

## Chapter LXXI.

### THE IMPEACHMENT AND TRIAL OF JOHN PICKERING.

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**2319. The impeachment and trial of John Pickering, judge of the United States district court for New Hampshire, in 1803.**

**The impeachment proceedings against Judge Pickering were set in motion by a message from the President.**

**The committee recommended and the House voted the impeachment of Judge Pickering on the strength of certain ex parte affidavits.**

**The House decided to proceed in the Pickering impeachment, although the session and the Congress neared an end.**

**The Pickering impeachment was carried to the Senate by a committee of two.**

**Forms of resolutions for impeachment of Judge Pickering and directing the carrying of the same to the Senate.**

On February 4, 1803,<sup>1</sup> a message was received from the President of the United States transmitting a "letter and affidavits exhibiting matter of complaint against John Pickering, district judge of New Hampshire, which is not within executive cognizance."

The message was read, and with the accompanying papers, was referred to a committee composed of Messrs. Joseph H. Nicholson, of Maryland; James A. Bayard, of Delaware; John Randolph, jr., of Virginia; Samuel Tenney, of New Hampshire, and Lucas Elmendorf, of New York.

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<sup>1</sup>Second session Seventh Congress, Journal, p. 322; Annals, p. 460.

Accompanying the message were the following documents: (1) A letter from Albert Gallatin, Secretary of the Treasury, to the President, stating that it appeared that Judge Pickering, in a suit wherein the revenue was concerned, had “acted in a manner which showed a total unfitness for the office,” and which showed “some legislative interference absolutely necessary;” (2) a letter from John S. Sherburne, United States district attorney for New Hampshire, to the Secretary of the Treasury, transmitting affidavits and making a statement as to the conduct of the judge; (3) affidavits of Thomas Chadbourne, Jonathan Steele, Daniel Humphrey, John Wentworth, Joseph Whipple, and R. C. Shannon setting forth specific acts of said judge. These affidavits were taken *ex parte*.<sup>1</sup>

On February 18<sup>2</sup> Mr. Nicholson submitted the report of the committee:

That from the face of the said depositions it appears that the said John Pickering has been guilty of high misdemeanor in the exercise of his judicial functions, and recommend the adoption of the following resolution:

*Resolved*, That John Pickering, judge of the district court of the district of New Hampshire, be impeached of high crimes and misdemeanors.”

On March 2<sup>3</sup> the report was considered by the Committee of the Whole, who recommended concurrence in the report, after a debate which is very briefly reported and during which the principal question seems to have been the advisability of proceeding in the case at so late a period in the session. A proposition to postpone the resolution to the next session was disagreed to, ayes 9, noes 43.

The House agreed to the resolution, yeas 45, nays 8.

Thereupon it was

*Ordered*, That Mr. Nicholson and Mr. Randolph be appointed a committee to 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, to impeach Judge Pickering, judge of the district court of the district of New Hampshire, of high crimes and misdemeanors; and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him and make good the same.

*Ordered*, That the committee do demand that the Senate take order for the appearance of the said John Pickering to answer to the said impeachment.

### **2320. Pickering’s impeachment, continued.**

**Ceremonies of presenting the Pickering impeachment at the bar of the Senate.**

**Form of declaration by House committee in presenting the impeachment of Judge Pickering in the Senate.**

**Verbal report made by the House committee on returning from presenting in the Senate the impeachment of Judge Pickering.**

**Proceedings and resolutions adopted by the Senate in taking order on the presentation of the Pickering impeachment.**

**The impeachment of Judge Pickering was presented in the Senate on the last day of the Seventh Congress.**

<sup>1</sup>These documents were published with the report of the committee. Copies are rare, but may be found in the Library of Congress.

<sup>2</sup>Second session Seventh Congress, House Report, p. 252; Journal, p. 351; Annals, p. 544.

<sup>3</sup>Journal of House, pp. 383, 384; Annals, p. 642.

On March 3,<sup>1</sup> in the Senate, a message was received from the House of Representatives by Mr. Nicholson and Mr. Randolph, as follows:

Mr. President, we are commanded, in the name of the House of Representatives and of all the people of the United States, to impeach John Pickering, judge of the district court of the district of New Hampshire, of high crimes and misdemeanors; and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him and make good the same.

We are further commanded to demand that the Senate take order for the appearance of the said John Pickering to answer to the said impeachment.

Then they withdrew.

On the same day, in the House,<sup>2</sup> Mr. Nicholson reported verbally:

That, in obedience to the order of the House, the committee had been to the Senate, and, in the name of the House of Representatives and of all the people of the United States, had impeached John Pickering, judge of the district court of the district of New Hampshire, of high crimes and misdemeanors; and had acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles against him and make good the same.

And, further, that the committee had demanded that the Senate take order for the appearance of the said John Pickering to answer to the said impeachment.

On the same day, in the Senate,<sup>3</sup>

*Ordered*, That the message received this day from the House of Representatives respecting the impeachment of John Pickering, judge of a district court, be referred to Messrs. Tracy [Uriah, of Connecticut], Clinton [De Witt, of New York], and Nicholas [Wilson C., of Virginia].

Later on this day Mr. Tracy reported from the committee the following resolution and preamble, which were agreed to by the Senate:

Whereas the House of Representatives have this day, by two of their Members, Messrs. Nicholson and Randolph, at the bar of the Senate, impeached John Pickering, judge of the district court for the district of New Hampshire, of high crimes and misdemeanors; and have acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him and make good the same,

And have likewise demanded that the Senate take order for the appearance of the said John Pickering to answer to the said impeachment: Therefore,

*Resolved*, That the Senate will take proper order thereon, of which due notice shall be given the House of Representatives.

*Resolved*, That the Secretary of the Senate notify the House of Representatives of this resolution.

On the same day a message announcing this resolution was received in the House.<sup>4</sup>

And later on the same day, March 3, 1803, both House and Senate adjourned sine die, the term of the Seventh Congress having expired.

### **2321. Pickering's impeachment, continued.**

**At the beginning of the Eighth Congress the House continued the Pickering impeachment by appointing a committee to prepare articles.**

The Eighth Congress met in its first session on October 17, 1803, it being the day appointed by law. The proceedings against Judge Pickering were continued from the point where they had been interrupted by the expiration of the Seventh Congress.

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<sup>1</sup> Senate Journal, p. 284; Annals, p. 267.

<sup>2</sup> House Journal, p. 387.

<sup>3</sup> Senate Journal, p. 285; Annals, p. 268.

<sup>4</sup> House Journal, p. 392.

On October 20,<sup>1</sup> in the House, Mr. Nicholson stated that during the last session the House had voted an impeachment against John Pickering, judge of the district court for New Hampshire, for high crimes and misdemeanors. But the impeachment had been voted at so late a period of the session as rendered it impossible to act then finally upon it. In order that it might be now acted upon, and the impeachment proceed, he moved the adoption of the following:

*Resolved*, That a committee be appointed to prepare and report articles of impeachment against John Pickering, district judge of the district of New Hampshire, who was impeached by this House during the last session of high crimes and misdemeanors; and that the said committee have power to send for persons, papers, and records.

The committee were appointed as follows: Messrs. Nicholson, John Randolph, jr., Roger Griswold, of Connecticut; Peter Early, of Georgia, and Samuel Thatcher, of Massachusetts.

**2322. Pickering's impeachment, continued.**

**The Senate declined to order compulsory process to compel the appearance of Judge Pickering, but authorized a committee to examine the subject.**

On October 27,<sup>2</sup> in the Senate, the following resolution was proposed, but was laid on the table:

*Resolved*, That a committee be appointed to prepare the process to compel the attendance of John Pickering to answer the charge exhibited against him by the House of Representatives at their last session.

On November 14<sup>3</sup> the Senate resumed consideration of the resolution above given and, having amended it, agreed to it as follows:

*Resolved*, That a committee be appointed to inquire if any, and what, further proceedings at present ought to be had by the Senate respecting the impeachment of John Pickering, made at the bar of this Senate by two Members of the House of Representatives on the last day of the last session of Congress.

The following committee were appointed: Uriah Tracy, of Connecticut; Stephen R. Bradley, of Vermont; Abraham Baldwin, of Georgia; Robert Wright, of Maryland, and William Cocke, of Tennessee.

**2323. Pickering's impeachment, continued.**

**The House considered the articles of impeachment of Judge Pickering in Committee of the Whole House.**

**The articles of impeachment of Judge Pickering were enrolled after they were agreed to by the House.**

**In the Pickering impeachment the House decided that the managers should not be appointed by the Speaker or by viva voce vote, but by ballot.**

**The House having excused a Member elected manager in the Pickering case, another was chosen by ballot.**

**Form of resolution directing the carrying of the articles of impeachment of Judge Pickering to the Senate.**

**Form of resolution directing that the Senate be informed of the appointment of managers and that they will carry articles to the Senate.**

<sup>1</sup> First session Eighth Congress, House Journal, p. 411; Annals, p. 380.

<sup>2</sup> Senate Journal, p. 303; Annals, p. 27.

<sup>3</sup> Senate Journal, p. 310; Annals, p. 75.

**It does not appear that the message announcing the appointment of managers of the Pickering impeachment included their names.**

On December 27<sup>1</sup> Mr. Nicholson, from the committee appointed to prepare articles of impeachment, presented them to the House; and having been read, the same were referred to a Committee of the Whole House.

On December 30<sup>2</sup> the articles were considered in Committee of the Whole and, being reported therefrom without amendment, were agreed to by the House. They appear in full in the Journal. During the proceedings<sup>3</sup> on the articles Mr. Samuel Tenney, of New Hampshire, called for the reading of several depositions to show that Judge Pickering had sustained a respectable character and that his recent conduct had arisen from insanity. In reply Mr. Nicholson said that the House had determined that they would impeach, and it was therefore the present duty to furnish the Senate with the articles. Mr. Nicholson further said that he was informed from respectable sources that Judge Pickering was habitually intoxicated. The articles were agreed to without division.

On motion of Mr. Nicholson, according to the Annals,<sup>4</sup> the articles were ordered to be enrolled, in correspondence with the practice of the House. The Journal does not mention this.

It was then ordered that eleven managers be appointed on the part of the House. A discussion arose as to the manner of selection. A motion that they be appointed by the Speaker was decided in the negative. Then it was decided that they be appointed by ballot, although several Members, notably Mr. Nicholson, urged that they should be elected by viva voce vote.

It does not appear that a special rule was made to govern the balloting, which was presumably conducted under the then existing rule of the House.

The following were chosen managers: Messrs. Nicholson, Early, Caesar A. Rodney, of Delaware; William Eustis, of Massachusetts; John Randolph, jr., of Virginia; Roger Griswold, of Connecticut; Samuel L. Mitchell, of New York; George W. Campbell, of Tennessee; William Blackledge, of North Carolina; John Boyle, of Kentucky, and Joseph Clay, of Pennsylvania.

On motion,

*Ordered*, That Mr. Roger Griswold be excused from serving as one of the managers appointed to conduct the said impeachment; and that the House do now proceed, by ballot, to the appointment of another manager to serve in his stead.

Thereupon Mr. Thomas Newton, jr., of Virginia, was chosen.

On January 3, 1804,<sup>5</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 John Pickering, 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.

*Ordered*, That a message be sent to the Senate, to inform them that this House have appointed managers, on their part, to conduct the impeachment against John Pickering, and have directed the

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<sup>1</sup> House Journal, p. 503.

<sup>2</sup> House Journal, p. 507.

<sup>3</sup> Annals, pp. 794, 795.

<sup>4</sup> Annals, p. 795.

<sup>5</sup> House Journal, pp. 511, 512; Annals, p. 797.

said managers to carry to the Senate the articles agreed upon by the House, to be exhibited in maintenance of their impeachment against the said John Pickering; and that the Clerk of this House do go with the said message.

On the same day in the Senate: <sup>1</sup>

A message from the House of Representatives informed the Senate that the House have appointed managers, on their part, to conduct the impeachment against John Pickering, judge of the district court of the United States for the district of New Hampshire, and have also directed the said managers to carry to the Senate the articles agreed upon by the House of Representatives to be exhibited against the said John Pickering.

It does not appear that the message announced the names of the managers.

**2324. Pickering's impeachment, continued.**

**The Senate decided, in the Pickering case, that it would take order for respondent's appearance only after articles had been exhibited.**

**The Senate committee concluded, in the Pickering case, that there was no impeachment before the Senate until articles were exhibited.**

**It was concluded by a Senate committee in Pickering's impeachment that the Senate had no power to take into custody the body of the accused.**

**A notification to the accused with a copy of the articles was deemed, in the Pickering impeachment, all the process necessary.**

**A Senate committee concluded, in the Pickering impeachment, that respondent might answer in person, by attorney, or not at all.**

**In the Pickering case the Senate committee concluded that after service of notice of the articles, the Senate might proceed to trial whether respondent entered appearance or not.**

**The Senate committee advised, in Pickering's case, that the Senate had the sole power to regulate forms, substances, and proceedings when acting as a court of impeachment.**

On the same day in the Senate, after the receipt of the above message, a report submitted by Mr. Tracy, from the committee appointed to inquire as to further proceedings, was submitted as follows: <sup>2</sup>

That they find the following facts, which have an immediate relation to the subject committed to them, viz: "On the last day of the last session of Congress two Members of the House of Representatives came to the Senate, and in the name of the House, and of all the people of the United States, verbally impeached John Pickering, district judge of the district of New Hampshire, of high crimes and misdemeanors, without any specification; and likewise, they verbally acquainted the Senate that the said House of Representatives would in due time exhibit particular articles of impeachment against him, the said Pickering, and make good the same. And they verbally demanded that the Senate should take order for the appearance of the said John Pickering, to answer to the said impeachments;" and that said verbal declaration of impeachment was committed by the Senate to a select committee, who reported thereon, in the following words, viz: "*Resolved*, That the Senate will take proper order thereon (that is, of the verbal impeachment aforesaid), of which due notice shall be given to the House of Representatives," of which resolution, the Secretary of the Senate gave information to the House of Representatives.

With these facts in view, your committee have attended to the constitutional powers vested in the Senate as a court of impeachment, and they find that "judgment in case of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States;" and that "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law." Hence your committee

<sup>1</sup> Senate Journal, p. 332.

<sup>2</sup> Senate Journal, p. 332; 1 Annals, p. 224.

suppose that no power is constitutionally vested in the Senate to take into custody, or hold the body of the person impeached for trial; but that a notification to the party of the impeachment, with a copy of the articles exhibited, is all the process requisite in the case; and that it is optional with the party to appear in propria persona, by attorney, or not at all; and that after the notice given as aforesaid, it is competent for the Senate to proceed to a trial and judgment on said impeachment, whether the party shall appear by himself, his attorney, or not at all. And although your committee would not in the smallest degree interfere with the House of Representatives, in the manner of instituting the process of impeachment, since the sole right of impeaching is vested by the Constitution in that House, yet they believe the Senate, in common with other courts, have the sole power, while acting as a court of impeachment, to regulate all forms as well as substance of impeachments which shall be presented to them, and all proceedings to be had thereon. They therefore are of opinion that at present no further proceeding ought to be had by the Senate respecting the verbal impeachment of John Pickering, made at the bar of the Senate by two Members of the House of Representatives, on the last day of the last session of Congress; and that in strict and proper construction of the Constitution, there is no impeachment before the Senate, until exhibited to them by the House of Representatives, in written articles.

On a full view of the subject, the committee respectfully submit for the consideration and adoption of the Senate the following resolution, viz:

*Resolved*, That the Senate can not with propriety take any order upon the verbal notification to them by the House of Representatives, on the last day of the last session of Congress, that they did impeach John Pickering of high crimes and misdemeanors. And that all proceedings thereon by the Senate must be deferred until written articles shall, in due form, be presented by said House of Representatives."

It does not appear that the above resolution was formally agreed to by the Senate.

#### **2325. Pickering's impeachment, continued.**

**Rule of the Senate prescribing forms and ceremonies for receiving managers in presenting articles of impeachment against Judge Pickering.**

**The Senate organized as a court before receiving the articles in the Pickering case.**

**The oath administered by the Secretary to the President and by him to the Senators in the Pickering impeachment.**

**The Senate set a day and hour for receiving the managers to exhibit articles impeaching Judge Pickering, and informed the House thereof.**

**The Senate appointed a committee to search the Journals for precedents for the Pickering impeachment.**

The same committee further reported the following resolution:

*Resolved*, That, at 12 o'clock tomorrow, the Senate will resolve itself into a court of impeachment, at which time the following oath or affirmation shall be administered by the Secretary to the President of the Senate, and, by him, to each member of the Senate, viz: "I, ———, solemnly swear (or affirm, as the case may be), that, in all things appertaining to the trial of the impeachment of John Pickering, judge of the district court of the district of New Hampshire, I will do impartial justice, according to law;" which court of impeachments, being thus formed, will, at the time aforesaid, receive the managers appointed by the House of Representatives to exhibit articles of impeachment, in the name of themselves and of all the people of the United States, against John Pickering, judge of the district court for the district of New Hampshire, pursuant to notice given to the Senate this day by the House of Representatives, that they had appointed managers for the purposes aforesaid.

*Ordered*, That the Secretary lay this resolution before the House of Representatives.

It was further

*Ordered*, That a committee be appointed to search the Journals and report precedents in cases of impeachments; and that Messrs. Tracy, Bradley, Baldwin, Wright, and Cocke, to whom it was referred on the 14th of November last, to consider and report, if any, what further proceedings ought to be had by the Senate, respecting the impeachment of John Pickering, by this committee.

On January 4,<sup>1</sup> in the House, the following message was received from the Senate:

Mr. Speaker: I am directed to inform this House that the Senate will, at 12 o'clock this day, be ready to receive articles of impeachment against John Pickering, judge of the district court of the United States for the district of New Hampshire, to be presented by the managers appointed by this House.

**2326. Pickering's impeachment continued.**

**The Senate prescribed by rule the ceremonies for receiving the House managers to present articles of impeachment against Judge Pickering.**

**Form of proclamation made by the Sergeant-at-Arms, under direction of the President, when the managers presented articles in the Pickering impeachment.**

**Articles of impeachment being exhibited against Judge Pickering, the President of the Senate was directed by rule to state that order would be taken and the House would be notified.**

**On January 4,<sup>2</sup> in the Senate, before it resolved itself into a court of impeachment, Mr. Tracy, from the committee appointed to examine precedents, reported the following:**

*Resolved*, That, after the managers of the impeachment shall be introduced to the bar of the Senate, and shall have signified that they are ready to exhibit articles of impeachment against John Pickering, the President of the Senate shall direct the Sergeant-at-Arms to make proclamation; who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States, sitting as a court of impeachment, articles of impeachment against John Pickering, judge of the district court for the district of New Hampshire."

After which the articles shall be exhibited; and then the President of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

The resolution was agreed to.

**2327. Pickering's impeachment continued.**

**In the Pickering trial a Senator, who as a Member of the House had voted for impeachment, was challenged, but voted.**

Thereupon Mr. John Quincy Adams, of Massachusetts, offered the following:

*Resolved*, That any Senator of the United States, having previously acted and voted as a Member of the House of Representatives, on a question of impeachment, is thereby disqualified to sit and act, in the same case, as a member of the Senate, sitting as a court of impeachment.

It was agreed that this motion should lie for consideration.

An appendix to the records of the court of impeachment has the following:<sup>3</sup>

Early in the trial a question was raised as to the propriety of those gentlemen, viz, Samuel Smith, Israel Smith, and John Smith, of New York, who were during the last session Members of the House of Representatives, and voted here upon the question for impeaching Judge Pickering, sitting and voting as judges upon the trial.

Mr. Smith, of New York, wished to be excused.

Mr. S. Smith declared that he would not be influenced from his duty by any false delicacy; that he, for his part, felt no delicacy upon the subject, the vote he had given in the other House to impeach

<sup>1</sup>House Journal, p. 513.

<sup>2</sup>Senate Journal, pp. 382, 383; Annals, p. 225.

<sup>3</sup>Annals, p. 368.

Judge Pickering would have no influence upon him in the court; his constituents had a right to his vote, and he would not by any act of his deprive or consent to deprive them of that right, but would claim and exercise it upon this as upon every other question that might be submitted to the Senate whilst he had the honor of a seat.

All these men appear as voting during the trial.

**2328. Pickering's impeachment continued.**

**In the Pickering impeachment the Senate organized itself as a court before receiving the articles.**

**The Journal of the Pickering trial was kept separate from the regular Senate Journal.**

**Ceremonies of presenting the articles against Judge Pickering before the high court of impeachment.**

**In the Pickering impeachment the chairman of the managers read the articles and then delivered them at the table of the Senate.**

**The articles impeaching Judge Pickering, with signature of the Speaker and attestation of the Clerk.**

**The chairman of the managers reported verbally to the House after having presented in the Senate the articles impeaching Judge Pickering.**

On this day, January 4,<sup>1</sup> the Senate resolved itself into a court of impeachment. The ordinary Senate Journal merely records this fact, but does not contain the record of the court's proceedings.<sup>2</sup>

On February 20, 1805,<sup>3</sup> the Senate resumed consideration of the motion for printing the Journals of their proceedings, while sitting for the purpose of trying impeachments, and agreed to it as follows:

*Resolved*, That the proceedings of the Senate while sitting for the purpose of trying impeachments shall be published in the same manner in which the legislative proceedings are now published; and this resolution shall have relation to all proceedings in trials of impeachments which have heretofore taken place.

The Senate having resolved itself into a court of impeachment, proceeded agreeably to its resolution to organize the court.<sup>4</sup>

The Secretary administered the following oath to the President:

You solemnly swear that, in all things appertaining to the trial of the impeachment of John Pickering, judge of the district court of the district of New Hampshire, you will do impartial justice, according to law.

The President administered the oath, respectively, to Messrs. Adams, Armstrong, Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Hillhouse, Jackson, Olcott, Pickering, Potter, Israel Smith, Samuel Smith, John Smith, Tracy, Venable, Wells, and Worthington; and the affirmation to Messrs. Logan, Maclay, and Plumer.

A message was received from the House of Representatives.

<sup>1</sup> Senate Journal, p. 333.

<sup>2</sup> The Senate, however, kept in Journal form a record of "The trial of John Pickering, etc., on a charge exhibited to the Senate of the United States for high crimes and misdemeanors," which was published later. Senate Journal, Eighth Congress, pp. 493-507.

<sup>3</sup> Second session Eighth Congress, Annals, p. 63.

<sup>4</sup> Annals, p. 319.

The managers on the part of the House of Representatives, Messrs. Nicholson, Early, Rodney, Eustis, John Randolph, jr., Samuel L. Mitchill, George W. Campbell, Blackledge, Boyle, Joseph Clay, and Newton, were admitted; and Mr. Nicholson, the chairman, announced that they were the managers instructed by the House of Representatives to exhibit certain articles of impeachment against John Pickering, district judge of the district of New Hampshire.

They were requested by the President to take seats assigned them within the bar.

The Sergeant-at-Arms was directed to make proclamation, in the words following:

Oyes! Oyes! Oyes! All persons are commanded to keep silence on pain of imprisonment while the grand inquest of the nation is exhibiting to the Senate of the United States, sitting as a court of impeachments, articles of impeachment against John Pickering, judge of the district court of the district of New Hampshire.

The managers then rose, and Mr. Nicholson, their chairman, read the articles, 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 John Pickering, judge of the district court of the district of New Hampshire, in maintenance and support of their impeachment against him for high crimes and misdemeanors.*

ARTICLE 1. That whereas George Wentworth, surveyor of the district of New Hampshire, did, in the port of Portsmouth, in the said district, on waters that are navigable from the sea by vessels of more than 10 tons burden, on the 15th day of October, in the year 1802, seize the ship called the *Eliza*, of about 285 tons burden, whereof William Ladd was late master, together with her furniture, tackle, and apparel, alleging that there had been unladen from on board of said ship, contrary to law, sundry goods, wares, and merchandise, of foreign growth and manufacture, of the value of \$400 and upwards, and did likewise seize on land within the said district, on the 7th day of October, in the year 1802, two cables of the value of \$250, part of the said goods which were alleged to have been unladen from on board the said ship as aforesaid, contrary to law; and whereas Thomas Chadbourn, a deputy marshal of the said district of New Hampshire, did, on the 16th day of October, in the year 1802, by virtue of an order of the said John Pickering, judge of the district court of the said district of New Hampshire, arrest and detain in custody for trial before the said John Pickering, judge of the said district court, the said ship, called the *Eliza*, with her furniture, tackle, and apparel, and also the two cables aforesaid;

And whereas by an act of Congress, passed on the 2d day of March, in the year 1789, it is among other things provided that "upon the prayer of any claimant to the court that any ship or vessel, goods, wares, or merchandise so seized and prosecuted, or any part thereof, should be delivered to such claimant, it shall be lawful for the court to appoint three proper persons to appraise such ship or vessel, goods, wares, or merchandise, who shall be sworn in open court, for the faithful discharge of their duty; and such appraisement shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisement, if the claimant shall, with one or more sureties to be approved of by the court, execute a bond in the usual form to the United States for the payment of a sum equal to the sum of which the ship or vessel, goods, wares, or merchandise so prayed to be delivered and appraised and moreover produce a certificate from the collector of the district wherein such trial is had and of the naval officer thereof, if any there be, that the duties on the goods, wares, and merchandise, or tonnage duty on the ship or vessel so claimed have been paid or secured in like manner as if the goods, wares, or merchandise, ship or vessel, had been legally entered, the court shall, by rule, order such ship or vessel, goods, wares, or merchandise, to be delivered to the said claimant;" yet the said John Pickering, judge of the said district court of the said district of New Hampshire, the said act of Congress not regarding, but with intent to evade the same, did order the said ship called the *Eliza*, with her furniture, tackle, and apparel, and the said two cables, to be delivered to a certain Eliphalet Ladd, who claimed the same, without his, the said Eliphalet Ladd, producing any certificate from the collector and naval officer

of the said district that the tonnage duty on the said ship or the duties on the said cables had been paid or secured, contrary to his trust and duty as judge of the said district court, against the law of the United States and to the manifest injury of their revenue.

ART. 2. That whereas, at a special district court of the United States, began and held at Portsmouth on the 11th day of November, in the year 1802, by John Pickering, judge of said court, the United States, by Joseph Whipple, the collector of said district, having libeled, propounded, and given the said judge to understand and be informed that the said ship *Eliza*, with her furniture, tackle, and apparel, had been seized as aforesaid, because there had been unladen therefrom, contrary to law, 2 cables and 100 pieces of check, of the value of \$400, and having prayed in their said libel that the said ship, with her furniture, tackle, and apparel, might by the said court be adjudged to be forfeited to the United States and be disposed of according to law; and a certain Eliphalet Ladd, by his proctor and attorney, having come into the said court, and having claimed the said ship *Eliza*, with her tackle, furniture, and apparel, and having denied that the said 2 cables and the said 100 pieces of check had been unladen from the said ship contrary to law, and having prayed the said court that the said ship, with her furniture, tackle, and apparel, might be restored to him, the said Eliphalet Ladd, the said John Pickering, judge of the said district court, did proceed to the hearing and trial of the said cause thus pending between the United States on the one part, claiming the said ship *Eliza*, with her furniture, tackle, and apparel, as forfeited by law, and the said Eliphalet Ladd on the other part, claiming the said ship *Eliza*, with her furniture, tackle, and apparel, in his own proper right; and whereas John S. Sherburne, attorney for the United States in and for the said district of New Hampshire, did appear in the said district, as his special duty it was by law, to prosecute the said cause in behalf of the United States, and did produce sundry witnesses to prove the facts charged by the United States in the libel filed by the collector as aforesaid in the said court, and to show that the said ship *Eliza*, with her tackle, furniture, and apparel, was justly forfeited to the United States, and did pray the said court that the said witnesses might be sworn in behalf of the United States, yet the said John Pickering, being then judge of the said district court, and then in court sitting, with intent to defeat the just claims of the United States, did refuse to hear the testimony of the said witnesses so as aforesaid, produced in behalf of the United States, and without hearing the said testimony so adduced in behalf of the United States in the trial of the said cause did order and decree the said ship *Eliza*, with her furniture, tackle, and apparel, to be restored to the said Eliphalet Ladd, the claimant, contrary to his trust and duty as judge of the said district court, in violation of the laws of the United States and to the manifest injury of the revenue.

ART. 3. That whereas it is provided by an act of Congress, passed on the 24th day of September, in the year 1789, "that from all final decrees of the district court in cases of admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of \$300 exclusive of costs, an appeal shall be allowed to the next circuit court to be held in such district;" and whereas on the 12th (lay of November, in the year 1802, at the trial of the aforesaid cause between the United States on the one part, claiming the said ship *Eliza*, with her furniture, tackle, and apparel, as forfeited for the cause aforesaid, and the said Eliphalet Ladd on the other part, claiming the said ship *Eliza*, with her furniture tackle, and apparel, in his own proper right, the said John Pickering, judge of the said district of New Hampshire, did decree that the said ship *Eliza*, with her tackle, furniture, and apparel, should be restored to the said Eliphalet Ladd, the claimant; and whereas the said John S. Sherburne, attorney for the United States in and for the said district of New Hampshire, and prosecuting the said cause for and on the part of the United States, on the said 12th clay of November, in the year 1802, did, in the name and behalf of the United States, claim an appeal from said decree of the district court to the next circuit court to be held in the said district of New Hampshire, and did pray the said district court to allow the said appeal, in conformity to the provisions of the act of Congress last aforesaid, yet the said John Pickering, judge of the said district court, disregarding the authority of the laws and wickedly meaning and intending to injure the revenues of the United States and thereby to impair their public credit, did absolutely and positively refuse to allow the said appeal, as prayed for and claimed by the said John S. Sherburne in behalf of the United States, contrary to his trust and duty of judge of the district court, against the laws of the United States, to the great injury of the public revenue, and in violation of the solemn oath which he had taken to administer equal and impartial justice.

ART. 4. That whereas for the due, faithful, and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge, yet the said John Pickering, being a man of loose morals and intemperate habits, on the 11th and 12th days of November, in the year 1802, being then judge of the district court in and for the district of New Hampshire, did appear on the bench of the said court for the administration of justice in a state of total intoxication, produced by the free and intemperate use of intoxicating liquors; and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the good citizens of the United States; and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge and degrading to the honor 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 John Pickering; and also of replying to his or any answers which he shall make to the said articles, or any of them; and of offering proof to all and every other articles, impeachment, or accusation which shall be exhibited by them as the case shall require, do demand that the said John Pickering may be put to answer the said high crimes and misdemeanors; and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

Signed by order and in behalf of the House.

NATHANIEL MACON, *Speaker*.  
JOHN BECKLEY, *Clerk*.

He then delivered the articles at the table; whereupon,

The President notified the managers that the Senate would take proper order on the subject of the impeachment, of which due notice should be given to the House of Representatives, and they withdrew.

The court adjourned to 12 o'clock to-morrow.

In the House,<sup>1</sup> on the same day, Mr. Nicholson, from the managers appointed on the part of this House to conduct the impeachment against John Pickering, judge of the district court of the United States for the district of New Hampshire, reported that the managers did this day carry to the Senate the articles of impeachment agreed to by this House on the 30th ultimo, and the said managers were informed by the Senate that their House would take proper measures relative to the said impeachment, of which this House should be duly notified.

**2329. Pickering's impeachment continued.**

**In the Pickering case the rules were reported directly to the court of impeachment and agreed to therein.**

**Form of summons prescribed to command appearance of respondent in the Pickering impeachment.**

**Form of precept prescribed by the Senate to be indorsed on the writ of summons to Judge Pickering.**

**In the Pickering case the Senate provided for issuing subpoenas of a specified form on application of managers or of respondent or his counsel.**

**In the Pickering impeachment the subpoenas were directed to the marshal of the district wherein the witness resided.**

**The forms of summons and subpoena in the Pickering case were communicated to the House and entered on its Journal.**

**Form of direction to the marshal for service of subpoenas in the Pickering trial.**

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<sup>1</sup>House Journal, p. 515; Annals, p. 802.

On January 5<sup>1</sup> the Senate in high court of impeachments assembled, and the President administered the oath to Mr. Jonathan Dayton, of New Jersey.

On January 9,<sup>2</sup> in the high court, Mr. Tracy reported from the committee appointed to examine precedents and prepare forms. The Senate Journal makes no mention of this or other proceedings of the court, although the committee was appointed by the Senate.

On January 10 and 11<sup>3</sup> the report was considered in the high court, and amendments were voted on and agreed to. The yeas and nays were taken, although it does not appear in what way they were ordered.

On January 12<sup>4</sup> the report was agreed to as follows:

*Resolved*, That a summons issue, directed to the said John Pickering, in the form following: “  
United States of America, sct:

*“The Senate of the United States of America, in their capacity of a court of impeachments, to John Pickering, judge of the district court for the district of New Hampshire, greeting:*

“Whereas the House of Representatives of the United States of America did, on the 4th day of January, exhibit to the Senate, then sitting as a court of impeachments, articles of impeachment against you, the said John Pickering, charging you with high crimes and misdemeanors, therein specially set forth in the words following, viz: [Here insert the articles]; and did demand that you, the said John Pickering, should be put to answer the accusations of high crimes and misdemeanors as set forth in said articles; and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice. You, the said John Pickering, are therefore hereby summoned to be and appear before the Senate of the United States of America in their capacity of a court of impeachments, at their Chamber in the city of Washington, on the 2d day of March next, then and there to answer to 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, acting in their said capacity of a court of impeachments, shall make in the premises, according to the Constitution and laws of the said United States. Hereof you are not to fail.”

Witness, Aaron Burr, Vice-President of the United States of America and President of the Senate thereof, at the city of Washington, this 12th day of January, in the year of our Lord 1804, and of the Independence of the United States the twenty-eighth.

Which summons shall be signed by the Secretary of the Senate and sealed with their seal, and served by James Mathers, Sergeant-at-Arms to the Senate, who shall serve the same pursuant to the directions given in the next following resolution:

Second. *Resolved*, That a precept shall be indorsed on said writ of summons in the form following, viz:

“United States of America, ss:

*“The Senate of the United States, in their capacity of a court of impeachments, to James Mathers, Sergeant-at-Arms to the Senate, greeting:*

“You are hereby commanded to deliver to and leave with John Pickering, esq., district judge of the district of New Hampshire, if to be found, a true and attested copy of the within writ of summons, together with a like copy of this precept, showing him both; or in case he can not with convenience be found, you are to leave true and attested copies of the said summons and precept at his usual place of residence; and in whichever way you perform the service, let it be done at least thirty days before the appearance day mentioned in the said writ of summons. Fail not, and make return of this writ of summons and precept, with your proceedings thereon indorsed, on or before the appearance day therein mentioned in said writ of summons.”

Witness, Aaron Burr, Vice-President of the United States of America and President of the Senate thereof, at the city of Washington, this 12th day of January, in the year of our Lord 1804, and of the Independence of the United States the twenty-eighth.

Which precept shall be signed by the Secretary of the Senate and sealed with their seal.

<sup>1</sup> Annals, p. 322.

<sup>2</sup> Annals, p. 323; Senate Journal, p. 335.

<sup>3</sup> Annals, p. 323.

<sup>4</sup> Annals, pp. 323, 325.

Third. *Resolved*, That the Secretary of the Senate be, and he is hereby, directed to pay the necessary expenses arising upon the process aforesaid, after the same shall be allowed by the President of the Senate for the time being, out of the fund appropriated to defray the contingent expenses of the two Houses of Congress, and the Secretary of the Senate is hereby authorized and directed to advance out of said fund, to said James Mathers, for his traveling expenses, the sum of two hundred dollars, to be by said James Mathers accounted for in a final settlement for his services.

Fourth. *Resolved*, That the Secretary of the Senate do acquaint the House of Representatives of the foregoing resolutions, and deliver to them a copy of the same.

Mr. Tracy, from the committee last mentioned, further reported in part, and the report was amended, as follows:

*Resolved*, That whenever application shall be made to the Secretary of the Senate for a subpoena or subpoenas for witnesses by the House of Representatives, either by their managers of the impeachment or in any other proper way, or by the party impeached or his counsel, acknowledged as such by the Senate sitting as a court of impeachments, he shall issue to such applicant a subpoena or subpoenas in the following form, viz:

“To [here name the witnesses and residence] greeting: You and each of you are hereby commanded, laying aside all excuses, to appear before the Senate of the United States, in their capacity of a court of impeachments, on the —— day of ——, at the Senate Chamber, in the city of Washington, then and there to testify your knowledge in the cause which is before said court of impeachments for trial, in which the House of Representatives have impeached John Pickering, judge of the district court for the district of New Hampshire, of high crimes and misdemeanors. Fail not.”

Witness, Aaron Burr, Vice-President of the United States of America and President of the Senate thereof, at the city of Washington, this —— day of ——, in the year of our Lord 1804, and of the Independence of the United States the twenty-eighth.

Which shall be signed by the Secretary of the Senate and sealed with their seal.

Which subpoenas shall be directed in every case to the marshal of the districts where such witnesses reside, to serve and return.

*Resolved*, That the Secretary of the Senate do issue twelve subpoenas for witnesses in the above form for the use of the said Pickering, with blanks therein for such witnesses as he, the said Pickering, may think proper to summon, which Subpoenas shall be delivered by the Sergeant-at-Arms to him at the time he shall serve the summons aforesaid on the said Pickering.

As amended, the report was agreed to, yeas 23, nays 5.

It was then—

*Ordered*, That the Secretary lay these resolutions before the House of Representatives.

The above resolutions were communicated to the House by message on this day,<sup>1</sup> and on January 13 were read and laid on the table. The resolutions of the Senate are printed in full in the House Journal.

On January 13<sup>2</sup> the high court appears to have agreed on a “form of direction to the marshal for the service of the subpoena:”

[L. S.] THE SENATE OF THE UNITED STATES OF AMERICA, SITTING AS A COURT OF  
IMPEACHMENTS.

To the Marshal of the District of ——:

You are hereby commanded to serve and return the within subpoena according to law.

Dated at Washington this —— day of ——, in the year of our Lord 1804, and of the Independence of the United States the twenty-eighth.

It does not appear that this form was communicated to the House of Representatives.

<sup>1</sup>House Journal, pp. 531, 533, 534.

<sup>2</sup>Annals, p. 326.

**2330. Pickering's impeachment continued.****Returns of the Sergeant-at-Arms on the summons and a subpoena in the Pickering trial were read in the court before the return day.**

On February 9,<sup>1</sup> in the high court, the following returns were filed:

United States of America, *ss*:

I, James Mathers, Sergeant-at-Arms to the Senate of the United States, in obedience to the within summons, did proceed to the house of the within-named John Pickering on the 25th day of January, in the year 1804, and did then and there leave a true copy of the said writ of summons, together with a true copy of the articles of impeachment annexed, with him, the said John Pickering.

JAMES MATHERS.

United States of America, *ss*:

I, James Mathers, Sergeant-at-Arms to the Senate of the United States, did, on the twenty-sixth day of January, in the year one thousand eight hundred and four, proceed to the house of the within-named Michael McClary and served this subpoena by reading the same and leaving with him a copy thereof.

JAMES MATHERS.

On February 20 these returns were read in the high court.

**2331. Pickering's impeachment continued.****Rules adopted by the Senate as a court to govern the trial of Judge Pickering.**

**The Senate sitting as a court did not communicate to the House the rules for governing the trial.**

**By the rules for the Pickering trial the President of the Senate was given general authority to direct forms of proceeding not otherwise provided for.**

**Form of oath taken by the Sergeant-at-Arms and entered on the record, on the making of the return of service of summons on Judge Pickering.**

**Rule framed to govern ceremonies for appearance and answer of respondent in the Pickering impeachment.**

**The rules for the Pickering trial provided that a record should be made if respondent appeared in person or by counsel, or if he failed to appear.**

**Rule for offering motions during the Pickering trial.**

**In the Pickering trial a rule provided that the Senate might retire for consultation on demand of one-third.**

**The rule of the Pickering trial required all decisions to be in open court, by yeas and nays, and without debate.**

**Form of oath and method of examination for witnesses in the Pickering trial.**

**Rule of the Senate, in the Pickering trial, for examination of a Senator.**

**The rules of the Pickering trial provided that a question by a Senator should be in writing and be put by the Presiding Officer.**

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<sup>1</sup>Annals, p. 326.

On March 1<sup>1</sup> Mr. Tracy, from the committee appointed by the Senate to examine precedents and prepare forms, reported to the court (not to the Senate) the following resolutions, which were agreed to by the court:

*Resolved*, That the President of the Senate shall direct all the forms of proceeding, while the Senate are sitting as a court of impeachments, as to opening, adjourning, and all forms during the session not otherwise specially provided for by the Senate.

And that the President of the Senate be requested to direct the preparations in the Senate Chamber for the accommodation of the Senate while sitting as a court, and for the reception and accommodation of the parties to the impeachment, their counsel, witnesses, etc.

And that he be authorized to direct the employment of the marshal, or any officer or officers of the District of Columbia during the session of the court of impeachments whose services he may think requisite and which can be obtained for the purpose.

And all the expenses arising under this resolution, after being first allowed by the President of the Senate, shall be paid by the Secretary, out of the fund appropriated to defray the contingent expenses of both Houses of Congress.

*Resolved*, That on the 2d day of March instant, at 1 o'clock, the legislative and executive business of the Senate be postponed, and that the court of impeachments shall then be opened, after which the process, which, on the 12th day of January last, was directed to be issued and served on John Pickering, and the return thereof, shall be read, and the Secretary of the Senate shall administer an oath to the returning officer in the following form, to wit:

"I, James Mathers, do solemnly swear that the return made and subscribed by me, upon the process issued on the 12th day of January last by the Senate of the United States against John Pickering, is truly made, and that I have performed said services as there described, so help me God."

Which oath shall be entered at large on the records.

The Secretary shall then give notice to the House of Representatives that the Senate, in their capacity of a court of impeachments, are ready to proceed upon the impeachment of John Pickering in the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives.

*Resolved*, That counsel for the parties shall be admitted to appear and be heard upon said impeachment. And upon the attendance of the House of Representatives, their managers, or any person or persons admitted to appear for the impeachment, the said John Pickering shall be called to appear and answer the articles of impeachment exhibited against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly if by himself or if by agent or attorney, naming the person appearing and the capacity in which he appears. If he does not appear either personally or by agent or attorney the same shall be recorded. All motions made by the parties or their counsel shall be addressed to the President of the Senate, and, if he shall require it, shall be committed to writing and read at the Secretary's table, and after the parties shall be heard upon such motion the Senate shall retire to the adjoining committee room for consideration, if one-third of the members present shall require it; but all decisions shall be had in open court, by ayes and noes and without debate, which shall be entered on the records.

Witnesses shall be sworn in the following form, viz: "I, A B, do swear (or affirm, as the case may be) that the evidence I shall give to this court in the case now 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 is called as a witness he shall be sworn and give his testimony standing in his place.

If a Senator wishes a question to be put to a witness it shall be reduced to writing and put by the President.

These rules were not communicated to the House of Representatives.

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<sup>1</sup> Annals, pp. 326, 327; Senate Journal, p. 368.

**2332. Pickering's impeachment continued.****Ceremonies at the calling of Judge Pickering to answer the articles of impeachment.****The House did not accept the invitation of the Senate to accompany its managers at the return of summons in Pickering's impeachment.**

On the same day, in the high court, the summons to John Pickering was read, together with the return made thereon by the Sergeant-at-Arms, and the oath prescribed was administered to the returning officer by the Secretary.

Subpoenas having been issued in the form prescribed and directed to Ebenezer Chadwick and others, the following return was made to them respectively:

NEW HAMPSHIRE DISTRICT, *ss*:

*January 28, 1804.*

Pursuant to this precept, I have served the same by reading it to the within-named Ebenezer Chadwick, etc.

MICHAEL MCCLARY,

*Marshal for the New Hampshire District.*

Then it was, by the high court of impeachments—

*Ordered*, That the Secretary give notice to the House of Representatives that the Senate, in their capacity of a court of impeachments, are ready to proceed upon the impeachment of John Pickering in the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives, and that the Secretary communicate a copy of the regulations agreed on to that House.

On March 2<sup>1</sup> the substance of this order was by message communicated to the House, whereupon it was—

*Resolved*, That the managers appointed on the 2d of January last do now attend in the Senate Chamber for the purpose of conducting the impeachment against John Pickering on the part of this House.

It does not appear that attendance by the House itself was proposed.

Thereupon the managers attended in the high court, whereupon John Pickering was three times called to answer the articles of impeachment exhibited against him by the House of Representatives, but came not.

**2333. Pickering's impeachment continued.****No appearance was made on behalf of Judge Pickering and no answer was made to the articles of impeachment.**

**In the Pickering impeachment counsel for respondent's son presented a petition of the latter setting forth that his father was insane, and asking for time to show this.**

**In the Pickering case, against the objection of the managers, the court determined to hear the counsel of respondent's son and evidence to show the insanity of the accused.**

**On a question of permitting counsel for respondent's son to appear in the Pickering trial, the said counsel was not permitted to argue.**

The Vice-President then submitted a petition of Jacob S. Pickering, son of John Pickering, and a letter from Robert G. Harper, inclosed to the Vice-President.

<sup>1</sup>House Journal, p. 613; Annals, p. 1087.

## PETITION OF JACOB S. PICKERING.

At a court of impeachments holden before the honorable the Senate of the United States of America, sitting in their capacity of a high court of impeachment at the city of Washington, on the 2nd day of March, 1804:

The House of Representatives of the United States *v.* John Pickering, judge of the district court for the district of New Hampshire.

Jacob S. Pickering, of Portsmouth, in the district of New Hampshire, and son of the said John Pickering, against whom articles of impeachment have been exhibited by the House of Representatives of the United States, conceives it his duty most respectfully to state to this high and honorable court the real situation of the said John Pickering, the facts and circumstances relative to said articles, wherein he stands charged of supposed high crimes and misdemeanors, and to request that this court would grant him such term of time as they shall think fit and reasonable to substantiate this statement.

Your petitioner will be able to show that at the time when the crimes wherewith the said John stands charged are supposed to have been committed, the said John was, and for more than two years before, and ever since has been, and now is, insane, his mind wholly deranged, and altogether incapable of transacting any kind of business which requires the exercise of judgment, or the faculties of reason; and, therefore, that the said John Pickering is incapable of corruption of judgment, no subject of impeachment, or amenable to any tribunal for his actions.

That this derangement has been constant and permanent, every day of his life completely demonstrating his insanity; every attempt for his relief, which has been prescribed by the faculty who have been consulted on his case, has proved unavailing, and his disorder has baffled all medical aid.

Your petitioner is well aware that the most conclusive evidence of the foregoing fact would result from an actual view of the respondent, which unfortunately, by reason of his great infirmities can not now be, but at the hazard of his life—he is wholly unable at this inclement season to support the fatigue of so long a journey; yet if the respondent's life be spared, and his health in any degree restored, it will be the endeavor of your petitioner that the said John shall make his personal appearance before this honorable court at any future day they shall think proper to assign.

Your petitioner will be able to show, any pretense to the contrary notwithstanding, that the decisions made in the cause stated in the first article of impeachment, although not the result of reflection, or grounded on any deductions of reason, were, nevertheless, correct, perfectly consonant to the principles of justice, and conformable to the laws of the land; and the refusal of the said judge to grant the appeal claimed by the said John S. Sherburne, in behalf of the United States, was not against law, or to the injury of the public revenue, as the third article of the impeachment supposes; there being no law to warrant such appeal in such a case.

While, with deep humility, your petitioner admits and greatly laments the indecorous and improper expressions used by the said judge on the seat of justice, as mentioned in the last article of impeachment, he will clearly evince the injustice of that part thereof which respects his moral character, and show abundantly, that from his youth upward, through a long, laborious and useful life, and until he was visited by the most awful dispensation of Providence, and the most deplorable of all human calamities, the loss of reason, he was unexceptionable in his morals, remarkable for the purity of his language, and the correctness of his habits, and the deviations in these particulars now complained of, are irresistible evidence of the deranged state of his mind.

When this high and honorable court shall take into their consideration the situation of this respondent, oppressed with infirmity, incapable of making arrangements for his defense, the inclemency of the season, his great distance from the place of trial, and the shortness of notice—when your honors reflect on the high and atrocious crime with which he stands charged; in the decision of which is involved, not his life (indeed his remains of life would be but a slender sacrifice), but that which, to an honest mind, is more dear than life itself, his good name—when you advert to the consequences attached to a conviction; the indelible stigma which will befall a numerous family whose only patrimony was the unsullied reputation of their parent, which they have ever cherished, and of which they fondly, perhaps too fondly, hoped, no time, or circumstance, or adverse fortune could deprive them—when your honors shall think of these things, your petitioner has strong confidence that the wisdom and justice of this court will permit a respondent, whose integrity until now has been unquestioned;

who has sustained offices high and honorable, through a long life, and the general tenor of whose character and conduct has hitherto furnished him with a coat of armor against the assaults of his enemies, but who is now incapable of defending himself, to be defended by his friends.

*Audi alteram partem* is a maxim held in reverence wherever liberty yet remain. The Senate of America will be the last tribunal on earth that will cease to respect it; they will never condemn unheard; they will never refuse time for a full and impartial trial.

That time, that impartial trial, your petitioner prays for; the charity of the law presumes the innocence of the respondent; and your petitioner, also, respectfully entreats that, in the meantime, and more especially as the evidence on which the impeachment is founded, was taken *ex parte*, no unfavorable impressions may be made on the minds of this honorable court, by any report or extra-judicial representations which may have been made on the subject before them.

JACOB S. PICKERING.

LETTER OF ROBERT G. HARPER.

SIR: Mr. Jacob S. Pickering, the son of Judge Pickering, of New Hampshire, has forwarded to me, through one of his friends here, the inclosed petition, with a request that I will lay it before the court of impeachments, and will appear on his part, if permitted, and support the prayer of it. I am also furnished with several depositions, showing that Judge Pickering, from bodily infirmity and total derangement of mind, is wholly incapable of appearing before the court at this time, of making a defense, or of giving authority to any person to appear for him.

The process of subpoena heretofore issued by the court not being compulsory, and Judge Pickering's narrow circumstances not enabling his son to defray the expenses of the witnesses whose testimony it is important for him to produce, it was judged necessary to serve the subpoena. The object of the petition is to obtain a postponement of the trial, and either compulsory process, or an order to take depositions, which may be received in evidence. Be pleased, Sir, to lay the petition before the court, and to inform me whether I shall be received to appear on the part of the petitioner, Mr. Jacob S. Pickering, in its support. In that case I will attend in the capacity of agent or counsel for the petitioner, and submit to the court the reasons and proofs with which I am furnished in support of his application.

With the highest respect, I have the honor to be, Sir, your most obedient very humble servant,

ROBERT G. HARPER.

The VICE-PRESIDENT OF THE UNITED STATES.

The President inquired if Mr. Harper was in court, and invited him to a seat within the bar, which having taken, he made the following address:

Mr. President: Before I proceed to address this honorable court in the case now before it, I think it proper to repeat explicitly what is stated in the letter just now read, that I do not appear as the counsel, agent, or attorney of Judge Pickering, or by virtue of any authority derived from him, he being in a state of absolute and long-continued insanity, can neither appear himself nor authorize another to appear for him. I present myself to this honorable court, at the request of Jacob S. Pickering, son of Judge Pickering, stating his father's insanity, and praying that time may be allowed for collecting and producing complete proof of the melancholy fact. This application for postponement I am prepared to support by depositions now in my possession; and it is also my intention, if permitted, to make a further application on the part of Judge Pickering for compulsory process to compel the attendance of such witnesses as it may be necessary to produce in proof of the fact of insanity, or for an order to take their depositions in writing on interrogatories, and notice to the prosecutors. It rests with this honorable court whether it will receive such an application, and hear counsel so appearing in its support.

After a short pause, Mr. Harper again rose and inquired whether his appearance in support of the petition would be construed as the appearance of John Pickering by counsel.

The President<sup>1</sup> answered that he presumed that it would not be so construed.

Mr. Nicholas, on behalf of the House managers, objected to the hearing of Mr. Harper in any other capacity than as counsel of the accused, and remarked

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<sup>1</sup> Aaron Burr, of New York, Vice-President and President of the Senate.

that as Mr. Harper disclaimed appearing in that capacity, he could not in his opinion be heard. Other managers spoke, especially Mr. Rodney, who said:

I understand the President as having declared that, agreeably to the rules of proceeding adopted by the Senate, no person can be heard in this case but the accused, or his agent or counsel.

The Vice-President nodded assent.

Mr. Rodney continued:

I also understand the gentleman who appeared on this occasion, as clearly and explicitly stating that he does not appear as the counsel of Mr. Pickering, nor does he wish it so to be understood. That gentleman has informed us in a very fair and candid manner of the only character in which he does appear, and has assumed very properly and correctly the only ground upon which he wishes to stand. He has in positive terms disavowed the idea of his being the agent or counsel of the accused, because he has protested against Mr. Pickering's being affected by any act done by him. On this single ground, then, I respectfully submit whether it would be proper to hear the gentleman under these circumstances, and whether it be not manifested that he does not come within the rules laid down by the Senate for the government of this high court of impeachments.

But if the gentleman is to be heard on this subject in the anomalous character in which he appears, with a view of postponing the proceedings of this court, it will first be necessary for the court to decide that the case is properly before them, agreeably to the rules which have been established. If no appearance in person or by attorney has been entered, unless proceedings have been had which they shall consider tantamount to an appearance, there is no cause regularly in court, and it would be idle for any person to talk of postponing the consideration of that which really was not before the court. A question of this kind must, from the nature of it, ever be incidental to the principal or main question. When a writ is in court according to the rules of the court, a motion for postponement may, with propriety, if the circumstances justify it, be made. This must always be a subsequent consideration, after the court are in full possession of the case. Agreeably to the correct course of proceeding in ordinary courts, until bail and appearance, there can be no case in court. The party has no day given him, because he is, until this takes place, considered to be out of court; nor would any counsel, though duly authorized, be heard in his behalf. There has, in this case, then, been no appearance in person or by agent or counsel. The accused has made default, and no agent or attorney has been recorded for him. Surely, then, his default should be first recorded, and if the court consider that after his having been duly served, and making default, they will proceed to a hearing and determination of the principal question, it will then be proper to listen to those which are necessarily incidental. It will be at this stage of the business competent for the court, if at all, to hear the gentleman. But I am decidedly of the opinion, there is no period in which it will be proper so to do unless he claims this right as the agent or counsel of the accused. In that capacity he has a right to be heard; and in that capacity alone. Our Constitution has wisely secured to every man this privilege, and I would not deprive the humblest object in the community of this inestimable benefit. I flatter myself, therefore, that this honorable court will adhere strictly to the rules which they have prescribed for themselves, and that they will for these reasons, and those which have been assigned by my colleague, refuse the present application.

Mr. Harper inquired whether it would be regular in him to reply to these remarks?

The President said it would not; and immediately after put the question to the Senate, whether Mr. Harper should be heard in support of the prayer of the petition of Jacob S. Pickering.

Whereupon the Senate retired to a private Chamber, from which they returned about 3 o'clock, when the President advised the managers that the Senate would take further time to consider the question before them, and would make them acquainted with their decision.

Finally, with open doors, the court took a vote on the question:

Will the court hear evidence and counsel respecting the insanity of John Pickering, upon the suggestion contained in the petition of Jacob S. Pickering, and the letter of R. G. Harper?

It was decided in the affirmative, yeas 18, nays 12.

It was then—

*Resolved*, That, on the motion made and seconded, the court shall retire to the adjoining committee room, if one-third of the Senators present shall require it.

The court adjourned to 12 o'clock the next day.

**2334. Pickering's impeachment continued.**

**The court having determined, in the Pickering impeachment, to hear counsel of a third person on a preliminary question, the managers withdrew to consult the House.**

**The Senate declined to await the consultation of the managers with the House before hearing evidence as to Judge Pickering's sanity.**

**The House, in the Pickering impeachment, deemed it unnecessary to approve the conduct of its managers in declining to discuss in the court a matter from a third party.**

**In the Pickering case the Presiding Officer ruled that in presenting affidavits to show the insanity of the accused only the pertinent parts should be read.**

**The Presiding Officer held that counsel of the son of Judge Pickering, admitted to show the insanity of the accused, might not offer a motion to the court.**

On March 6,<sup>1</sup> the court was opened, and the managers of the impeachment, on the part of the House of Representatives, against John Pickering, attended.

Mr. Harper also attended.

The President informed Mr. Harper that the court would hear evidence and counsel respecting the insanity of John Pickering upon the suggestion contained in the petition of Jacob S. Pickering and the letter of R. G. Harper.

Mr. Nicholson, in behalf of the managers, said he was instructed to ask for the reading of the proceedings of the court on the last day of its sitting.

The clerk having read the record, by which it appeared that John Pickering had been called three times without appearing,

Mr. Nicholson inquired at what point of time it was intended that Mr. Harper should be heard, and whether this was to be a step preliminary to the trial.

The President said he could not undertake to give an explanation of the proceedings of the Senate, adding that their meaning must be gathered from the proceedings themselves.

Mr. Nicholson then said that he begged leave to state that the managers were ready to proceed with the trial of the articles preferred by the House of Representatives.

The President said that under the decision of the Senate it had been determined in the first instance to hear Mr. Harper in support of the petition of Jacob S. Pickering.

Mr. Nicholson said he was instructed by the managers again to state that they were ready to support the articles of impeachment. They, however, not being at present under the consideration of the Senate, they did not consider themselves under

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<sup>1</sup> Annals, p. 333.

any obligation to discuss a preliminary question raised by a third person unauthorized by the person charged. He was therefore instructed to state to the Senate that the managers would, under these circumstances, retire, and take the opinion of the House of Representatives respecting their further procedure.

The managers thereupon retired.

Then a proposition that the Senate retire to its private chamber was disagreed to, only six voting aye.

Mr. John Quincy Adams, apparently to second a suggestion of Mr. James Jackson, of Georgia, that proceedings should be delayed until the Senate had heard from the managers of the House of Representatives, moved an adjournment, but the motion was disagreed to, only 10 voting aye.

A motion by Mr. Robert Wright, of Maryland, that the counsel in support of the petition of J. S. Pickering be not heard until the return of the managers, or until their intention should be signified, was disagreed to, the ayes being seven.

Then Mr. Harper rose and presented affidavits, evidently *ex parte*, to show the insanity of Judge Pickering. One affidavit expressing the opinion that Judge Pickering could not “from his bodily infirmities” proceed on a journey to Washington, was ruled out by the President, as the order of the Senate confined the proof to the single allegation of insanity. On the presentation of another affidavit the President ruled that only the parts relating to insanity should be read.

After the reading of the affidavits,<sup>1</sup> Mr. Harper said this was the testimony on which he founded the application—which was to postpone the trial until such time as the court might think fit, in order to take depositions.

The President said:

It does not seem to me proper to receive any motion from you. The Senate will attend to what you have said and take proper order upon it.

Mr. Harper thereupon addressed the court briefly, expressing the wish that opportunity should be allowed and the necessary facilities afforded to obtain testimony.

The court thereupon adjourned.

In the House of Representatives,<sup>2</sup> meanwhile, a short time after the managers returned from the court, Mr. Nicholson, in their behalf, made to the House of Representatives the following communication:

That on Friday, the 2d of March, the managers, agreeably to the directions of the House, appeared at the bar of the Senate, to support the said articles of impeachment, when John Pickering was three times solemnly called, but did not answer or appear, either in person or by counsel. The President of the Senate then stated that he had received a letter, signed R. G. Harper, accompanying a petition, signed Jacob S. Pickering, who called himself the son of the party charged. The petition being read, it was found to contain a statement of a variety of matter, particularly the insanity of Judge Pickering, upon which the prayer of the petition was founded for a postponement of the trial to some future day. Mr. Harper was called to the bar of the Senate; he entered, and stated that he wished it to be distinctly understood that he did not appear at the bar of the Senate as counsel for John Pickering, from whom he had received no authority for that purpose; but that his object was to support the facts contained in the petition of Jacob S. Pickering, and the prayer thereof. There was a short pause, when Mr. Harper rose again and inquired whether his appearance in support of the petition would be construed as the appearance of John Pickering, by counsel. The President of the Senate answered, he presumed that Mr. Harper's appearance would not be considered as the appearance of John Pickering by counsel.

<sup>1</sup>Annals, p. 342.

<sup>2</sup>House Journal, pp. 625, 626; Annals, p. 343.

The managers, under these circumstances, felt themselves bound to object to Mr. Harper's being heard in any other capacity than as counsel for the party who was impeached; and briefly stated their reasons for the objection.

The Senate withdrew to a private chamber, where it is presumed the question was debated. The managers again appeared at the bar of the Senate this day, and were informed by the President that it had been resolved to hear Mr. Harper in support of the allegations contained in the petition of Jacob S. Pickering, and the prayer thereof. The managers inquired at what point of time it was intended that Mr. Harper should be heard, and whether this was to be a measure preliminary to the trial. The President of the Senate declared that he could not undertake to explain the resolutions of the Senate, but that their sense must be collected from the resolutions themselves. The managers then offered themselves ready for trial, declaring that they were prepared to open the prosecution on behalf of the House of Representatives, and that the witnesses were ready to prove the facts charged in the articles of impeachment. Upon this offer being made, the President of the Senate stated that he considered it to be the sense of the Senate that Mr. Harper was to be heard before the trial commenced.

The managers considered this as an irregular step, and not believing that they ought to discuss any petition presented to the Senate from a person who was not a party to the impeachment, and this, too, before the party charged, although duly notified, had appeared, either in person or by attorney, withdrew from the Senate Chamber. They will not feel themselves either bound or authorized to appear again until the Senate shall inform them that they are prepared to proceed in the trial, unless specially directed by this House.

Mr. John Smilie, of Pennsylvania, thereupon proposed the following:

*Resolved*, That this House doth approve of the conduct of the managers appointed to support the articles of impeachment in the case of John Pickering, as stated in their report of this day, and that the said managers do not appear at the bar of the Senate, until they shall be specially instructed by this House.

There was objection to the resolution on the ground that it was not necessary for the House to express its opinion of the conduct of the managers at every stage. There was so much objection that Mr. Smilie on the next day withdrew the resolution.

### **2335. Pickering's impeachment continued.**

**After hearing evidence as to the sanity of the accused, the court of impeachment notified the House of its readiness to hear the managers on the articles.**

**There being no appearance for Judge Pickering, witnesses presented by the managers were not cross-examined, except for a few questions by the Presiding officer.**

On March 7,<sup>1</sup> in the high court of impeachments, it was ordered that the Secretary inform the House of Representatives that the court was open and ready to receive and hear the managers in support of the articles of impeachment. This motion was agreed to by a vote of yeas 19, nays 8.

Accordingly, on March 8,<sup>2</sup> the court was opened, the managers attended, and one of them, Mr. Early, after opening remarks, proceeded to produce testimony in support of the first article of impeachment, and then, in order, evidence supporting the other articles. This evidence consisted of the reading of statutes of the United States, an attested copy of the record of the court, with the seal of said court annexed, and the examination of witnesses.

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<sup>1</sup> Annals, p. 345; House Journal, pp. 626, 627.

<sup>2</sup> Annals, p. 345. The Senate Journal simply records the fact of the sitting of the court of impeachments on this as on other days.

Judge Pickering not being represented by counsel, the witnesses were not cross-examined, except in certain instances<sup>1</sup> when the President addressed questions to a witness.

The testimony tended to substantiate the charge that the said judge was an inebriate.

Mr. Nicholson then informed the court that the managers here closed the testimony, and then the managers withdrew.

**2336. Pickering's impeachment, continued.**

**No defense being made in the Pickering impeachment, the two Senators from the State of the accused were examined at suggestion of the court.**

**In the Pickering case one of the managers submitted the case finally without extended argument.**

**The Senate declined to postpone the Pickering trial after the evidence had been submitted.**

On March 9,<sup>2</sup> on the suggestion of Mr. Tracy, the Senator who was chairman of the committee having in charge the preparation of forms of procedure for the trial, Simeon Olcott and William Plumer, the Senators from New Hampshire, were respectively sworn and affirmed. They testified that in their opinion the troubles of Judge Pickering were not due to intemperance. Mr. Plumer thought the intemperance the result of insanity.

Four witnesses were introduced, at whose suggestion does not appear, and testified in rebuttal.

Mr. Nicholson then observed that the managers would withdraw for a few minutes. Accordingly they withdrew, and shortly returned.

Mr. Nicholson then, in their behalf, addressed the court briefly, saying that he was directed by the managers to inform the court that they submitted the articles on the evidence offered, entertaining no doubt of full justice being done by the decision of the Senate.

Thereupon the managers retired.

Mr. Tracy then offered the following motion:

*Resolved*, As the opinion of this court, that the proceedings on the articles of impeachment exhibited by the House of Representatives against John Pickering be postponed to the — day of — next.

This resolution was disagreed to, yeas 10, nays 20.

Thereupon the court adjourned to the next day.

**2337. Pickering's impeachment, continued.**

**In the absence of the Vice-President a President pro tempore was chosen to preside over the court trying Judge Pickering.**

**The Senate informed the House of the day and hour fixed for pronouncing judgment in the Pickering impeachment.**

**The court of impeachment declined to postpone judgment until Judge Pickering could be brought personally before it for inspection as to sanity.**

<sup>1</sup> Annals, p. 357.

<sup>2</sup> Annals, pp. 359, 362.

On March 10<sup>1</sup> the record of the court of impeachment shows:

Mr. Franklin was chosen President pro tem.

The Journal of the Senate for this day shows that the Vice-President was absent and that the Senate chose Mr. Jesse Franklin, of North Carolina, President pro tempore.<sup>2</sup>

On this day, also, the Senate, before sitting as high court of impeachments, ordered,<sup>3</sup> by a vote of yeas 20, nays 9—

That the Secretary do acquaint the House of Representatives that the court of impeachments will, on Monday at 12 o'clock, proceed to pronounce judgment on the articles of impeachment exhibited by them against John Pickering.

Afterwards, the high court of impeachments having convened, Mr. Samuel White, of Delaware, submitted the following:<sup>4</sup>

*Resolved*, That this court is not at present prepared to give their final decision upon the articles of impeachment preferred by the House of Representatives against John Pickering, district judge of the district of New Hampshire, for high crimes and misdemeanors, the said John Pickering not having appeared, or been heard, by himself or by counsel; and it having been suggested to the court by Jacob S. Pickering, son of the said John Pickering, that the said John Pickering, at the time of the conduct charged against him in the said articles of impeachment as high crimes and misdemeanors, was, and yet is, insane, which suggestion has been supported by the testimony of two members of the court and by the affidavits of sundry persons, whose integrity is unimpeached; and it being further suggested in the said petition that at such future day as the court may appoint the body of the said Pickering shall be produced in court, and further testimony in his behalf, which will enable the court to judge for themselves as to the insanity of the said John Pickering and to act more understandingly in the premises: but that the said John Pickering, owing to bodily infirmity, could not be brought to court at present, at so great a distance, and at this inclement season of the year, without imminent hazard of his life.

Mr. Wilson Carey Nicholas, of Virginia (not Mr. Nicholson, the House manager) and Mr. Robert Wright, of Maryland, and others, objected to the resolution as not being in order.

Mr. Joseph Anderson, of Tennessee, asked if it would be in order to move an amendment to it.

Mr. John Quincy Adams, of Massachusetts, said he would object to any amendment to it, as, by the rule of the court, a gentleman had a right to a vote upon any specific proposition he might please to submit connected with the trial.

Mr. Samuel White, of Delaware, called for the reading of the rule.

Mr. Anderson then moved that the resolution submitted by the gentleman from Virginia yesterday be taken up as being entitled to be acted upon first.

The President pro tempore declared that the resolution of the gentleman from Delaware was fairly before the court and must be disposed of in some way before anything else could be taken up.

A motion for postponing the further consideration of it was then made and withdrawn.

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<sup>1</sup> Annals, p. 362; Senate Journal, p. 372.

<sup>2</sup> It seems hardly necessary to suppose that the court of impeachments ratified this selection of the Senate. The records of the court are not made with technical care, and the entry probably refers to action of the Senate.

<sup>3</sup> Senate Journal, p. 373; House Journal, p. 632. The record of the court of impeachment also shows the adoption of this order.

<sup>4</sup> Annals, p. 362.

Mr. Nicholas hoped it would not be permitted to go upon the journals of the court.

Mr. Jackson moved the previous question, viz: "Shall the main question be now put?"

Mr. White hoped that whatever question should be taken on the subject should be by yeas and nays; that his resolution and the manner in which it might be got rid of should be seen and understood.

Mr. Anderson then moved to amend the resolution by striking out the words, "not having been heard by himself or counsel," and all after the words "was, and yet is, insane" to the end of the resolution.

On motion of Mr. Jonathan Dayton, of New Jersey, the galleries were cleared and the doors closed.

At 3 o'clock the doors were opened and the question was taken upon the resolution as at first submitted—yeas 9, nays 19.

So the resolution was disagreed to.

**2338. Pickering's impeachment, continued.**

**The House attended its managers to the Senate to hear the Senate pronounce judgment in the Pickering impeachment.**

**The House having heard judgment in the Pickering impeachment, the managers made no report, and no record appears on the House Journal.**

On March 12,<sup>1</sup> in the House of Representatives, it was

*Ordered*, That this House do now attend in the Senate Chamber to hear the Senate, in their capacity of a court of impeachments, pronounce judgment on the articles of impeachment exhibited against John Pickering, judge of the district court of the United States for the district of New Hampshire, agreeably to the notification contained in a message from the Senate, by their Secretary, on Saturday last.

The Speaker, attended by the Members, accordingly withdrew to the Senate Chamber for the purpose expressed in the foregoing order; and being returned, etc., proceeded to other business. The House Journal has no record of the decision of the court.

**2339. Pickering's impeachment continued.**

**The court determined to confine the question in the judgment on Judge Pickering to the simple question of guilt on the charges.**

**The court, in the Pickering judgment, declined to permit an expression as to whether the offenses constituted high crimes and misdemeanors.**

**In conformity with English precedents the Senate pronounced judgment, article by article, in the Pickering case.**

**The final question in the Pickering judgment was on the removal of the accused from office.**

Meanwhile, on the same day, the Court of Impeachment had convened, and Mr. Samuel White, of Delaware, inquired whether the question was to be taken on each article separately, as practiced in the House of Lords, or on the whole

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<sup>1</sup> House Journal, pp. 642, 643; Annals, p. 1169.

together. He hoped upon each separately, as gentlemen might wish to vote affirmatively on some and negatively on others, from which privilege they must be precluded by giving but one general vote of guilty or not guilty. He would, therefore, beg leave to submit to the consideration of the court the following as the form of the question to be put to each member upon each article of impeachment, viz:

Is John Pickering, district judge of the district of New Hampshire, guilty of high crimes and misdemeanors upon the charges contained in the—article of impeachment or not guilty?

For this form of question, Mr. White observed, he could adduce precedent. It was nearly the same as was used in the very celebrated case of Warren Hastings, and he presumed would collect the sense of the court with as much certainty as any that could be proposed, which was his only object.

After some conversation, Mr. Joseph Anderson, of Tennessee, moved the following as the form and prayed that it might be taken up:

Is John Pickering, district judge of the district of New Hampshire, guilty as charged in the—article of impeachment exhibited against him by the House of Representatives?

The President pro tempore declared that it would not be in order to take it up till the motion of the gentleman from Delaware was acted upon, as it was first before the court and had not yet been disposed of in any way, and was about to put the question following upon it, when—

Mr. Joseph Anderson, of Tennessee, mentioned that he had objections to the form of question proposed by the gentleman from Delaware and moved to strike out the words “of high crimes and misdemeanors.”

On motion, the galleries were cleared and the doors closed. After some debate, Mr. White’s form of question was lost—only 10 voting in favor of it and 18 against it.

Mr. Anderson’s form was then adopted—yeas 18, nays 9.

Mr. White stated that he believed Judge Pickering had practiced much of the indecent and improper conduct charged against him in the articles of impeachment; that he had been seen intoxicated and heard to use very profane language upon the bench; that he had acted illegally and very unbecoming a judge in the case of the ship *Eliza*, as charged against him in the articles, but that he was very far from believing that any part of his conduct amounted to high crimes and misdemeanors or that he was in any degree capable of such an offense, because, after the testimony the court had heard, scarcely a doubt could remain in the mind of any gentleman but that the judge was actually insane at the time; and Mr. White wished to know whether it was to be understood by the two last votes just taken that the court intended only to find the facts and to avoid pronouncing the law upon them; that they could have it in view to say merely that Judge Pickering had committed the particular acts charged against him in the articles of impeachment and upon such a conviction, to remove him, without saying directly or indirectly whether those acts amounted to high crimes and misdemeanors or not; for in the several articles they are not so charged, though judgment is demanded upon them as such. Upon such a principle and by such a mode of proceeding good behavior, he observed, would be no longer the tenure of office; every officer of the

Government must be at the mercy of a majority of Congress, and it would not hereafter be necessary that a man should be guilty of high crimes and misdemeanors in order to render him liable to removal from office by impeachment, but a conviction upon any facts stated in articles exhibited against him would be sufficient.

Mr. Jonathan Dayton, of New Jersey, observed that the honorable gentleman from Virginia seemed to be offended at the language of his honorable friend from Delaware, who, in speaking of the proceedings on the impeachment, had called them a mere mockery of trial. To such terms, however, the ears of that honorable gentleman must be accustomed and accommodated, for, whilst either he or his friend had the honor of a seat in that body, they should designate this trial by no other character. It deserved no better appellation and would be thus characterized in all parts of the United States where these proceedings could be seen and understood.

That the conclusion of this exhibition might perfectly correspond with its commencement and progress, that the catastrophe might comport with the other parts of the piece, the Senate were now to be compelled, by a determined majority, to take the question in a manner never before heard of on similar occasions. They were simply to be allowed to vote, whether Judge Pickering was guilty as charged—that is, guilty of the facts charged in each article—aye or no. If voted guilty of the facts, the sentence was to follow, without any previous question whether those facts amounted to a high crime and misdemeanor. The latent reason of this course was, Mr. Dayton said, too obvious. There were numbers who were disposed to give sentence of removal against this unhappy judge, upon the ground of the facts alleged and proved, who could not, however, conscientiously vote that they amounted to high crimes and misdemeanors, especially when committed by a man proved at the very time to be insane and to have been so ever since, even to the present moment. The Constitution gave no power to the Senate, as the High Court of Impeachments, to pass such a sentence of removal and disqualification, except upon charges and conviction of high crimes and misdemeanors. The House of Representatives had so charged the judge and had exhibited articles in maintenance and support, as they themselves declared, of those charges. The Senate had received and heard the evidence adduced by the managers and had gone through certain forms of a trial, and they now, by a majority, dictated the form of a final question the most extraordinary, unprecedented, and unwarrantable. For himself, Mr. Dayton said, he felt at a loss how to act. He was free to declare that he believed the respondent guilty of most of the facts stated in the articles, but, considering the deranged state of intellect of that unfortunate man, he could not declare him guilty in the words of the Constitution; he could not vote it a conviction under the impeachment. Let the question be stated, as had been proposed by his honorable friend from Delaware, agreeably to the form observed in the well recollected case of Warren Hastings:

Is John Pickering guilty of a high crime and misdemeanor upon the charge contained in the first, the second, the third, or the fourth article of the impeachment, or not guilty?

Or, if the court preferred it, he should have no objection against taking the preliminary question, whether guilty of the facts charged in each article, provided

they would allow it to be followed by another most important question, viz: Whether those facts, thus proved and found, amounted to a conviction of high crimes and misdemeanors, as charged in the impeachment, and expressly required by the Constitution. Both these forms of stating the question were, it was now too evident, intended to be refused by the majority, and thus a precedent established for removing a judge in a manner unauthorized by that charter.

Mr. White asked whether, after the question now before the court—which goes merely to settle, as gentlemen themselves believe, the point whether Judge Pickering has committed the particular acts charged against him in the articles of impeachment or not—should be decided, it would then be in his power to obtain a vote of the court upon another question which, without presenting at present, he would state in his place, viz: Is it the opinion of this court that John Pickering is guilty of high crimes and misdemeanors, upon the charges exhibited against him in the articles of impeachment preferred by the House of Representatives?

The President *pro tempore* replied that he thought such a motion could not be received after the vote had been taken.

Mr. Wright submitted the following as the final question, viz:

Is the court of opinion that John Pickering be removed from the office of judge of the district court of the district of New Hampshire?

This form was agreed to.

**2340. Pickering's impeachment continued.**

**In the Pickering impeachment certain Senators retired from the court because dissatisfied with form of the question on final judgment.**

Messrs. John Armstrong, of New York; Stephen R. Bradley, of Vermont; David Stone, of North Carolina; Jonathan Dayton, of New Jersey; and Samuel White, of Delaware, retired from the court. The two last not because they believed Judge Pickering guilty of high crimes and misdemeanors, but because they did not choose to be compelled to give so solemn a vote upon a form of question which they considered an unfair one, and calculated to preclude them from giving any distinct and explicit opinion upon the true and most important point in the cause, viz, as to the insanity of Judge Pickering, and whether the charges contained in the articles of impeachment, if true, amounted in him to high crimes and misdemeanors or not.

**2341. Pickering's impeachment continued.**

**In final judgment the court found Judge Pickering guilty in all the articles and decreed his removal from office.**

**Final judgment being pronounced, the court of impeachment in Pickering's case adjourned sine die.**

The question was then taken in the presence of the managers and of the House of Representatives, and decided as follows:

On the question—

Is John Pickering, district judge of New Hampshire, guilty as charged in the first article of impeachment exhibited against him by the House of Representatives?

It was determined in the affirmative, yeas 19, nays 7.

The same question was put, in the same way, on the three remaining articles, and decided by a like result.

On the question—

Is the court of opinion that John Pickering be removed from the office of judge of the district court of the district of New Hampshire?

It was determined in the affirmative, yeas 20, nays 6.

The court then adjourned sine die.

The Senate Journal<sup>1</sup> records simply the fact of the sitting and adjournment of the court, as on other days, and makes no mention of the result of the trial.

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<sup>1</sup>Senate Journal, p. 374.