Chapter LXXVIII.

THE IMPEACHMENT AND TRIAL OF CHARLES SWAYNE.

2469. The impeachment and trial of Charles Swayne, judge of the northern district of Florida.

A Member, rising in his place, impeached Judge Swayne both on his own responsibility and on the strength of a legislative memorial.

Discussion as to the degree of definiteness of charges required to justify the House in ordering an investigation.

The House declined to have the impeachment of Judge Swayne considered by a committee before ordering an investigation.

Form of resolution instructing the Judiciary Committee to examine the charges against Judge Swayne.

On December 10, 1903,[1] Mr. William B. Lamar, of Florida, claiming the floor for a question of privilege, said:

Mr. Speaker, I believe that the impeachment of a civil officer by this House is a question of privilege. I have made a joint resolution adopted by the legislature of the State of Florida a part of the resolution which I desire to submit to this House for its adoption. In pursuance of this joint resolution of the legislature of the State which I have the honor in part to represent, I impeach Charles Swayne, judge of the northern district of the State of Florida, of high crimes and misdemeanors; and the resolution which I have prepared in accordance with former proceedings of this House in like cases:

[1] Second session Fifty-eighth Congress, Journal, p. 37–1 Record, pp. 95, 103.

"Whereas the following joint resolution was adopted by the legislature of the State of Florida:

"Senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida.

"Be it resolved by the legislature of the State of Florida:

"Whereas Charles Swayne, United States district judge of the northern district of Florida, has so conducted himself and his court as to cause the people of the State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences and have been so corruptly influenced;

"Whereas it also appears that the said Charles Swayne is guilty of a violation of section 551 of the Revised Statutes of the United States in that he does not reside in the district for which he was appointed and of which he is judge, but resides out of the State of Florida and in the State of Delaware or State of Pennsylvania, in open and defiant violation of said statute, and has not resided in the northern district of Florida, for which he was appointed, in ten years, and is constantly absent from said district, only making temporary visits for a pretense of discharging his official duties;

"Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interests of the entire State of Florida, and his constant absence from his supposed district causes great sacrifice of their rights and annoyance and expense to litigants in his court;

"Whereas it also appears that the said Charles Swayne is not only a corrupt judge, but that he is ignorant and incompetent, and that his judicial opinions do not command the respect or confidence of the people;

"Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is, in effect, legalized robbery and a stench in the nostrils of all good people:

"Be it resolved by the house of representatives of the State of Florida (the senate concurring), That our Senators and Representatives in the United States Congress be, and they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the proceedings of the United States circuit and districts court for the northern district of Florida by Charles Swayne as United States judge for the northern district of Florida, and of his acts and doings as such judge, to the end that he may be impeached and removed from such office.

"Be it resolved further, That the secretary of state of the State of Florida be, and is hereby, instructed to certify to each Senator and Representative in the Congress of the United States, under the great seal of the State of Florida, a copy of this resolution and its unanimous adoption by the legislature of the State of Florida.

"STATE OF FLORIDA, OFFICE OF THE SECRETARY OF STATE.

"UNITED STATES OF AMERICA, *State of Florida, ss:*

"I, H. Clay Crawford, secretary of state of the State of Florida, hereby certify that the foregoing is a true and exact copy of senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida, passed by the legislature of Florida, session of 1903, and on file in this office.

"Given under my hand and the great seal of the State of Florida at Tallahassee, the capital, this the 7th day of September, A. D. 1903.

[L. S.]

"'H. CLAY CRAWFORD, *Secretary of State.*

"Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Charles Swayne, judge of the United States district court for the northern district of Florida, and say whether said judge has held terms of his court as required by law; whether he has continuously and persistently absented himself from the said State, and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that district of the benefits of the court therein to amount to a denial of justice; whether the said judge has been guilty of corrupt conduct in office, and whether his administration of his office has resulted in injury and wrong to litigants of his court.

"And in reference to this investigation the said committee is hereby authorized and empowered to send for persons and papers, administer oaths, take testimony, and to employ a clerk and stenographer, if necessary, to send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee. And the said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant-at-arms, by himself or deputy, who shall serve the processes of said committee and subcommittee and execute its orders, and shall attend the sittings of the same as ordered and directed thereby. And that the expense of such investigation shall be paid out of the contingent fund of the House."

Mr. Charles H. Grosvenor, of Ohio, raised the question that the specifications made by the Member from Florida were not sufficiently specific; and after debate Mr. Lamar said:

I charge this judge, first, with continued, persistent, and, if you please, pernicious absenteeism from his district; second, with corrupt official conduct, based upon several matters. * * * Third, I charge Judge Swayne with maladministration of judicial matters in his court, so much so as to embarrass bankrupts and annihilate the assets of litigants and others appearing within his jurisdiction

Renewed objection being made that charges should be more definite and better substantiated in order to initiate proceedings so important, Mr. John F. Lacey, of Iowa, moved that the resolution be referred to the Committee on the Judiciary.

After debate the motion of Mr. Lacey was disagreed to, ayes 53, noes 129.

The resolution was then agreed to without division.

2470. The Swayne impeachment continued.

The resolution impeaching Judge Swayne was reported from a divided committee.

The committee investigating Judge Swayne took testimony in the Judge's district as well as in Washington.

In the investigation of the conduct of Judge Swayne the accused was present in person with counsel and argued his own case.

In investigating the conduct of Judge Swayne both complainants and accused were permitted to introduce sworn testimony.

On March 25, 1904, Mr. Henry W. Palmer, of Pennsylvania, from the Committee on the Judiciary, presented the report [1] of that committee. The report says:

Testimony was taken in Pensacola, Tallahassee, and Jacksonville, Fla., and in the city of Washington upon several days. At all the hearings the Hon. Charles Swayne was present himself and by counsel, except at the last hearings in Washington, when he appeared in propria persona and argued his case before the subcommittee. All the witnesses asked for by the complainants and the respondent were sworn. Their evidence was reduced to writing and is presented with this report.

Specifications of the particular matters covered by the general charges were furnished the committee by the complainants. They were as follows:

Specification 1.—That the said Charles Swayne, judge of the United States court in and for the northern district of Florida, for ten years, while he has been such judge, was a nonresident of the State of Florida, and resided in the State of Delaware. That he never pretended to reside in Florida until May, 1903. That during said time of his nonresidence, by such nonresidence, he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failing to be in reach for the disposition of admiralty and chancery matters and other matters arising between terms of court needing disposition.

Specification 2.—That said Charles Swayne, as such judge, appointed one B. C. Tunison as United States commissioner; that it was charged that it was an improper appointment, and that testimony was offered to such effect before said appointment.

[1] House Report No. 1905.

Specification 3.—That the said Charles Swayne, as such judge, appointed and maintains one John Thomas Porter as United States commissioner at Marianna, but that said Porter does not reside at Marianna, but at Grand Ridge, 16 miles away, and is never at Marianna or at his office except when notified of an arrest, necessitating people having business with the United States commissioner, often at expense and inconvenience, to go to Grand Ridge, and necessitating the holding of prisoners often for a day or two, at their inconvenience, and in imprisonment at the expense of the Government, until said Porter sees fit to come to Marianna.

The said Swayne, although there is great necessity for a commissioner at Marianna, has refused to appoint such.

Specification 4.—That said Swayne, in the administration of his court, has been guilty of great partiality and favoritism to one B. C. Tunison, mentioned in specification No. 2, and a practicing attorney in said court. That so great and well known has this partiality and favoritism become that it has created the general impression that to succeed in that court before the said Swayne it is necessary to retain the said Tunison.

Specification 5.—That said Swayne has been guilty of oppression and tyranny in his office, incorrectly and oppressively and without just cause imprisoning one W. C. O'Neal, one E. T. Davis, and one Simeon Belding upon feigned, fictitious, and false charges of contempt of his said court.

Specification 6.—That said Charles Swayne has willfully, negligently, and corruptly maladministered bankruptcy cases in his court, to the extent that the assets of bankrupts have, in all or nearly all cases, been squandered and dissipated in paying extraordinary fees and expenses, and never paying any dividends to creditors.

Specification 7.—That said Charles Swayne was guilty of oppression and tyranny in his office to one Charles Hoskins, upon an alleged contempt resulting in the suicide of the said Hoskins, and said alleged contempt proceedings being brought for the purpose of breaking down and injuring one W. R. Hoskins, who was charged in said court with involuntary bankruptcy, but who was defending and resisting such charge.

Specification 8.—That said Swayne corruptly purchased a house and lot in the city of Pensacola while the said house and lot was in litigation in his court.

Specification 9.—Ignorance and incompetency to hold said position. Under this specification many illustrations could be given, among them a case in which he took jurisdiction in admiralty in violation of the treaty between the United States and Sweden and Norway; and in one case, that of Sweet *v.* Owl Commercial Company, in which he charged the jury to exactly and diametrically conflicting theories of law.

Specification 11.—That said Swayne, by reason of his absence from the State, failed to hold the term of court which should have been held at Tallahassee in the fall of the year 1902, during the months of November or December.

Specification 12.—That the said Charles Swayne has been guilty of conduct unbecoming an upright judge, in that he has procured as indorsers on his note, for the purpose of borrowing money, attorneys and litigants having cases pending in his court.

Specification 13.—That the said Charles Swayne has been guilty of maladministration in the affairs of the conduct of his office; that he has discharged people convicted of crime in his court. Illustration, case of Alonzo Love, convicted in the year of 1902, of perjury.

The committee found that the evidence sustained the first, fourth, fifth, and seventh specifications, and concluded:

The charges and specifications not covered by the foregoing findings were not proved by sufficient evidence to warrant action upon them.

Upon the whole case it is plain that Judge Swayne has forfeited the respect and confidence of the bar of his court and of the people of his district who do business there. He has so conducted himself as to earn the reputation of being susceptible to the malign influence of a man of notoriously bad character. He has shown himself to be harsh, tyrannical, and oppressive, unmindful of the common rule of a just and upright judge. He has continuously and persistently violated the plain words of a statute of the United States, and subjected himself to punishment for the commission of a high misdemeanor. He has fined and imprisoned members of his bar for a constructive contempt without the authority of law and without a decent show of reason, either through inexcusable ignorance, a malicious intent to injure,

or a wanton disposition to exercise arbitrary power. He has condemned to a term of imprisonment in the county jail a reputable citizen of the State of Florida over whom he had no jurisdiction, who was guilty of no thought of a contempt of his court, for no offense against him or in the presence of the court, or "in obstruction of any order, rule, command, or decree," and after the accused had purged himself on oath.

For all those reasons Charles Swayne has been guilty of misbehavior in his office of judge and grossly violated the condition upon which he holds this honorable appointment. The honor of the judiciary, the orderly and decent administration of public justice, and the welfare of the people of the United States demand his impeachment and removal from the high place which his conduct has degraded.

It is vitally necessary to maintain the confidence of the people in the judiciary. A weak executive or an inefficient or even dishonest legislative branch may exist, for a time at least, without serious injury to the perpetuity of our free institutions, but if the people lose faith in the judicial branch, if they become convinced that justice can not be had at the hands of the judges, the next step will be to take the administration of the law into their own hands and do justice according to the rule of the mob, which is anarchy, with which freedom can not coexist.

The Committee on the Judiciary recommend the adoption of the following resolution:

"Resolved, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high misdemeanor."

A minority of the committee composed of Messrs. J. N. Gillett, of California, Robert M. Nevin, of Ohio, D. S. Alexander, of New York, George A. Pearre, of Maryland, Charles E. Littlefield, of Maine, and Richard W. Parker, of New Jersey, joined in minority views dissenting from the conclusions of the committee, and holding that the evidence did not justify impeachment.

2471. The Swayne impeachment continued.

The impeachment of Judge Swayne was postponed to the next session of Congress for further investigation.

In the second investigation Judge Swayne testified on his own behalf and was cross-examined.

The rule as to the pertinency of evidence to the charges was enforced in the investigation of Judge Swayne's conduct.

The closing arguments in the Swayne investigation were heard before the subcommittee which had taken the evidence.

On April 7, 1904,[1] Mr. Palmer offered as a question of privilege the following, which was agreed to without division:

Resolved, That the consideration of the resolution (No. 274) reported by the Committee on the Judiciary in the matter of the impeachment of Charles Swayne, judge of the district court of the United States in the northern district of Florida, be postponed until the 13th day of December, 1904, and that the Committee on the Judiciary be, and it is hereby, authorized to take such further testimony as may be offered by the complainants or the respondent, and report the same to the House, with its conclusions thereon. The said committee and subcommittee shall have all the authority conferred by the original resolution (No. 86), and the further authority to take testimony when Congress is not in session.

In accordance with this resolution a subcommittee composed of Messrs. Palmer, Clayton, and Gillett took testimony at various times from February 13 to November 29, 1904.[2] In the course of these proceedings[3] Judge Swayne, besides having

[1] Record, p. 4431.

[2] See published evidence, "Washington: Government Printing Office, 1904."

[3] See page 211 of testimony.

counsel, also appeared for himself, offered evidence, and cross-examined witnesses; and Hon. B. S. Liddon appeared for the complainants. In the course of the testimony Judge Swayne made "a statement to the stenographer," which is published with the evidence, and later it appears that "Charles Swayne, having been recalled, testified as follows."[1] After he had concluded his direct statement he was cross-examined by Mr. Liddon at length.[2]

As to the character of the testimony permitted in the examination before the subcommittee, the chairman, Mr. Palmer, stated[3] that no testimony would be received on irrelevant questions or on charges which, if proven, would not be considered grounds of impeachment. Hearsay testimony was, on objection, ruled out.[4] On the question of relevancy one notable ruling was made.[5] Judge Swayne was charged with having certified as expenses sums greater than he had actually expended. His counsel attempted to introduce documents to show that other Federal judges did likewise. This evidence was excluded by the subcommittee on the ground that it was not relevant to Judge Swayne's case. In the course of the proceedings a question arose as to whether the briefs or arguments should be heard before the subcommittee or before the whole Judiciary Committee.[6] In fact, they were heard before the subcommittee.

On December 9, 1904,[7] Mr. Palmer reported from the Judiciary Committee the testimony, with the following resolution, adopted by a majority of the committee:

Resolved, That the Committee on the Judiciary respectfully report to the House the testimony taken in the case of Charles Swayne since Congress adjourned, with the conclusion that in their opinion said testimony strengthens the case against the said Charles Swayne.

The minority views, submitted by Mr. Richard Wayne Parker, of New Jersey, and concurred in by Messrs. John J. Jenkins, of Wisconsin; D. S. Alexander, of New York; Vespasian Warner, of Illinois; Charles E. Littlefield, of Maine; Lot Thomas, of Iowa; J. N. Gillett, of California, and George A. Pearre, of Maryland, contended that the additional evidence weakened rather than strengthened the case, except as to the charge as to false certificates of expenses of travel. On this point the minority say:

Evidence as to the alleged practice of other judges in this respect was offered and excluded, and we think properly. It would have been competent for him, when a witness in his own behalf, to have stated why he made those certificates. As a witness he answered and explained every other charge. This charge he made no effort as a witness to answer or explain. The inference from the record, on general principles, is that the charge is admitted to be true and that he has no answer or explanation thereto. Whether a satisfactory explanation can be made we do not say. We must take the record as it stands.

Upon this record, unanswered and unexplained, we are of the opinion that in this particular an impeachable offense has been made out.

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[1] Pages 240, 578.

[2] Page 591.

[3] Page 7 of testimony; also p. 240.

[4] Pages 8, 46.

[5] Pages 433–435.

[6] Pages 242, 243.

[7] House Report No. 3021, third session Fifty-eighth Congress.

2472. The Swayne impeachment continued.

Form of resolutions impeaching Judge Swayne and directing that the impeachment be carried to the bar of the Senate.

The House decided that the articles impeaching Judge Swayne should be prepared by a select committee.

Constitution of the committee to carry the Swayne impeachment to the Senate.

The Speaker, in the committee to draw the articles in the Swayne case, gave minority representation to those opposed generally to the impeachment.

On December 13, 1904,[1] the reports were considered in the House, the pending resolution being:

Resolved, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high misdemeanor.

At the conclusion of the debate, on motion of Mr. Palmer, the House agreed to the following amendment:

Amend by striking out all after the word *"Resolved"* and inserting "That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high crimes and misdemeanors."

The previous question was then ordered on the amendment and original resolution by a vote of ayes 198, noes 61. The amendment was then agreed to, and then the resolution as amended was agreed to without division.

Then, on motion of Mr. Palmer, it was—

Resolved, That a committee of five be appointed 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 Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, 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; and that the committee do demand that the Senate take order for the appearance of said Charles Swayne to answer said impeachment.

Mr. Palmer then offered[2] the following:

Resolved, That a committee of seven be appointed to prepare and report articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida, with power to send for persons, papers, and records.

Mr. Palmer explained that this resolution was in accordance with all the precedents except that of the Belknap case, wherein the Judiciary Committee had framed the articles.

Mr. Charles E. Littlefield, of Maine, proposed this amendment:

Strike out "a committee of seven is appointed" and insert "the Committee on the Judiciary be empowered."

The question being taken, the amendment was disagreed to, ayes 113, noes 140. Then the original resolution was agreed to without division.

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[1] Third session Fifty-eighth Congress; Record, pp. 214–249.

[2] House Journal, p. 51; Record, p. 248.

On the same day[1] the Speaker[2] appointed the following committee to carry the impeachment to the bar of the Senate: Messrs. Henry W. Palmer, of Pennsylvania; John J. Jenkins, of Wisconsin; J. N. Gillett, of California; Henry D. Clayton, of Alabama, and David H. Smith, of Kentucky. All of these were members of the Committee on the Judiciary, two of them belonged to the minority party in the House, and two had signed the minority views which accompanied the report from the Judiciary Committee.

On December 14,[3] the Speaker announced the appointment of the following committee to prepare articles of impeachment: Messrs. Henry W. Palmer, of Pennsylvania; J. N. Gillett, of California; Richard Wayne Parker, of New Jersey; Charles E. Littlefield, of Maine; Samuel L. Powers, of Massachusetts; Henry D. Clayton, of Alabama, and David A. De Armond, of Missouri. Three of these gentlemen had signed the minority views on the question of impeachment. The minority party in the House was also represented by three members of the committee.

2473. The Swayne impeachment continued.

Forms and ceremonies of presenting the Swayne impeachment in the Senate.

On December 14,[4] in the Senate, a message from the House of Representatives by Mr. W. J. Browning, its Chief Clerk, was delivered, as follows:

Mr. President, I am directed by the House of Representatives to communicate to the Senate the following resolution:

"Resolved, That a committee of five be appointed 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 Charles Swayne, judge of the district court of the United States, for the northern district of Florida, of high crimes and misdemeanors in office, 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, and that the committee do demand that the Senate take order for the appearance of said Charles Swayne to answer said impeachment.

"The Speaker announced the appointment of Mr. Palmer of Pennsylvania, Mr. Jenkins of Wisconsin, Mr. Gillett of California, Mr. Clayton of Alabama, and Mr. Smith of Kentucky, members of said committee."

The Assistant Sergeant-at-Arms (B. W. Layton) announced the presence of the committee from the House of Representatives.

The President pro tempore[5] said:

The Senate will receive the committee from the House of Representatives.

The committee from the House of Representatives was escorted by the Sergeant-at-Arms (D. M. Ransdell) to the area in front of the Vice-President's desk, and its chairman, Mr. Palmer, said:

Mr. President, in obedience to the order of the House of Representatives we appear before you, and in the name of the House of Representatives and of all the people of the United States of America we do impeach Charles Swayne, judge of the district court of the United States for the northern district of

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[1] House Journal, p. 51; Record, p. 249.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] House Journal, p. 55; Record, p. 277.

[4] Senate Journal, p. 38; Record, p. 257.

[5] William P. Frye, of Maine, President pro tempore.

Florida, of high crimes and misdemeanors in office; and we do further inform the Senate that the House of Representatives will in due time exhibit articles of impeachment against him and make good the same. And in their name we demand that the Senate shall take order for the appearance of the said Charles Swayne to answer the said impeachment.

The President pro tempore said:

Mr. Chairman and gentlemen of the committee of the House of Representatives, the Chair begs to assure you that the Senate will take proper order in the premises, notice of which will be given to the House.

The committee of the House of Representatives thereupon retired from the Chamber.

On the same day, in the Senate,[1] Mr. Orville H. Platt, of Connecticut, presented the following resolution, which was agreed to:

Resolved, That the message of the House of Representatives relating to the impeachment of Charles Swayne be referred to a select committee to consist of five Senators to be appointed by the President pro tempore.

The President pro tempore thereupon appointed Messrs. Platt, of Connecticut; Clarence D. Clark, of Wyoming; Charles W. Fairbanks, of Indiana; Augustus A. Bacon, of Georgia, and Edmund W. Pettus, of Alabama.

In the House of Representatives, on the same day,[2] the committee appointed to go to the Senate and at the bar thereof and, in the name of the House of Representatives and of all the people of the United States, to impeach Judge Charles Swayne, appeared at the bar of the House.

Mr. Palmer being recognized, reported verbally:

Mr. Speaker, in obedience to the order of the House, we proceeded to the bar of the Senate, and, in the name of this body and of all the people of the United States, we impeached, as we were directed to do, Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, and we demanded that the Senate should take order to make him appear before that body to answer for the same; and announced that the House would soon present articles of impeachment and make them good, to which the response was: "Order shall be taken."

On December 15,[3] in the Senate, Mr. Platt, from the select committee, reported the following, which was agreed to by the Senate:

Whereas the House of Representatives, on the 14th day of December, 1904, by five of its Members (Mr. Palmer, of Pennsylvania; Mr. Jenkins, of Wisconsin; Mr. Gillett, of California; Mr. Clayton, of Alabama, and Mr. Smith, of Kentucky), at the bar of the Senate impeached Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, and informed the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and likewise demanded that the senate take order for the appearance of the said Charles Swayne to answer the said impeachment: Therefore,

Ordered, That the Senate will, according to its standing rule and orders in such cases provided, take proper order thereon (upon the presentation of the articles of impeachment), of which due notice shall be given to the House of Representatives.

Ordered, That the Secretary acquaint the House of Representatives herewith.

On the same day,[4] in the House, the message was received, and having been read, was ordered to lie on the table.

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[1] Senate Journal, p. 39; Record, p. 265.

[2] House Journal, p. 56; Record, p. 281.

[3] Senate Journal, p. 40; Record, pp. 295, 296.

[4] House Journal, p. 69; Record, p. 321.

2474. The Swayne impeachment continued.

The articles impeaching Judge Swayne were reported from a divided committee and agreed to by a divided House.

On January 10, 1905,[1] Mr. Palmer, from the select committee appointed to prepare articles of impeachment, presented the report of the majority of that committee as follows:

The select committee appointed to prepare and report articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida, appointed December 13, 1904, submit the following report:

That the evidence heretofore taken in the matter of the impeachment of Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, sustains twelve articles of impeachment, which are submitted herewith, with the recommendation that they be adopted by the House and exhibited to the Senate. [Here followed the articles.]

Messrs. Littlefield, Parker, and Gillett filed minority views. Messrs. Littlefield and Parker in their views said:

The House must establish the truth of these articles, by competent testimony, beyond reasonable doubt.

The only articles which, in our judgment, the record as it now stands would sustain are based upon the certificates of expenses. As to these it was claimed in the hearings that other judges have construed the law as it was construed by Judge Swayne, and evidence was offered to establish that claim and excluded.

We dissent from all the other articles, and especially as to those based upon the contempt proceedings in the Davis, Belden, and O'Neal cases. These cases clearly involved willful and marked contempt of court, and demanded exemplary and summary punishment from any self-respecting court.

The charge as to nonresidence is not supported by such evidence as warrants the adoption of articles in that regard.

The use of the private car, which is the proper subject of adverse criticism, taking into account the fact that there is no intimation or claim that any judicial act was influenced, or attempted to be influenced thereby, is not of such gravity as to justify impeachment proceedings therefor.

The car incident occurred more than ten years ago, and no residence question has existed for more than four years. No statute of limitations can apply, but the great proceeding of impeachment is not to be used as to stale charges not affecting the moral character or the present fitness of the officer to perform his duty.

Mr. Gillett concurred in these views except as to the certificates of expenses, saying:

I concur in all that is said in the foregoing "Views of the minority" except as to the certificates for expenses. At the hearing before the committee Judge Swayne offered to prove the custom and practice of the Federal judges in making certificates for their reasonable expenses for travel and attendance when holding court out of their district, the purpose being to show a judicial construction of the statute under which these expenses were allowed. This offer was denied by the committee and an inquiry upon this subject shut off.

Therefore, for this reason, the record is silent upon matters which, in my judgment, should have been submitted to the consideration of this House. The record is silent as to the custom and practice of other judges in this particular, as to the construction which they placed upon the statute, and as to the construction which the disbursing and auditing officers of the Government gave it.

The intent with which Judge Swayne made these certificates is of controlling importance, and all of the facts and circumstances surrounding the matter, the practice and customs of other judges, and the construction placed upon the statute by them and by the Government, if any, are and were proper subjects of inquiry. While the record is silent on these questions, for the reason above stated, still it appears from official records, some of which have been furnished to me by the Treasury Depart-

[1] House Journal, p. 115; Record, pp. 665–667; House Report, No. 3477.

ment, that a majority of the district and circuit judges in five circuits, selected at random, make out certificates for $10 a day, and in two of these districts every judge made out such certificates,

I am inclined to believe that where a practice has been so general these judges acted in good faith with an honest belief that a fair construction of the statute gave them $10 a day for an allowance for travel and attendance while attending court out of their district, and I also feel that this House would with great reluctance pass a resolution impeaching them all; and if not all, why one?

On this article my mind is not satisfied beyond a reasonable doubt that Judge Swayne, in following a practice so well established by so many honorable men, committed a criminal offense for which he should either be prosecuted or impeached, and giving him the benefit of this doubt I can not consent to any impeachment on that ground.

On January 12, 13, 16, 17, and 18,[1] the articles were debated at length, and on the latter day the question was taken first on a motion of Mr. Charles E. Littlefield, of Maine, to lay the first three articles on the table. This motion was disagreed to,[2] yeas 159, nays 167.

Then the question was taken on agreeing to the first three articles (relating to the false certificates), and they were agreed to-yeas 165, nays 160.

The question was next taken on the fourth and fifth articles, a division of the question being demanded so as to vote on those two articles separated from the remaining articles.

Then, by unanimous consent, it was permitted that the House, by a single vote, should pass on two similar amendments which Mr. Marlin E. Olmsted, of Pennsylvania, proposed, the one to article 4 and the other to article 5. Mr. Olmsted explained the amendments as follows:

The change which I propose is perhaps not very material; but it may be. He is charged in article 4 and again in article 5, as they now stand, with having appropriated to his own use, under a claim of right, the car of a certain railroad company and the provisions therein under the claim that, being in the hands of a receiver, he had a right to use them. Now, the facts are, according to the testimony of Judge Swayne himself and of Mr. Axtell, attorney for the receiver, that Judge Swayne did not appropriate the car, nor demand it, nor claim it as a right. It was the receiver's own suggestion. The receiver tendered Judge Swayne the car and the provisions therein, and Judge Swayne accepted them.

The question being taken, Mr. Olmsted's amendments were disagreed to without division.

Then, by yeas 162, nays 138, articles 4 and 5 were agreed to.

Articles 6 and 7 were then agreed to, yeas 159, nays 136.

Articles 8, 9, 10, and 11, were agreed to, without division.

Also articles 12 and 13 were agreed to without division.

2475. The Swayne impeachment continued.

Forms of resolutions authorizing the appointment of managers of the Swayne impeachment and directing the articles to be exhibited in the Senate.

Constitution of the managers of the Swayne impeachment.

Then, on motion of Mr. Palmer, the following resolutions were severally agreed to:[3]

Resolved, That seven managers be appointed by the Speaker of this House to conduct the impeachment against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida.

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[1] Record, pp. 754–764, 806–822, 925–950, 972–993, 1021–1058.

[2] House Journal, pp. 158–163; Record, pp. 1053–1058.

[3] Home Journal, pp. 162, 163; Record, p. 1058.

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 Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, in maintenance of their impeachment against him of high crimes and misdemeanors in office be carried to the Senate by the managers appointed to conduct said impeachment.

On January 21,[1] the Speaker announced the appointment of the following managers:

Messrs. Henry W. Palmer, of Pennsylvania; Samuel L. Powers, of Massachusetts; Marlin E. Olmsted, of Pennsylvania; James B. Perkins, of New York; Henry D. Clayton, of Alabama; David A. De Armond, of Missouri, and David H. Smith, of Kentucky.

Four of the managers belonged to the majority party in the House and three to the minority. All but two were members of the Judiciary Committee. The entire number were favorable to the impeachment, and all had voted for all the articles of impeachment so far as appeared by record votes, except Mr. Powers, who was absent, and Mr. Olmsted, who answered present on the roll call on articles 4 and 5. He voted for the other articles. Mr. Powers was of the committee which framed the articles, and joined in the report favorable to them.

The managers having been appointed, Mr. Palmer offered this resolution, which was agreed to:

Resolved, That a message be sent to the Senate to inform them that this House has appointed Mr. Palmer, Mr. Powers, of Massachusetts, Mr. Olmsted, Mr. Perkins, Mr. Clayton, Mr. De Armond, and Mr. Smith, of Kentucky, managers to conduct the impeachment against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, and have directed the said managers to carry to the Senate the articles agreed upon by this House to be exhibited for maintenance of their impeachment against said Charles Swayne, and that the Clerk of the House do go with said message.

On the same day[2] the message was transmitted to the Senate and received there. Thereupon, on motion of Mr. Platt, of Connecticut, it was

Ordered, That the Secretary inform the House of Representatives that the Senate is ready to receive the managers appointed by the House for the purpose of exhibiting articles of impeachment against Charles Swayne, judge of the distaict court of the United States for the northern district of Florida, agreeably to the notice communicated to the Senate.

On January 23,[3] Mr. Palmer, in the House, claiming the floor for a matter of privilege, offered the following resolution, which was agreed to by the House:

Resolved, That the managers on the part of the House in the matter of the impeachment of Charles Swayne, district judge of the United States in and for the northern district of Florida, be, and they are hereby, authorized to employ a clerk, stenographer, and messenger, and to incur such expense as may be necessary in the preparation and conduct of the case, to be paid out of the contingent fund of the House.

2476. The Swayne impeachment continued.

Ceremonies of the exhibition of the articles impeaching Judge Swayne.

The articles of impeachment of Judge Charles Swayne.

Having exhibited in the Senate the articles impeaching Judge Swayne, the managers reported verbally to the House.

On January 24[4] in the Senate, at 12 o'clock and 30 minutes p.m. the managers

[1] House Journal, p. 183; Record, p. 1202.

[2] Senate Journal, p. 108; Record, p. 1176.

[3] House Journal, p. 186; Record, p. 1246.

[4] Senate Journal, p. 119; Record, pp. 1281–1283.

of the impeachment, on the part of the House of Representatives, of Judge Charles Swayne appeared below the bar of the Senate, and the Assistant Sergeant-at-Arms (Alonzo H. Stewart) announced their presence as follows:

I have the honor to announce the managers on the part of the House of Representatives to conduct the impeachment against Charles Swayne, judge of the United States district court for the northern district of Florida.

The PRESIDENT pro tempore. The managers on the part of the House will be received, and the Sergeant-at-Arms will assign them their seats.

The managers were thereupon escorted by the Assistant Sergeant-at-Arms of the Senate to the seats assigned to them in the area in front of the Chair.

The PRESIDENT pro tempore. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms (D. M. Ransdell) made proclamation as follows:

Hear ye, hear ye, hear ye. All persons will keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida.

Mr. Manager PALMER. Mr. President.

The PRESIDENT pro tempore. Mr. Manager.

Mr. Manager PALMER. The managers on the part of the House of Representatives are ready to exhibit articles of impeachment against Charles Swayne, district judge of the United States in and for the northern district of Florida, as directed by the House, in the words and figures following: [1]

Articles exhibited by the House of Representatives of the United States of America, in the name of themselves and of all the people of the United States of America, against Charles Swayne, a judge of the United States, in and for the northern district of Florida, in maintenance and Support of their impeachment against him for high crimes and misdemeanor in office.

ARTICLE 1. That the said Charles Swayne, at Waco, in the State of Texas, on the 20th day of April, 1897, being then and there a United States district judge in and for the northern district of Florida, did then and there, as said judge, make and present to R. M. Love, then and there being the United States marshal in and for the northern district of Texas, a false claim against the Government of the United States in the sum of $230, then and there knowing said claim to be false, and for the purpose of obtaining payment of said false claim, did then and there as said judge, make and use a certain false certificate then and there knowing said certificate to be false, said certificate being in the words and figures following:

"UNITED STATES OF AMERICA, *Northern District of Texas, ss:*

"I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Waco, in the northern district of Texas, twenty-three days, commencing on the 20th day of April, 1897; also, that the time engaged in holding said court, and in going to and returning from the same, was twenty-three days, and that my reasonable expenses for travel and attendance amounted to the sum of two hundred and thirty dollars and ——— cents, which sum is justly due me for such attendance and travel.

CHAS. SWAYNE, *Judge.*

"WACO, *May 15, 1897.*

"Received of R. M. Love, United States marshal for the northern district of Texas, the sum of 230 dollars and no cents in full payment of the above account.

"$230.

"CHAS. SWAYNE."

when in truth and in fact, as the said Charles Swayne then and there well knew, there was then and there justly due the said Swayne from the Government of the United States, and from said United States marshal a far less sum, whereby he has been guilty of a high crime and misdemeanor in his said office.

ART. 2. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge, as aforesaid, the said Charles Swayne was entitled

[1] The articles were enrolled on parchment, following the practice of the early trials. In the later trials of Johnson and Belknap the articles had been engrossed on ordinary white paper.

by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed $10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were $10 per diem while holding court at Tyler, Tex., twenty-four days commencing December 3, 1900, and seven days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of John Grant, the United States marshal for the eastern district of Texas, the sum of $310, when the reasonable expenses incurred and paid by the said Charles Swayne for travel and attendance did not amount to the sum of $10 per diem.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 3. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid was, entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northerns district of Florida, not to exceed $10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel in going to and coming from and attendance were $10 per diem while holding court at Tyler, Tex., thirty-five days from January 12, 1903, and six days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of A. J. Houston, the United States marshal for the eastern district of Texas, the sum of $410, when the reasonable expenses of the said Charles Swayne incurred and paid by him during said period were much less than said sum.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 4. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge as aforesaid heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car, belonging to the Jacksonville, Tampa and Key West Railroad Company, for the purpose of transporting himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Fla., the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida, and entered upon the duties of said office, and while in the exercise of his office of judge as aforesaid heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa and Key West Railroad Company for the purpose of transporting himself, his family, and friends from Jacksonville, Fla., to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swaye, judge as aforesaid, on the petition of creditors.

The car was supplied with some provisions by the said receiver, which were consumed by the said Swayne and his friends, and it was provided with a porter at the cost and expense of the railroad company and also with transportation over connecting lines. The wages of said porter and the cost of said provisions were paid by the said receiver out of the funds of the Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne, acting as judge as aforesaid, allowed the credits claimed by the said receiver for and on account of the said expenditures as a part of the necessary expenses of operating the said railroad. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner under a claim of right, alleging that the same was in the hands of a receiver appointed by him and he therefore had a right to use the same.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office.

ART. 6. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress approved the 23d of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine and contiguous territory were transferred to the southern district of Florida; whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida and to comply with the five hundred and fifty-first section of the Revised Statutes of the United States, which provides that—

"A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

Nevertheless the said Charles Swayne, judge as aforesaid, did not acquire a residence, and did not, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of October, A. D. 1900, a period of about six years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law and was and is guilty of a high misdemeanor in office.

ART. 7. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress of the United States approved the 23d day of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine, with the contiguous territory, was transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida, as defined by said act of Congress, and to comply with section 551 of the Revised Statutes of the United States, which provides that—

"A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

Nevertheless, the said Charles Swayne, judge as aforesaid, totally disregarding his duty as aforesaid, did not acquire a residence, and within the intent and meaning of said act did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of January, A. D. 1903, a period of about nine years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge, as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida,

did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 9. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 10. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 11. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a circuit judge of the United States heretofore, to wit, on the 12thdayof November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swane, judge as aforesaid, misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 12. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge heretofore, to wit, on the 9th day of December, A. D. 1902, at Pensacola, in the county of Escambia, in the State of Florida, did unlawfully and knowingly adjudge guilty of contempt and did commit to prison for the period of sixty days one W.C. O'Neal, for an alleged contempt of the district court of the United States for the northern district of Florida.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, as aforesaid, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

And the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said Charles Swayne, judge of the United States court for the northern district of Florida, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same and every part thereof, and to all and every other article or accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Charles Swayne may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

J.G. CANNON,
Speaker of the Home of Representatives.

Attest:
A. MCDOWELL, *Clerk.*

The articles of impeachment were handed to the Secretary of the Senate.

The PRESIDENT pro tempore. The Senate will take proper order in the matter of the impeachment of Judge Swayne, and communicate to the House of Representatives its action.

The managers thereupon withdrew from the Chamber.

Having returned to the House,[1] the managers appeared at the bar, and Mr. Palmer reported orally:

Mr. Speaker, the managers of impeachment beg leave to report to the House that the articles of impeachment prepared by the House of Representatives against Charles Swayne, district judge of the United States in and for the northern district of Florida, have been exhibited and read to the Senate, and the Presiding Officer of that body stated to the managers that the Senate would take order in the premises, due notice of which would be given to the House of Representatives.[2]

2477. The Swayne impeachment continued.

The organization of the Senate for the Swayne impeachment trial.

The oath to the Senators for the Swayne trial was administered by the Chief Justice.

At the request of the President pro tempore the Senate elected a Presiding Officer for the Swayne impeachment trial.

The Senate being organized for the Swayne impeachment, the House was notified by message.

In the Senate, after the retirement of the managers, Mr. Platt, of Connecticut, offered the following resolutions, which were severally agreed to:[3]

Ordered, That the articles of impeachment presented this day by the House of Representatives be printed for the use of the Senate.

Ordered, That at 2 o'clock this afternoon the Senate will proceed to the consideration of the articles of impeachment of Charles Swayne, judge of the United States district court for the northern district of Florida, presented this day.

Ordered, That a committee of two Senators be appointed by the Chair to wait upon the Chief Justice of the United States and invite him to attend in the Senate Chamber at 2 o'clock this day, to administer to Senators the oath required by the Constitution, in the matter of the impeachment of Charles Swayne, or in case of his inability to attend, any one of the associate justices.

In accordance with the last resolution, Messrs. Charles W. Fairbanks, of Indiana, and Augustus O. Bacon, of Georgia, were appointed as the committee.

Later, on the same day, in the Senate,[4] the President pro tempore[5] requested that he be relieved of the duty of presiding at the trial. Thereupon, Mr. John C. Spooner, of Wisconsin, offered this resolution, which was agreed to:

Resolved, That in view of the statement just made to the Senate by the President pro tempore of his inability, because of recent illness, to discharge the duties of his office, other than those involved in presiding over the Senate in legislative and executive session, the Hon. Orville H. Platt, Senator from the State of Connecticut, be, and he is hereby, appointed presiding officer on the trial of the impeachment of Charle Swayne, district judge of the United States for the northern district of Florida.

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[1] House Journal, p. 195; Record, p. 1310.

[2] The House itself did not attend its managers to the Senate on this occasion or at any other time during the trial.

[3] Senate Journal, p. 121; Record, p. 1283.

[4] Senate Journal, p. 121; Record, p. 1289.

[5] William P. Frye, of Maine, President pro tempore.

A message announcing this action was transmitted to the House.[1]

At 2 o'clock p.m., on motion of Mr. Platt, of Connecticut, Rule III of the Senate, sitting for impeachment trials, providing that the presiding officer should administer the oath, was suspended.[2]

Then[3] the presence of the Chief Justice of the United States, Hon. Melville W. Fuller, was announced by the Assistant Sergeant-at-Arms.

The Chief Justice entered the Senate Chamber, escorted by Mr. Fairbanks and Mr. Bacon, the committee appointed for the purpose, and was conducted by them to a seat by the side of the President pro tempore.

Mr. FAIRBANKS. Mr. President, the committee appointed by the Senate to wait upon the Chief Justice of the Supreme Court of the United States and request him to administer to Senators the oath required by the Constitution in the matter of the impeachment of Judge Charles Swayne report that they have discharged that duty. The Chief Justice of the Supreme Court, complying with the request of the Senate, is now present in the Senate and ready to administer the oath required to be administered to the members of the Senate sitting in the trial of impeachments.

The Chief Justice administered the oath to the President pro tempore as follows:

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

The PRESIDENT pro tempore. The Senator from Connecticut will please present himself as Presiding Officer of the Senate while in court and take the necessary oath.

Mr. Platt, of Connecticut, advanced to the Vice-President's desk, and the oath was administered to him by the Chief Justice.

The PRESIDENT pro tempore. The Secretary will call the roll, and as their names axe called Senators will present themselves at the desk in groups of ten, and the oath will be administered to them.

The oath having been administered to all the Senators present, Mr. Platt, of Connecticut, thereupon took the chair, and announced:

Senators, the Senate is now sitting for the trial of the impeachment of Charles Swayne, judge of the United States district court in and for the northern district of Florida.

Then, on motion of Mr. Charles W. Fairbanks, of Indiana, the following resolution was agreed to:

Ordered, That the Secretary notify the House of Representatives that the Senate is now organized for the trial of articles of impeachment against Charles Swayne, judge of the United States district court for the northern district of Florida, and is ready to receive the managers on the part of the House at its bar.

This message was delivered in the House soon after.[4]

2478. The Swayne impeachment continued.

Ceremonies of demanding that process issue in the Swayne impeachment.

The Senate having ordered, on demand of the managers, that process issue against Judge Swayne, the managers returned and reported verbally to the House.

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[1] House Journal, p. 195; Record, p. 1312.

[2] The Senate had overlooked the law relating to this subject.

[3] Senate Journal, pp. 122, 346; Record, pp. 1289–1290.

[4] House Journal, p. 185; Record, p. 1310.

Then, on the same day,[1] in the Senate, at 2 o'clock and 27 minutes p. m., the managers of the impeachment on the part of the House of Representatives appeared at the bar and their presence was announced by the Sergeant-at-Arms.

The PRESIDING OFFICER. The Sergeant-at-Arms will conduct the managers to the seats provided for them within the bar of the Senate.

The managers were conducted to the seats assigned them within the space in front of the Secretary's desk.

The PRESIDING OFFICER. Gentlemen managers, the Senate is now organized for the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida.

Mr. Manager Palmer rose and said:

Mr. President, we are instructed by the House of Representatives, as its managers, to demand that the Senate shall issue process against Charles Swayne, district judge of the United States in and for the northern district of Florida, that he answer at the bar of the Senate the articles of impeachment heretofore exhibited by the House of Representatives through its managers.

Then, on motion of Mr. Fairbanks, the following resolutions were severally agreed to:

Ordered, That a summons be issued, as required by the rules of procedure and practice in the Senate when sitting for the trial of impeachment of Charles Swayne, returnable on Friday, the 27th day of the present month, at 1 o'clock in the afternoon.

Ordered, That the Senate, sitting for the trial of impeachment of Charles Swayne, adjourn until Friday, the 27th instant, at 1 o'clock in the afternoon.

The Presiding Officer then said:

The order having been agreed to, the Senate, sitting for the trial of the impeachment, stands adjourned until 1 o'clock on Friday, the 27th instant. The Senate will resume its legislative session.

Mr. Platt, of Connecticut, thereupon vacated the chair, which was resumed by the President pro tempore.

On January 26,[2] in the House, Mr. Palmer, on behalf of the managers, reported orally:

Mr. Speaker, I have the honor to report on behalf of the managers in the matter of the impeachment of Charles Swayne, district judge of the United States in and for the northern district of Florida, that the Senate has organized for the trial of the impeachment; that in the name of the House of Representatives and in behalf of all the people of the United States, the managers have demanded of the Senate that process be issued against Charles Swayne, judge as aforesaid, to answer to the articles hereinbefore exhibited against him at the bar of the Senate; and that the Senate has advised us that process will be issued against him in that behalf returnable on the 27th instant, at 1 o'clock p.m.

2479. The Swayne impeachment continued.

Proceedings on the return of the writ of summons in the Swayne impeachment.

In response to the writ of summons, Judge Swayne entered appearance by his counsel.

In the Swayne impeachment, in response to the motion of respondent's counsel, the Senate granted time after the appearance to present the answer.

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[1] Senate Journal, p. 346; Record, p. 1290.

[2] House Journal, p. 205; Record, p. 1415.

The managers and respondent in the Swayne case were directed to furnish a list of their witnesses to the Sergeant-at-Arms of the Senate.

The oath to Senators in the Swayne impeachment trial was administered by the Presiding Officer after the organization was completed.

On January 27,[1] in the Senate, the President pro tempore said:

The hour of 1 o'clock, to which the Senate sitting as a court in the impeachment of Judge Charles Swayne adjourned, has arrived. Will the Senator from Connecticut [Mr. Platt] please take the chair?

Mr. Platt, of Connecticut, thereupon took the chair as Presiding Officer.

The PRESIDING OFFICER. The Sergeant-at-Arms will make the opening proclamation.

The SERGEANT-AT-ARMS. Hear ye, hear ye, hear ye. All persons are commanded to keep silence on pain of imprisonment while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida.

The PRESIDING OFFICER. The Secretary will now call the names of those Senators who have not been sworn, and such of those Senators as are present in the Chamber will, as their names are called, advance to the desk and take the oath.

The Secretary called the names of the Senators who had not been heretofore sworn, whereupon Senators Blackburn, Depew, Dryden, Knox, and McLaurin advanced to the area in front of the Secretary's desk, and the oath was administered to them by the Presiding Officer.[2]

Mr. Charles W. Fairbanks, of Indiana, then offered this resolution, which was agreed to, as follows:

Resolved, That the Secretary inform the House of Representatives that the Senate is sitting in its Chamber and ready to proceed with the trial of the impeachment of Charles Swayne.[3]

At 1 o'clock and 7 minutes p. m. the Assistant Sergeant-at-Arms announced the managers on the part of the House of Representatives.

The PRESIDING OFFICER. The managers will be admitted and conducted to the seats provided for them within the bar of the Senate.

The managers were conducted to seats provided in the space in front of the Secretary's desk on the left of the Chair, namely: Hon. Henry W. Palmer, of Pennsylvania; Hon. Marlin E. Olmsted, of Pennsylvania; Hon. James B. Perkins, of New York; Hon. Henry D. Clayton, of Alabama; Hon. David A. De Armond, of Missouri, and Hon. David H. Smith, of Kentucky.

At 1 o'clock and 14 minutes p. m. Hon. Anthony Higgins and Hon. John M. Thurston, counsel for the respondent, Charles Swayne, entered the Senate Chamber and were conducted to the seats assigned them in the space in front of the Secretary's desk on the right of the Chair.

The PRESIDING OFFICER. The Secretary will read the minutes of the proceedings of the last session of the Senate while sitting in the trial of the impeachment of Charles Swayne.

The Secretary read the Journal of proceedings of the Senate, sitting for the trial of the impeachment, of Tuesday, January 24, 1905.

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[1] Senate Journal, p. 346; Record, pp. 1449–1451.

[2] The House managers called the attention of the Senate to the law permitting the Presiding Officer to administer the oath.

[3] This message was duly received in the House, Record, p. 1479.

The PRESIDING OFFICER. The Secretary will now read the return of the Sergeant-at-Arms to the summons directed to be served.

The Secretary read the following return appended to the writ of summons:

The foregoing writ of summons, addressed to Charles Swayne, and the foregoing precept, addressed to me, were duly served upon the said Charles Swayne by delivery to and leaving with him true and attested copies of the same at 1215 Tatnall street, Wilmington, Del., the residence of Henry G. Swayne, on Tuesday, the 24th day of January, 1905, at 7 o'clock and 45 minutes in the afternoon of that day.

DANIEL M. RANSDELL,
Sergeant-at-Arms United States Senate.

The PRESIDING OFFICER. The Secretary will now administer to the Sergeant-at-Arms an oath in support of the truth of his return.

The Secretary (Mr. Charles G. Bennett) administered the following oath to the Sergeant-at-Arms:

You, Daniel M. Ransdell, Sergeant-at-Arms of the Senate of the United States, do solemnly swear that the return made by you upon the process issued on the 24th day of January, 1905, by the Senate of the United States against Charles Swayne, is truly made, and that you have performed such service as therein described: So help you God.

The SERGEANT-AT-ARMS. I do so swear.

The PRESIDING OFFICER. The Sergeant-at-Arms will make proclamation.

The SERGEANT-AT-ARMS. Charles Swayne, Charles Swayne, Charles Swayne, judge of the district court of the United States for the northern district of Florida: Appear and answer to the articles of impeachment exhibited by the House of Representatives against you.

Mr. HIGGINS. Mr. President, on behalf of the respondent, Charles Swayne, I beg to enter the following appearance:

To the honorable the Senate of the United States, sitting as a Court of Impeachment:

I, Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, now present in the city of Washington, having been served with a summons to be in the city of Washington on the 27th day of January, 1905, at 1 o'clock afternoon, to answer certain articles of impeachment presented against me by the honorable the House of Representatives of the United States, do hereby enter my appearance by my counsel, Anthony Higgins and John M. Thurston, who have my warrant and authority therefor, and who are instructed by me to ask this court for a reasonable time for the preparation of my answer to said articles.

CHARLES SWAYNE.

Dated at Washington, D. C., this 27th day of January, A. D. 1905.

I ask this be filed, and I submit a copy for the managers.

The PRESIDING OFFICER. It will be placed on file.

Mr. THURSTON. On behalf of the respondent we make the following motion:

In the Senate of the United States, sitting as a court of impeachment. The United States of America *v.* Charles Swayne. Upon articles of impeachment presented by the House of Representatives of the United States of America.

The respondent, by his counsel, now comes and moves the court to grant him the period of seven days in which to prepare and present his answer to the articles of impeachment presented against him herein.

ANTHONY HIGGINS.
JOHN M. THURSTON.

Then, on motion of Mr. Fairbanks, it was

Ordered, That the respondent present his answer to the articles of impeachment at 12 o'clock and 30 minutes post meridian on the 3d day of February next.

Also, on motion of Mr. Fairbanks, at the suggestion of the managers, it was

Ordered, That lists of witnesses be furnished the Sergeant-at-Arms by the managers and the respondent, who shall be subpoenaed by him to appear on the 10th day of February, at 1 o'ciock post meridian.

A proposition of the managers that the trial proceed on the 13th of February was objected to by counsel for respondent, who suggested the 10th of February instead, and it was not pressed.

Then, on motion of Mr. Fairbanks, the Senate, sitting for the trial of the impeachment, adjourned until Friday, February 3, 1905, at 12.30 o'clock p. m.

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

The President pro tempore resumed the Chair.

2480. The Swayne impeachment continued.

Forms and ceremonies in the Senate at the session for receiving respondent's answer in the Swayne case.

Proclamation of the Sergeant-at-Arms at opening of session of the Senate sitting for the Swayne impeachment trial.

At the presentation of the answer in the Swayne case the respondent was represented by his counsel.

Rule of the Senate in the Swayne trial for submitting of requests or applications by managers or counsel.

Rule governing the Senators in the Swayne trial as to colloquys and questions.

On February 3,[1] in the Senate,

The PRESIDENT pro tempore (at 12 o'clock and 30 minutes p. m.). The hour has arrived to which the Senate sitting as a court of impeachment adjourned, and the Senator from Connecticut will please take the chair.

Mr. Platt, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now sitting for the trial of the impeachment of Charles Swayne, a judge of the United States in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made proclamation as follows:

Hear ye, hear ye, hear ye. All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives of the United States against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida.

The oath was then administered to certain Senators not previously sworn.

The PRESIDING OFFICER. The Sergeant-at-Arms will notify the managers, if they are in waiting, that the Senate is ready to proceed.

At 12 o'clock and 32 minutes p. m. the managers on the part of the House of Representatives were announced, and they were conducted by the Assistant Sergeant-at-Arms to the seats assigned them in the area in front of the Secretary's desk.

The PRESIDING OFFICER. The Sergeant-at-Arms will also notify the counsel for the respondent.

Mr. Anthony Higgins and Mr. John M. Thurston, counsel for the respondent, entered the Chamber and were assigned to the seats provided for them in the area in front of the Secretary's desk.

The PRESIDING OFFICER. The Journal of the proceedings of the last session of the Senate sitting for the trial of the impeachment of Charles Swayne will now be read.

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[1] Senate Journal, p. 347; Record, pp. 1818–1832.

The Journal of the proceedings of the Senate sitting as a court on Friday, January 27, 1905, was read and approved.

Then, on motion of Mr. Augustus O. Bacon, a Senator from Georgia, it was—

Ordered, That in all matters relating to the procedure of the Senate sitting in the trial of the impeachment of Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, whether as to form or otherwise, the managers on the part of the House, or the counsel representing the respondent, may submit a request or application orally to the Presiding Officer, or, if required by him or requested by any Senator, shall submit the same in writing.

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

It shall not be in order for any Senator to engage in colloquy, or to address questions either to the managers on the part of the House or the counsel for the respondent, nor shall it be in order for Senators to address each other, but they shall address their remarks directly to the Presiding Officer.

2481. The Swayne impeachment continued.

The answer of Judge Swayne to the articles of impeachment.

Judge Swayne's answer was signed by himself and his counsel.

The answer of Judge Swayne as to the first seven articles raised a question as to the jurisdiction of the Senate to try the charges.

Then Mr. Thurston, of counsel for the respondent, said:

Mr. President, counsel for the respondent now come, and for answer of said Charles Swayne under impeachment herein say:

And the said Charles Swayne, named in said articles of impeachment, comes before the honorable Senate of the United States, sitting as a court of impeachment, and says that this honorable court ought not to have or take further cognizance of the first of said articles of impeachment so exhibited and presented against him, because, he says, the facts set forth in said first article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

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

He admits that on the 20th day of April, 1897, at Waco, in the State of Texas, acting as United States judge in and for the northern district of Florida, he made and presented to R. N. Love, the United States marshal in and for the northern district of Texas, the certificate in writing as set forth in the said first article, and did then and there receive from the said R. N. Love, United States marshal as aforesaid, the sum of $230 in full payment of the account certified to as aforesaid, and the respondent says that he then and there believed, and still believes and insists, that, under the true meaning and intent of the statutes of the United States allowing the expenses of a district judge of the United States for travel and expenses while holding court outside of his own district, the said claim was just and in strict accordance with the provisions of the law of Congress in that respect enacted; and he denies that he then and there knew or believed said claim to be false, as set forth in said article; and he denies that he signed and presented the said certificate for the purpose of obtaining payment of any false claim; and he denies that he then and there made and used a false certificate knowing or believing said certificate to be false. [Etc., specifying at length.]

* * * And respondent says that he attaches to this, his answer to the said article 1, copies of certificates of the honorable the Secretary of the Treasury, marked, respectively, Exhibits A et seq., and asks that the same be accepted and taken as a part of this his answer to the said article 1. * * *

These exhibits were attached, not at the end of the answer, but at the end of article first.

To articles second and third, which related to the offense set forth in article 1, answer was made in similar form.

As to article 4, the answer says:

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

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

He admits that he was duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and that he had entered upon the duties of his office prior to 1893 and had continued in the performance of the duties and in the exercise of his office of judge up to the present time.

He denies that at the time specified in said article 4, to wit, A. D. 1893, he did unlawfully appropriate to his own use, without making compensation to the owner, a certain railway car belonging to the Jacksonville, Tampa and Key West Railroad Company, for the purposes stated in said article 4, or for any other purpose or purposes whatsoever; and as to the true facts of the transaction referred to in said article 4, he says, etc.

To article 5, which related to the same offense as article 4, a similar answer was given.

As to article 6 the answer was:

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

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said sixth article, the said respondent, saving to himself all advantages of exceptions to said sixth article, for answer thereto saith:

He admits that prior to the year 1900 he had been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office, and that he was in the exercise of his office as judge as aforesaid at all times in the said article specified and as therein alleged.

The respondent denies that he did not acquire a residence in the northern district of Florida and did not, within the intent and meaning of the five hundred and fifty-first section of the Revised Statutes of the United States, reside in said district from the 23d day of July, 1894, to the 1st day of October, 1900; and denies that he violated said section; and denies that he was and is guilty of a high misdemeanor in office as charged in said article 6.

The respondent further says, etc.

As to article 7, which related to the same offense as set forth in article 6, the answer is similar.

As to the remaining articles, relating to the contempt cases, the answer begins as to each with a saving clause, and proceeds generally as follows:

And the said respondent, saving to himself all advantages of exception or otherwise to article 8 of the said articles of impeachment, for answer thereto saith:

He admits that prior to the 12th day of November, A. D. 1901, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office prior to said date, and continued in the performance of the duties and in the exercise of his office of judge up to the present time, and he says that at all the times mentioned in said article 8 he was exercising and performing the duties of a district judge in and for the northern district of Florida, and that on the 12th day of November, A. D. 1901, he was holding a session of the district and circuit court of said district at the city of Pensacola, in the State of Florida,

and he admits that on said date he did adjudge guilty of contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days one E. T. Davis, an attorney and counselor at law, as set forth in said article 8, but he denies that said judicial action on his part was malicious or unlawful, and, on the contrary, he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said E. T. Davis guilty of the contempt of court stated in said article 8.

Respondent, further answering, says, etc.

And in conclusion the form of the answer was:

And this respondent, in submitting to this honorable court this his answer to the articles of impeachment exhibited against him, respectfully reserves leave to amend and add to the same from time to time as may become necessary or proper and when said necessity and propriety shall appear.

CHAS. SWAYNE.

ANTHONY HIGGINS,
JOHN M. THURSTON,
Of Counsel for Respondent.

2482. The Swayne impeachment continued.

Forms of procedure of authorizing, preparing, and presenting the replication in the Swayne impeachment trial.

Mr. Manager Palmer then asked [1] that the following order be agreed to:

Ordered, That the managers have time until Monday next, at 2 p. m., to consult the House of Representatives on the subject of filing exceptions, demurrer, or replication to the answer of the respondent, and that they be furnished with a copy of the said answer.

Mr. Charles W. Fairbanks, a Senator from Indiana, proposed instead an order which, after a reference to the precedent of the Belknap trial, and some modification as to time, was agreed to as follows:

Ordered, That the managers on the part of the House be allowed until the 6th day of February instant, at 2 o'clock in the afternoon, to present a replication, or other pleading, of the House of Representatives to the answer of the respondent. That any subsequent pleadings, either on the part of the managers or of the respondent, shall be filed with the Secretary of the Senate, of which notice shall be given to the House of Representatives and the respondent respectively, so that all pleadings shall be closed on or before the 9th day of February instant, and that the trial shall proceed on the 10th day of February instant, at 2 o'clock p.m.

Then, on motion of Mr. Manager Palmer, the following order was agreed to:

Ordered, That the Secretary of the Senate communicate to the House of Representatives an attested copy of the answer of Charles Swayne, judge of the United States in and for the northern district of Florida, to the articles of impeachment, and also a copy of the foregoing order.

After an order had been made for printing the articles and the answer as documents, the Senate, "sitting as a court of impeachment," [2] adjourned until Monday, February 6, 1905, at 2 o'clock p. m.

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

The President pro tempore resumed the chair.

On February 4 [3] a message from the Senate transmitted to the House an attested copy of the respondent's answer, which was referred to the managers.

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[1] Senate Journal, p. 359; Record, p. 1831.

[2] These words appear in the Record. The Senate Journal (p. 359) speaks of the "Senate sitting for the trial."

[3] House Journal, p. 259; Record, p. 1887.

The message also transmitted the resolution of the Senate fixing a time for the filing of the replication and further pleadings.

On February, 6,[1] in the House, Mr. Palmer, from the managers, reported the following replication, which was agreed to without debate or division:

Replication by the House of Representatives of the United States of America to the answer of Charles Swayne, judge of the United States in and for the northern district of Florida, to the articles of impeachment exhibited against him by the House of Representatives.

The House of Representatives of the United States have considered the several answers of Charles Swayne, district judge of the United States in and for the northern district of Florida, to the several articles of impeachment against him by them exhibited in the name of themselves and of all the people of the United States, and reserving to themselves all advantage of exception to the insufficiency, irrelevancy, and impertinency of his answer to each and all of the several answers of impeachment exhibited against the said Charles Swayne, judge as aforesaid, do deny each and every averment in said several answers, or either of them, which denies or traverses the acts, intents, crimes, or misdemeanors charged against Charles Swayne in said articles of impeachment or either of them; and for replication to said answer, do say that said Charles Swayne, district judge of the United States in and for the northern district of Florida, is guilty of the high crimes and misdemeanors mentioned in said articles, and that the House of Representatives are ready to prove the same.

Then, on motion of Mr. Palmer, it was also—

Resolved, That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted a replication to the answer of Charles Swayne, judge of the northern district of Florida, to the articles of impeachment exhibited against him and that the same will be presented to the Senate by the managers on the part of the House.

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

This message was communicated to the Senate very soon thereafter,[2] and received during the legislative session.

On the same day, at 2 p. m., the Senate[3] went into session for the trial in the usual form, and after the reading of the Journal, the Presiding Officer laid before the Senate sitting for the trial the message which had been received during the legislative session.

Thereupon Mr. Palmer, for the managers, who were in attendance, presented and read the replication.

Thereupon the Presiding Officer asked:

Have the managers anything further to offer?

Mr. Manager Palmer replied:

Nothing to offer to-day, sir.

The Presiding Officer then said:

Have counsel for the respondent anything to offer?

Mr. Higgins replied:

Should we be advised there is anything further to offer we assume it can be done without a formal meeting of the Senate. It would be merely to join issue, in technical phrase.

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[1] House Journal, p. 262; Record, p. 1939.

[2] Senate Journal, p. 174; Record, p. 1915.

[3] Senate Journal, p. 360; Record, p. 1922.

The Presiding Officer rejoined:

It may, under the order which bas already been adopted, be filed with the Secretary.

Then, on motion of Mr. Augustus O. Bacon, a Senator from Georgia, it was—

Ordered, That the Senate sitting in the trial of impeachment of Charles Swayne adjourn until Friday, the 10th instant, at 1 o'clock p. m.

2483. The Swayne impeachment continued.

Forms and ceremonies in the Swayne trial during the presentation of testimony.

The House of Representatives, although invited by the Senate, did not at any time attend the Swayne trial.

The respondent attended during the presentation of testimony and the arguments in the Swayne trial.

Instance wherein a witness was examined on the question of issuing process for a witness in the Swayne trial.

On February 10,[1] in the Senate sitting for the trial, Mr. Augustus O. Bacon, a Senator from Georgia, presented the following resolution, which was agreed to:

Ordered, That the pleadings in the matter of the impeachment of Charles Swayne having been closed, the Secretary inform the House of Representatives that the Senate is ready to proceed with the trial of said impeachment according to the rule heretofore communicated to the House, and that provision has been made for the accommodation of the House of Representatives and its managers in the Senate Chamber.[2]

At 1 o'clock and 5 minutes p. m. the managers on the part of the House of Representatives were announced, and they were conducted by the Assistant Sergeant-at-Arms to the seats assigned them in the area in front of the Secretary's desk.

The respondent, Charles Swayne, accompanied by his counsel, Mr. Anthony Higgins and Mr. John M. Thurston, entered the Chamber and took the seats provided for them in the area in front of the Secretary's desk.

The PRESIDING OFFICER. The Journal of the proceedings of the last session of the Senate sitting for the trial of the impeachment of Charles Swayne will now be read.

The Journal of the proceedings of the Senate sitting as a court on Monday, February 6, 1905, was read and approved.

The PRESIDING OFFICER. The Presiding Officer will inquire of the Sergeant-at-Arms whether the names of the witnesses have been furnished him by the managers on the part of the House and by the counsel for the respondent, and whether those witnesses have been summoned for attendance at this time?

The SERGEANT-AT-ARMS. Mr. President, the names of the witnesses for both the managers on the part of the House of Representatives and the respondent have been furnished me and have been served, and many of the witnesses are now in the city.

Then, on motion of Mr. Charles W. Fairbanks, a Senator from Indiana, the following orders were severally agreed to:

Ordered, That the proceedings of the Senate sitting in the trial of impeachment of Charles Swayne be printed daily for the use of the Senate as a separate document.

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[1] Senate Journal, p. 360; Record, p. 2229.

[2] No action was taken by the House, and it did not attend the proceedings at any time.

Ordered, That the daily sessions of the Senate sitting in the trial of impeachment of Charles Swayne, shall, unless otherwise ordered, commence at 2 o'clock in the afternoon and continue until 5 o'clock in the afternoon.

Then, on suggestion of Mr. Manager Palmer, the names of the witnesses were called over to ascertain their presence.

Then Mr. Manager Palmer stated:

Mr. President, in the case of Joseph H. Durkee, of Jacksonville, Fla., we have a certificate of a physician stating that he is not able to attend. The certificate was sent to the Presiding Officer and by him handed to me, and it has been exhibited to counsel on the other side.

Mr. Durkee is a witness who has been subpoenaed by both sides, and is a material and important witness. I have a witness present who will testify with respect to Mr. Durkee's present condition, and I ask that Mr. B. S. Liddon be summoned to testify what Mr. Durkee's present condition is, for the purpose of moving for an attachment.

Thereupon Mr. Liddon was examined under oath; and then the Presiding Officer announced that the Senate would take into account the issuance of an attachment.

Then Mr. Manager Palmer opened the case for the House of Representatives, setting forth what the managers expected to prove.

Then the introduction of testimony on behalf of the managers began.

This presentation of testimony continued until February 20,[1] when Mr. Manager Marlin E. Olmsted, of Pennsylvania, announced that the case of the managers was in.

Immediately thereafter Mr. Anthony Higgins, of counsel for the respondent, proceeded[2] with the opening address in respondent's case. He not only outlined the defense, but entered somewhat into argument on the legal features of the case. Mr. Higgins consumed the remainder of the session on that day, and spoke some time the next day.[3]

The introduction of testimony on behalf of the respondent then began and continued from day to day.

On February 23[4] the Senate agreed to the following:

Ordered, That the session of the Senate sitting this day in the trial of the impeachment of Charles Swayne shall continue until 6 o'clock, when a recess shall be taken until 8 o'clock, and the session shall be continued until 10 o'clock unless otherwise ordered.

2484. The Swayne impeachment continued.

The Senate limited the time of the final arguments in the Swayne impeachment trial.

The Senate, after deliberation, permitted written arguments to be filed in the Swayne case, but only in such way as would permit reply.

Rebuttal evidence was offered by the managers in the Swayne trial.

Order of final arguments in the Swayne case.

On the same day,[5] Mr. Charles W. Fairbanks, a Senator from Indiana, offered the following:

Ordered, That the managers be allowed five hours for the argument of the case, the time to be divided between them as they may agree, but the concluding oral argument shall be by one manager and shall not exceed one hour.

Ordered, That counsel for the respondent be allowed five hours for the argument of the case, the time to be divided between them as they may agree.

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[1] Senate Journal, p. 363; Record, p. 2909.

[2] Record, pp. 2909–2915.

[3] Record, pp. 2975–2979.

[4] Record, p. 3142.

[5] Record, pp. 3142–3145.

These orders were agreed to, but presently the vote was reconsidered on suggestion that the managers would prefer a different division of their time, so that the closing argument might be longer than an hour. So an amendment was adopted to provide that the closing argument by the manager should not exceed one hour and forty minutes. As amended the order was then agreed to.

Thereupon Mr. Manager Henry W. Palmer, of Pennsylvania, offered the following motion:

That any of the managers or counsel for respondent having all or any portion of his argument in manuscript, may deliver a copy of the same to the reporter, and any portion thereof which for lack of time or to save the time of the Senate the managers or counsel shall omit to deliver or read shall be incorporated by the reporter as part of the argument delivered, and any manager who does not address the court may file an argument before the close of the discussion.

Mr. Palmer explained the reasons for this motion:

I wish to explain the reason why we ask for this privilege. We have made no objection to curtailing the time, though this is the first time in the history of impeachment trials where the time of the managers has been curtailed. To be sure, the rule of the Senate provides that a case shall be closed by two managers, but there has never been any limit of time. We have consented to curtail the time of the gentlemen who are to speak in this case so that some of them shall have forty-five, some fifty, and some sixty minutes. Of course they will not be able to go over the case and do themselves or the case justice in that length of time. Their arguments can be printed in the Record and can be read afterwards by anybody who desires to read them.

Again, it was ordered by the Senate the other day that a brief on the part of the counsel for respondent should be printed, and a brief of 48 pages was printed about ten days ago, but we never got a chance to look at it until this morning, when it was printed in the Record. That brief pertains to jurisdictional affairs, and it is particularly desired to print a brief of the law of the case to meet the brief on the part of the gentlemen on the other side.

In the course of argument by Senators, Mr. John C. Spooner, of Wisconsin, said:

I can see no objection to the publication or the printing in the Record of any argument on one side which the other side seasonably will have opportunity to peruse and to answer.

This is a case which involves, of course, the interests of the people. It involves vitally the interests of the respondent. Whether technically this is a court or not, it pronounces a sentence or judgment. It is a court or a tribunal of first instance and of last resort. There is no appeal from its decision. If it commits an error, there is no reviewing tribunal.

Nowhere in any judicial tribunal in the country, I think, in a matter involving not simply the right to hold an office, but the right ever to hold an office of honor, trust, or emolument, would it be tolerated that an argument should be made and communicated to the court without opportunity to counsel on the other side to reply to it as fully as they might be advised.

Now, if the managers have some argument to submit in answer to the brief which is printed in the Record this morning, that, I should think, would be entirely proper to be printed, but that the managers shall be permitted to submit to the Senate, after the counsel for the respondent have finished their argument, further argument on any of these charges or these articles I think is against the justice of judicial procedure.

Mr. John W. Daniel, of Virginia, said:

Mr. President, my disposition would be to vote for any reasonable request made by the managers or by counsel for the respondent here, but I could under no circumstances vote affirmatively on that request. In my opinion it violates the fundamental principles of English and American law. Every accused person is entitled to be present with his counsel, to have an opportunity to hear every charge

and every word of argumentative speech that is made against him, and also to have opportunity to respond thereto. It seems to me that a statement of the case carries an enforcement of its justice. If that request were granted a most serious and grave argument might appear in print after this case was heard, presenting it in aspects which had not occurred either to the accused, to his counsel, or to any of his judges.

In response to these suggestions the proposed order was modified and agreed to as follows:

That any of the managers or counsel for respondent having all or any portion of his argument in manuscript may deliver a copy of the same to the reporter, and any portion thereof, which for lack of time or to save the time of the Senate, the managers or counsel shall omit to deliver or read, shall be incorporated by the reporter as part of the argument delivered, and any manager who does not address the court may file an argument before the close of the discussion: *Provided,* That all briefs and arguments shall be printed before the closing argument for the respondent begins.

On February 23,[1] at the evening session, counsel for the respondent announced that their case was closed.

The managers then began the presentation of rebuttal evidence.

The rebuttal evidence being concluded, and the managers having, in accordance with permission already given, submitted a brief to be printed, Mr. John M. Thurston, of counsel for the respondent, on this day (February 23)[2] offered on behalf of the respondent, and by reason of the approaching end of the Congress with consequent pressure of legislative business, to submit the case without argument. This offer was declined by the managers.

Mr. Manager Marlin E. Olmsted, of Pennsylvania, then began the arguments in closing.

On February 24[3] Mr. Manager James B. Perkins, of New York. argued; and was followed by Messrs. Managers Henry D. Clayton, of Alabama, and Samuel L. Powers, of Massachusetts, and they were followed on the same day by Mr. Anthony Higgins, of counsel for the respondent.

On February 25[4] Mr. John M. Thurston, of counsel for the respondent, argued; and then, on the same day, Mr. Manager David A. De Armond, of Missouri, closed the case for the House of Representatives and the people.

2485. The Swayne impeachment continued.

The Senate in secret session framed the rule for voting on the articles impeaching Judge Swayne.

The respondent did not attend when the articles in the Swayne case were voted on in the Senate.

Forms of voting on the articles and declaring the result in the Swayne impeachment.

Judgment of acquittal entered in the Swayne case by direction of the Presiding Officer.

The Swayne trial being concluded, the Senate, on motion, adjourned without day.

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[1] Record, p. 3178.

[2] Record, p. 3181.

[3] Record, pp. 3246–3265.

[4] Record, pp. 3365–3383.

The Senate announced to the House by message the acquittal of Judge Swayne.

Then, on the same day,[1] on motion of Mr. Charles W. Fairbanks, a Senator from Indiana, it was ordered that the doors be closed for deliberation.

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

The Senate proceeded to deliberate with closed doors, and at the expiration of one hour and thirty-five minutes the doors were reopened.

While the doors were closed,

Mr. Augustus O. Bacon, of Georgia, submitted the following resolution, which was agreed to:

Resolved, That on Monday next, the 27th day of February, at 10 o'clock a.m., the Senate shall proceed to vote, without debate, on the several articles of impeachment. The Presiding Officer shall direct the Secretary to read the several articles of impeachment in their regular order. After the reading of each article the Presiding Officer shall put the question following: "Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article?" The Secretary will proceed to call the roll for the response of Senators.

Whereupon, when his name is called, each Senator shall arise in his place and give his response "guilty" or "not guilty," and the Secretary shall record the same.

Resolved, That the Secretary notify the House of Representatives of the foregoing.

On February 27,[2] in the Senate, the following occurred:

The PRESIDENT pro tempore. The hour of 10 o'clock having arrived, to which the Senate sitting in the impeachment trial adjourned, the Senator from Connecticut will please take the chair.

Mr. Platt, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now sitting in the impeachment trial of Charles Swayne. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will see if the managers on the part of the House are in attendance.

The managers on the part of the House (with the exception of Mr. Powers, of Massachusetts, and Mr. Perkins) appeared and were conducted to the seats assigned them.

The PRESIDING OFFICER. The Sergeant-at-Arms will see if the respondent and his counsel are in attendance.

Mr. Higgins and Mr. Thurston, the counsel for the respondent, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the last trial day will be read.

The Journal of the proceedings of the Senate sitting for the trial of the impeachment of Charles Swayne Friday, February 24, was read.

The PRESIDING OFFICER. The Secretary will read the first article of impeachment exhibited by the House of Representatives against Charles Swayne.

The Secretary read the first article of impeachment, as follows: * * *

The article having been read, the Presiding Officer put the question:

Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article?

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[1] Senate Journal, p. 365; Record, p. 3383.

[2] Senate Journal, pp. 365–369; Record, pp. 3467–3472.

The roll was then called, Senators answering "guilty" or "not guilty." In the same manner the verdict was taken on each article, with result as follows:

	Guilty.	Not guilty.
Article I	33	49
Article II	32	50
Article III	32	50
Article IV	13	69
Article V	13	69
Article VI	31	51
Article VII	19	63
Article VIII	31	51
Article IX	31	51
Article X	31	51
Article XI	31	51
Article XII	35	47

After the vote on the first article the Presiding Officer announced:

Senators, upon Article 1 of the impeachment of Charles Swayne 33 Senators have voted "guilty" and 49 Senators have voted "not guilty." Two-thirds of the Senators present not having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in the first article.

A similar announcement was made after the vote on each article.

At the conclusion of the voting, after the result on the twelfth article had been recorded, the Presiding Officer said:

The Presiding Officer, following the precedent in the Belknap impeachment case, calls the attention of the Senate to the twenty-second rule of procedure and practice in the trial of impeachments, which provides:

"And if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State."

If there is no objection, the Presiding Officer will direct the Secretary to enter a judgment of acquittal according to the rule. The Chair hears no objection. The Secretary will read it.

The Secretary read as follows:

The Senate having tried Charles Swayne, judge of the district court of the United States for the northern district of Florida, upon twelve several articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein: It is therefore

Ordered and adjudged, That the said Charles Swayne be, and he is, acquitted of the changes in said articles made and set forth.

Mr. Charles W. Fairbanks, of Indiana, said:

Mr. President, I move that the Senate sitting for the trial of the impeachment of Charles Swayne adjourn without day.

The motion was agreed to; and (at 11 o'clock and 40 minutes a. m.) the Senate sitting upon the trial of the impeachment of Charles Swayne adjourned without day.

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

The President pro tempore resumed the chair.

On the same day,[1] in the House, this message was received:

IN THE SENATE OF THE UNITED STATES,
February 27, 1905.

The Senate having tried Charles Swayne, judge of the district court of the United States for the northern district of Florida, upon twelve several articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein: It is therefore

Ordered and adjudged, That the said Charles Swayne be, and he is, acquitted of the charges in said articles made and set forth.

Attest:

CHARLES G. BENNETT, *Secretary.*

The managers made no report to the House.

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[1] House Journal, p. 393; Record, p. 3593.