

## Chapter LXX.

### IMPEACHMENT AND TRIAL OF WILLIAM BLOUNT.

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**2294. The impeachment of William Blount, a United States Senator, in 1797.**

**The proceedings of the Blount impeachment were set in motion by a confidential message from the President of the United States.**

**In the Blount case the House voted to impeach on the strength of the matter contained in a letter proved to be in respondent's handwriting.**

**In the Blount impeachment case it was ruled that evidence should be taken before the House, and not before the Committee of the Whole.**

**In the Blount impeachment case the House seems to have distrusted its power to authorize the Speaker to administer oaths.**

**The House excused one of its Members from voting on any question connected with the impeachment of a brother.**

**Forms of the resolutions impeaching William Blount and directing the carrying of the impeachment to the bar of the Senate.**

**The Blount impeachment was carried to the bar of the Senate by a single Member of the House.**

On July 3, 1797,<sup>1</sup> a confidential message was received in the House from the President of the United States, who transmitted a letter purporting to have been

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<sup>1</sup>First session Fifth Congress, Journal (supplemental); p. 76, Annals, p. 439.

written by William Blount, a Senator of the United States for the State of Tennessee, to one James Carey, interpreter for the United States to the Cherokee Nation of Indians, for the purpose of seducing him from his duty and trust, in furtherance of certain unlawful designs. The message and papers were referred to a committee composed of Messrs. Samuel Sitgreaves, of Pennsylvania; Abraham Baldwin, of Georgia; Samuel W. Dana, of Connecticut; John Dawson, of Virginia, and William Hindman, of Maryland.

On July 6<sup>1</sup> Mr. Sitgreaves reported from the committee the following resolution:

*Resolved*, That William Blount, a Senator of the United States from the State of Tennessee, be impeached of high crimes and misdemeanors.

This report was on the same day considered in a Committee of the Whole House. Mr. Sitgreaves stated that the President had been advised by the law officers of the Government that the letter was evidence of crime; that the crime was of the denomination of a misdemeanor; and that William Blount, being a Senator, was liable to impeachment. In conformity with this opinion, the letter had been transmitted to the House. There was debate as to whether or not a legislator was an officer liable to impeachment, after which Mr. Sitgreaves made a statement<sup>2</sup> as to the forms of procedure:

As to the form of proceeding necessary to be taken on this occasion, he would state what the opinion of the committee was as to this matter. They supposed it would be first proper for that House to determine that the gentleman in question should be impeached. This being done, that a Member of that House should go to the bar of the Senate and impeach the person, in the name of the House and of the people of the United States, and state that the House of Representatives will proceed to draw out specific articles of charge against him. According to the case, they require that he shall be sequestered from his seat, be committed, or be held to bail. When this is done, a committee will be appointed to draw articles of impeachment.

The reason, Mr. S. said, why some steps should be taken at present was that means should be taken to secure the person of the offender, either by confinement or by bail, since it was the opinion of the law officers of Government that he could not be arrested by ordinary process. He could not be arrested by the Senate; they could send for him (as he understood they had done) by the Sergeant-at-Arms, to take his seat in the House; but when the House adjourned, they had no further power over him until an impeachment was made against him.

Gentlemen said there was no danger of escape. If it were not improper to state what had taken place out of doors, it might be said that there had already been an attempt at an escape. Besides, if no investigation were now to take place, how were they to come to a knowledge of the plot which gentlemen seemed so desirous to come to a knowledge of? When they had determined to make the impeachment, and an oral declaration was made of it to the Senate, when they were ready to go home, they might go, and exhibit the charges at the next session, when they should have leisure fully to consider the subject.

Mr. John Rutledge, jr., of South Carolina, who had attended the trial of Warren Hastings, approved the form of procedure, but suggested that the handwriting of Mr. Blount should be proven, and submitted a motion to that effect.

The chairman<sup>3</sup> suggested that the proof should be taken in the House, and this opinion prevailed, it being urged that the Committee of the Whole did not have the power of taking evidence. The committee accordingly arose.

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<sup>1</sup> Journal, p. 70, Annals, pp. 448–458.

<sup>2</sup> Annals, p. 455.

<sup>3</sup> George Dent, of Maryland, Chairman.

In the House the Speaker<sup>1</sup> suggested the propriety of calling in a magistrate, as the Speaker had no power to administer an oath except in the case of qualifying the Members of the House. A motion to authorize the Speaker to administer the oath was disagreed to, 29 yeas, 53 nays.<sup>2</sup>

Then it was<sup>3</sup>

*Ordered*, That William Barry Grove, Abraham Baldwin, Joseph McDowell, and Nathaniel Macon, Members of this House, be examined upon oath, at the bar of this House, touching their knowledge of the handwriting of William Blount, a Senator of the United States for the State of Tennessee; and that Reynold Keene, esq., one of the judges of the court of common pleas for the county of Philadelphia, and also one of the aldermen of the city of Philadelphia, in the State of Pennsylvania, administer the said oath.

The said Members were then sworn, and, being interrogated by the Speaker, severally answered that they believed the letter to be in the handwriting of William Blount.

It was then

*Ordered*, That the testimony of the said Members be reduced to writing by the Clerk, and that the same be referred to the Committee of the Whole House, to whom was committed the report of the committee to whom was referred the message of the President of the United States of the 3d instant.

On July 7<sup>4</sup> the Speaker laid before the House a letter from Thomas Blount, a Member from North Carolina, and brother of William Blount, praying that he might be excused from voting on any question arising in the course of the impeachment proceedings. Thereupon it was

*Ordered*, That the said Thomas Blount be excused from voting on any question relating to the impeachment, now pending in this House, of William Blount, a Senator of the United States for the State of Tennessee.

On July 7,<sup>5</sup> also, the Committee of the Whole reported and the House agreed to the resolution that William Blount be impeached.

Then Mr. Sitgreaves moved an order which, with modification, was agreed to as follows:

*Ordered*, That Mr. Sitgreaves do go to the Senate, and, at the bar thereof, in the name of the House of Representatives, and of all the people of the United States, impeach William Blount, a Senator of the United States, of high crimes and misdemeanors; and acquaint the Senate that this House will in due time exhibit particular articles against him, and make good the same.

### **2295. Blount's impeachment continued.**

**In the Blount impeachment, following the precedent of the Hastings trial, the House did not send the articles to the Senate with the impeachment.**

**In the first impeachment the House followed English precedents to the extent of requiring the sequestration of the respondent from his seat in the Senate.**

It was suggested by Mr. Albert Gallatin, of Pennsylvania, that the articles

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<sup>1</sup>Jonathan Dayton, of New Jersey, Speaker.

<sup>2</sup>Annals, p. 458.

<sup>3</sup>Journal, p. 71.

<sup>4</sup>Journal, p. 72; Annals, p. 458.

<sup>5</sup>Journal, p. 72; Annals, p. 459.

of impeachment should be prepared and presented with the impeachment. To this the reply was made:<sup>1</sup>

Mr. Sitgreaves said that the mode which he proposed was the same which was practiced in the case of Mr. Hastings. Mr. Burke went up to the House of Lords and impeached him in words similar to those now proposed to be used. Some time afterwards, the articles of impeachment having been drawn, Mr. Burke again went up to the House of Lords and exhibited them. Mr. S. spoke also of a work lately published, in continuation of Judge Blackstone's Commentaries, which had a chapter on parliamentary impeachment, and pointed out this as the proper mode of procedure. He had also looked into the proceedings on the trial of the Earl of Macclesfield, and found the same course was taken. It was true that in the case of a public officer of the State of Pennsylvania, which perhaps his colleague might have in his eye, the articles of impeachment were exhibited at the same time that the impeachment was made.

On motion of Mr. Sitgreaves it was:

*Ordered, further,* That Mr. Sitgreaves do demand that the said William Blount be sequestered from his seat in the Senate, and that the Senate do take order for the appearance of the said William Blount to answer to the said impeachment.

It was objected that it was not necessary to follow so closely the English precedents, since capital punishment could not follow a conviction on impeachment in this country. Therefore it would be unnecessary to confine the one impeached. But the House agreed to the order, ayes 41, noes 30.<sup>2</sup>

**2296. Blount's impeachment, continued.**

**Form used in delivering the Blount impeachment at the bar of the Senate.**

**Upon the impeachment of William Blount the Senate took him into custody and required bonds for his appearance, and informed the House thereof.**

**Form of report to the House of an impeachment carried to the bar of the Senate.**

On July 7,<sup>3</sup> while the Senate was engaged in proceedings for the expulsion of the said William Blount for the offense set forth in the message of the President, Mr. Sitgreaves appeared with the following message from the House:

Mr. President, I am commanded, in the name of the House of Representatives and of all the people of the United States, to impeach William Blount, a Senator of the United States, of high crimes and misdemeanors, and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles against him and make good the same.

I am further commanded to demand that the said William Blount be sequestered from his seat in the Senate, and that the Senate do take order for his appearance to answer the said impeachment.

Thereupon the Senate agreed to the following:

Pursuant to a message from the House of Representatives of the United States by Samuel Sitgreaves, esq., a Member of that House, that they, in their own name, and in the name of all the people of the United States, have impeached William Blount, a Member of the Senate, of high crimes and misdemeanors; and that, in due time, they will exhibit articles against him and make good the same; and they having demanded that the said William Blount be sequestered from his seat in this House, and that the Senate take order for his appearance to answer to the said impeachment:

*Resolved,* That the said William Blount be taken into custody of the messenger of this House until he shall enter into recognizance, himself in the sum of \$20,000, with two sufficient sureties in the sum of \$15,000 each, to appear and answer such articles of impeachment as may be exhibited against him.

<sup>1</sup> Annals, p. 459.

<sup>2</sup> Annals, p. 462.

<sup>3</sup> Senate Journal, p. 388; Annals, p. 39.

Whereupon Mr. Blount named his sureties, and they were satisfactory to the Senate.

The President then named Mr. Blount and his sureties, who arose while the recognizance was read, and, being approved by the Senate, it was executed in their presence.

On the same day Mr. Sitgreaves returned to the House and reported:<sup>1</sup>

That, in obedience to the order of this House, he had been to the Senate, and in the name of this House and of all the people of the United States, had impeached William Blount, a Senator of the United States, of high crimes and misdemeanors, and had acquainted the Senate that this House will, in due time, exhibit particular articles against him and make good the same.

And, further, that he had demanded that the said William Blount be sequestered from his seat in the Senate, and that the Senate do take order for his appearance to answer to the said impeachment.

On July 8,<sup>2</sup> it was ordered by the Senate:

*Ordered*, That the Secretary of the Senate notify the House of Representatives that, in consequence of their message of yesterday, by the Hon. Mr. Sitgreaves, one of their Members, they have caused William Blount to recognize, in the sum of \$20,000 principal, with two sureties in the sum of \$15,000 each, to appear and answer to the impeachment mentioned in their message.

**2297. Blount's impeachment, continued.**

**In the Blount impeachment the drawing up of the articles was confided to a select committee, with power to procure testimony.**

**In the Blount impeachment the House, after discussion, empowered the committee drawing the articles to sit during the recess of Congress.**

**On the same day and succeeding day, in the House, the following resolutions appear to have been agreed to:<sup>3</sup>**

*Resolved*, That a committee be appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States, impeached by this House of high crimes and misdemeanors, and that the said committee have power to send for persons, papers, and records.

*Resolved*, That the committee appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States, impeached by this House of high crimes and misdemeanors, be authorized to sit during the recess of Congress.

*Resolved*, That the said committee be instructed to inquire, and by all lawful means to discover, the whole nature and extent of the offense whereof the said William Blount stands impeached, and who are the parties and associates therein.

The privilege of sitting during the recess was the subject of considerable debate, but precedents from English practice and from trials in South Carolina and Pennsylvania were cited.

Messrs. Sitgreaves, Baldwin, Dana, Dawson, and Robert Goodloe Harper, of South Carolina, were appointed to prepare and report articles of impeachment.

**2298. Blount's impeachment, continued.**

**After his expulsion from the Senate William Blount was surrendered by his bondsmen, and gave bonds anew to answer to the impeachment.**

On July 8,<sup>4</sup> in the Senate, the trial of William Blount terminated with his expulsion.

<sup>1</sup> House Journal, p. 73.

<sup>2</sup> Senate Journal, p. 390; Annals, p. 40.

<sup>3</sup> House Journal, p. 74; Annals, pp. 463–466. The Journal appears to be defective in its record as to these resolutions, but the Annals seem to make certain that these resolutions were agreed to.

<sup>4</sup> Senate Journal, p. 392; Annals, p. 44.

On this, Mr. Butler, in behalf of himself and Mr. Thomas Blount, the other surety, surrendered the person of William Blount, the principal, to the Senate, and requested to be discharged from their recognizance. Whereupon, it was

*Ordered*, That they be discharged from their recognizance, and that the Secretary enter an indorsement on the back of the bond as follows:

“And now, to wit, on this 8th day of July, 1797, the Hon. Thomas Blount and Pierce Butler, esqs., came into the Senate and surrendered William Blount, esq., for whom they became bound yesterday.

On motion,

*Resolved*, That William Blount be taken into the custody of the Messenger of this House until he shall enter into recognizance, himself in the sum of \$1,000, with two sufficient sureties in the sum of \$500 each, to appear and answer such articles of impeachment as may be exhibited against him by the House of Representatives on Monday next.

A message was sent informing the House of Representatives of this action.<sup>1</sup>

On July 10 the Senate Journal records:<sup>2</sup>

Agreeably to the order of the Senate the within-mentioned William Blount having entered into recognizance, I have returned the same into the office of the Secretary of the Senate.

*Ordered*, That it be entered on the Journal of the Senate that William Blount failed making his appearance this day, agreeably to the recognizance entered into on the 8th instant.

#### **2299. Blount's impeachment, continued.**

#### **A recess of Congress intervened between the impeachment of Blount and the framing of the articles of impeachment.**

On July 10,<sup>3</sup> in the House, it was:

*Ordered*, That Mr. Dana be excused from serving on the committee appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States, and that Mr. Bayard be appointed of the said committee in his stead.

On July 10 the Congress adjourned until the second Monday in November next.

#### **2300. Blount's impeachment, continued.**

**The committee appointed to prepare articles of impeachment in the Blount case reported the evidence, and later the articles.**

**The articles of impeachment in Blount's case were considered by the House and not by the Committee of the Whole.**

**After considering English precedents the House chose the managers of the Blount impeachment by ballot.**

**In choosing managers by ballot the House guarded against complications in case more than the required number should have a majority.**

**A manager in impeachment proceedings is excused from service by authority of the House.**

**The managers carry the articles of impeachment to the Senate in accordance with a resolution agreed to by the House.**

On December 4, 1797,<sup>4</sup> at the second session of Congress, Mr. Sitgreaves from the committee appointed to prepare articles of impeachment, submitted a report from which the injunction of secrecy was removed, and which was read in

<sup>1</sup>House Journal, p. 74.

<sup>2</sup>Senate Journal, p. 393; Annals, p. 44.

<sup>3</sup>House Journal, p. 75.

<sup>4</sup>Second session Fifth Congress, Journal, pp. 96, 97; Annals, pp. 672–679.



the House on December 5 and ordered to lie on the table. This report did not embody the articles of impeachment, but simply set forth the facts, documents, subpoenas, etc., resulting from the investigation.<sup>1</sup>

On January 18 and 22, 1798,<sup>2</sup> Mr. Sitgreaves submitted supplementary reports, one presenting an additional deposition and the other two letters received by the committee. They were read to the House and ordered to lie on the table.

On January 25, 1798,<sup>3</sup> Mr. Sitgreaves, from the committee, reported the articles of impeachment, which were considered in Committee of the Whole, and on January 29 were agreed to by the House.

Thereupon, on motion of Mr. Sitgreaves:

*Resolved*, That eleven managers be appointed, by ballot, to conduct the said impeachment on the part of this House.

As to the method of appointment there was some debate.<sup>4</sup>

Mr. Sitgreaves said, with respect to the manner of appointing managers, he left it to the discretion of the House. The British House of Commons appointed their managers of impeachment by ballot, as they did all their large committees. In this House a different course was taken with respect to committees; they were always appointed by the Speaker, except specially ordered otherwise. The former committee on this business was appointed by the Speaker. He was not disposed to deviate from the usual practice. If, however, any gentleman wished to move that they be appointed by ballot, such a motion, he supposed, would be in order.

Mr. Albert Gallatin, of Pennsylvania, thought the rule directing the appointment of committees did not apply in the present case. It was true that managers of conferences of the Senate were thus chosen, but he thought there was an essential difference between the two cases. Managers of conferences reported to the House similarly with committees, and in fact they were a committee, though called by a different name. But managers of an impeachment on the part of this House appeared to him to be quite a different thing. They were not to make a report to the House which might be affirmed or negatived; they were the representatives of the House, and what they did would be final. Under this impression, in order to take the sense of the House upon the business, he moved that the managers be elected by ballot.

The motion that the managers be appointed by ballot was agreed to by the House.

On January 30<sup>5</sup> Mr. Sitgreaves, in view of the fact that the House should determine whether the choice should be determined by majority or plurality, offered the following resolution, which was agreed to:

*Resolved*, That in the ballot for managers to conduct the impeachment against William Blount, on the part of this House, a majority of the whole number of votes shall be necessary to a choice; and if it should happen that more than eleven members shall have a majority, that, in that case, the eleven highest in votes shall be considered as chosen; and if any two or more having a majority of votes should be equal in number, so as that the plurality can not be determined among them, the same shall be decided by a new ballot, subject to the preceding rules.

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<sup>1</sup> For the report in full, with exhibits, see Annals, vol. 5, part 2, pp. 2319–2415.

<sup>2</sup> Journal, pp. 135, 144; Annals, pp. 847, 890.

<sup>3</sup> Journal, pp. 149–153; Annals, pp. 919, 947–951.

<sup>4</sup> Annals, p. 952.

<sup>5</sup> Journal, p. 154; Annals, p. 953.

Proceeding to ballot, the House, on this and the succeeding day, chose the following managers:

Messrs. Sitgreaves; James A. Bayard, of Delaware; Harper; William Gordon, of New Hampshire; Thomas Pinckney, of South Carolina; Dana; Samuel Sewall of Massachusetts; Hezekiah L. Hosmer, of New York; John Dennis, of Maryland; Thomas Evans, of Virginia; and James H. Imlay, of New Jersey.

Mr. Baldwin, who had been elected a manager, was excused by the House.

On February 2<sup>1</sup> it was—

*Resolved*, That the articles agreed to by this House, to be exhibited in the name of themselves and of all the people of the United States against William Blount, in maintenance of their impeachment against him for high crimes and misdemeanors, be carried to the Senate by the managers appointed to conduct the said impeachment.

**2301. Blount's impeachment continued.**

**The ceremonies of presenting to the Senate the articles of impeachment of William Blount in 1797.**

**Rules established by the Senate to prescribe ceremonies for receiving House managers presenting articles in Blount's case.**

**Form of proclamation made in the Senate on attendance of House managers to present articles of impeachment against William Blount.**

**Upon receiving notice from the House that the managers would present articles against William Blount, the Senate set a time and informed the House thereof.**

**The managers who presented the articles impeaching William Blount were attended by some Members of the House.**

**Announcement of the chairman of the House managers in presenting to the Senate the articles against William Blount.**

**The manager having read the articles impeaching William Blount, the Sergeant-at-Arms received them and laid them on the Senate table.**

**Form of declaration of Vice-President upon presentation of articles of impeachment in Blount's case.**

On February 5,<sup>2</sup> in the Senate, the following rules were agreed to:

*Resolved*, That the Doorkeeper of the Senate be, and he is hereby, invested with the authority of Sergeant-at-Arms, to hold said office during the pleasure of the Senate, whose duty it shall be to execute the commands of the Senate, from time to time, and all such process as shall be directed to him by the President of the Senate.

*Resolved*, That for regulating the proceedings of the Senate in cases of impeachment the following rule be adopted, viz:

When the House of Representatives, or managers by them appointed for that purpose, shall attend the Senate to present articles of impeachment, the President of the Senate shall cause proclamation to be made in the form following, viz:

All persons are commanded to keep silence while the Senate of the United States are receiving articles of impeachment against—, on pain of imprisonment.

And shall then signify to the managers that the Senate are ready to receive the articles of impeachment, which, having been read by one of the managers, shall be received by the Secretary; and the managers shall thereupon be informed by the President that the Senate will take proper order on the subject, of which due notice will be given to the House of Representatives.

After which the Secretary shall read said articles of impeachment and enter the same on the Journals of the Senate.

<sup>1</sup> House Journal, p. 160.

<sup>2</sup> Senate Journal, p. 433; Annals, p. 498.



On February 7,<sup>1</sup> in the Senate, a message, ordered to be sent by the House, was received from the House by its clerk, who said:

Mr. President: The House of Representatives have resolved that articles agreed by the House to be exhibited by them, in the name of themselves and of all the people of the United States, against William Blount, in maintenance of their impeachment against him for high crimes and misdemeanors, be carried to the Senate by the managers, Messrs. Sitgreaves, Bayard, Harper, Gordon, Pinckney, Dana, Sewall, Hosmer, Dennis, Evans, and Imley, appointed to conduct the said impeachment.

On motion,

*Resolved*, That the Senate will, at 12 o'clock this day, be ready to receive articles of impeachment against William Blount, late Senator of the United States from the State of Tennessee, to be presented by the managers appointed by the House of Representatives.

This was the same day communicated to the House by a message borne from the Senate by its Secretary.<sup>2</sup>

Mr. Sitgreaves having stated that it was usual on all solemn occasions like this for the House to give sanction to its managers by an attendance at the time, the managers of the impeachment, accompanied by some of the Members of the House, accordingly went up to the Senate for the purpose of exhibiting the articles of impeachment against William Blount.<sup>3</sup>

Later, in the Senate,<sup>4</sup> a message was announced from the House of Representatives by the above-mentioned managers, who, being introduced, and all but the chairman being seated,<sup>3</sup> Mr. Sitgreaves, their chairman, addressed the Senate as follows:

Mr. Vice-President: The House of Representatives having agreed upon articles in maintenance of their impeachment against William Blount for high crimes and misdemeanors, and having appointed on their part managers of the said impeachment, the managers have now the honor to attend the Senate for the purpose of exhibiting the said articles.

The Vice-President then ordered the Sergeant-at-Arms to proclaim silence, after which he notified the managers that the Senate was ready to hear the articles of impeachment; whereupon,

The chairman of the managers read the articles of impeachment, and they were received from him at the bar by the Sergeant-at-Arms and laid on the table.

The Vice-President<sup>5</sup> then said:<sup>3</sup>

Gentlemen, managers on the part of the House of Representatives: The Senate will take such order on the articles of impeachment which you have exhibited before them as shall seem to them proper, of which due notice will be given to the House of Representatives.

Upon which the managers and Members attending then retired.

**2302. Blount's impeachment continued.**

**The articles in impeachment of William Blount.**

**The articles in the Blount impeachment were signed by the Speaker and attested by the Clerk.**

**The articles of impeachment in the Blount case appear in the House Journal on the day of their adoption, and in the Senate Journal on the day of their presentation.**

<sup>1</sup> Senate Journal, p. 435; Annals, p. 498.

<sup>2</sup> House Journal, P. 163.

<sup>3</sup> Annals, p. 970.

<sup>4</sup> Senate Journal, p. 435; Annals, p. 499.

<sup>5</sup> Thomas Jefferson, of Virginia, Vice-President.

The Secretary of the Senate then read the articles of impeachment, as follows:

ARTICLES EXHIBITED BY THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, IN THE NAME OF THEMSELVES AND OF ALL THE PEOPLE OF THE UNITED STATES, AGAINST WILLIAM BLOUNT, IN MAINTENANCE OF THEIR IMPEACHMENT AGAINST HIM FOR HIGH CRIMES AND MISDEMEANORS.

ARTICLE 1. That, whereas the United States, in the months of February, March, April, May, and June, in the year of our Lord 1797, and for many years then past, were at peace with His Catholic Majesty, the King of Spain; and whereas, during the months aforesaid, His said Catholic Majesty and the King of Great Britain were at war with each other; yet the said William Blount, on or about the months aforesaid, then being a Senator of the United States, and well knowing the premises, but disregarding the duties and obligations of his high station, and designing and intending to disturb the peace and tranquillity of the United States, and to violate and infringe the neutrality thereof, did conspire, and contrive to create, promote, and set on foot, within the jurisdiction and territory of the United States, and to conduct and carry on from thence, a military hostile expedition against the territories and dominions of His said Catholic Majesty in the Floridas and Louisiana, or a part thereof, for the purpose of wresting the same from His Catholic Majesty, and of conquering the same for the King of Great Britain, with whom His said Catholic Majesty was then at war as aforesaid, contrary to the duty of his trust and station as a Senator of the United States, in violation of the obligations of neutrality, and against the laws of the United States, and the peace and interests thereof.

[Then follows article 2, reciting that the said William Blount “did conspire and contrive to excite the Creek and Cherokee nations of Indians then inhabiting within the territorial boundary of the United States, to commence hostilities against the subjects and possessions of His Catholic Majesty,” and article 3, reciting that the said Blount did “further conspire and contrive to alienate and divert the confidence of the said Indian tribes or nations from the said Benjamin Hawkins, the principal temporary agent aforesaid, and to diminish, impair, and destroy the influence of the said Benjamin Hawkins with the said Indian tribes, and their friendly intercourse and understanding with him, contrary to the duty of his trust and station as a Senator of the United States, and against the ordinances and laws of the United States, and the peace and interests thereof;” and article 4, reciting a similar attempt to seduce James Carey from his duty; and article 5, reciting similar efforts to foment disaffection among the Cherokee Indians toward the Government of the United States.]

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any further articles, or other accusation, or impeachment, against the said William Blount, and also of replying to his answers, which he shall make unto the said articles, or any of them, and of offering proof to all and every the aforesaid articles, and to all and every other articles of impeachment, or accusation, which shall be exhibited by them, as the case shall require, do demand that the said William Blount may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments may be thereupon had and given, as are agreeable to law and justice.

Signed by order and in behalf of the House.

JONATHAN DAYTON, *Speaker*.

Attest:

JONATHAN W. CONDY, *Clerk*.

These articles of impeachment appear in full in the Journals of both the House and Senate, in the House Journal on January 29,<sup>1</sup> the day of their adoption, and in the Senate Journal on February 7,<sup>2</sup> the day they were presented and read.

<sup>1</sup>House Journal, p. 151.

<sup>2</sup>Senate Journal, p. 435.

**2303. Blount's impeachment continued.****Form of oath administered to Senators sitting for the impeachment of William Blount.**

**The Senate decided in the Blount impeachment that the oath might be administered by the Secretary and President without authority of law.**

**The Senate decided in the Blount impeachment that the Secretary, should administer the oath to the President, and the President to the Senators.**

On February 9<sup>1</sup> the Senate considered the report of a committee appointed to determine the mode of administering oaths in cases of impeachment. This committee reported the following:

*Resolved*, That the oath or affirmation required by the Constitution of the United States to be administered to the Senate, when sitting for the trial of impeachment, shall be in the form following, viz:

"I, A B, solemnly swear (or affirm, as the case may be), that in all things appertaining to the trial of the impeachment of ——— I will do impartial justice, according to law."

Which oath or affirmation shall be administered by the Secretary to the President of the Senate, and by the President to each member of the Senate.

On motion that the report be amended by adding thereto these words "and that a bill be brought in conformable thereto," there were yeas 8, nays 20. Then, by a vote of 22 yeas to 6 nays, the resolution was agreed to as reported. On February 14<sup>2</sup> the Senate postponed a bill regulating certain proceedings in case of impeachment, and on February 20 the bill failed to pass.

**2304. Blount's impeachment, continued.****Form of the writ of summons issued for the appearance of William Blount to answer articles of impeachment.****Rule of the Senate prescribing method of service of writ of summons on William Blount.**

**In the Blount impeachment the Secretary was directed to serve the summons sixty days before the return day.**

**The Senate in its writ of summons in the Blount impeachment fixed respondent's appearance at the next session of Congress.**

**The Senate communicated to the House its form of summons in the Blount impeachment, and it was entered in the House Journal.**

**In the Blount impeachment the House, in conference, asked of the Senate an earlier return day of the summons, but the request was denied.**

**Instance of a conference on a subject of procedure in an impeachment.**

On March 1<sup>3</sup> the Senate concluded consideration of the report made on February 27 by Mr. Samuel Livermore,<sup>4</sup> of New Hampshire, from the committee to whom the subject had been recommitted on February 23, and, by a vote of yeas 22, nays 5, agreed to it as follows:

The committee to whom was recommitted the report of the committee appointed to prepare rules of proceeding in the case of the impeachment against William Blount, report, in part, that a writ of summons issue, directed to the said William Blount, in the form following:

<sup>1</sup> Senate Journal, p. 438; Annals, p. 503.

<sup>2</sup> Senate Journal, pp. 441, 448.

<sup>3</sup> Senate Journal, pp. 447, 448; Annals, p. 514.

<sup>4</sup> The other members of the committee were Messrs. James Ross, of Pennsylvania, and Richard Stockton, of New Jersey.

“UNITED STATES OF AMERICA, ss:

“The Senate of the United States of America to William Blount, late a Senator of the United States for the State of Tennessee, greeting: Whereas the House of Representatives of the United States of America did, on the 7th day of July last past, in their own name, and in the name of all the people of the United States, impeach you, the said William Blount, of high crimes and misdemeanors before the Senate of the United States: And whereas the said House of Representatives did, on the 7th day of February, of the present year, exhibit to the Senate their articles of impeachment against you, the said William Blount, charging you with high crimes and misdemeanors, therein specially set forth (a true copy of which articles of impeachment is annexed to this writ), and did demand that you, the said William Blount, should be put to answer the said crimes and misdemeanors; and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice—you, the said William Blount, are therefore summoned to be and appear before the Senate of the United States of America, at their Chamber, in the city of Philadelphia, in the State of Pennsylvania, on the third Monday of December next, at the hour of 11 of that day, then and there to answer the said articles of impeachment, and then and there to abide by, obey, and perform such orders and judgments as the Senate of the United States shall make in the premises, according to the Constitution and laws of the said United States. And hereof you are in nowise to fail. Witness, the honorable Thomas Jefferson, esq., Vice-President of the United States of America, and President of the Senate thereof, at the city of Philadelphia, the 1st day of March, in the year of our Lord 1798, and of the independence of the United States the twenty-second.

“Which summons shall be signed by the Secretary of the Senate.

“That the said summons shall be served on the said William Blount by the Sergeant-at-Arms of this House, or a special messenger, who shall leave a true copy of the writ and the articles annexed with the said William Blount, if he can be found, showing him the original; or at the usual place of residence of the said William Blount, if he can not be found. Which messenger shall make return of the writ of summons, and of his proceedings in virtue thereof, to the Senate, on the appearance day therein mentioned.

“And that a message be sent to the House of Representatives, giving information that the Senate have directed the said writ to be issued, and of the day mentioned therein for the appearance of the said William Blount.”

It was then

*Resolved*, That the Secretary of the Senate do issue the summons hereinbefore directed, and that service thereof be made sixty days at the least before the return day mentioned in the said writ of summons.

This report was communicated to the House by message and appears in full on the Journal of that body.<sup>1</sup> The following order was then agreed to:

*Ordered*, That the said proceedings of the Senate be referred to the managers appointed on the part of this House to conduct the said impeachment against William Blount, with instructions to inquire and report whether any, and, if any, what, provisions are necessary to be made by law for regulating proceedings in cases of impeachment.

On April 6<sup>2</sup> Mr. Sitgreaves, from the managers, reported the following resolutions, which were agreed to:

*Resolved*, That a conference be desired with the Senate on the subject of their resolution of the 1st of March last, relative to the impeachment of William Blount, and that the managers appointed to conduct the said impeachment be the managers for this House at the proposed conference.

*Resolved*, That the managers of this House do request, at the said conference, that the Senate will appoint a day, during the present session of Congress, for the return of the summons directed by their resolution of the 1st of March aforesaid, to be issued to the said William Blount.

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<sup>1</sup>House Journal, p. 211.

<sup>2</sup>House Journal, pp. 253, 254; Annals, pp. 1376, 1377.

On April 9,<sup>1</sup> in the Senate,

*Resolved*, That they do agree to the proposed conference, and that Messrs. Ross and Livermore be managers at the same on the part of the Senate.

On April 13,<sup>2</sup> Mr. Bayard, from the managers appointed on the part of the House, submitted the following report, which was laid on the table:

That they laid before the conferees appointed by the Senate the resolution of the 6th instant, requesting the appointment of a day during the present session of Congress for the return of the summons against the said William Blount, the reasons upon which the said resolution was founded; and were assured by the conferees that the said request and the reasons for making it, suggested by the managers, should be reported and submitted to the Senate.

This report was ordered to lie on the table.

In the Senate, on April 16,<sup>3</sup> Mr. Ross, from the conferees, made a report; whereupon, it was

*Resolved*, That it is not, at this time, expedient to alter the return day of the summons directed to be issued to William Blount, so as to make it returnable in the present session of Congress as requested by the managers of the House of Representatives, there being no certainty that it will continue long enough to afford reasonable time for a proper service and return of this process.

On April 16<sup>4</sup> this resolution was communicated to the House by message, and was read and ordered to lie on the table.

**2305. Blount's impeachment, continued.**

**In Blount's impeachment the return of service of the summons was filed in the Senate before the day set for the appearance.**

**In the Blount impeachment a letter from respondent's attorneys announcing their readiness to attend was filed in the Senate before the day set for appearance.**

In the Senate on December 6, 1798,<sup>5</sup> in the next and third session of the Congress, "the return of service on the summons to William Blount, made by the Sergeant-at-Arms, pursuant to the resolution of the Senate of the 1st of March last, was read." This is the entry of the Senate Journal, which does not give the return in full.

Then the President communicated a letter from Jared Ingersoll, esq., stating that he, together with A. J. Dallas, esq., were employed as counsel for William Blount, and that they were ready to attend the trial when ordered by the Senate. This letter does not appear in full in the Senate Journal.

**2306. Blount's impeachment, continued.**

**A manager of an impeachment having accepted an incompatible office, the House chose a successor.**

**The chairman of managers of an impeachment having ceased to be a Member, the next in order succeeded to the chairmanship.**

<sup>1</sup> Senate Journal, p. 469; Annals, p. 537.

<sup>2</sup> House Journal, p. 261; Annals, p. 1412.

<sup>3</sup> Senate Journal, p. 472; Annals, p. 541.

<sup>4</sup> House Journal, p. 263.

<sup>5</sup> Third session Fifth Congress, Senate Journal, p. 558; Annals, p. 2190.

In the House, on December 13,<sup>1</sup> Mr. Harper, in the absence of Mr. Bayard, “the present chairman” of the managers,<sup>2</sup> offered the following, which was agreed to:

*Resolved*, That another Member be appointed, by ballot, as one of the managers to conduct the impeachment against William Blount, in the room of Mr. Sitgreaves, appointed a commissioner of the United States, under the sixth article of the treaty of amity, commerce, and navigation, with Great Britain.

The House accordingly chose Mr. John Wikes Kittera, of Pennsylvania.

**2307. Blount’s impeachment, continued.**

**The Senate, by message, informed the House that the summons had been served on William Blount and a return made thereon to the Secretary’s office.**

**Rules adopted by the Senate for reading the return, calling the respondent, and entering appearance or default in the first impeachment.**

**In the first impeachment the Senate by rule described itself as a court of impeachment.**

**Impeachment trials in the Senate have from the first been recorded in a separate journal.**

**Form used by the Sergeant-at-Arms in calling William Blount to appear and answer articles of impeachment.**

**Form of return of writ of summons in Blount impeachment.**

**William Blount appeared neither in person nor by attorney to answer the articles of impeachment.**

**The House did not attend the return of summons to William Blount to appear and answer articles of impeachment.**

In the Senate on December 13:<sup>3</sup>

*Ordered*, That the Secretary notify the House of Representatives that the summons issued by order of the Senate of the United States against William Blount, on the 1st day of March last, to appear at their bar on the third Monday of December instant and answer to the impeachment made by the House of Representatives, for high crimes and misdemeanors, has been duly served on the said William Blount by the Sergeant-at-Arms, and a return thereon is made to the office of the Secretary of the Senate.

This message was received in the House on the same day.

On December 17,<sup>4</sup> in the Senate, Messrs. James Ross, of Pennsylvania; Jacob Read, of South Carolina, and Samuel Livermore, of New Hampshire, were appointed to report rules for conducting the trial of impeachment and reported—

That the legislative and executive business of the Senate be postponed, and that the Senate form itself into a court of impeachment by taking the oath prescribed by a resolution of this House on the 9th of February, last.

After the oath has been administered to the President and Senate, the process which, on the 1st of March last, was directed to be issued and served upon William Blount, and the return made there—

<sup>1</sup>Third session Fifth Congress, House Journal, p. 406; Annals, pp. 2440, 2441.

<sup>2</sup>Mr. Bayard was second on the committee of managers and apparently succeeded to the position without election, although such usage was not incorporated in the rule until 1804.

<sup>3</sup>Senate Journal, p. 563; Annals, p. 2194.

<sup>4</sup>Senate Journal, p. 565; Annals, p. 2196.



upon, shall be read. The officer who served the process shall be sworn to the truth of the return thereof. The defendant, William Blount, shall be called to appear and answer the articles of impeachment exhibited against him. If he appears, his appearance shall be recorded. If he does not appear, his default shall be recorded.

The House of Representatives shall be notified of the appearance or default of the defendant, William Blount, and that the Senate will be ready at 12 o'clock to-morrow to receive the managers appointed by that House, and to take further order in this trial.

The report was adopted, and the Senate "formed itself into a court of impeachment accordingly." The daily Journal of the Senate does not record the proceedings of the court of impeachment, but they were as follows on this day:<sup>2</sup>

On this day the Senate formed itself into a high court of impeachment, in the manner directed by the Constitution, and the oath prescribed was administered to the Senators present. The process issued on the 1st of March last against William Blount, together with the return made thereon, was read, and the return was sworn to as follows:

"James Mathers, Sergeant-at-Arms of the Senate of the United States, maketh oath that, in obedience to the within summons, he did repair to the usual place of residence of the within-named William Blount, at Knoxville, in the State of Tennessee, and on the 27th day of August, in the present year, did then leave a true copy of the said writ of summons, and of the articles of impeachment annexed, with the wife of the said William Blount, he not being to be found; and that, on the next day, meeting with the said William Blount at the Blue Springs, the deponent showed and read the said original writ to the said William Blount, and informed him that he had left a copy at the usual place of his residence.

"JAMES MATHERS."

The doors of the court were then opened by order of the President, and by his order the Sergeant-at-Arms called the said William Blount three several times, in the words following, to appear and answer:

"Hear ye! Hear ye! Hear ye!

"William Blount, late a Senator from the State of Tennessee, come forward and answer the articles of impeachment exhibited against you by the House of Representatives."

William Blount not appearing, the court adjourned till 12 o'clock to-morrow.

### **2308. Blount's impeachment, continued.**

**The House being informed that William Blount had failed to appear and answer the articles, instructed the managers to ask of the Senate time to prepare proceedings.**

**After William Blount had failed to appear and answer, counsel were admitted on his behalf.**

**William Blount having failed to appear and answer, the House, after discussing English precedents, declined to ask that he be compelled to appear.**

**The House declined to instruct its managers as to further proceedings after William Blount had failed to appear and answer.**

In the House on December 18,<sup>3</sup> a message was received from the Senate notifying the House that William Blount, impeached of high crimes and misdemeanors before the Senate, by this House, though he had been duly summoned, had not

<sup>1</sup>The Senate kept in journal form a "Record of the Proceedings of the High Court of Impeachment on the Trial of William Blount," which was published separately at a later date. Senate Journal, Eighth Congress, pp. 484-491.

<sup>2</sup>Annals, p. 2245.

<sup>3</sup>House Journal, p. 415; Annals, p. 2458.

appeared at the bar of the Senate at the time appointed; and that the Senate would be ready to receive the managers at 12 o'clock this day, to take further order in this trial.

On motion of Mr. Harper, this message was referred to the managers of the impeachment, who had leave to sit during the session of the House.

Later, on the same day, Mr. Harper reported, and in accordance therewith it was—

*Resolved*, That the said managers do attend before the Senate, at 12 o'clock this day, and request a further day for preparing their proceedings in the said impeachment.

In the Senate, on December 18,<sup>1</sup> Messrs. Ross, Livermore, and Stockton were appointed a committee to take into consideration and report what rules were necessary to be adopted on the trial of the impeachment.

On the same day the Senate resolved itself into a court of impeachment, wherein occurred the following proceedings: <sup>1</sup>

The President communicated a letter, signed "Jared Ingersoll and A. J. Dallas," praying to be admitted to appear as counsel for the defendant. It was accordingly so ordered, and that the House of Representatives be informed thereof.

The managers on the part of the House of Representatives and the defendant's counsel appeared at the bar.

On motion of Mr. Harper (in the absence of Mr. Bayard, the chairman), in behalf of the managers, that further time be allowed them to prepare their proceedings in the case, it was,

*Ordered*, That they have time till Monday next, at 12 o'clock, for that purpose."  
The court adjourned till that time.

In the House, on December 20,<sup>2</sup> Mr. Harper submitted the report of the managers, which was as follows:

That, pursuant to the resolution of this House, of the 18th instant, they did attend before the Senate of the United States, and request a further day for preparing their proceedings in the said impeachment; whereupon, a further day was granted till Monday next, at 12 o'clock.

That the managers, having carefully considered the subject, are of opinion that it is neither consistent with the solemnity which ought to attend this high constitutional proceeding, nor with the principles, which, as far as they have been able to discover, have invariably obtained in impeachments, and all other trials of a criminal nature, to proceed to trial against the defendant in this case in his absence; and that the said William Blount, having failed to make personal appearance, as has been notified to the House by the above-mentioned message from the Senate, the next step, on the part of this House, ought to be a motion before the Senate that further order be taken by them for compelling his personal appearance at their bar, to answer to the articles of impeachment exhibited against him by this House.

The managers, however, do not think it proper for them to take a step involving so important a principle without the direction of the House, for the purpose of obtaining which, they beg leave to submit to its consideration the following resolution:

*Resolved*, That the managers appointed, on the part of this House, to conduct the impeachment against William Blount, late a Senator of the United States, be instructed to request, at their next attendance before the Senate, that further order be taken for compelling the personal appearance of the said William Blount, to answer to the articles of impeachment exhibited against him on the part of this House."

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<sup>1</sup> Annals, p. 2245.

<sup>2</sup> House Journal, pp. 416, 417; Annals, pp. 2469–2487.

On the next day the House debated the report at length. It appeared that the managers were nearly unanimous in favor of their report, but it was vigorously assailed in the House. Mr. Harrison G. Otis, of Massachusetts, opposed:

Mr. Otis said he did not know what had been the rule observed in similar cases in England; he had not had leisure to examine; nor did he think we ought to be bound by British precedents in a case of this kind. It is, said he, a new case, and he saw no difficulty in determining to prosecute this man to conviction, and in obtaining for him the punishment which he deserves. There is some analogy between this process and a process (well known in common law) against a man's property, distinct from his person. Every one knows that such a prosecution is a prosecution of forfeiture. For instance, we libel a vessel, and notice is given to all the parties to defend. If they do not appear, judgment and execution are obtained.

The present process is against the office of William Blount; it has nothing to do with his person; he is afterwards liable to a prosecution at common law for any crime which he may have committed.

Mr. Samuel W. Dana, of Connecticut, also supported this view:

Let gentlemen who say that a person, in a case like the present, should be required to appear, answer, if a sentence can neither affect a man's person nor his property, why he should appear in person? If a man were liable to be punished with imprisonment, fine, or ransom, his person ought to be secured; and it is because courts will have security, that in such cases persons are either imprisoned or held by efficient bail is refused, it is where it does not afford a sufficient security. Is any such security required in this case? asked Mr. Dana, There is not. The process would be a rare one if the party were required to appear.

The Constitution, continued Mr. Dana, has proceeded on a different principle. The process in cases of impeachment in this country is distinct from either civil or criminal—it is a political process, having in view the preservation of the Government of the Union. Impeachments under the British Government are wholly different from impeachments carried on under this Government. The Constitution proceeds on the high authority of public opinion and of the high value of reputation to every man who is a candidate for public office, and that the declaration of public reprobation, expressed by the constitutional organ, is one of the severest punishments. It considers that the punishment of fine and imprisonment may be endured, but that public abhorrence is not to be borne.

The punishment in this case therefore is wholly a declaration of public opinion, not only that the person receiving it has proved himself unworthy of his present office, but that there is such a baseness attached to his character as to render him unfit for any office in future. Taking the matter up in this view, the propriety of not considering the offense as criminal will clearly appear. Were the offense to be considered as a crime merely, the judgment of the court should involve the whole punishment; whereas, it has no connection with punishment or crime, as, whether a person tried under an impeachment be found guilty or acquitted, he is still liable to a prosecution at common law. This process therefore is perfectly *sui generis*—equally unknown to the British Government or to this country.

Upon this view of the subject, Mr. Dana said his opinion was, that the House ought to instruct the managers, but in a way directly opposite to that proposed by the resolution under consideration.

Mr. Dana also cited the case of Robert Tresylliam and others, tried before the British House of Lords in 1388, in support of his opinion, but it was alleged in opposition that this precedent had been highly censured by English law writers.

Mr. Harper defended the report of the managers:

It had been the practice, from the earliest records of our jurisprudence to the present time, that a man shall never be tried in his absence for a criminal offense. Gentlemen say the reason of this is, that he may be ready to receive judgment. If so, it would be foolish, because the court might direct the person of a criminal to be brought before them to receive sentence as well as they could do it before his trial. What, then, said he, is the reason? Ask the great sages of the English law, and they will give an answer very different from his learned friends. They will say that it is because a man ought always to be face to face with his judges and accusers; that no witness ought to be heard against a man, or his life or property put in jeopardy, without his personal presence; and so sacred is the principle held that a man is not permitted to depart from it. This is not a solitary instance in which personal

convenience is sacrificed to natural convenience; this is frequently the case, in order to make sure the barriers which protect individual security. It is in this respect that our jurisprudence is chiefly distinguished from the inquisitorial proceedings of former times, where a man might be found guilty of the highest crimes without knowing who were his accusers, witnesses, or judges. It is by this sacred maxim that no man can be put in jeopardy without being confronted by his accusers. And shall we, said he, depart from this principle? Why shall we do this? Because the judgment to be awarded in this case does not extend to person or property? Is the judgment less than if it affected person or property? Gentlemen will not say so. They will say that a man's reputation is the dearest possession which he can enjoy; and certain he was that gentlemen who are opposed in opinion to him on this subject would sooner be deprived of their property or personal liberty than lose their fame and reputation. It was, in his opinion, the highest punishment that could be inflicted upon a man of worth.

The House disagreed to the resolution proposed by the managers, yeas 11, nays 69.

Mr. Samuel Sewall, of Massachusetts, one of the managers, in order that there might be positive instructions from the House, proposed this resolution:

*Resolved*, That the managers appointed on the part of this House for conducting the impeachment against William Blount proceed in the prosecution of the said impeachment, although William Blount should not appear in person to answer to the same.

It was urged against this resolution that it was improper to give any instructions at all and that the Senate should be left to proceed as they should think proper.

The resolution was disagreed to, ayes 37, noes 46.

### **2309. Blount's impeachment, continued.**

#### **Rule adopted by the Senate for the trial of William Blount in 1797.**

**The rule providing for the putting in of the answer or plea in the Blount case.**

**The rules in the Blount case provided that respondent's answer should be communicated to the House of Representatives.**

**The Senate rules in the Blount case required that respondent's answer should be spread on the journal.**

**The Senate rules in the Blount case provided that all questions arising should be decided in secret session and by yeas and nays.**

**Form of oath and mode of examination of witnesses prescribed in the Blount impeachment.**

**It was provided in the Blount case that Senators called as witnesses should be sworn and testify standing in their places.**

**The Senate communicated to the House its rules for the trial of William Blount; and they appear in the House Journal.**

**The Senate decided that the counsel for William Blount need not file any warrant of attorney or other written authority.**

**During proceedings in impeachment before the Senate the President pro tempore presides during temporary absence of the Vice-President.**

In the Senate, on December 20,<sup>1</sup> Mr. Ross, from the committee appointed to prepare rules, made a report which, after amendment, was on December 21 agreed to, as follows:

*Resolved*, That at the next opening of the court of impeachment the President shall inquire whether the managers have any request to make before the counsel of the defendant are called on to put in his answer.

<sup>1</sup> Senate Journal, p. 566; Annals, p. 2197.

If no motion or request is made, the defendant's counsel shall be required to put in his answer or plea to the articles of impeachment.

The answer or plea shall be read by the Secretary and entered by him on the Journal.

A copy of the defendant's answer or plea shall be communicated to the House of Representatives by the Secretary.

The President shall then inform the managers that the Senate is ready to hear any reply or motion which they may think proper to make.

All questions, arising in the course of the trial, shall be decided with closed doors. The decisions shall be by ayes and noes, which shall be entered upon the Journal. When the question is decided, the doors shall be opened, the parties called in, and the result made known to them by the President.

Witnesses shall be examined by the Secretary, and shall take the following oath:

"I, A, B, do swear (or affirm, as the case may be) that the evidence I will give to this court, touching the impeachment of William Blount, now here depending, shall be the truth, the whole truth, and nothing but the truth. So help me God."

Witnesses shall be examined by the party producing them, and then cross-examined in the usual form. If a Senator wishes any question to be asked, it shall be put by the President.

If Senators are called as witnesses, they shall be sworn, and give their testimony standing in their places.

It was also—

*Ordered*, That the Secretary inform the House of Representatives that the Senate, taking into their care the ordering of the trial of William Blount, late a Senator of United States from the State of Tennessee, on Monday, the 24th of December instant, have prepared some rules to be observed at said trial, which they have thought fit to communicate to the House of Representatives.

The message was accordingly delivered in the House, and the rules appear in full in the House Journal of December 21.<sup>1</sup>

On December 24<sup>2</sup> the Senate resolved themselves into a court of impeachment whereupon the proceedings were as follows:

The managers and counsel attended as on the 18th instant.

On the motion of Mr. Harper, in behalf of the managers, that the counsel exhibit and file the power, or powers, by which they are authorized to appear in behalf of William Blount, and that the managers be furnished with a copy thereof.

Mr. Dallas, one of the counsel, exhibited sundry letters to the President, which, he alleged, contains the powers and also the confidential instructions of Mr. Blount to his counsel.

The court was cleared in order to take into consideration the motion made by the managers of the impeachment; and, on the motion that it be ruled,

"That the court having, on the 18th day of the present month, admitted Jared Ingersoll and A. J. Dallas, esqs., to appear and plead for William Blount, to the impeachment now pending against him, and the court having then been satisfied that the said counsel were duly authorized to appear for the said William Blount, are of opinion that it is not necessary that any warrant of attorney, or other written authority, be now filed in this court."

It was determined in the affirmative, 20 to 2.

The managers and counsel being again admitted, the President<sup>3</sup> stated to them the opinion of the court on the motion of the managers, and returned to Mr. Dallas the letters by him exhibited, unopened.

The President then asked the managers if they had further motion to make prior to permission to the counsel for the defendant to file a plea on his behalf.

To which the managers replied in the negative.

<sup>1</sup> House Journal, p. 416.

<sup>2</sup> Annals, p. 2246.

<sup>3</sup> It is evident that in the absence of the Vice-President the President pro tempore presided. The Vice-President had not attended this session at this time. Senate Journal, p. 567.

**2310. Blount's impeachment, continued.**

**The plea filed by counsel of William Blount in answer to the articles of impeachment.**

**William Blount, in his plea, demurred to the jurisdiction of the Senate to try him on impeachment charges.**

**William Blount pleaded that he was not, at the time of pleading, a Senator; and that a Senator was not impeachable as a civil officer.**

**The plea of William Blount being received by the House of Representatives, was referred to the managers.**

Whereupon the President notified to the counsel that they were permitted to file their plea, which was done by Mr. Ingersoll and read by the Secretary as follows:

UNITED STATES *v.* WILLIAM BLOUNT.

UPON IMPEACHMENT OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, OF HIGH CRIMES AND MISDEMEANORS.

IN THE SENATE OF THE UNITED STATES, DECEMBER 24, 1798.

The aforesaid William Blount, saving and reserving to himself all exceptions to the imperfections and uncertainty of the articles of impeachment, by Jared Ingersoll and A. J. Dallas, his attorneys, comes and defends the force and injury, and says, that he, to the said articles of impeachment preferred against him by the House of Representatives of the United States, ought not to be compelled to answer, because he says that the eighth article of certain amendments of the Constitution of the United States, having been ratified by nine States, after the same was, in a constitutional manner, proposed to the consideration of the several States of the Union, is of equal obligation with the original Constitution, and now forms a part thereof, and that by the same article it is declared and provided, that "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

That proceedings by impeachment are provided and permitted by the Constitution of the United States, only on charges of bribery, treason, and other high crimes and misdemeanors, alleged to have been committed by the President, Vice-President, and other civil officers of the United States, in the execution of their offices held under the United States, as appears by the fourth section of the second article, and by the seventh clause of the third section of the first article, and other articles, and clauses contained in the Constitution of the United States.

That although true it is, that he, the said William Blount, was a Senator of the United States, from the State of Tennessee, at the several periods in the said articles-of impeachment referred to; yet, that he, the said William, is not now a Senator, and is not, nor was at the several periods, so as aforesaid referred to, an officer of the United States; nor is he, the said William, in and by the said articles, charged with having committed any crime or misdemeanor, in the execution of any civil office held under the United States, or with any misconduct in civil office, or abuse of any public trust, in the execution thereof.

That the courts of common law, of a criminal jurisdiction, of the States, wherein the offenses in the said articles recited are said to have been committed, as well as those of the United States, are competent to the cognizance, prosecution, and punishment, of the said crimes and misdemeanors, if the same have been perpetrated, as is suggested and charged by the said articles, which, however, he utterly denies. All which the said William is ready to verify, and prays judgment whether this high court will have further cognizance of this suit, and of the said impeachment, and whether he, the said William, to the said articles of impeachment, so as aforesaid preferred by the House of Representatives of the United States, ought to be compelled to answer.

JARED INGERSOLL.

A. J. DALLAS.



On request of Mr. Harper, in behalf of the managers, that they be allowed a further delay, to wit, until Thursday sennight, to file their replication, it was allowed and the court adjourned to that time.

On December 26<sup>1</sup> a message from the Senate, by their Secretary, announced:

Mr. Speaker, the counsel in behalf of William Blount, by permission of the Senate, having filed their plea, I am directed to communicate a copy thereof to the House of Representatives.

This plea, as above given, appears in full in the Journal of the House. It does not appear from the Senate Journal that the Senate itself ordered this message sent. If the court of impeachment ordered it sent, the fact is not noted in the proceedings. But under the rule the Secretary would send it without further order of the Senate or court.

The House:

*Ordered*, That the said message be referred to the managers appointed on the part of this House to conduct the impeachment against William Blount, with instructions to proceed thereon as they shall deem advisable.

**2311. Blount's impeachment, continued.**

**The House sent to the Senate a replication to respondent's plea; and his counsel presented a rejoinder.**

**The replication of the House was signed by the Speaker and attested by the Clerk.**

**In the Blount impeachment the rejoinder on behalf of respondent was signed by his attorneys.**

**In the Blount impeachment the replication was presented by the House managers, but was read by the Secretary of the Senate.**

**In the Blount impeachment the Senate dispensed with the requirement for yeas and nays on questions of adjournment and on allowing further time for the parties.**

On December 31,<sup>2</sup> in the House, Mr. Bayard, from the managers appointed on the part of this House to conduct the impeachment against William Blount, to whom was referred, on the 26th instant, a message from the Senate communicating a copy of the plea filed by the counsel in behalf of the said William Blount, with instructions to proceed thereon, as they shall deem advisable, made a report, which he delivered in at the Clerk's table, where the same was twice read and agreed to by the House, as follows:

That the replication annexed be put into the said plea on behalf of this House, and that the managers be instructed to proceed to maintain the said replication at the bar of the Senate, as such time as shall be appointed by the Senate:

"The replication of the House of Representatives of the United States, in their own behalf, and also in the name of the people of the United States, to the plea of William Blount, to the jurisdiction of the Senate of the United States, to try the articles of impeachment exhibited by them to the Senate against the said William Blount:

"The House of Representatives of the United States, prosecuting, on behalf of themselves and the people of the United States, the articles of impeachment exhibited by them to the Senate of the United States against the said William Blount, reply to the plea of the said William Blount, and say, that the matters alleged in the said plea are not sufficient to exempt the said William Blount from answering the said articles of impeachment, because they say that, by the Constitution of the United States, the House

<sup>1</sup> House Journal, p. 419; Annals, p. 2491.

<sup>2</sup> House Journal, p. 423; Annals, p. 2551.

of Representatives had power to prefer the said articles of impeachment, and that the Senate have full and the sole power to try the same: Wherefore, they demand that the plea aforesaid of the said William Blount be not allowed, but that the said William Blount be compelled to answer the said articles of impeachment.”

It does not appear from the Journals of either the Senate or House that this replication was transmitted to the Senate by message before it was presented in the court of impeachment by the managers.

In the Senate, on January 3, 1799,<sup>1</sup> it was

*Resolved*, That in all questions of adjournment of the court of impeachment, as also in all questions on a motion that further time be allowed to the parties, the taking the question by yeas and nays be dispensed with.

Also on January 3 the Senate resolved itself into a court of impeachment, the proceedings of which are recorded:<sup>2</sup>

The court being opened, and the managers and counsel being present,

Mr. Bayard, chairman of the managers, in behalf of the House of Representatives, offered a replication, which was read by the Secretary as follows:

“The replication of the House of Representatives of the United States, in their own behalf. [Here follows the text of the replication as given above.]

“Signed by order, and in behalf of the House.

“JONATHAN DAYTON, *Speaker*.

“Attest:

“JON. W. CONDY, *Clerk*.”

Mr. Ingersoll, counsel for the defendant, thereupon presented a rejoinder, which was read by the Secretary, as follows:

“UNITED STATES *v.* WILLIAM BLOUNT.

“*In the Senate of the United States.*

“And the aforesaid William Blount, by Jared Ingersoll and Alexander J. Dallas, his attorneys, Says that the matter by him before alleged, which he is ready to verify, is sufficient reason in law to show that this court ought not to hold jurisdiction of the said impeachment, and the articles therein set forth; which said matter so as aforesaid by him alleged, the said House of Representatives not having denied or made answer thereto, he prays the judgment of this honorable court, whether they will hold further jurisdiction of the said impeachment or take cognizance thereof, and whether the said William Blount shall make further answer thereto.

“JARED INGERSOLL.

“A. J. DALLAS.

“January 3, 1799.”

It does not appear that this rejoinder was transmitted by message to the House.

**2312. Blount’s impeachment, continued.**

**In the Blount impeachment it was arranged that the managers should open and close in arguing respondent’s plea in demurrer.**

Mr. Bayard, the chairman, having communicated with Mr. Ingersoll, the leading counsel for the defendant, it was agreed between them that the managers should proceed in the argument first on the part of the prosecution, and that the right to reply should belong to the managers, whereupon,

Mr. Bayard rose and proceeded.

<sup>1</sup> Senate Journal, p. 568; Annals, p. 2199.

<sup>2</sup> Annals, p. 2248.

At the conclusion of his address Mr. Ingersoll, on behalf of the defendant, moved<sup>1</sup> for further time to reply, and it was allowed until 11 o'clock the next day to which time the court adjourned.

On January 4,<sup>1</sup> the court having convened, Mr. Dallas, in behalf of the defendant, spoke during that day's sitting.

On January 5<sup>2</sup> the court convened again, Mr. Ingersoll speaking further in defense. Mr. Ingersoll having concluded, Mr. Harper,<sup>3</sup> of the managers, closed.

After Mr. Harper had closed his observations, the Vice-President inquired of the managers if they had any further observations to offer, on which Mr. Bayard, in their behalf, requested permission to withdraw for a few moments; and, returning into the court, he replied in the negative.

The argument touched upon five points, although on two of these little stress was laid.

### **2313. Blount's impeachment continued.**

#### **Discussion as to the right to demand a trial by jury in a case of impeachment.**

(1) The plea of the respondent had set forth that the power of impeachment as established in the original Constitution had been limited by the eighth amendment. Mr. Bayard, of the managers, answering this, contended that it had no bearing on the question of jurisdiction in this case, whatever it might have should there be a trial. But he further urged that if the contention of the plea were well founded there would be an end of the judicial character of the Senate and it must part with the power expressly given it by the Constitution to try all impeachments. The same rule of construction would require jury trials in courts-martial.<sup>4</sup>

In reply on this point Mr. Dallas, speaking for the respondent, said:

The honorable manager had misunderstood the object of the plea when he supposed it asserted a right to a trial by jury in cases properly impeachable, since the clause to which he referred was merely inserted to show that, unless this was a case in which an impeachment would lie, the party was entitled to a trial by jury in the ordinary courts having cognizance of the matters charged.

### **2314. Blount's impeachment continued.**

#### **Argument that impeachment should not fail simply because the offense may be within jurisdiction of the courts.**

(2) The plea that the courts of law were competent to try the cause was answered by Mr. Bayard<sup>1</sup> by calling attention to the fact that no court at common law could give judgment of disqualification; and that was the just punishment for the offenses alleged.

He also said:

In the second place, if the suggestion were true it would not be effectual, because by the seventh clause of the seventh section of the first article of the Constitution delinquents shall be liable both to the punishment upon impeachment and that inflicted in the courts of common law. It is no objection to say that the courts have cognizance of the offense, because it is expressly provided that the one punishment shall not be an exemption from the other.

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<sup>1</sup> Annals, p. 2262.

<sup>2</sup> Annals, p. 2278.

<sup>3</sup> Annals, p. 2318.

<sup>4</sup> Annals, p. 2250.

**2315.—Blount's impeachment continued.**

**In the Blount impeachment the managers contended, although in vain, that all citizens of the United States were liable to impeachment.**

**The law of Parliament was referred to in 1797 in discussing the power of impeachment.**

(3) The first point of essential importance in the contending arguments of managers and counsel related to the nature of the power of impeachment. Mr. Bayard showed that in no places had the Constitution defined the cases or described the persons who should be objects of impeachment.<sup>1</sup> This, like other portions of the Constitution, left one to seek in the common law the answer to the questions.

The question,<sup>2</sup> therefore, is, what persons, for what offenses, are liable to be impeached at common law? And I am confident, as to this point, the learning and liberality of the counsel will save me the trouble of argument, or the citation of authorities, to establish the position that the question of impeachability is a question of discretion only, with the Commons and Lords. Not that I mean to insist that the Lords have legal cognizance of a charge of a capital crime against a commoner, but simply that all the King's subjects are liable to be impeached by the Commons, and tried by the Lords, upon charges of high crimes and misdemeanors. And this, sir, goes to the extent of the articles exhibited against William Blount. And for my part I do not conceive it would have been sound policy to have laid any restriction as to person upon the power of impeaching.

It is not difficult to imagine a case in which the punishment it imposes would be the most suitable which could be inflicted. Let us suppose that a citizen not in office, but possessed of extensive influence, arising from popular arts, from wealth or connections, actuated by strong ambition, and aspiring to the first place in the Government, should conspire with the disaffected of our own country, or with foreign intriguers, by illegal artifice, corruption, or force, to place him in the Presidential chair. I would ask, in such a case, what punishment would be more likely to quell a spirit of that description than absolute and perpetual disqualification for any office of trust, honor, or profit under the Government; and what punishment could be better calculated to secure the peace and safety of the State from the repetition of the same offense?

Mr. Dallas, counsel for the respondent, combated this proposition at length. It was contrary to the "principles of the Federal Compact."<sup>3</sup>

For although it is in some of its features Federal, in others it is consolidated; in some of its operations it affects the people as individuals; in others it applies to them in the aggregate as States; yet, in every view, all the powers and attributes of the National Government are matters of express and positive grant and transfer; whatever is not expressly granted and transferred must be deemed to remain with the people, or with the respective States; and as the motive for establishing the Federal Constitution arose from the want of a competent national authority in cases in which it was essential for the people inhabiting the different States to act as a nation, so far the people gave power to the Federal Government; but the delegation of that power is evidently limited by the reason which produced it.

Mr. Dallas asserted that the United States, as a nation distinguished from the States, had no common law, and that it would be unwise to apply the theory of impeachments taken "from the dark and barbarous pages of the common law" to the existing situation, since it would render the Government dependent upon the laws and usages of a foreign country. The same doctrine would also give the Federal courts jurisdiction beyond the enumerated cases. The doctrine was also inconsistent with the general policy of the law of impeachments, which was to afford a means of reaching offenders who could not be reached by the ordinary

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<sup>1</sup> Annals, p. 2251.

<sup>2</sup> Annals, p. 2254.

<sup>3</sup> Annals, p. 2263.

tribunals. The doctrine was also inconsistent with a fair construction of the terms of the Constitution itself:

The operative words<sup>1</sup> are express: "The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."—Art. 2, sec. 4. The previous clauses are only descriptive of the power and distributive of its exercise; declaring that the sole power to institute and the sole power to try impeachments shall belong to the branches of the Legislature respectively. They contain no description of the persons liable to impeachment, nor of the offenses for which the impeachment may be brought. To suppose that they include a jurisdiction over all persons, for all offenses, is to annihilate the trial by jury where a punishment more severe than death to an honorable mind may be inflicted; it is to overthrow all the barriers of criminal jurisprudence; for every petty rogue may be tried by impeachment before this high court for every offense within the indefinite classification of a misdemeanor.

The reason of the thing, as well as the expression, shows, however, that the offender must be a civil officer to vest the jurisdiction of impeachment. For every other offender a competent punishment is provided in the ordinary tribunals; but, in the case of a public officer, no sentence strictly judicial, in any common law court, can affect the tenure of his office. In the business of offices, to appoint, to reappoint, or to abstain from reappointing are attributes and exercises of Executive authority; the ordinary judicial authority can not exercise them, nor restrain or regulate their exercise by the proper magistrate. Hence arose the necessity of the judgment in case of a conviction on impeachment, which, by declaring that the delinquent officer shall be removed, and that he shall never be reappointed, affixes, in effect, a check or limitation to the general power of the Executive.

But, if civil officers are not exclusively contemplated, why limit the judgment on impeachment simply to a removal and disqualification? The common law maxim says that no man shall be twice tried for the same offense; and if the Senate may, on any charge against any offender, try the whole merits of the accusation and defense, why restrain them from pronouncing the whole judgment? Why multiply trials, and parcel out jurisdictions, when one trial, one jurisdiction, would accomplish every purpose of justice? There is an appearance of absurdity in the doctrine that can not be overlooked. A private citizen who holds an office may be impeached on the speculation that, at some period of his life, it is possible he should be appointed a public officer. And if any sentence is pronounced it must, in his case, be a perpetual disqualification; whereas, in the case of a man actually in office, the sentence may only extend to a present removal.

Again, if the bare designation of the party who should impeach, and of the party who should try impeachments, creates a jurisdiction over all persons for all offenses, why should the subsequent clause specially name the President, Vice-President, and all civil officers of the United States? They would certainly be included in the general authority; and it can be no answer to say that it was with a view, imperatively, to command their removal on conviction, because the restricted judgment of the Senate points emphatically at their case—a removal from office and a perpetual disqualification. Would not those officers be removed or disqualified for any offense for which a private citizen might be disqualified on impeachment, though it is not one of the enumerated offenses? It is here, likewise, to be remarked that the persons subject to removal are to be "civil officers of the United States," excluding all idea of affecting the station of State officers; and yet State officers as well as private citizens are liable to impeachment before this Senate, according to the present claim of jurisdiction.

Mr. Ingersoll also argued on this point in support of the contention of his colleague.

In concluding for the managers, Mr. Harper replied:<sup>2</sup>

The learned counsel who first replied to my colleague took great pains and displayed much ability to show the pernicious and absurd consequences which would result from adopting the penal common law of England, or the penal code of any State, as a rule of conduct for the Federal Government. But this was merely fighting a phantom; for my colleague contended for no such thing, nor is it in the least necessary for our purpose. We do not wish the Federal Government to adopt the penal laws of England

<sup>1</sup> Annals, p. 2267.

<sup>2</sup> Annals, p. 2298.

or of any particular State in the Union, but we contend that when a term, borrowed from the law of England, is introduced without comment or explanation into our Constitution or our statutes, every question respecting the meaning of that term must be decided by a reference to the code from whence it was drawn in the same manner as a term in chemistry, or any other science, being introduced into one of our statutes or constitutions, must be explained by a reference to the writers on that science. Surely this is a different thing from adopting the penal code of England or of any particular State as a rule of conduct for the Federal Government.

Mr. Harper further said:<sup>1</sup>

Nor can I conceive how the universal extent of the power of impeachment, contended for by my honorable colleague, is contrary to the spirit, the objects, or the policy either of the law of impeachment or of the Federal Constitution. The use of the law of impeachment is to punish, and thereby prevent, offenses which are of such a nature as to endanger the safety or injure the interests of the United States; and the object of the Federal Constitution was to provide for that safety and to protect those interests. Such offenses may be committed as well by persons out of office as by persons in office; and although the punishment can go no further than removal and disqualification, which restriction was, perhaps, wisely introduced in order to prevent those abuses of the power of impeachment which had taken place in another country, yet it may often be extremely important to prevent such offenders from getting into office, as well as to remove them when they are in; and it is, therefore, as consistent with the policy of impeachments and the principles of the Federal compact to punish them in the one case as in the other. This doctrine, it is further said, would enable Congress to interfere with the State governments by impeaching their officers. But those impeachments must be founded on offenses against the United States; and if such offenses were committed by State officers, I can not see why they ought not to be punished as well as in any other case. Surely they would not be less dangerous. If the convictions in such impeachments could remove men from State offices, or disqualify them for holding such offices, there might be something in the objection; but that could not be the case, since the removal and disqualification apply to offices under the General Government alone. \* \* \* But the learned counsel for the defendant have told us that the power of impeachment is limited in the Constitution itself by the restriction which it imposes on the power of punishment. The power of punishment on conviction by impeachment is restricted, say they, to "removal from office and disqualification to hold or enjoy any office of honor, trust, or profit under the United States;" and it would be absurd to impeach, try, and convict a man who held no office from which he could be removed, and could, of consequence, be not otherwise affected than by a disqualification to hold in future offices which he, perhaps, never had a prospect of obtaining. Of this absurdity the Constitution can not be supposed to be guilty; and therefore it could not have intended to subject to the power of impeachment any persons except those who actually hold offices and may be punished by removal.

But where, Mr. President, did the honorable counsel for the defendant learn that disqualification to hold any office of trust, honor, or profit under the Government of our country is no punishment? Would either of those honorable gentlemen think it no punishment in his own case?

### **2316. Blount's impeachment, continued.**

**Elaborate argument of the question whether or not a Senator is a civil officer within the meaning of the impeachment clause of the Constitution.**

(4) The fourth branch of the discussion involved an inquiry as to whether or not—it being assumed that only officers of the United States might be impeached—a Senator was an officer within the meaning of the Constitution.

Mr. Bayard, for the managers, contended that he acted as a legislator, an executive magistrate, and a judge. The ordinance of Congress for establishing a government for the Northwest Territory, passed in 1787, had contemplated members of the legislature as officers. This use of the word "office" was contemporaneous with the formation of the Constitution.

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<sup>1</sup>Annals, p. 2299.



Furthermore, he contended that a Senator was not only an officer, but was an officer within the meaning of the Constitution itself. He then discussed the following portions as confirmatory of this view:

Article I, section 3, clause 7; Article I, section 6; Article I, section 9, clause 7; Article II, sections 3 and 4.

As to two of these provisions he said:<sup>1</sup>

The first of these is the third section of the second article, which declares that the President shall commission all officers of the United States; and as it is clearly not designed that he should commission a Senator, it will be inferred that a Senator is not to be considered as an officer.

I humbly trust I can show, that it was not the intention of the Constitution that these words should take effect in their full extent; and I shall submit that they ought to be understood according to the subject to which they apply.

A commission is simply an evidence of authority delegated to a particular person. And surely it is proper that that evidence should show from the same source from which the appointment is derived. By the Constitution the President is made the fountain of office. The officers, properly speaking, under the United States are all appointed by him; and it was right, therefore, as the general power of appointing was given to him, that he should also have the general power of commissioning.

It is certain that it was intended that the power of commissioning should not exceed that of appointing, because the President does not commission anyone whom he does not appoint. The provision in question was not intended to define who should be considered as officers, but to introduce a plain and just rule of policy that the power of appointing and commissioning should reside in the same person. The practice under this constitutional regulation, explains its meaning and extent. It is clearly not true that he commissions all officers of the United States. He is an officer himself, and so expressly denominated throughout the second article, and yet he has no commission. It is equally clear that the Vice-President is an officer, and yet not commissioned. Again, the Speaker of the House of Representatives is an officer, as I shall have occasion to show hereafter, but has no commission. And there are also a variety of subordinate officers, appointed by heads of Departments and courts of justice, whom the President does not commission. I am therefore justified in concluding that it does not follow, because a person has no commission from the President, that therefore he is not to be considered as an officer.

There is another objection of a similar nature, arising from the provision in the sixth section of the first article, of which it is probable much use will be made. That section declares that no person holding an office under the United States shall be a Member of either House during his continuance in office. It will therefore be said, if the place of a Senator is an office, this clause is repugnant and absurd.

This provision, I humbly apprehend, has the same limits with the one which I have just adverted to. The intention of it was to erect a barrier between the Executive and legislative departments; to prevent Executive patronage from influencing legislative councils. It was designed therefore to apply solely to the officers of Executive appointment. I am not much disposed, sir, to place reliance in an argument upon so great a subject, upon nice distinctions or verbal criticism; but I think I shall be excused for paying some attention to the peculiar language of the clause in question. The regulation is that no person holding an office under the United States shall be a Member of either House during his continuance in office. The United States here means the Government of the United States, for the United States grants no office but through the Government. Now, it is clear that a Senator is not an officer under the Government. The Government consists of the President, the Senate, and House of Representatives, and they who constitute the Government can not be said to be under it. Besides, a Senator does not derive his authority from the Government. The Senatorial power is an emanation of the State sovereignties; it is coordinate with the supreme power of the United States; in its aggregate, it forms one of the highest branches of the Government. Giving every effect to this section, it would only prove that a Senator is not an officer under the Government of the United States, but still he may be an officer of the United States; and give me leave to say that the distinction which I have here taken is supported by the variance of language to be found in another part of the Constitution.

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<sup>1</sup>Annals, p. 2258.

Mr. Bayard also cited the law of March 1, 1792, enacting that in case of vacancy in the office of President the Speaker of the House of Representatives should exercise the office, as showing that in legislative interpretation the Speaker is an officer.

Mr. Dallas, in replying, discussed the articles of the Constitution referred to by Mr. Bayard, especially to show that a distinction could not be drawn between "officers of" and "officers under" the United States. The two terms, in his view, were used indiscriminately.

There were no words in the Constitution extending the impeaching power to a Senator:<sup>1</sup>

The second section of the second article provides, that "the President shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." The President having then power to appoint all the officers of the United States, including military as well as civil officers; the third section of the same article, declaring that "he shall commission all the officers of the United States;" and the fourth section, providing for the removal of all civil officers excluding military officers, on impeachment and conviction; it would seem inevitably to result that no man is an officer of the United States unless he has been appointed and commissioned by the President; and that, therefore, unless he is so appointed and commissioned, he can not be an object of impeachment. Here Mr. Dallas requested that it might be remembered that the provision respecting impeachments was a part of the Executive article of the Constitution; and was immediately connected with the arrangements for making appointments, and issuing commissions, under the authority of the President.

Then Mr. Dallas proceeded to inquire, Does the President nominate or commission Senators or Representatives? No; nor does the Constitution, in any part of it, term them officers, or call their representative station an office. But the honorable manager has said that the latitude to which this position extends would render it necessary that the President should issue a commission to himself, to the Vice-President, and to the Speaker of the House of Representatives, since they are all expressly denominated officers. The Constitution, however, is not chargeable with this absurdity. The President and Vice-President have their commissions from the Constitution itself, and the speaker of the House of Representatives is emphatically an officer of the House, not of the United States. But the objection affords an opportunity to illustrate the meaning of the Constitution. It is provided that the President shall commission all officers, and that all civil officers shall be removed on impeachment and conviction; but the President does not commission himself and the Vice-President, and therefore as it was intended to affect them by the impeachment power, it became necessary expressly to name them. The President does not commission Senators and Representatives; but it was not intended to affect them by the impeachment, and therefore they are not named.

Mr. Dallas continued to analyze various parts of the Constitution, and argued from the operation of them that a legislator never was considered as an officer of the United States, in the ordinary or constitutional acceptation of the term. The sixth section of the first article contains the following passage: "No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office." Nothing could more strongly mark the discrimination between a legislator and an officer than the language which is here used. It is declared that no member holding any office shall be a member of either House while he continues in office. If a member was deemed an officer, the phraseology would doubtless have been, "no member holding any other office." Again let it be supposed that previously to the amendment of the Constitution (which merely provides that no law varying the compensation for the services of Senators and Representatives shall take effect until an election of Representatives has intervened) the pay of Senator had been increased by an act of Congress, could not a Representative, who had assisted in passing the act, be chosen a Senator before the expiration of the two years for which he was originally elected?

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<sup>1</sup> Annals, pp. 2271-2274.

Again let it be supposed that a new State was erected and admitted into the Union; if a Senator is an officer, the office of Senator for the new State would be created during the time for which Congress, who created it, was elected; and yet might not a member of that Congress be chosen a Senator for the new State, before the expiration of the time for which he was elected a Representative? When, for instance, Kentucky was separated from Virginia, and erected into a State, was not a Representative elected for Virginia, residing within the boundaries of Kentucky, eligible immediately as a Senator of Kentucky, though he resigned his Representative seat before the term of his election had elapsed?

The first section of the second article likewise pointedly distinguishes between a legislator and a public officer, declaring "that no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector." If Senators or Representatives were considered as persons holding offices of profit or trust under the United States, it was superfluous to specify them at all; or, if named, it would have been correct to say, "no Senator or Representative, or person holding any other office of trust or profit," etc. But it is important also to remark that here, where the Constitution intends to work a disqualification, as to Senators and Representatives, they are expressly named; and no sound reason can be offered why they should not have been equally named, if the Constitution had intended to subject them to impeachment. \* \* \* But, Mr. D. contended, that, independent of all precedent and authority, the distinction was founded upon the very nature of a free Government. The legislature is, in theory, the people; they do not themselves assemble, but they depute a few to act for them; and the laws which are thus made are the expressions of the will of the people. Over their Representatives the people have a complete control, and if one set transgress they can appoint another set, who can rescind and annul all previous bad laws. But the power of the people is only to make the laws; they have nothing to do with executing them; they have nothing to do with expounding them; and hence arises the diversity in the modes of remedying any grievance which they may suffer from the conduct of their Representatives or agents. If a legislator acts wrong, he may be expelled before the term for which he was chosen has expired; he may be rejected at the next periodical election; and the laws which he has sanctioned may be repealed by a new representation. But if an executive, or a judicial magistrate, acts wrong, the people have no immediate power to correct; prosecution and impeachment are the only remedies for the evil. Then, it is manifest, that, by the power of impeachment, the people did not mean to guard against themselves, but against their agents; they did not mean to exclude themselves from the right of reappointing, or pardoning; but to restrain the Executive magistrate from doing either with respect to officers whose offices were held independent of popular choice.

The argument that every person who executes an authority is in fact an officer was, in Mr. Dallas's opinion, too broad. The Speaker of the House of Representatives was an officer of the House, but not of the United States. And it was only on being chosen to the chair that he acquired the denomination of officer, contradistinguished from the character of Member.

Mr. Dallas continued further:<sup>1</sup>

From a just consideration of the principles of our Government, it was thus manifest that the moment there was a departure from the immediate choice of the people, the law of impeachment became necessary to secure them from the favoritism, or perverseness of the Executive Magistrate. Impeachment, he observed, is, with respect to executive and judicial officers, what expulsion is with respect to the members of the legislature. As expulsion enables the people to decide whether they will restore the evicted Member to their service, a conviction on impeachment enables the Representatives of the people to decide whether the delinquent shall be partially or totally excluded from the honors and emoluments of public office. But the very circumstance of declaring that a pardon shall not avail in cases of impeachment, though a reelection shall avail in cases of expulsion, demonstrates (as was before intimated) that the people did not mean to guard against the exercise of their own sovereignty, but against an abuse of the power delegated to their agents.

Mr. Ingersoll, speaking also in behalf of the respondent, discussed the extent of the power of impeachment under the Constitution, which, as he claimed,<sup>2</sup> was restricted to the President, Vice-President, and civil officers of the United States, for

<sup>1</sup> Annals, p. 2275.

<sup>2</sup> Annals, p. 2282.

malconduct in office. He stated that he should afterwards endeavor to make it appear that Senators were not the objects of this power, not being comprehended under the designation of civil officers of the United States.

After discussing the limited powers granted by the Constitution, he said:<sup>1</sup>

My position is that the clause in question was intended and operates for the purpose of designating the extent of the power of impeachment, both as to the offenses and the persons liable to be thus proceeded against. It will be of use here to recollect that the Constitution had previously provided for the purity of the legislature in the second clause of the fifth section of the first article by empowering each House to punish its Members for disorderly behavior, and, with the concurrence of two-thirds, to expel a Member. No clause similar to that which is introduced into some of the State constitutions (that a member expelled and then returned is not liable to be expelled again for the same offense) is to be met with in the Constitution of the United States; and therefore the Senate has an unlimited power to expel any Member they shall deem unworthy their society.

Here, then, I flatter myself, the dispute admits of a clear solution—is reduced within a narrow compass, and brought to a point.

It is a rule of construction that every part of an instrument be, if possible, made to take effect and every word operate in some shape or other.

There are but two constructions suggested as possible—the one for which the honorable managers contend, to wit: That the fourth section of the second article was intended as an imperative injunction upon the Senate that when judgment was rendered against a civil officer of the United States it should be for removal from office; the other, that for which we, as counsel for the defendant, insist—that is, that it was intended to designate the extent of the practice of proceeding by impeachment, specifying who are the persons to be proceeded against, and for what offenses. If, then, I am able to show that the words of the fourth section of the second article will not have any effect or operation at all, unless they receive the construction for which I contend; if I establish these premises, the inference will necessarily follow that the construction for which the honorable managers contend is not well founded, and that the construction for which we contend is the true meaning of the Constitution in this particular. To this fair, short, and decisive test be the appeal.

He then proceeded to give emphasis to the word “further” in the Constitution, and to show that disqualification for office necessarily implied removal.<sup>2</sup>

It is impossible to pronounce a judgment that a man shall be incapable of holding an office and not remove him. The incapacity takes effect immediately. It is coeval with the judgment. There is not any interval between the judgment pronounced and the disqualification and incapacity. It is of course ridiculous to say that the fourth section of the second article was introduced to make it imperative upon the Senate to remove from office on conviction, when it was previously made so imperative that it was impossible to avoid pronouncing a judgment that would operate a removal from office. As it is thus clear beyond the possibility of doubt that the fourth section of the second article was not introduced for the purpose suggested by the honorable managers, which I have considered, and as no third construction has been attempted on either side, I infer that the construction contended for by the counsel for the defendant is well founded, to wit: That the fourth section of the second article was intended for the purpose of designating the extent of the power of proceeding by impeachment, at least so far as respects the persons liable to be thus proceeded against.

Further, if anything further be necessary upon a matter so very plain, if, as the honorable managers insist, all persons are within the extent of this mode of proceeding, why make it imperative on the Senate to remove civil officers only? Why make it absolutely imperative to remove the marshal of a district, whose sphere of influence is comparatively inconsiderable, and leave a general at the head of an army or an admiral in the command of a navy? Would not the public security be much more endangered by leaving a man convicted of high crimes and misdemeanors in these situations than those of many civil offices? It may be said that these military characters are liable to be proceeded against by courts-martial. Be it so; that consideration is a good reason why they should not be considered as within the power of impeachment, as we assert to be the case; but none at all for not removing them on conviction,

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<sup>1</sup> Annals, p. 2283.

<sup>2</sup> Annals, p. 2286.

if they are within the provision of the Constitution in this particular. And if Senators were within the power of proceeding by impeachment, would it not also have been made imperative upon the Senate to remove them, who have a veto upon every bill proposed to be passed into a law and every nomination for appointment to office?

I add, that I conceive the proceedings by impeachment are restricted not only to civil officers, but that the only causes cognizable in this mode of proceeding are malconduct in office.

Proceeding to consider whether or not Senators are "civil officers of the United States," after quoting Blackstone's definition, "a right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging," Mr. Ingersoll called attention to the fact that an officer excluded from his office might obtain admission by mandamus proceedings. Might a Senator avail himself of these remedies? This question he answered in the negative.

To be an officer of the Government one must receive a commission from the Executive. A Senator was not such an officer. Nor was there force in the argument that a Senator had a judicial as well as an executive character. All those qualities of his position emanated from the same source as his legislative qualities.

He said on another point:

Senators and Members of the House of Representatives have one set of words appropriated to them in the Constitution—civil officers, other terms; as thus, "office," "appointment," "commission," "removal," Senator, or one of the House of Representatives, "Member," "election," "expulsion," "seat vacated."

What interpretation shall we give to the sixth section of the fourth article? "No person holding any office under the United States shall be a Member of either House during his continuance in office;" and yet a Senator is, ipso facto, it is said, an officer of the United States. Identity is incompatibility. The exception of a Senator is implied, say the honorable managers; but how do they show it? Is not this section to be understood as importing that the character of a Member of either House and that of an officer of the United States are, by the Constitution, distinct and incompatible? The distinction is observed throughout. Can the Clerk of this House, or the Clerk of the other House, be proceeded against by impeachment? I conceive not; because they are not appointed nor commissioned by the United States Government, or by the Executive thereof, but by the respective Houses. I believe that not an instance can be found in the Constitution of the United States in which a Senator is classed under the denomination of an officer, or civil officer of the United States.

Some observation was made on the ninth section of the first article of the Constitution of the United States, "that no person holding any office of profit or trust under the United States should, without the consent of Congress, accept of any present from any king, prince, or foreign state." Might a Senator, one in so important a public situation, accept of a present from a foreign state? No, I answer. The power of expulsion is a sufficient check. The impropriety of the measure would be a sufficient guard. The laws, in consonance with the Constitution of the United States, distinguish between the Members of the legislature and the officers of the United States, and also of the several States.

In the first volume of the laws of the United States, page 18, section 3, it is provided "that all members of the State legislatures, and the executive and judicial officers of the several States, shall take an oath to support the Constitution;" and by section 2 it is provided "that the Members of the Senate and House of Representatives," and by section 4, "that all officers of the United States" shall take the same oath, distinguishing between the Members of either House and the officers of the United States. In the constitution of the State of Pennsylvania, of New York, of Massachusetts, and of New Hampshire the same distinction of language is observed. The distinction is equally familiar in the English law. In the first volume of Blackstone's Commentaries, page 368, it is said "that the oath of allegiance must be taken by all persons in any office, trust, or employment;" yet members of either House are not considered as included. On page 374 of the same volume it is declared "that no denizen can be of the Privy Council, or either House of Parliament, or have any office of trust, civil or military." Such, I believe, has been the universal understanding of the expressions until the present prosecution.

<sup>1</sup> Annals, p. 2291.



It is a rule of construction that when a law is only doubtful, arguments *ab inconvenienti* are most powerful. The rule will apply, with equal propriety, to the construction of a constitution. If the most numerous branch, already, I repeat it, sufficiently formidable, may proceed by impeachment against a Senator—at their will doom to temporary disgrace any Member—this would form an engine of immense additional weight in their hands. I know that it is not always an objection against intrusting power that it may be abused; but when it is unnecessary to make the trust, and the danger great, the risk ought not to be incurred.

In concluding for the managers, Mr. Harper joined issue<sup>1</sup> with Mr. Ingersoll as to the intent of the clause relating to impeachments:

But admitting, Mr. President, that the power of impeachment is restricted by the Constitution to officers of the Government of the United States, still I contend that a Senator of the United States, a Member of this honorable body, is an officer of the Government, in the constitutional meaning of the word, and consequently liable to impeachment on the doctrine of the learned counsel themselves.

The learned counsel have, indeed, contended by their plea and in their arguments that none but civil officers are liable to impeachment by the Constitution; but in this they are plainly contradicted by the Constitution itself. They found their argument on that clause which provides “that the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.” But this clause is, evidently, not restrictive, but imperative. It does not point out what persons or what officers shall be liable to impeachment, but expressly orders that such and such officers, when convicted on impeachment, shall be punished to the extent, at least, of removal from office. The former clause had declared that “judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold or enjoy any office of honor, trust, or profit, under the United States,” leaving the Senate to apportion the punishment, according to its discretion, within those limits. They might censure the person convicted, suspend him for a limited time, or disqualify him perpetually for certain offices, or for all offices during a certain period. But beyond absolute removal and perpetual disqualification for all offices they could not go. This was fixed as the utmost limit of their power and of their discretion.

It was judged, however, that in case of the President, Vice-President, or any civil officer the punishment ought not to be less than removal, though it might be more, according to circumstances. This provision was, therefore, inserted. Its object, manifestly, is, not to designate the persons who shall be liable to impeachment, but to prevent the Senate, in the exercise of their discretion, from retaining in a civil office a person convicted of “treason, bribery, or other high crimes and misdemeanors.” As to the distinction here made between civil officers and other officers, there is no need to examine or defend it. It may, however, be supposed to have arisen from an opinion, certainly well founded, that, under certain circumstances, there might be danger or great inconvenience in removing from his command a military officer, whom, nevertheless, it might be very proper to censure or suspend, or even to disqualify for some particular offices. As to military officers, therefore, a complete discretion was left to the Senate; but not in the case of civil officers, to whom the same reasons could not apply. They, on conviction, must be removed. Military officers may be removed or not, according to circumstances.

He further contended that a Senator was an officer in the sense of the Constitution, and after exhaustively considering the definitions of the term “office,” he said:<sup>1</sup>

The manner in which the term “office” is used by legal writers, and their formal definitions of it, support the interpretation which I have drawn from its received and common acceptance. Without going into a detail on this point, which might be tedious, let it suffice, Mr. President, to refer to Blackstone, who has been justly relied on by the learned counsel for the defendant, as a standard authority on subjects of this kind. Speaking of “offices,” in the second volume of his Commentaries, page 36,

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<sup>1</sup> Annals, p. 2302.

<sup>2</sup> Annals, p. 2307.



as cited by the learned counsel who preceded me, that great writer lays it down that “offices are a right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging.” Now, let me ask, is not a seat in this honorable body “a public employment?” Has not the Member “a right to exercise this employment, and to receive the emoluments thereunto belonging?” Surely to answer in the negative would be a strange abuse of language.

The learned counsel who immediately preceded me has contended that a Senator can not be considered as an “officer,” because there could be no quo warranto to remove him from his place if he held it improperly, nor mandamus to place him in it if unjustly kept out. But surely this can not be a well-founded argument, for, if it be, it applies as well to the President, the Judges, the Secretaries, and the Commander in Chief of the Army as to a Senator. Not one of them could be removed by quo warranto or replaced by mandamus. Did anyone ever hear of a quo warranto to remove a colonel of a regiment? Was a quo warranto ever brought in England against the Chancellor of the Exchequer or a Secretary of State, or a Lord of the Admiralty? Certainly not, and yet that these are officers will not be denied. The truth is, Mr. President, that the doctrine of quo warranto and mandamus, as far as it relates to officers, is confined exclusively to certain local municipal officers of a subordinate nature, who are placed, by the common law of England, under the superintendence of the supreme court of justice; to which, from the nature of their offices, recourse could most conveniently and effectually be had for their punishment, their removal, or their reinstatement. But this reason did not extend to the great officers of the State, of the Army, or the Navy, or to any of their subordinates. They could best be punished, removed, and replaced in a different manner and by a different authority. To them, therefore, nobody ever dreamt of extending the power of the supreme courts by quo warranto and mandamus, and yet nobody ever, on this account, thought of denying that they were “officers,” which, however, would be just as reasonable as to contend that a Senator of the United States is not an “officer,” because he can not be removed by a quo warranto or admitted by mandamus. I admit that it would be absurd to talk of an office from which a man could not be removed, however flagitious his conduct; or into which, when entitled to it, and improperly kept out, he had no means of obtaining admission. But a Senator may be removed by a vote of expulsion, and if duly elected, but not returned, may obtain his seat by a petition to the Senate.

I conceive, therefore, that no argument can be more destitute of foundation than that which would divest a seat in this honorable body of the quality of an “office,” because it is not within the scope of writs of mandamus and quo warranto.

If from Blackstone, Mr. President, we turn to our own laws, our own writers, and even our own constitutions, we shall equally find that a seat in the legislature is considered as an “office.”

After discussing the legislator as an officer, especially in the light of the State and national constitutions and laws, especially discussing one clause of the National Constitution—<sup>1</sup>

A clause from the sixth section of the first article, in the following words, has also been relied on:

“No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a Member of either House during his continuance in office.”

I am ready to admit, Mr. President, with my honorable colleague, who opened the case, that this clause wears an aspect more hostile to our construction of the term “office” than any other part of the Constitution, but I contend with him that the Constitution, like all other instruments, must be construed in each separate part of it, secundum subjectam materiam, according to the subject-matter of each part, and in such a manner as to effectuate every part and render the whole consistent. These rules of construction will not be denied. When this clause comes to be analyzed and tried by these rules, it will, I think, appear satisfactorily that our construction is not infringed by it.

What is the object of this clause? It is threefold: First, to prevent a blending of the different departments of Government—the legislative, executive, and judicial—by uniting their functions in the hands of the same individual, which would be contrary to the spirit of the Constitution; secondly,

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<sup>1</sup>Annals, p. 2312.

to prevent the executive from acquiring an undue influence in the legislature, by appointing its most active and able Members to offices which must be held at his pleasure, and, thirdly, to take away from aspiring or avaricious Members the temptation to create offices or increase their emoluments, which might arise from the expectation of speedily filling those offices themselves. What description of officers was it necessary to exclude from the legislature in order to effect these three objects? First, those whose duties might be incompatible with a strict and regular attendance in the legislature; secondly, those who derive their appointments from the Executive, and, thirdly, those whose offices are of a nature to be considered as lucrative—to be sought after on account of their pecuniary emoluments. It is evident that some one or other of these characteristics belongs to every description of officers, except “legislative”—to military, to executive, judicial, and diplomatic. It is to be presumed that the Constitution here used the word “office” in that sense, and that only, which was necessary in order to effectuate its intentions, and consequently that the clause extends to those officers only whom it was the intention of the Constitution to exclude from the legislature. The clause therefore is to be understood as if, instead of the general expressions, “any civil office,” “any office,” “it had said, “any other civil office,” “any other office.” This will render the whole Constitution consistent with itself and with the well-established meaning of language. In the clause relative to commissions we have an instance where, in order to prevent the Constitution from pronouncing a palpable absurdity, it was necessary to explain the general term “all officers,” so as to mean “all officers appointed by the President.” If the general expression may be controlled by the subject-matter and intent in one case, it may in another, and certainly the subject-matter and intent could not speak more strongly against the general expression in the former, or in any other case, than in this.

If this reasoning be well founded, it follows that the clause in question proves nothing against our doctrine of a Senator being an officer in the sense of the Constitution. It only proves that the Constitution, being obliged to use the same word in application to different matters, and for different purposes, has used it generally and left it to be explained by a reference to the intent and subject-matter, instead of explaining it by express modifications. The object here was to exclude certain officers from the legislature, and the term is used generally; but it by no means follows, from thence, that Members of the legislature are not themselves officers.

Also another argument was answered:<sup>1</sup>

An objection has also been drawn from the supposed intention with which the power of impeachment was established by the Constitution. The sole object of this power, it is said, was to provide a remedy against the favoritism or obstinacy of the Supreme Executive Magistrate, by affording a means of removing from office improper persons, whom he might be inclined to retain in place to the detriment of the nation. This necessity does not exist, we are told, with respect to members of the legislature who are removable by the people themselves at stated periods, and to whom, consequently, the power of impeachment ought not to extend.

But this can not be the sole object of the power of impeachment, because the President himself is liable to be impeached, as well as the officers whom he appoints. So also is the Vice-President. And yet these two great officers are appointed by the people themselves, in a manner far more direct and immediate than Senators and removable at shorter periods. If the power of impeachment be, as the learned counsel insist, intended as an aid to the control which the people, by the right of election, have over their public servants, or to supply the place of that control where it does not exist, surely there is much stronger reason for its extending to Senators than to the President or Vice-President, for Senators are much farther removed from the power of the people and the control of elections than those officers. They are elected for a much longer period; their election being made by legislative bodies, who are chosen by the people for other purposes and, for a considerable time, is far less influenced by popular opinion or popular feelings than that of the President, who is chosen by electors elected for that sole purpose, and selected, in almost every instance, according to their known attachment to the favored candidate. The election of the President and Vice-President therefore partakes far more of the nature of a popular election than that of Senators. Indeed, of all the component members of our Government the Senate, both in the mode of its appointment and the term of its duration, is intended

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<sup>1</sup>Annals, p. 2315,

to be, and actually is, the most permanent and independent—the furthest elevated above the region and the influence of those storms whereby a popular government must sometimes be agitated. God forbid, Mr. President, that I should find fault with these ingredients in the composition of the Senate or do anything which could tend in the least to diminish their efficiency. I consider them as among the most valuable principles of the Constitution.

And finally he urged:<sup>1</sup>

But the effect of an impeachment, it is said, may be produced in another manner, more conformable to the dignity of the Senate. The same majority of two-thirds which can convict on an impeachment may also expel, and thus an improper person may be driven from the Senate. But, in the first place, he can not be thus kept out in future; for, though the Senate may expel, it can not disqualify. And if we suppose the case (which may very well happen) of a great and wicked man, supported by a strong party in the legislature of his own State, he may return again, after being expelled and may go on in the commission of “high crimes and misdemeanors,” in the very station which gives him the greatest means of committing them with effect.

In the second place, an offender has a much better chance to escape from an expulsion than from an impeachment. Where the offense is of a very dark and complicated nature, consists in transactions or plots carried on at a distance or in many places at once, and of consequence can not be brought to light and fully substantiated without a laborious, long-continued and systematic inquiry, it must be admitted that the aid of a prosecutor will be necessary, and that the Senate of itself and for the mere purpose of expulsion will be little disposed to undertake so tedious and disagreeable a task.

**2317. Blount’s impeachment, continued.**

**In the Blount case it was conceded that a person impeached might not avoid punishment by resignation.**

(5) As to the status of Mr. Blount at the time of the argument, Mr. Bayard said:<sup>2</sup>

It is also alleged in the plea that the party impeached is not now a Senator. It is enough that he was a Senator at the time the articles were preferred. If the impeachment were regular and maintainable when preferred, I apprehend no subsequent event, grounded on the willful act, or caused by the delinquency of the party, can vitiate or obstruct the proceeding. Otherwise the party, by resignation or the commission of some offense which merited and occasioned his expulsion, might secure his impunity. This is against one of the sagest maxims of the law, which does not allow a man to derive a benefit from his own wrong.

Speaking for the respondent, Mr. Dallas said:<sup>3</sup>

It is among the less objections of the cause that the defendant is now out of office, not by resignation. I certainly shall never contend that an officer may first commit an offense and afterwards avoid punishment by resigning his office; but the defendant has been expelled. Can he be removed at one trial and disqualified at another for the same offense? Is it not the form rather than the substance of a trial? Do the Senate come, as Lord Mansfield says a jury ought, like blank paper, without a previous impression upon their minds? Would not error in the first sentence naturally be productive of error in the second instance? Is there not reason to apprehend the strong bias of a former decision would be apt to prevent the influence of any new lights brought forward upon a second trial?

**2318. Blount’s impeachment, continued.**

**The Senate decided that it had no jurisdiction to try an impeachment against William Blount, a Senator.**

**The Senate notified the House that it had made a decision in the Blount case and set a time for receiving the managers and rendering judgment.**

<sup>1</sup> Annals, p. 2317.

<sup>2</sup> Annals, p. 2261.

<sup>3</sup> Annals, p. 2293.

**The House did not attend its managers during the Blount impeachment, even at the judgment.**

**Form of judgment pronounced by the Vice-President in the Blount impeachment.**

**Judgment being given in the Blount impeachment, the managers submitted to the House a report in writing.**

**The Senate delivered to the managers for transmission to the House an attested copy of its judgment in the Blount case.**

On January 7<sup>1</sup> the Senate resolved itself into a court of impeachment, and the following resolution was offered:

That William Blount was a civil officer of the United States within the meaning of the Constitution of the United States, and therefore liable to be impeached by the House of Representatives;

That as the articles of impeachment charge him with high crimes and misdemeanors, supposed to have been committed while he was a Senator of the United States, his plea ought to be overruled.

This resolution was debated in the court of impeachment until January 10,<sup>2</sup> when it was disagreed to, yeas 11, nays 14.

On January 11,<sup>3</sup> it was determined by a vote of 14 yeas and 11 nays, the division of Members being exactly as on the preceding day:

The court is of opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed.

It was further ordered by the court of impeachment:

*Ordered,* That the Secretary notify the House of Representatives that the Senate will be ready to receive the managers of the House of Representatives and the counsel of the defendant on Monday next, at 12 o'clock, to render judgment on the impeachment against William Blount.

The Journal of the Senate has no record of this order; but it was received in the House the same day as a message from the Senate.<sup>4</sup>

On January 14,<sup>5</sup> the managers alone attended, the House going on with the transaction of its business. The court being opened and silence being proclaimed, the parties attending, judgment was pronounced by the Vice-President as follows:

Gentlemen, managers of the House of Representatives, and gentlemen, counsel for William Blount: The court, after having given the most mature and serious consideration to the question, and to the full and able arguments urged on both sides, has come to the decision which I am now about to deliver.

The court is of opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed.

Copies of the judgment were delivered to the managers and to the counsel for the defendant, respectively.

After which they withdrew; and, on motion, the court adjourned without day.

On the same day, in the House,<sup>6</sup> Mr. Bayard, from the managers appointed on

<sup>1</sup> Senate Journal, p. 568; Annals, p. 2318.

<sup>2</sup> Annals, p. 2318.

<sup>3</sup> Annals, p. 2319.

<sup>4</sup> House Journal, p. 430.

<sup>5</sup> House Journal, pp. 431, 432. Annals, pp. 2648, 2319

<sup>6</sup> House Journal, pp. 431, 432.

the part of this House to conduct the impeachment against William Blount, made a further report, which was read, as follows:

That agreeably to the notification of the Senate they attended at their bar to hear their judgment upon the plea of the said William Blount, and that the President of the Senate pronounced judgment upon the said plea, a copy whereof was ordered to be delivered to the managers and is annexed to this report.

“UNITED STATES OF AMERICA, FRIDAY, JANUARY 11, 1799. HIGH COURT OF IMPEACHMENT.

“UNITED STATES V. WILLIAM BLOUNT.

“The court is of opinion, etc. [Here follows the decision as given above.]

“Attest:

“SAM A. OTIS, *Secretary.*”

The report and copy were ordered to lie on the table.