remedy of the House is resort to judicial proceedings under the criminal law.

On April 23, 1917,¹ the Supreme Court of the United States handed down a unanimous decision in the case of H. Snowden Marshall, appellant, *v.* Robert B. Gordon, Sergeant at Arms of the House of Representatives of the United States.²

As to the authority of the House of Commons to punish for contempt the decision says:

Undoubtedly what went before the adoption of the Constitution may be resorted to for the purpose of throwing light on its provisions. Certain is it that authority was possessed by the House of Commons in England to punish for contempt directly—that is, without the intervention of courts—and that such power included a variety of acts and many forms of punishment including the right to fix a prolonged term of imprisonment. Indubitable also is it, however, that this power rested upon an assumed blending of legislative and judicial authority possessed by the Parliament when the Lords and Commons were one, and continued to operate after the division of Parliament into two houses either because the interblended power was thought to continue to reside in the Commons, or by the force of routine the mere reminiscence of the commingled powers led to a continued exercise of the wide authority as to contempt formerly existing long after the foundation of judicial-legislative power upon which it rested had ceased to exist. That this exercise of the right of legislative-judicial power to exert the authority stated prevailed in England at the time of the adoption of the Constitution and for some time after has been so often recognized as to make it too certain for anything but statement.

The opinion then differentiates between the power vested in the House of Commons and that conferred by the Constitution on the House of Representatives:

No power was expressly conferred by the Constitution of the United States on the subject except that given to the House to deal with contempt committed by its own Members. Article 1, section 5. As the rule concerning the Constitution of the United States is that powers not delegated were reserved to the people or the States, it follows that no other express authority to deal with contempt can be conceived of. It comes, then, to this: Was such an authority implied from the powers granted? As it is unthinkable that in any case from a power expressly granted there can be implied the authority to destroy the grant made, and as the possession by Congress of the

¹First session Sixty-fifth Congress, Record, p. 1706.

²U. S. 243, p. 521.

commingled legislative-judicial authority as to contempts which was exerted in the House of Commons would be absolutely destructive of the distinction between legislative, executive, and judicial authority which is interwoven in the very fabric of the Constitution and would disregard express limitations therein, it must follow that there is no ground whatever for assuming that any implication as to such a power may be deduced from any grant of authority made to Congress by the Constitution. This conclusion has long since been authoritatively settled and is not open to be disputed.

The court holds, however, that, while not expressly granted, implied powers are conferred as follows:

As we have already said, the power possessed by the House of Commons was incompatible with the Constitution and could not be exerted by the House, it was yet explicitly decided that from the power to legislate given by the Constitution to Congress there was to be implied the right of Congress to preserve itself; that is, to deal by way of contempt with direct obstructions to its legislative duties.

As to the nature of these implied powers:

What does this implied power embrace, is thus the question. In answering, it must be borne in mind that the power rests simply upon the implication that the right has been given to do that which is essential to the execution of some other and substantive authority expressly conferred. The power is therefore but a force implied to bring into existence the conditions to which constitutional limitations apply. It is a means to an end and not the end itself. Hence it rests solely upon the right of self-preservation to enable the public powers given to be exerted.

Without undertaking to inclusively mention the subjects embraced in the implied power, we think from the very nature of that power it is clear that it does not embrace punishment for contempt as punishment, since it rests only upon the right of self-preservation; that is, the right to prevent acts which in and of themselves inherently obstruct or prevent the discharge of legislative duty or the refusal to do that which there is an inherent legislative power to compel in order that legislative functions may be performed. And the essential nature of the power also makes clear the cogency and application of two limitations; that is, that the power, even when applied to subjects which justified its exercise, is limited to imprisonment, and such imprisonment may not be extended beyond the session of the body in which the contempt occurred. Not only the adjudged cases but the congressional action in enacting legislation as well as in exerting the implied power conclusively sustain the views just stated.

The court then cites instances of the exercise of the power by Congress and characterizes them as dealing—

with either physical obstruction of the legislative body in the discharge of its duties or physical assault upon its Members for action taken or words spoken in the body, or obstruction of its officers in the performance of their official duties, or the prevention of Members from attending so that their duties might be performed, or, finally, with contumacy in refusing to obey orders to produce documents or give testimony which there was a right to compel.

In the two or three instances not embraced in the classes we think it plainly appears that for the moment the distinction was overlooked which existed between the legislative power to make criminal every form of act which can constitute a contempt to be punished according to the orderly process of law and the accessory implied power to deal with particular acts as contempts outside of the ordinary process of law because of the effect such particular acts may have in preventing the exercise of legislative authority. And in the debates which ensued when the various cases were under consideration it would seem that the difference between the legislative and the judicial power was also sometimes forgotten—that is to say, the legislative right to exercise discretion was confounded with the want of judicial power to interfere with the legislative discretion when lawfully exerted. But these considerations are incidental and do not change the concrete result manifested by considering the subject from the beginning. Thus we have been able to discover no single instance wherein the exertion of the power to compel testimony restraint

was ever made to extend beyond the time when the witness should signify his willingness to testify, the penalty or punishment for the refusal remaining controlled by the general criminal law. So again we have been able to discover no instance, except the two or three above referred to, where acts of physical interference were treated as within the implied power unless they possessed the obstructive or preventive characteristics which we have stated, or any case where any restraint was imposed after it became manifest that there was no room for a legislative judgment as to the virtual continuance of the wrongful interference which was the subject of consideration. And this latter statement causes us to say that where a particular act because of interference with the right of self-preservation comes within the jurisdiction of the House to deal with directly under its implied power to preserve its functions and therefore without resort to judicial proceedings under the general criminal law, we are of opinion that authority does not cease to exist because the act complained of had been committed when the authority was exerted, for to so hold would be to admit the authority and at the same time deny it. On the contrary, when an act is of such a character as to subject it to be dealt with as a contempt under the implied authority, we are of opinion that jurisdiction is acquired by Congress to act on the subject, and therefore there necessarily results from this power the right to determine in the use of legitimate and fair discretion how far from the nature and character of the act there is necessity for repression to prevent immediate recurrence—that is to say, the continued existence of the interference or obstruction to the exercise of the legislative power. And of course in such case, as in every other, unless there be manifest an absolute disregard of discretion and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference.

As to the application of these implied powers to the case at bar, the court holds:

It remains only to consider whether the acts which were dealt with in the case in hand were of such a character as to bring them within the implied power to deal with contempt; that is, the accessory power possessed to prevent the right to exert the powers given from being obstructed and virtually destroyed. That they were not, would seem to be demonstrated by the fact that the contentions relied upon in the elaborate arguments at bar to sustain the authority were principally rested not upon such assumption, but upon the application and controlling force of the rule governing in the House of Commons. But aside from this, coming to test the question by a consideration of the conclusion upon which the contempt proceedings were based as expressed in the report of the select committee which we have previously quoted and the action of the House of Representatives based on it, there is room only for the conclusion that the contempt was deemed to result from the writing of the letter not because of any obstruction to the performance of legislative duty resulting from the letter or because the preservation of the power of the House to carry out its legislative authority was endangered by its writing, but because of the effect and operation which the irritating and ill-tempered statements made in the letter would produce upon the public mind or because of the sense of indignation which it may be assumed was produced by the letter upon the members of the committee and of the House generally. But to state this situation is to demonstrate that the contempt relied upon was not intrinsic to the right of the House to preserve the means of discharging its legislative duties, but was extrinsic to the discharge of such duties and related only to the presumed operation which the letter might have upon the public mind and the indignation naturally felt by members of the committee on the subject. But these considerations plainly serve to mark the broad boundary line which separates the limited implied power to deal with classes of acts as contempts for self-preservation and the comprehensive legislative power to provide by law for punishment for wrongful acts.

The opinion thus sums up the relation between the legislative and judicial departments of the Government:

The conclusions which we have stated bring about a concordant operation of all the powers of the legislative and judicial departments of the Government, express or implied, as contemplated

by the Constitution. And as this is considered, the reverent thought may not be repressed that the result is due to the wise foresight of the fathers manifested in State constitutions even before the adoption of the Constitution of the United States by which they substituted for the intermingling of the legislative and judicial power to deal with contempt as it existed in the House of Commons a system permitting the dealing with that subject in such a way as to prevent the obstruction of the legislative powers granted and secure their free exertion and yet at the same time not substantially interfere with the great guaranties and limitations concerning the exertion of the power to criminally punish—a beneficent result which additionally arises from the golden silence by which the framers of the Constitution left the subject to be controlled by the implication of authority resulting from the powers granted.

As to the privilege of the House in impeachment proceedings, the decision says:

It is suggested in argument that whatever be the general rule, it is here not applicable because the House was considering and its committee contemplating impeachment proceedings. The argument is irrelevant because we are of opinion that the premise upon which it rests is unfounded. But indulging in the assumption to the contrary we think it is wholly without merit, as we see no reason for holding that if the situation suggested be assumed it authorized a disregard of the plain purposes and objects of the Constitution as we have stated them. Besides, it must be apparent that the suggestion could not be accepted without the conclusion that under the hypothesis stated the implied power to deal with contempt as ancillary to the legislative power had been transformed into judicial authority and become subject to all the restrictions and limitations imposed by the Constitution upon that authority—a conclusion which would frustrate and destroy the very purpose which the proposition is advanced to accomplish and would create a worse evil than that which the wisdom of the fathers corrected before the Constitution of the United States was adopted.

In conclusion the court recapitulates:

We repeat, out of abundance of precautions, we are called upon to consider not the legislative power of Congress to provide for punishment and prosecution under the criminal laws in the amplest degree for any and every wrongful act, since we are alone called upon to determine the limits and extent of an ancillary and implied authority essential to preserve the fullest legislative power, which would necessarily perish by operation of the Constitution if not confined to the particular ancillary atmosphere from which alone the power arises and upon which its existence depends.

It follows from what we have said that the court below erred in refusing to grant the writ of habeas corpus and its action must be, and it is, therefore, reversed, and the case remanded with directions to discharge the relator from custody.

And it is so ordered.

535. The investigation of the conduct of Judge Kenesaw Mountain Landis.

A Member, rising in his place, impeached Judge Landis on his responsibility as a Member of the House.

As the Congress was nearing its close, the majority of the Judiciary Committee recommended that the further prosecution of the investigation be left to the succeeding Congress.

Conflicting views of the majority and minority of the Judiciary Committee, in 1921, as to offenses justifying impeachment.

On February 14, 1921,¹ Mr. Benjamin F. Welty, of Ohio, claiming the floor for a question of privilege, said:

I impeach said Kenesaw M. Landis for high crimes and misdemeanors and charge said Kenesaw M. Landis as follows:

¹Third session Sixty-sixth Congress, Record, p. 3142.

First. For neglecting his official duties for another gainful occupation not connected therewith,

Second. For using his office as district judge of the United States to settle disputes which might come into his court as provided by the laws of the United States.

Third. For lobbying before the legislatures of the several States of the Union to procure the passage of State laws to prevent gambling in baseball, instead of discharging his duties as district judge of the United States.

Fourth. For accepting the position as chief arbiter of disputes in baseball associations at a salary of \$42,500 per annum, while attempting to discharge the duties as a district judge of the United States which tends to nullify the effect of the judgment of the Supreme Court of the District of Columbia and the baseball gambling indictments pending in the criminal courts of Cook County, Ill.

Fifth. For injuring the national sport of baseball by permitting the use of his office as district judge of the United States because the impression will prevail that gambling and other illegal acts in baseball will not be punished in the open forum as in other cases.

Mr. Speaker, I move that this charge be referred to the Committee on the Judiciary without debate for investigation and report, and on that I move the previous question.

The House, without division, agreed to the motion.

On March 2,¹ Mr. Leonidas C. Dyer, of Missouri, from the Committee on the Judiciary, reported that the committee had considered the impeachment charges against Judge Landis—

which involve the legal and moral character of his alleged act in accepting employment while a district judge of the United States from certain baseball associations within the United States, to act as an arbitrator in disputes which may hereafter arise between them, at a compensation of \$42,500 per annum, and that said committee find that said act of accepting the employment aforesaid, if proved, is, in their opinion, at least inconsistent with the full and adequate performance of the duty of the said the Hon. Kenesaw Mountain Landis, as a United States district judge, and that said act would constitute a serious impropriety on the part of said judge.

That said charges were filed too late in the present session of the Congress to admit of the full and complete investigation which their serious nature requires, and for that reason your committee recommend that the question of the further prosecution of said charges by full and adequate investigation be left to the Sixty-seventh Congress.

The minority views, submitted by Mr. Andrew J. Volstead, of Minnesota, fail to agree with the conclusions reached by the majority and take this position:

No violation of any law has been called to the attention of the committee, nor is it claimed that the judge is guilty of any act that would establish moral turpitude. One or both of those grounds would have to be established before impeachment proceedings could be maintained.

The investigation has gone far enough to disclose the actual facts and there is no reason for the recommendation that a further investigation be had in the next Congress. To postpone action is not only unjust to the judge, but equally unjust to the public. If the judge is guilty, this committee should say so; if he is not, he is entitled to have the public know that fact. Postponement tends only to discredit him in the eyes of the public and to weaken him in the administration of justice.

The Congress was nearing its close and consideration of the report was not reached by the House.

No action by Sixty-seventh Congress appears.

536. The investigation of charges against Attorney General Harry M. Daugherty

¹House Report No. 407: Record. p. 4359.

Instance wherein a Member rising to a question of privilege, impeached the Attorney General on his responsibility as a Member of the House.

A Member proposing impeachment is required to present definite charges before proceeding in debate.

Charges of impeachment may not be denied presentation because of generality in statement.

A committee was authorized to send for persons and papers and to administer oaths in an investigation delegated to it by the House.

On September 11, 1922,¹ Mr. Oscar E. Keller, of Minnesota, rising to a question of privilege, said:

Mr. Speaker, I impeach Harry M. Daugherty, Attorney General of the United States, for high crime and misdemeanors in office.

Mr. Keller proceeded in debate, when the Speaker interposed:

The Chair will say to the gentleman that he ought first to prefer his charges. When the gentleman rises to a question of this high privilege he ought to present definite charges at the outset.

Thereupon Mr. Keller submitted:

First. Harry M. Daugherty, Attorney General of the United States, has used his high office to violate the Constitution of the United States in the following particulars:

- (1) By abridging freedom of speech.
- (2) By abridging the freedom of the press.
- (3) By abridging the right of people peaceably to assemble.

Second. Unmindful of the duties of his office and his oath to defend the Constitution of the United States, and unmindful of his obligations to discharge those duties faithfully and impartially, the said Harry M. Daugherty has, in his capacity of Attorney General of the United States, conducted himself in a manner arbitrary, oppressive, unjust, and illegal.

Third. He has, without warrant, threatened with punishment citizens of the United States who have opposed his attempts to override the Constitution and the laws of this Nation.

Fourth. He has used the funds of his office illegally and without warrant in the prosecution of individuals and organizations for certain lawful acts which, under the law, he was specifically forbidden to prosecute.

Fifth. He has failed to prosecute individuals and organizations violating the law after those violations have become public scandal.

Mr. Thomas L. Blanton, of Texas, made the point of order that the charges recited were too general in character to constitute an impeachment of a public official.

The Speaker overruled the point of order, and Mr. Kelier offered the following resolution:

Whereas impeachment of Harry M. Daugherty, Attorney General of the United States, has been made on the floor of the House by the Representative from the fourth district of Minnesota: Be it

Resolved, That the Committee on the Judiciary be, and they hereby are, authorized and directed to inquire into the official conduct of Harry M. Daugherty, Attorney General of the United States, and to report to the House whether, in their opinion, the said Harry M. Daugherty 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 this House; and that the

¹Second session Sixty-seventh Congress, Record p. 12346.

said committee have power to send for persons and papers and to administer the customary oaths to witnesses.

On motion of Mr. Frank W. Mondell, of Wyoming, the resolution was referred to the Committee on the Judiciary.

On December 4¹ the House, by resolution, authorized the committee in the consideration of the resolution, to send for persons and papers, administer oaths to witnesses, and sit during sessions of the House.

537. The investigation of charges against Attorney General Harry M. Daugherty, continued.

Instance wherein a Member declined to obey a summons to appear and testify before a committee of the House.

A committee having summoned a Member to testify as to statements made by him in debate, he protested that it was an invasion of his constitutional privilege.

Form of subpoena served on a Member of the House.

A committee asserted the power of the House to arrest and imprison recalcitrant Members in order to compel obedience to its summons.

An official against whom charges of impeachment were pending asked leave and was allowed to file an answer.

In compliance with a request from the committee that he furnish it with a statement of the facts relied on by him as constituting the offenses charged, Mr. Keller filed a statement specifying some 60 different charges. Thereupon Attorney General Daugherty asked leave and was allowed to file an answer.

While these pleadings were under consideration by the Committee on the Judiciary Mr. Keller appeared before the committee and read a prepared statement criticizing the methods of the committee in conducting the inquiry and announcing:

I reiterate now that I am in possession of evidence ample to prove Harry M. Daugherty guilty of all of the high crimes and misdemeanors with which I have charged him. I am ready and anxious to present this evidence in a proper way before an unbiased committee, but I emphatically refuse to permit it to be used as whitewashing material.

I now repeat my demand that my resolution, House Resolution 425, be reported to the House of Representatives with the recommendation that it pass, and that I be permitted to present my evidence before an unbiased committee in the proper way. With these whitewashing proceedings I shall have nothing further to do.

He then withdrew and declined to further participate in the proceedings.

By direction of the committee the following subpoena was issued and was served upon Mr. Keller by the Sergeant at Arms of the House December 14:

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA.

To the SERGEANT AT ARMS or his special messenger:

You are hereby commanded to summon Hon. Oscar E. Keller to be and appear before the Judiciary Committee of the House of Representatives of the United States, of which the Hon. Andrew J. Volstead is chairman, in their chamber in the city of Washington on December 15, 1922,

¹ Fourth session Sixty-seventh Congress, Record, p. 18.

at the hour of 10:30 a. m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States at the city of Washington, this 14th day of December, 1922.

[SEAL.]

F. H. GILLETT, *Speaker*.

Attest:

WM. TYLER PAGE, *Clerk*.

Mr. Keller refused to heed the summon and by his attorney, who appeared before the committee for him, submitted that as a Representative in Congress he was not legally bound to obey the subpoena.

On January 25, 1923,¹ Mr. Andrew J. Volstead, of Minnesota, from the Committee on the Judiciary, submitted a report reciting:

That the said Oscar E. Keller was duly summoned as a witness by authority of the House of Representatives to give testimony before this committee touching matters of inquiry committed to that committee, and that he willfully made default in that in disobedience to said subpoena and without valid cause or excuse, but in contempt of the authority of the House of Representatives, he willfully failed and refused to appear as such witness and willfully failed and refused to testify in obedience to said subpoena. Your committee is of the opinion that Mr. Keller was legally required to obey said subpoena and that the excuse he submitted through his said attorney is without any merit; that the House of Representatives possesses the power to cause him to be arrested and confined in prison until he shall consent to testify, such confinement not to extend beyond the term of this Congress, and power to otherwise deal with him so as to compel obedience to the summons.

Subsequent illness of Mr. Keller rendered inadvisable further action on the part of the committee or the House.

538. The investigation of the charges against Attorney General Harry M. Daugherty, continued.

A motion to lay on the table a resolution providing for final disposition of impeachment proceedings does not, if agreed to, carry such proceedings to the table with the resolution.

Minority views submitted by Mr. R. Y. Thomas, jr., of Kentucky, takes the position that House Resolution 425 merely authorized an investigation of the charges and not a trial of the Attorney General, and conclude with the recommendation:

I therefore recommend, in view of what I consider the farcical investigation of this case, that a special committee be appointed by the Speaker of the House with instructions to make a full and fair investigation of all the charges against the Attorney General.

On January 25, 1923,² Mr. Volstead called up the majority report and offered the following resolution:

That whereas the Committee on the Judiciary has made an examination touching the charges sought to be investigated under House resolution 425 to ascertain if there is any probable ground to believe that any of the charges are true; and on consideration of the charges and the evidence obtained it does not appear that there is any ground to believe that Harry M. Daugherty, Attorney General of the United States, has been guilty of any high crime or misdemeanor requiring the interposition of the impeachment powers of the House:

¹Fourth session Sixty-seventh Congress, House Report No. 1371.

²Fourth session Sixty-seventh Congress, Journal, p. 148; Record, p. 2410.

Resolved, That the Committee on the Judiciary be discharged from further consideration of the charges and proposed impeachment of Harry M. Daugherty, Attorney General, and that House Resolution 425 be laid upon the table.

After extended debate, Mr. Finis J. Garrett, of Tennessee, moved to lay the resolution on the table.

In response to a parliamentary inquiry as to whether an affirmative vote on the motion would carry the entire impeachment proceedings to the table, the Speaker held:

This is a resolution laying the whole subject on the table. A motion to lay that on the table, if carried, would be equivalent to rejecting it. A motion to lay the impeachment proceedings on the table would still leave the impeachment matter pending.

On the question of agreeing to the motion to lay the resolution on the table there were 88 yeas and 204 nays, and the motion was rejected.

A division of the question on the pending resolution and preamble having been demanded, the resolution was agreed to without division, and the preamble by a vote of yeas 206, nays 78.

539. Instance wherein the Senate transmitted to the House testimony adduced before one of its committees for consideration by the House with a view to impeachment.

An official against whom charges were pending having resigned his office, the House committee to which they had been referred made no report.

On March 25, 1924,¹ the Senate passed and messaged to the House the following resolution:

Whereas one Clarence C. Chase is and, for more than a year last past, has been a civil officer of the United States, to wit, the collector of customs at the port of El Paso, Tex.; and

Whereas in the prosecution of an inquiry by the Committee on Public Lands and Surveys of the Senate under Senate Resolution 147, it became necessary to inquire into the source from which one A. B. Fall, late Secretary of the Interior, secured large sums of money at or about the time or shortly after he entered upon negotiations resulting in the execution of leases or contracts relating to the naval oil reserves; and

Whereas it appears from the testimony taken and proceedings had before the said committee that the said Clarence C. Chase entered into a conspiracy with the said A. B. Fall to mislead and deceive the said committee concerning the source of such moneys, and that pursuant to such conspiracy the said Clarence C. Chase, on or about the 29th of November, 1923, endeavored to induce one Price McKinney to represent to and testify before the said committee that he had loaned to the said Fall at or about the time hereinbefore mentioned the sum of \$100,000; and

Whereas the said Clarence C. Chase well knew that the said Price McKinney had made no such loan to the said Fall; and

Whereas the said Clarence C. Chase being, on the 24th day of March, 1924, called before the said committee and interrogated concerning the matters herein referred to by the said committee, declined and refused to answer any questions in relation to the same upon the ground that his answers might tend to incriminate him: Now, therefore, be it

Resolved, That a copy of the testimony adduced and the proceedings had before the said Committee on Public Lands and Surveys under Senate Resolution 147 be, with a copy of this resolution, transmitted to the House of Representatives for such proceeding against the said Clarence C. Chase as may be appropriate.

¹First session Sixty-eighth Congress, Record, p. 4915.

On the following day¹ the resignation of Clarence C. Chase was announced in the Senate.

In the House the resolution was referred from the Speaker's table to the Committee on the Judiciary, which made no report thereon.

540. Proposed inquiry into the eligibility of Andrew W. Mellon to serve as Secretary of the Treasury, in 1932.

Secretary Mellon having been nominated and confirmed as ambassador to a foreign country and having resigned as Secretary of the Treasury, the House declined to authorize an investigation.

On January 6, 1932,² Mr. Wright Patman, of Texas, rising in his place in the House, charged that Andrew William Mellon, of Pennsylvania, was serving as Secretary of the Treasury of the United States in contravention of statutes³ prohibiting certain officials from owning certain classes of property and engaging in certain business enterprises, and offered a privileged resolution providing for an investigation.

On February 13,⁴ Mr. Hatton W. Sumners, of Texas, from the Committee on the Judiciary to which the resolution had been referred, presented a report⁵ recommending the adoption of the following:

Whereas Hon. Wright Patman, Member of the House of Representatives, filed certain impeachment charges against Hon. Andrew W. Mellon, Secretary of the Treasury, which were referred to this committee; and

Whereas pending the investigation of said charges by said committee, and before said investigation had been completed, the said Hon. Andrew W. Mellon was nominated by the President of the United States for the post of ambassador to the Court of St. James and the said nomination was duly confirmed by the United States Senate pursuant to law, and the said Andrew W. Mellon has resigned the position of Secretary of the Treasury: Be it

Resolved by this committee, That the further consideration of the said charges made against the said Andrew W. Mellon, as Secretary of the Treasury, be, and the same are hereby discontinued.

The resolution submitted by the committee was agreed to without debate or division.

541. A proposal to investigate the official conduct of the President of the United States with a view to impeachment was laid on the table.

The question of consideration may not be demanded on a resolution of impeachment until the reading of the resolution has been concluded.

Recognition to propound a parliamentary inquiry is within the discretion of the Chair and may interrupt proceedings of high privilege.

The laying on the table of a resolution of impeachment does not preclude the offering of a similar resolution if not in identical language.

Motions for the disposition of a resolution of impeachment are not in order until it has been read in full.

¹ Record p. 5009.

² First session, Seventy-second Congress, Record, p. 1400.

³ U. S. Code, title 5, sec. 243; title 14, sections 1, 51, 66; title 19, sections 3, 382, etc.

⁴ Record, p. 3850.

⁵ House Report No. 444.

A resolution of impeachment may be expunged from the record by unanimous consent only.

On December 13, 1932,¹ Mr. Louis T. McFadden, of Pennsylvania, rising to a question of constitutional privilege in the House, proposed to impeach the President of the United States for “high crimes and misdemeanors” in that he had “unlawfully attempted to usurp legislative powers” and otherwise in domestic and foreign relations “violated the Constitution and laws of the United States.” The charges were of a general nature and prefaced a resolution authorizing the Committee on the Judiciary to conduct an investigation with a view to impeachment.

In the course of the reading of the resolution by the Clerk, Mr. William H. Stafford, of Wisconsin, interrupted and proposed to submit a parliamentary inquiry, when Mr. Thomas L. Blanton, of Texas, presented the point of order that a proceeding of this character could not be interrupted by a parliamentary inquiry.

The Speaker² overruled the point of order and said:

That is in the discretion of the Chair. The Chair will recognize the gentleman from Wisconsin to make a parliamentary inquiry.

Mr. Stafford inquired if it would be in order to raise the question of consideration. The Speaker, Mr. John N. Garner, replied that the question of consideration could not be raised until the reading of the resolution had been completed.

The reading of the resolution having been concluded, Mr. Edward W. Pou, of North Carolina, moved that the resolution be laid on the table.

On a yea and nay vote, ordered on the demand of Mr. Leonidas C. Dyer, of Missouri, the yeas were 361, the nays, were 8, and the resolution was laid on the table.

On January 17, 1933,³ Mr. McFadden again rose to a question of privilege and submitted a similar but not identical, resolution embodying similar charges and carrying a similar proposal for an investigation by the Committee of the Judiciary, and asked recognition to debate it. The Speaker said:

The gentleman is entitled to an hour, but first the Clerk must report the resolution of impeachment.

During the reading of the resolution by the Clerk, Mr. Robert Luce, of Massachusetts, interrupted and submitted a parliamentary inquiry asking if it were in order to bring up at this time a proposition of similar import to one previously laid on the table.

The Speaker said:

The Chair, of course, has not heard the resolution read. Probably if it was identical with the resolution submitted some time ago and laid on the table there would be some question whether or not a second impeachment could be had. But the President can be impeached, or any person provided for by the Constitution, a second time, and the Chair thinks the better policy would be to have the resolution read and determine whether or not it is the same.

Mr. Fred A. Britten, of Illinois, inquired if it would be in order at this time to offer a motion for disposition of the resolution.

¹ Second session, Seventy-second Congress, Record, p. 399.

² John N. Garner, of Texas, Speaker.

³ Second session seventy-second Congress, Record, p. 1954.

The Speaker replied:

No. The Chair would not recognize any Member to make a motion until the resolution is read.

Mr. Britten further inquired if a motion to expunge the resolution would be entertained.

The Speaker responded:

It may only be done by unanimous consent.

The Clerk having concluded the reading of the resolution, Mr. Henry T. Rainey,¹ of Illinois, offered a motion to lay the resolution on the table.

Mr. McFadden submitted that he was entitled to recognition for one hour.

The Speaker differentiated:

The gentleman from Illinois moves to lay the resolution of impeachment on the table.

May the Chair be permitted to make a statement with reference to the rules applying to that motion. The parliamentarian has examined the precedents with reference to the motion. Speaker Clark and Speaker Gillette, under identical conditions, held that a motion to lay on the table deprived a Member of the floor, although the general rules granted him one hour in which to discuss the resolution of impeachment or privileges of the House. Therefore the motion is in order.

The question being put, and the yeas and nays being ordered, it was decided in the affirmative, yeas, 344, nays, 11, and the resolution was laid on the table.

542. The inquiry into the conduct of Harry B. Anderson, United States judge for the western district of Tennessee, in 1931.

The inquiry into the conduct of Judge Anderson was initiated by a resolution supplemented by a report from the Department of Justice.

While the House decided against impeachment, it expressed disapproval of practices disclosed by the investigation.

On March 24, 1930,² Mr. Fiorello LaGuardia, of New York, introduced a resolution authorizing a special committee of five members of the Committee on the Judiciary to inquire into the official conduct of Harry B. Anderson, United States judge for the western district of Tennessee.

The resolution was referred to the Committee on the Judiciary and reported to the House by direction of that committee through Mr. Andrew J. Hickey, of Indiana, on June 13.³

After brief debate, the resolution was agreed to with an amendment providing for the designation of the members of the special committee by the chairman of the Committee on the Judiciary.

In the course of his remarks, Mr. Hickey, in response to an inquiry from Mr. William H. Stafford, of Wisconsin, explained that the preliminary inquiry had been delegated by the committee to a subcommittee which in addition to its own research had the advantage of a report by the Department of Justice which had made an

¹ Mr. McFadden and the President were members of the same party; Mr. Pou and Mr. Rainey were members of the opposing party.

² Second session Seventy-first Congress, Record, p. 6051.

³ Record, p. 10649.

extensive investigation of the handling of bankruptcy proceedings in Judge Anderson's court.

Pursuant to the resolution, Mr. Hickey, Mr. LaGuardia, Mr. Charles I. Sparks, of Kansas, Mr. Hatton W. Sumners, of Texas, and Mr. Gordon Browning, of Tennessee, were appointed to the special committee which after investigation recommended to the committee that no further action be taken.

On February 18, 1931,¹ Mr. George S. Graham of Pennsylvania, presented the report of the Committee on the Judiciary, embodying the recommendation of the subcommittee.

The report recited that while there were no grounds for invoking the high power of impeachment, the investigation disclosed—

certain matters which the committee does not desire to be regarded as in any way approving or sanctioning. The practice existing in the western district of Tennessee, both under Judge Anderson and his predecessors, of appointing referees to the place and position of receivers in bankruptcy matters is one which the committee thinks ought to be discontinued and desires to express its disapproval of the practice. The atmosphere and surroundings in the Tully case while free from evidence of wrong on the part of the judge, lead the committee to say that in their opinion when private matters or family matters come in touch with the court a judge should exercise more than ordinary care to avoid the appearance of improperly using the process of the court in any way that might be misunderstood, for in such matters the conduct of a judge must always be above suspicion.

The report then recommended the adoption of the following resolution which was agreed to by the House without debate:

Resolved, That the evidence submitted on the charges against Hon. Harry B. Anderson, district judge for the western district of Tennessee, does not warrant the interposition of the constitutional powers of impeachment of the House.

543. The investigation into the conduct of William E. Baker, United States district judge for the northern district of West Virginia.

A memorial addressed to the Speaker and setting forth charges against a civil officer was referred to the Committee on the Judiciary, which recommended an investigation.

The House referred the case of Judge Baker to the Committee on the Judiciary instead of to a select committee for investigation.

On May 22, 1934,³ Mr. George S. Graham, of Pennsylvania, from the Committee on the Judiciary, reported the following resolution, which was agreed to:

Whereas certain charges⁴ against William E. Baker, United States district judge for the Northern District of West Virginia, have been transmitted by the Speaker of the House of Representatives to the Judiciary Committee: Be it

Resolved, That the Committee on the Judiciary be, and they hereby are, authorized and directed to inquire into the official conduct of William E. Baker, United States district judge for the Northern District of West Virginia, and to report to the House whether in their opinion the

¹Third session Seventy-first Congress, Record, p. 5312.

²Record, p. 5009.

³First session Sixty-eighth Congress, Record, p. 9240.

⁴The memorial submitting the charges appears in full at p. 4875 of the Record.

said William E. Baker has been guilty of any acts which in contemplation of the Constitution are high crimes or misdemeanors requiring interposition of the constitutional powers of this House; and that the said committee have power to send for persons and papers, to administer the customary oaths to witnesses, and to sit during the sessions of the House until adjournment and thereafter until said inquiry is completed and report to the next session of the House.

The committee thus constituted was by later resolution authorized to employ clerical assistance and to incur expenses not to exceed \$2,500.

On February 10, 1925,¹ Mr. Leonidas C. Dyer, of Missouri, from the Committee on the Judiciary, submitted the report of the committee on the case.

The committee found:

That in their opinion the said William E. Baker has not been guilty of any acts which in contemplation of the Constitution are high crimes or misdemeanors requiring the interposition of the constitutional powers of this House, and recommends that articles of impeachment be not directed by the House against the said William E. Baker.

The report was referred to the Committee of the Whole House.

544. The inquiry into the conduct of Judge George W. English, United States judge for the eastern judicial district of Illinois.

A resolution proposing investigation with a view to impeachment was introduced by delivery to the Clerk and was referred to the Committee on Rules, on request of which committee it was referred to the Committee on the Judiciary.

A joint resolution created a select committee (in effect a commission), composed of Members of the House, and authorized it to report to the succeeding Congress.

A select committee visited various States and took testimony.

January 13, 1925,² Mr. Harry B. Hawes, of Missouri, introduced, by delivery to the Clerk, a resolution for an investigation of the official conduct of George W. English, district judge for the eastern district of Illinois, which, under the rule, was referred to the Committee on Rules. On February 3,³ Mr. Bertrand H. Snell, from the Committee on Rules, by direction of that committee, asked unanimous consent that the resolution be referred to the Committee on the Judiciary, to which communications relating to the charges have been previously referred. The request was agreed to, and subsequently ⁴ Mr. George S. Graham, of Pennsylvania, introduced a joint resolution which was reported from the Committee on the Judiciary and agreed to February 12,⁵ as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That William D. Boies, Charles A. Christopherson, Ira G. Hersey, Earl C. Michener, Hatton W. Summers, John N. Tillman, and Royal H. Weller, being a subcommittee of the Committee on the Judiciary of the House of Representatives, be, and they hereby are, authorized and directed to inquire into the official conduct of George W. English, United States district judge for the eastern district of Illinois, and so report to the House whether in their opinion the said

¹ House Report No. 1443.

² Second session Sixty-eighth Congress, Record, p. 1790.

³ Record, p. 2940.

⁴ Second session Sixty-eighth Congress, Record, p. 3472.⁵ Journal, p. 237.

George W. English 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, District of Columbia, 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 sessions of the House and until adjournment sine die of the Sixty-eighth Congress, and thereafter until said inquiry is completed, and report to the Sixty-ninth Congress.

SEC. 2. That said special committee be, and the same is hereby, authorized to employ such stenographic and clerical 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 of 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 joint resolution was passed by the Senate and approved by the President. Under the authorization thus conferred, the committee held hearings in Illinois, Missouri, and the District of Columbia following the adjournment of the Sixty-eighth Congress and submitted a report to the Sixty-ninth Congress.¹

545. Impeachable offenses are not confined to acts interdicted by the constitution or the Federal Statutes but include also acts not commonly defined as criminal or subject to indictment.

Impeachment may be based on offenses of a political character, on gross betrayal of public interests, inexcusable neglect of duty, tyrannical abuse of power, and offenses of conduct tending to bring the office into disrepute.

No judge is subject to impeachment on the complaint that he has rendered an erroneous decision.

A committee finding that a judge had failed to live up to the standards of the judiciary in matters of personal integrity and in the discharge of the duties of his office, recommended articles of impeachment.

It is in order to demand a division of the question on agreeing to a resolution of impeachment and a separate vote may be had on each article.

On March 25, 1926,² Mr. George S. Graham, of Pennsylvania, from the Committee on the Judiciary submitted the report of the committee reviewing the several charges in detail.

In determining whether the nature of the offenses charged warranted indictment, the committee decide:

Although frequently debated, and the negative advocated by some high authorities, it is now, we believe, considered that impeachment is not confined alone to acts which are forbidden by the Constitution or Federal statutes. The better sustained and modern view is that the provision for impeachment in the Constitution applies not only to high crimes and misdemeanors as those words were understood at common law but also acts which are not defined as criminal and made subject to indictment, but also to those which affect the public welfare. Thus an official may be impeached for offenses of a political character and for gross betrayal of public interests. Also, for abuses or, betrayal of trusts, for inexcusable negligence of duty, for the tyrannical abuse of power, or,

¹First session Sixty-ninth Congress, House Report No. 145.

²First session Sixty-ninth Congress, House Report No. 653.

as one writer puts it, for a “breach of official duty by malfeasance or misfeasance, including conduct such as drunkenness when habitual, or in the performance of official duties, gross indecency, profanity, obscenity, or other language used in the discharge of an official function, which tends to bring the office into disrepute, or for an abuse or reckless exercise of discretionary power as well as the breach of an official duty imposed by statute or common law.”

The committee hold, however, that:

No judge may be impeached for a wrong decision.

In support of the contention that the personal conduct of an official may be made the basis of impeachment the report says:

A Federal judge is entitled to hold office under the Constitution during good behavior, and this provision should be considered along with article 4, section 2, providing that all civil officers of the United States shall be removed from office upon impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. Good behavior is the essential condition on which the tenure to judicial office rests, and any act committed or omitted by the incumbent in violation of this condition necessarily works a forfeiture of the office.

A civil officer may have behaved in public so as to bring disgrace upon himself and shame upon the country and he would continue to do this until his name became a public stench and yet might not be subject to indictment under any law of the United States, but he certainly could be impeached. Otherwise the public would in this and kindred cases be beyond the protection intended by the Constitution. When the Constitution says a judge shall hold office during good behavior it means that he shall not hold it when his behavior ceases to be good behavior.

The report therefore concludes:

The Federal judiciary has been marked by the services of men of high character and integrity, men of independence and incorruptibility, men who have not used their office for the promotion of their private interests or those of their friends. No one reading the record in this case can conclude that this man has lived up to the standards of our judiciary, nor is he the personification of integrity, high honor, and uprightness, as the evidence presents the picture of the manner in which he discharged the high duties and exercised the powers of his great office.

The committee accordingly submit five articles of impeachment with the recommendation that they be adopted by the House and presented to the Senate with a demand for conviction and removal from office.

Minority views¹ are filed taking issue with facts determined and conclusions reached in the several specific charges discussed in the majority report, but indicating no disagreement with the views of the majority as to the law governing impeachment proceedings as set forth in the report.

The report was debated in the House on March 30, 31, and April 1, when the resolution reported by the committee was agreed to—yeas, 306; nays, 62.

The House then adopted a resolution² submitted by Mr. Graham naming Messrs. Earl C. Michener, Ira G. Hersey, W. D. Boies, C. Ellis Moore, George R. Stobbs, Hatton W. Sumners, and Andrew J. Montague, majority and minority members of the Committee on the Judiciary, as managers to conduct the impeachment, and instructing them to appear at the bar of the Senate and demand conviction.

¹ Record, p. 6363.

² Record, p. 6736

On reception of the report in the House on March 25, Mr. Charles R. Crisp, of Georgia, rising to a parliamentary inquiry, asked if it would be in order to demand a separate vote on each of the five articles of impeachment.

The Speaker replied in the affirmative, and when the vote was taken on April 1,¹ recognized Mr. William B. Bowling, of Alabama, to demand a separate vote on the first article of the impeachment, and said:

In response to the query of the gentleman may the Chair state that in view of the fact he is about to recognize the gentleman from Alabama to demand a separate vote on article of impeachment No. 1, the Chair will now put the question on agreeing to the resolution with all the articles except article 1.

In the opinion of the Chair the proper procedure under the circumstances, a separate vote having been demanded on only one article, would be that the vote should be first taken on the resolution and all other articles.

546. The managers on the part of the House having formally presented articles of impeachment, the Senate organized for the trial.

A Senator excused himself from participation in impeachment proceedings on the ground of close personal relations with one of the managers for the House, but on suggestion took the oath as a member of the court of impeachment.

A committee of the Senate after investigation expressed the opinion that during a trial of impeachment the House could, with the consent of the Senate, adjourn and the Senate proceed with the trial.

By common consent it was agreed that a judge under trial before the Senate continued undisturbed in the exercise of the judicial duties of his office.

On April 6,² the House by resolution notified the Senate of the appointment of managers and a message was communicated from the Senate in response informing the House that the Senate was ready to receive them.

Accordingly, on April 22,³ at 2 o'clock p. m., the managers of the impeachment on the part of the House appeared before the bar of the Senate and were announced by the doorkeeper. The Vice President received them and they were seated by the Sergeant at Arms.

By direction of the Vice President the Sergeant at Arms made proclamation:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Hon. George W. English, judge of the United States Court for the Eastern District of Illinois.

Thereupon Mr. Manager Michener read the resolution appointing the managers on the part of the House and presented the articles of impeachment with the demand of the House for impeachment, conviction, and removal from office.

¹ Record, p. 6735.

² Record, p. 6963.

³ Record, p. 7962.

On motion of Mr. Albert B. Cummins, of Iowa, the Senate agreed to an order fixing Friday, April 23, as the date on which the Senate would organize for the trial, and the managers on the part of the House retired from the Chamber.

Mr. Coleman L. Blease, of South Carolina, thereupon excused himself from participation in the trial on account of his former business relations with Mr. Manager Dominick.

When, however, on the day of trial, Mr. Blease's name was called for him to be sworn and he failed to appear to take the oath, Mr. John S. Williams, of Mississippi, submitted:

Mr. President, I noticed that, when the name of the Senator from South Carolina was called, he shook his head to indicate that he would not take the oath. On yesterday the Senator from South Carolina asked to be excused from participating in the trial of Judge English and gave as his reason for so doing the relationship which exists between himself and one of the board of managers of the House, Representative Dominick. We all sympathize with the views expressed by the Senator from South Carolina; but in the composition of the Senate as a court to try Judge English on the indictment which has been returned here by the House of Representatives, I think no one may be excused from taking the oath.

What shall happen to the Senator from South Carolina when it become necessary to vote is an entirely different matter, but the rule specifically provides that all the Members of the Senate who are present shall present themselves and take the oath, and that absent Senators shall take the oath as they appear in the Senate. I therefore think it not competent for us to excuse the Senator from South Carolina from taking the oath as a member of the court. I hope the question will not be raised and that we shall avoid any technicality which might be urged at any time. I ask the Senator from South Carolina to take the oath.

Thereupon Mr. Blease, when his name was called the second time, came forward and took the oath.

The designated day¹ having arrived, the senior Senator from Iowa, Mr. Cummins, by request administered the oath as the Presiding Officer of the court to the Vice President, who in turn swore in the Senators in groups of 10.

Mr. James A. Reed, of Missouri, having raised a question as to the administration of the oath of absent Senators, the Vice President said:

Under the precedents of the Senate each Senator who has not been sworn will be called to the desk when he enters the Chamber and the oath will be administered to him.

The Senate then agreed to an order submitted by Mr. Cummins notifying the House of Representatives that the Senate was ready for the trial of the articles of impeachment.

Pending the appearance of the House managers, Mr. Claude A. Swanson, of Virginia, inquired of Mr. Cummins, the Chairman of the Judiciary Committee, if conclusion has been reached as to whether the trial required that both Houses of Congress remain in session during the trial or whether the House of Representatives with consent of the Senate could adjourn sine die while the latter remained in session for the trial of the case of whether both Houses might adjourn and the Senate convene in extra session for the trial.

Mr. Cummin said:

Certain members of the Judiciary Committee, of which I happen to be chairman, have made rather an exhaustive study of that subject. I think it is the opinion of all the members of the

¹Record, p. 8026.

Judiciary Committee who have examined the matter that the House can adjourn sine die, with the consent, of course, of the Senate, and that the impeachment proceedings can go forward without the presence of the House of Representatives; although I say, very frankly, that the only precedent with regard to that question was decided the other way. That precedent was in the impeachment of Secretary Belknap. It was then ruled by the Senate that the House of Representatives must be present during the impeachment trial. A very close vote. I think the vote was 19 to 17, but there were not more than 2 votes either way.

In the Belknap case the question arose whether it was necessary for the House to be in session during the trial of the impeachment, and it was ruled in that case that the House must remain in session. I think everybody recognizes that there were very peculiar circumstances surrounding the trial of the impeachment of Secretary Belknap. There were political considerations, which I have no doubt had great weight in the determination of the matter. It was alleged that certain of the Senators did not want to try the Belknap case until after November elections. That did not appear, of course, in the ruling; but, at any rate, that was one of the material things that developed in that case. There was a controversy in respect to the time at which the case should be tried. Some wanted to put it over until after the elections and some wanted to try it before the elections. There are, I think, 12 precedents in the various States with constitutions substantially like our own.

There are half a dozen or more precedents in the States in which it has been uniformly held that the Senate could go forward in the trial of an impeachment case without the presence of the House.

Without any order on the part of the Senate, I appointed a committee—a subcommittee it may be called—of the Judiciary Committee to study and consider that subject.

And the majority of the committee, so far as I know, without any dissent, although they were not all present when the final conclusion was reached, held that it was not necessary for the House to be present or in session during the trial of the impeachment.

Mr. Joseph E. Ransdell, of Louisiana, further inquired if there was any question as to the right of a judge on trial to continue in the exercise of the judicial duties of his office.

Mr. Cummins replied:

None whatever. He will continue to discharge his duties as judge until after the trial of the impeachment.

The managers on the part of the House having appeared, an order was made that a summons be issued for George W. English returnable on May 3, and the Senate sitting for the trial of the impeachment adjourned until that date.

547. The answer of the respondent was printed and time allowed for replication of managers, with order that further pleadings be filed with the Secretary with due notice to the other party prior to a designated date.

The resignation of the respondent in no way affects the right of the court of impeachment to continue the trial and hear and determine all charges.

The respondent having retired from office, the managers, while maintaining their right to prosecute the charges to a final verdict, recommended that impeachment proceedings be discontinued.

On May 3,¹ the Senate convened as a court of impeachment and the respondent appeared and was seated with counsel in the area in front of the Secretary's desk. The return of the Sergeant at Arms was read and sworn to and the respondent presented his answer which was read by the Secretary. The answer was ordered

¹Record, p. 8578.

printed and the managers on the part of the House were by order of the Senate given until May 5 in which to present a replication, with direction that further pleadings be filed with the Secretary of the Senate with notice to the other party and that all pleadings be closed not later than May 10. The Senate sitting as a court of impeachment then adjourned until May 5.

In the House on May 4,¹ Mr. Earl C. Michener, of Michigan, presented for the managers on the part of the House, their replication which was approved by the House and by resolution ordered to be messaged to the Senate.

On the following day² the Vice President laid before the court of impeachment the message received from the House transmitting the replication which was read by the Secretary and was ordered to be printed. The court of impeachment adopted the usual order relating to the procedure of the Senate sitting as a court of impeachment, and a further order setting the trial for November 10, 1926.

On November 10,³ the court of impeachment having convened and the managers on the part of the House and counsel for the respondent having been received, Mr. Manager Michener announced:

Mr. President, I am directed by the managers on the part of the House of Representatives to advise the Senate, sitting as a court of impeachment, that in consideration of the resignation of George W. English, district judge of the United States for the eastern district of Illinois, and its acceptance by the President of the United States, certified copies of which I hereby submit, the managers on the part of the House have determined to recommend the dismissal of the pending impeachment proceedings. The managers desire to report their action to the House, and to this end they respectfully request the Senate, sitting as a court of impeachment, to adjourn to such time as may be necessary to permit the House to take appropriate action upon their report.

The resignation and its acceptance are as follows:

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF ILLINOIS,
CHAMBERS OF JUDGE GEORGE W. ENGLISH, EAST ST. LOUIS,
East St. Louis, Ill, November 4, 1926.

To His Excellency the PRESIDENT OF THE UNITED STATES:

I hereby tender my resignation as judge of the District Court of the United States for the Eastern District of Illinois, to take effect at once.

In tendering this resignation I think it is due you and the public that I state my reasons for this action.

While I am conscious of the fact that I have discharged my duties as district judge to the best of my ability, and while I am satisfied that I have the confidence of the law-abiding people of the district, yet I have come to the conclusion on account of the impeachment proceedings instituted against me, regardless of the final result thereof, that my usefulness as a judge has been seriously impaired.

I therefore feel that it is my patriotic duty to resign and let someone who is in no wise hampered be appointed to discharge the duties of the office.

Your obedient servant,

GEORGE W. ENGLISH.
THE WHITE HOUSE,
Washington, November 4, 1926.

¹ Record, p. 8686.

² Record, p. 8725.

³ First session Sixty-ninth Congress, Record, p. 3

Hon. GEORGE W. ENGLISH,

United States District Court, But St. Louis, Ill.

SIR: Your resignation as judge of the District Court of the United States for the Eastern District of Illinois dated November 4, 1926, has been received and is hereby accepted to take effect at once.

Very truly yours,

CALVIN COOLIDGE

On motion of Mr. Charles Curtis, of Kansas, it was:

Ordered, That the Sergeant at Arms be directed to notify all witnesses heretofore subpoenaed that they will not be required to appear at the bar of the Senate until so notified by him.

It was further ordered:

That in view of the statement just made by the chairman of the managers on the part of the House of Representatives, the Senate, sitting for the trial of the impeachment of Judge George W. English, adjourn until Monday, the 13th day of December, 1926, at 1'clock p.m.

The managers on the part of the House and counsel for the respondent then retired from the Chamber.

In the House on December 11,¹ Mr. Michener, by direction of the managers on the part of the House, submitted their unanimous report, reciting the resignation of George W. English, and holding:

The managers are of the opinion that the resignation of Judge English in no way affects the right of the Senate, sitting as a court of impeachment, to hear and determine said impeachment charges.

The managers, however, recommended:

Inasmuch, however, as the respondent, George W. English, is no longer a civil officer of the United States, having ceased to be a judge of the District Court of the United States for the Eastern District of Illinois, the managers on the part of the House of Representatives respectfully recommend that the impeachment proceedings pending in the Senate against said George W. English be discontinued.

Mr. Michener, then moved the following resolution:

Resolved, That the managers on the part of the House of Representatives in the impeachment proceedings now pending in the Senate against George W. English, late judge of the District Court of the United States for the Eastern District of Illinois, be instructed to appear before the Senate, sitting as a court of impeachment in said cause, and advise the Senate that in consideration of the fact that said George W. English is no longer a civil officer of the United States, having ceased to be a district judge of the United States for the eastern district of Illinois, the House of Representatives does not desire further to urge the articles of impeachment heretofore filed in the Senate against said George W. English.

After debate, the yeas and nays being demanded and ordered, the resolution was agreed to, yeas 290, nays 23.

The resolution of the House was messaged to the Senate and was considered by the Senate sitting as a court of impeachment on December 13,² when after debate the following order was agreed to, yeas 70, nays 9.

Ordered, That the impeachment proceedings against George W. English, late judge of the District Court of the United States for the Eastern District of Illinois, be and the same are, duly dismissed.

¹ Record, p. 297.

² Record, p. 344.

The Secretary having been directed to communicate the order to the House of Representatives, the Senate sitting as a court of impeachment adjourned sine die.

548. The investigation into the conduct of Frederick A. Fenning, a commissioner of the District of Columbia, in 1926.

A Member by virtue of his office submitted articles of impeachment and offered a resolution referring them to a committee of the House.

A committee of the House by majority report held a commissioner of the District of Columbia not to be a civil officer subject to impeachment under the Constitution.

A committee having reported that evidence adduced, while not supporting impeachment, disclosed grave irregularities, the respondent resigned.

On April 19, 1926,¹ Mr. Thomas L. Blanton, of Texas, claiming the floor for a question of privilege, announced that by virtue of his office as a Member of the House he impeached Frederick A. Fenning, Commissioner of the District of Columbia, of high crimes and misdemeanors, and submitted written charges. At the conclusion of the reading of the charges, Mr. Blanton proposed the following resolution which was referred to the Committee on the Judiciary.

Resolved, That the Committee on the Judiciary be, and it is hereby, directed to inquire and report whether the action of this House is necessary concerning the alleged official misconduct of Frederick A. Fenning, a commissioner of the District of Columbia, and said Committee on the Judiciary is in all things hereby fully authorized and empowered to investigate all acts of misconduct and report to the House whether in their opinion the said Frederick A. Fenning has been guilty of any acts which in the contemplation of the Constitution, the statute laws, and the precedents of Congress are high crimes and misdemeanors requiring the interposition of the constitutional powers of this House, and for which he should be impeached.

That this committee is hereby authorized and empowered to send for persons and papers, to administer oaths, to employ, if necessary, an additional clerk, and to appoint and send a subcommittee whenever and wherever necessary to take necessary testimony for the use of said committee or subcommittee, which shall have the same power in respect to obtaining testimony as exercised and is hereby given to said Committee on the Judiciary.

That the expenses incurred by this investigation shall be paid out of the contingent fund of the House upon the vouchers of the chairman of said committee, approved by the Clerk of this House.

Mr. George S. Graham, of Pennsylvania, from that committee reported the resolution back to the House on May 4² with amendments as to phraseology and on May 6,³ it was agreed to as amended.

The report⁴ of the committee, presented on July 2, considers first the power and right of the House to impeach and thus analyzes the requisites essential to impeachment:

Two things are necessary before the House will authorize impeachment: First, there must be an officer who, by reason of holding such office, is impeachable under the Constitution and laws of the United States, and, second, the establishment by creditable evidence of such misconduct on the part of such officer, defined as "treason, bribery, or other high crimes and misdemeanors" as will

¹ First session Sixty-ninth Congress, Record, p. 7753.

² Record, p. 8718.

³ Record, p. 8828.

⁴ House Report No. 1590.

bring the office into disrepute, and which will require his removal, to maintain its purity and the respect of the people for the office.

The question as to whether a Commissioner of the District of Columbia is a Federal officer and subject to the interposition of the Constitutional powers of the House in this respect, is answered in the negative as follows:

The first question that confronts us is, Is a Commissioner of the District of Columbia, appointed by the President and confirmed by the Senate, a civil officer of the United States, subject to the foregoing provision of the Federal Constitution? In order to arrive at a correct solution of this question it is necessary to review the acts of Congress relating to the District of Columbia.

The area within the District of Columbia was ceded by Maryland to, and accepted by, the Government in accordance with clause 17 of Article I of the Constitution, which granted to Congress exclusive legislative jurisdiction over such District. This in effect makes Congress the legislative body for the District with the same power as legislative bodies of the various States, and it has full authority in legislative matters pertaining to the District, subject to the prohibitions contained in the Constitution.

That act of July 16, 1790, provided for the establishment of a seat of government in the District of Columbia. On February 21, 1871, Congress created of the District a municipal corporation by the name of "the District of Columbia," with power to sue, be sued, contract, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution, the laws of the United States, and the provisions of this act.

Subsequently, on June 11, 1878, the organic act of the District of Columbia was enacted by Congress, which provides that the District of Columbia shall remain and continue a municipal corporation as provided in section 2 of the Revised Statutes relating to said District, and that the commissioners provided for should be deemed and taken as officers of such corporation.

This seems to be as clear as language can express it that thereafter the District of Columbia should enjoy a municipal corporate status and that its officer should be deemed and taken as officers of such corporation. The fact that Congress retains legislative authority and that the method of appointing Federal officers was followed in the appointment of the commissioners is not material and certainly not controlling, for the selection of the commissioners could have been delegated to the President alone or to the people of the District. Had it been the intent of Congress that the commissioners should enjoy the status of Federal officials then no expression thereon was necessary, but the fact that Congress in specific words gave them the status of municipal officers indicates clearly that Congress was making and did make a distinction as to the official status of these officers while, at the same time, retaining the Federal method of appointment.

This was a very reasonable provision for, while these officials are appointed by the President and confirmed by the Senate, they are not paid in the same manner as Federal officers. They are paid out of the District funds, to which, it is true, the Government contributes a certain sum, but they are not paid out of the Federal Treasury as are officials of the Federal Government.

For the reasons stated, it is our conclusion that Frederick A. Fennin is an officer of a municipal corporation, to wit, the District of Columbia, and as such is not a civil officer of the United States and as such is not subject to impeachment.

The report then discusses seriatim the charges filed, and finds in each case insufficient evidence to support the allegation.

In concluding, however, the committee find that the evidence adduced in the course of the hearings discloses practices "illegal and contrary to law," neglect of duty, and conditions "which can not be too severely criticized and condemned" and recommend an investigation by a "proper committee of Congress."

Seven minority views filed by nine members of the committee disagree with the findings of the majority as to proof of various charges but with the exception of two

concur in the opinion that a Commissioner of the District of Columbia is not a Civil officer subject to impeachment within the meaning of the Constitution.

Congress adjourned on July 3,¹ and in the interim Frederick A. Fenning tendered his resignation as Commissioner of the District of Columbia.

549. The inquiry into the conduct of Judge Frank Cooper, in 1927.

In instituting impeachment proceedings it is necessary first to present the charges on which the proposal is based.

Articles of impeachment having been presented, debate is in order only on debatable motions related thereto.

A motion to refer impeachment charges was entertained as a matter of constitutional privilege.

The proponent of a proposition to refer impeachment charges to a committee is entitled to one hour in debate exclusive of the time required for the reading of the charges.

The motion to refer is debatable in narrow limits only and does not admit discussion of the merits of the proposition sought to be referred.

Propositions relating to impeachment are privileged and a resolution authorizing the taking of testimony and defrayment of expenses of investigations in connection with impeachment proceedings was entertained as privileged.

On January 28, 1927,² Mr. Fiorello H. LaGuardia, of New York, rising to a question of high privilege, proposed to impeach Judge Frank Cooper, United States district judge for the Northern District of New York. After he had proceeded for some time in debate, Mr. Thomas L. Blanton, of Texas, made the point of order that he was not entitled to the floor, not having presented formal articles of impeachment.

The Speaker³ sustained the point of order and said:

The Chair thinks the gentleman from New York should make his charges. The Chair understood he was simply leading up to the charges. But if a point of order is made, the gentleman is bound to state his charges.

Mr. LaGuardia presented formal charges in writing and was again proceeding in debate when Mr. Leonidas C. Dyer, of Missouri, raised the further point of order that impeachment charges were not debatable except in connection with some admissible and debatable motion relating thereto.

The Speaker said:

The Chair would think that the proper procedure would be to introduce the motion or resolution and then it would be proper.

Mr. LaGuardia moved to refer the charges to the Committee on the Judiciary and was again proceeding in debate when Mr. Louis C. Cramton, of Michigan, interposed the point of order that having secured the floor on a motion to refer, it was not in order to discuss the merits of the propositions sought to be referred.

¹Second session Sixty-ninth Congress, Record, p. 3723.

²Second session Sixty-ninth Congress, Record, p. 2487.

³Nicholas Longworth, of Ohio, Speaker.

The Speaker sustained the point of order and said:

The Chair thinks that under the motion to refer the gentleman from New York would be limited to a discussion of the reasons why these charges should or should not be referred to the Committee on the Judiciary.

The precedent to which the Chair will call attention is this:

“The simple motion to refer is debatable within narrow limits, but the merits of the proposition which it is proposed to refer may not be brought into the debate.”

Under that the Chair would think the gentleman from New York would be confined to a discussion of the reasons why the resolution should be referred to the Committee on the Judiciary.

The gentleman from New York ought not to argue the merits of the case to the House. That is what will be argued before the Committee on the Judiciary, but the gentleman may argue to the House the merits of his motion, to wit, whether this matter should or should not be referred to the Committee on the Judiciary.

After further debate, Mr. Cramton submitted a parliamentary inquiry as to whether the time consumed in reading the charges should be taken from the hour allotted to the proponent of the motion to refer the charges.

The Speaker held:

No; the Chair would think not. The Chair would think that on his motion to refer, the gentleman is entitled to one hour.

The time taken to read the charges was simply time taken to inform the House of the matter before it, such as time taken by the clerk to read a bill. Now, the gentleman from New York makes a motion to refer, and under the rules of the House a motion to refer is debatable for one hour.

The gentleman did not present his case by way of argument. The gentleman read a series of charges, obtaining the floor as a matter of privilege. The reading of those charges was simply to give the House information—not argument, but information. The Chair held, in ruling on the point of order raised by the gentleman from Texas, that the gentleman from New York must read his charges before making any argument. Having now read his charges, the gentleman from New York moves to refer the charges to the Committee on the Judiciary, and under the rules of the House the gentleman is entitled to one hour.

The Chair overrules the point of order.

Subsequently, Mr. Cramton rose to the point of order that the debate was not being confined to the motion to refer.

The Speaker ruled:

The point of order has been made. The Chair thinks the gentleman from New York is going over the line of the argument and into the merits of the question instead of the merits of the motion to refer. The Chair in cases like this is always inclined to be in favor of a reasonable debate, but the Chair thinks that the line of argument which is being made now by the gentleman from New York goes more to the merits of the case than to the merits of the motion. The gentleman will proceed in order.

Debate having been concluded, the motion was agreed to and the charges were referred to the Committee on the Judiciary.

On February 11,¹ Mr. George S. Graham, of Pennsylvania, from that committee submitted the following resolution:

Resolved, That the Committee on the Judiciary, and any subcommittee that it may create or appoint, is hereby authorized and empowered to act by itself or its subcommittee to hold meetings and to issue subpoenas for persons and papers, to administer the customary oaths to witnesses, and

¹ Record, p. 3525.

to sit during the sessions of the House until the inquiry into the charges against Hon. Frank Cooper, United States district judge for the northern district of New York is completed, and to report to this House.

That said committee be, and the same is hereby, authorized to appoint such clerical assistance as they may deem necessary, and all expenses incurred by said committee or subcommittee shall be paid out of the contingent fund of the House of Representatives on vouchers ordered by said committee and signed by the chairman of said committee.

In response to a parliamentary inquiry from Mr. Blanton, as to the privilege of the resolution, the Speaker said:

It is privileged because it relates to impeachment proceedings.

Mr. Graham submitted the report of the committee on March 3,¹ as follows:

The committee has examined into the charges against Hon. Frank Cooper, United States district judge for the northern district of New York, made on the floor of the House and referred to it by the House on the 28th day of January, 1927 (Cong. Rec. pp. 2497–2493), and has heard all witnesses tendered by accuser and accused and reports to the House the oral and documentary evidence submitted, and while certain activities of the Hon. Frank Cooper with relation to the manner of procuring evidence in cases which would come before him for trial are not to be considered as approved by this report, it has reached the conclusion and finds that the evidence does not call for the interposition of the constitutional powers of the House with regard to impeachment. The committee, therefore, recommends the adoption of the following resolution:

Resolved, That the evidence submitted to the Committee on the Judiciary in regard to the conduct of Hon. Frank Cooper, United States district judge for the northern district of New York, does not call for the interposition of the constitutional powers of the House with regard to impeachment.”

The report was agreed to by the House without division.

550. The inquiry into the conduct of Francis A. Winslow, judge of the southern district of New York, in 1929.

Discussion of methods of authorizing an investigation with a view to impeachment.

Instance wherein a special committee was created for the purpose of instituting an inquiry and drafting articles of impeachment if found to be warranted by the circumstances.

Instance wherein a special committee of investigation was authorized to sit after adjournment of the current Congress and report to the succeeding Congress.

A special committee having been created to investigate charges, a member supplemented the proceedings by rising to a question of privilege in the House and proposing impeachment.

A judge whose conduct was under investigation having resigned, no further action was taken by the committee charged with the investigation.

A judge against whom impeachment proceedings were instituted refrained from the exercise of judicial functions from the date of the filing of the charges.

¹Record, p. 5619.

On February 12, 1929,¹ during consideration of the legislative appropriation bill in the Committee of the Whole House on the state of the Union, Mr. Fiorello H. LaGuardia, of New York, having been yielded time for debate said:

Mr. Chairman and members of the committee, at times it becomes necessary for a Member of the House to invoke the machinery provided in the rules of the House to ascertain whether or not a judge of the Federal court has been guilty of crimes and misdemeanors to warrant his impeachment. We have a situation in the southern district of New York so bad that it has shocked both the bench and the bar; so bad that it is reflecting on the integrity of that court; and unless we have an investigation either to ascertain the truth of these charges or otherwise, the people of that district will lose confidence in that court.

With the permission of the House I will read the resolution which I am now introducing:

Mr. LaGuardia then read from a written memorandum of specific charges and an appended resolution authorizing an investigation.

The resolution with the accompanying charges was later delivered to the Clerk and was referred by the Speaker to the Committee on the Judiciary.

On February 18, Mr. George S. Graham of Pennsylvania, submitted a report from the Committee on the Judiciary recommending the passage of the following joint resolution:

Whereas certain statements against Francis A. Winslow, United States district judge for the southern district of New York, have been transmitted by the Speaker of the House of Representatives to the Judiciary Committee: Therefore be it

Resolved, That Leonidas C. Dyer, Charles A. Christopherson, Andrew J. Hickey, George R. Stobbs, Hatton W. Sumners, Andrew J. Montague, and Fred H. Dominick, being a subcommittee of the Committee on the Judiciary of the House of Representatives, be, and they are hereby, authorized and directed to inquire into the official conduct of Francis A. Winslow, United States district judge for the southern district of New York, and to report to the House whether in their opinion the said Francis A. Winslow 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 sessions of the House until adjournment sine die of the Seventieth Congress and thereafter until aid inquiry is completed, and report to the Seventy-first Congress.

SEC. 2. 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.

Mr. Bertrand H. Snell, of New York, questioned the method of procedure on the grounds that under the rules a proposition for the creation of a special committee of investigation would come regularly within the jurisdiction of the Committee on Rules, and suggested that if impeachment was contemplated the matter should follow precedent and go direct to the Committee on the Judiciary.

¹Second session Seventieth Congress, Record, p. 3334.

Mr. Graham replied:

Mr. Speaker, this will not set up a special investigating committee. This resolution is exactly the same as was passed by this House under exactly similar circumstances in the English case. On the strength of that resolution the committee in the English case charged with the duty of investigating was able to subpoena witnesses and proceed in a regular and orderly way to ascertain whether or not the charges that had been made on the floor of the House were well founded. In the English case exactly the same procedure was followed. The House referred the resolutions to the Committee on the Judiciary.

They made a preliminary examination, which was a preliminary step in the procedure. That committee heard any witnesses that were willing to appear before the committee. They had no power to compel anyone to appear before the committee. We have not the right, unless the House gives it to us, to subpoena witnesses and call on them to testify under oath. That authority being given, and the committee, recognizing that it was proceeding under the Congress and that the Congress would die on the 4th of March succeeding, took charge and this investigation was started but, of course, would die with the Congress. A resolution exactly the same as this was adopted by the House for two purposes, first, to give the committee power to make an investigation, and, second, to give the committee all the necessary machinery and prolong its life beyond the period of its extinction through the adjournment of the Congress.

Now, then, in addition to that the committee was instructed to report back to the House. That meant through the regular channel, which would be by the subcommittee of the Committee on the Judiciary reporting to that body, and it to the House. This subcommittee was not a special investigating committee.

Now, I want to say on the general principle that if this were the rule of the House then these resolutions ought not to have been referred to us. They ought to have been referred in the first instance to the Committee on Rules. I want to say to my friends of the House and everybody that such a procedure as this will be marked with regret by those who assent to it making it the practice of the House. Whenever a man on the floor of the House presents such statements as cloud the reputation and standing of a judge of the district court of the United States he puts against that man what is equivalent to impeachment. I care not by what name you call it, impeachment or charges, it is an impeachment of the integrity and mars the usefulness of the judge himself. The matter ought to be proceeded with. It will be a sad day when these matters have first to go to the Committee on Rules where it would be said by the public it was only a subterfuge to delay a procedure which was started by charges made on the floor of the House.

After further debate Mr. Graham offered the following amendment:

To sit during the sessions of the House until adjournment sine die of the Seventieth Congress, and thereafter until said inquiry is completed, and report to the Committee on the Judiciary of the House of the Seventy-first Congress.

The amendment was agreed to and the joint resolution as amended was adopted by the House, and on February 23,¹ was agreed to by the Senate.

On March 2, Mr. LaGuardia, rising to a question of high privilege in the House, formally proposed the impeachment of Francis A. Winslow and submitted 12 specific charges accompanied by a resolution as follows:

Resolved, That Francis A. Winslow, United States district judge for the southern district of New York be impeached of high crimes and misdemeanors in office as hereinbelow in part specifically set forth.

The Speaker referred the resolution to the Committee on the Judiciary.

The subcommittee created by the joint resolution designated April 1 for the opening of the inquiry and notified Judge Winslow who on that day tendered his resignation to the President and issued the following statement by counsel:

¹ Record, p. 4123.

Judge Winslow has felt, from the time the charges were made against him, that his usefulness as a member of the judiciary was thereby impaired, and he has since refrained from appearing as a judge. The same belief is still uppermost in his mind. In the interval, the charges directed against him in Congress have been made the subject of inquiry by the grand jury in New York.

Also, since the presentment of the grand jury was made, proceedings have been instituted and concluded against certain of those whose names have been associated with his in the complaints. These several proceedings having ended, Judge Winslow finds that he now has to consider the future of his relations to the bench in the light of his own sense of duty. He can not but realize, notwithstanding the failure to impugn his personal integrity, that the prestige of the court would be impaired should he return to it, and this he could not for himself endure, nor could he allow it to continue as an embarrassment to the other judges.

The resignation was accepted by the President on the day on which received and the committee discontinued the investigation.

Notwithstanding the resignation, Mr. LaGuardia again preferred the charges by resolution on the convening of the Seventy-first Congress.¹ The resolution was referred to the Committee on the Judiciary which made no report thereon.

551. The inquiry into the conduct of Harry B. Anderson, judge of the western district of Tennessee, in 1930.

Charges having been preferred by a Member of the House, the committee to which the matter was referred reported a resolution providing for the creation of a special committee of investigation.

On March 12, 1930,² Mr. Fiorello H. LaGuardia, of New York, filed charges against Harry B. Anderson, judge of the western district of Tennessee with a view to the institution of proceedings for impeachment.

The charges and the accompanying resolution were referred by the Speaker to the Committee on the Judiciary which, on June 13,³ reported to the House the following resolution which was agreed to:

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, be, and is hereby authorized and directed to inquire into the official conduct of Harry B. Anderson, United States district judge for the western district of Tennessee, and to report to the Committee on the Judiciary of the House whether in their opinion the said Harry B. Anderson 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 sessions of the House and until adjournment of the second session of the Seventy-first Congress and thereafter until said inquiry is completed, and report to the Committee on the Judiciary of the House; and be it further

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.

¹ First session Seventy-first Congress, Record, p. 33.

² Second session Seventy-first Congress, Record p. 5105.

³ Record, p. 11097 tem.

552. The inquiry into the conduct of Grover M. Moscowitz, judge for the eastern district of New York, in 1930.

An instance wherein impeachment proceedings were set in motion by memorials filed with the Speaker and by him transmitted to a committee of the House.

A committee of the House having conducted a preliminary inquiry, a special subcommittee was by joint resolution created to further investigate the case with a view to impeachment.

A vacancy on a special committee created by joint resolution was filled by a further joint resolution.

The committee while criticizing the official conduct of a judge failed to find facts sufficient to warrant impeachment.

On February 27, 1929,¹ the Committee on the Judiciary, in response to certain memorials filed with the Speaker and by him referred to the committee, reported a joint resolution creating a special subcommittee of the Committee on the Judiciary to inquire into the official conduct of Grover M. Moscowitz, judge for the eastern district of New York, with authority to sit after adjournment of the Seventieth Congress and report to the Seventy-first Congress.

The resolution was agreed to by the Senate on March 1,² and was thereafter supplemented by a further joint resolution³ filling a vacancy on the subcommittee.

The report⁴ of the Committee on the Judiciary submitted by Mr. George S. Graham, of Pennsylvania, for the committee, on April 8,⁵ thus explains the inception of the proceedings:

This investigation had its origin in a letter addressed to the Speaker of the House of Representatives by Representative Andrew L. Somers, of the sixth New York district, transmitting to the Speaker a statement made by Sidney Levine and Joseph Levine, also some correspondence submitted by J. C. Rochester Co. (Inc.), charging misconduct on the part of Judge Grover M. Moscowitz.

The Speaker of the House referred the matter to the Committee on the Judiciary, and owing to the fact that the Seventieth Congress was about to expire, House Joint Resolution 431 was presented by the chairman of the Committee on the Judiciary for the purpose of giving vitality to a subcommittee that might make an investigation during the recess and report to the Judiciary Committee in the next Congress.

The Committee finds grounds for severe criticism and the report recites:

After seeing the witnesses, hearing them testify, and with due regard to the argument of counsel and all of the evidence in the case, individual members of this committee do not approve each and every act of Judge Moscowitz concerning which evidence was introduced. For example, the committee can not and does not indorse a business arrangement of Judge Moscowitz with his former partner which continued after Judge Moscowitz became a district judge, especially when he was appointing members of the legal firm to which this former partner belonged to various receiverships in his court. While this committee finds nothing corrupt in these transactions, yet

¹Second session Seventieth Congress, Record, p. 4610.

²Record, p. 4939.

³Record, p. 5015, 5068.

⁴House Report No. 1106.

⁵Record, P. 6992.

this procedure throws the court open to criticism and misunderstanding by the uninformed, as has happened in this case; and, therefore, this committee can not and does not indorse this practice.

The Committee, however, conclude:

Nevertheless, after a careful consideration of all the evidence in the case, and giving full consideration to the problems and persons with which the court had to deal, this committee is unanimous in its opinion that sufficient facts have not been presented or adduced to warrant the interposition of the constitutional powers of impeachment by the House.

The House accordingly approved the report and—

Resolved, That the House of Representatives hereby adopts the report of the Committee on the Judiciary relative to the charges filed against Hon. Grover M. Moscowitz, United States district judge for the eastern district of New York; and further

Resolved, That no further action be taken by the House with reference to the charges heretofore filed with the committee against Hon. Grover M. Moscowitz, United States district judge for the eastern district of New York.