

Chapter CC.

THE IMPEACHMENT AND TRIAL OF ROBERT W. ARCHBALD.

1. Preliminary inquiry and action by House. Section 498.
 2. Report of articles of impeachment to House. Section 499.
 3. Adoption of articles and election of managers. Section 500.
 4. Delivery of impeachment and presentation of articles in the Senate. Section 501.
 5. Organization of Senate for trial. Section 502.
 6. Process issued. Section 503.
 7. Appearance and rules for the trial. Section 504.
 8. Answer of respondent. Section 505.
 9. Replication of House. Sections 506, 507.
 10. Delay of trial. Section 508.
 11. Opening statements. Section 509.
 12. Presentation of evidence. Section 510.
 13. Final arguments. Section 511.
 14. Judgment pronounced. Section 512.
-

498. The impeachment and trial of Robert W. Archbald, United States circuit judge, designated as a member of the Commerce Court.

In response to a resolution of the House, the President transmitted to the Judiciary Committee of the House charges filed against Judge Archbald and all papers relating thereto with a message suggesting that they be not laid before the House until examined by the committee.

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

In investigating the conduct of Judge Archbald, the Judiciary Committee, by resolution, extended to the accused permission to be present with counsel and cross-examine witness.

On April 23, 1912,¹ Mr. George W. Norris, of Nebraska, introduced, by delivery to the Clerk, the following resolution:

Resolved, That the President of the United States be, and he is hereby, requested, if not incompatible with the public interest, to transmit to the House of Representatives a copy of any charger, filed against Robert W. Archbald, associate judge of the United States Commerce Court, together with the report of any special attorney or agent appointed by the Department of Justice to investigate such charges, and a copy of any and all affidavits, photographs, and evidence filed in the Department of Justice in relation to said charges, together with a statement of the action of the Department of Justice, if any, taken upon said charges and report."

¹Second session Sixty-second Congress, Record, p. 5242.

The resolution was referred, under the rule, to the Committee on the Judiciary. On April 25,¹ Mr. Henry D. Clayton, of Alabama, from that committee, submitted the report of the committee, with favorable recommendation, and the resolution was unanimously agreed to.

A message from the President in response to this request was laid before the House by the Speaker on May 4,² in part as follows:

In reply, I have to state that, in February last, certain charges of improper conduct by the Hon. Robert W. Archbald, formerly district judge of the United States Court for the Middle District of Pennsylvania, and now judge of the Commerce Court, were brought to my attention by Commissioner Meyer of the Interstate Commerce Commission. I transmitted these charges to the Attorney General, by letter dated February 13, instructing him to investigate the matter, confer fully with Commissioner Meyer, and have his agents make as full report upon the subject as might be necessary, and, should the charges be established sufficiently to justify proceeding on them, bring the matter before the Judiciary Committee of the House of Representatives.

The Attorney General has made a careful investigation of the charges, and as a result of that investigation has advised me that, in his opinion, the papers should be transmitted to the Committee on the Judiciary of the House to be used by them as a basis for an investigation into the facts involved in the charges. I have, therefore, directed him to transmit all of the papers to the Committee on the Judiciary; but in my opinion—and I think it will prove in the opinion of the committee—it is not compatible with the public interests to lay all these papers before the House of Representatives until the Committee on the Judiciary shall have sifted them out and determined the extent to which they deem it essential to the thoroughness of their investigation not to make the same public at the present time. But all of the papers are in the hands of the committee and, therefore, within the control of the House.

The message was read and, with the accompanying papers, was referred to the Committee on the Judiciary. On the same day Mr. Clayton, from that committee, reported the following resolution, which was agreed to by the House.

Resolved, That the Committee on the Judiciary be, and is hereby, authorized to inquire into and concerning the official conduct of Honorable Robert W. Archbald, formerly district judge of the United States Court for the Middle District of Pennsylvania, and now a judge of the Commerce Court, touching his conduct in regard to the matters and things mentioned in House Resolution numbered five hundred and eleven, and especially whether said judge has been guilty of an impeachable offense, and to report to the House the conclusions of the committee in respect thereto, with appropriate recommendation;

And resolved further, That the Committee on the Judiciary shall have power to send for persons and papers, and to subpoena witnesses and to administer oaths to such witnesses; and for the purpose of making this investigation said committee is authorized to sit during the sessions of this House; and the Speaker shall have authority to sign and the Clerk to attest subpoenas for any witness or witnesses.

Preliminary to the investigation thus authorized the committee agreed upon the following program of procedure:³

That for the present the committee will hold public hearings, under the authority given by House resolution 524, for the purpose of examining the witnesses in regard to the matters and things mentioned in House resolution 511, which involve the conduct of Hon. Robert W. Archbald, and that in these public hearings where witnesses are examined Judge Archbald may be represented by counsel, if he desires, and that after the chairman of the committee shall have conducted the principal examination of witnesses and asked the members of the committee to ask such questions

¹ Record, p. 5346.

² Record, p. 5896.

³ Record, p. 8907.

as their judgment may dictate to be proper, then, with the permission of the committee, counsel for Judge Archbald, if Judge Archbald is desirous to have counsel present, may ask such questions of the witnesses as the committee may deem proper to be asked of the witnesses in such investigation.

Pursuant to this determination, Judge Archbald attended and was represented by counsel, who cross-examined witnesses and submitted briefs, which were considered by the committee.

499. The Archbald impeachment continued.

The committee, empowered to investigate, reported simultaneously resolutions impeaching Judge Archbald and articles of impeachment.

On July 8, 1912, Mr. Clayton, from the Committee on the Judiciary, presented as privileged a unanimous report, which was referred to the House Calendar.¹

The report, which incorporates findings of fact and conclusions reached by the committee as well as a discussion of the law, nature, and function of impeachment, with citations of authorities relating thereto, concludes:

Your committee reports herewith the accompanying resolution and articles of impeachment against Judge Robert W. Archbald, and recommends that they be adopted by the House and that they be presented to the Senate with a demand for the conviction and removal from office of said Robert W. Archbald, United States circuit judge designated as a member of the Commerce Court:

Resolved, That Robert W. Archbald, additional circuit judge of the United States from the third judicial circuit, appointed pursuant to the act of June 18, 1910 (U. S. Stat. L., vol. 36, 540), and having duly qualified and having been duly commissioned and designated on the 31st day of January, 1911, to serve for four years in the Commerce Court, be impeached for misbehavior and for high crimes and misdemeanors; and that the evidence heretofore taken by the Committee on the Judiciary under House resolution 524 sustains 13 articles of impeachment which are hereinafter set out; and that said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

(Then follow 13 articles of impeachment setting forth the charges in detail.)

500. The Archbald impeachment, continued.

Form of resolution designating managers on the part of the House to conduct the impeachment trial and instructing them to carry the impeachment to the Senate.

The managers elected to conduct the Archbald trial on behalf of the House of Representatives consisted of seven members of the Judiciary Committee and represented both the majority and minority parties in the House.

Form of resolution authorizing the managers to incur necessary expenses in the conduct of the Archbald case.

The report² was debated in the House on July 11.³ At the conclusion of the reading of the report by the Clerk, Mr. James R. Mann, of Illinois, said:

Mr. Speaker, when the report was made by the gentleman from Alabama [Mr. Clayton it was stated by him, and properly so, that the resolution would be printed separately as any other resolution. The Clerk has read the resolution from the report. The resolution was not printed separately, through some misunderstanding, probably, on the part of the clerk in charge,

¹ Record, p. 8705.

² Second session Sixty-second Congress, House Report No. 946.

³ Record, p. 3004.

and I ask unanimous consent that the resolution may be numbered and printed and reported from the committee as of July 8, 1912, in the ordinary form. It seems to me that that is due to the proper procedure in the House.

There was no objection, and the resolution was ordered printed separately, as of July 8, and numbered H. Res. 622.

After extended debate, the resolution, with the accompanying articles of impeachment, was agreed to, yeas 223, nays 1.

Thereupon, it was:

Resolved, That Henry D. Clayton, of Alabama; Edwin Y. Webb, of North Carolina; John C. Floyd, of Arkansas; John W. Davis, of West Virginia; John A. Sterling, of Illinois; Paul Howland, of Ohio; and George W. Norris, of Nebraska, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Robert W. Archbald, circuit judge of the United States and designated as a judge of the United States Commerce Court; that said managers are hereby instructed to appear before the Senate of the United States and at the bar thereof in the name of the House of Representatives and of all the people of the United States to impeach the said Robert W. Archbald of high crimes and misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment against said judge which have been agreed upon by this House; and that the said managers do demand that the Senate take order for the appearance of said Robert W. Archbald to answer said impeachment, and demand his impeachment, conviction, and removal from office.

It was also:

Resolved, That the managers on the part of the House in the matter of the impeachment of Robert W. Archbald, circuit judge of the United States and designated as a judge of the United States Commerce Court, be, and they are hereby, authorized to employ legal, clerical, and other necessary assistants and to incur such expenses as may be necessary in the preparation and conduct of the case, to be paid out of the contingent fund of the House on vouchers approved by the managers, and the managers have power to send for persons and papers.

It was further:

Resolved, That a message be sent to the Senate to inform them that this House has impeached for high crimes and misdemeanors Robert W. Archbald, circuit judge of the United States and designated as a judge of the United States Commerce Court, and that the House adopted articles of impeachment against said Robert W. Archbald, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate, and that Henry D. Clayton, of Alabama; Edwin Y. Webb, of North Carolina; John C. Floyd, of Arkansas; John W. Davis, of West Virginia; John A. Sterling, of Illinois; Paul Howland, of Ohio; and George W. Norris, of Nebraska, Members of this House, have been appointed such managers.

The Members so elected were members of the Committee on the Judiciary and represented both the majority and minority parties in the House.

501. The Archbald impeachment, continued.

A message was sent to inform the Senate that the managers on the part of the House of Representatives would present the impeachment of Judge Archbald, and the Senate transmitted a message in reply informing the House that the Senate was ready to receive them.

Forms and ceremonies of presenting the Archbald impeachment at the bar of the Senate.

The articles of impeachment, signed by the Speaker and attested by the Clerk, after being read by the chairman of the managers, were handed to the Secretary of the Senate.

Having carried to the Senate the articles impeaching Judge Archbald, the managers returned and reported verbally in the House.

On July 13¹ (legislative day of July 6), in the Senate, a message was received from the House of Representatives, delivered by its Chief Clerk, announcing that the House had passed the following resolution:

Resolved, That a message be sent to the Senate to inform them that this House has impeached for high crimes and misdemeanors, Robert W. Archbald, circuit judge of the United States and designated as a judge of the United States Commerce Court, and that the House adopted articles of impeachment against said Robert W. Archbald, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate; and that Henry D. Clayton, of Alabama; Edwin Y. Webb, of North Carolina; John C. Floyd, of Arkansas; John W. Davis, of West Virginia; John A. Sterling, of Illinois; Paul Howland, of Ohio; and George W. Norris, of Nebraska, Members of this House, have been appointed such managers.

On motion of Mr. Augustus O. Bacon, of Georgia, 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 Robert W. Archbald, circuit judge of the United States and designated as a judge of the United States Commerce Court, agreeably to the notice communicated to the Senate.

On July 15,² at 12 o'clock and 15 minutes p. m., the Assistant Doorkeeper of the Senate announced:

I have the honor to announce the managers on the part of the House of Representatives to conduct the proceedings in the impeachment of Robert W. Archbald, judge of the circuit court and designated a judge of the Commerce Court of the United States.

The President pro tempore said:

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

The committee from the House of Representatives were escorted by the Sergeant at Arms to seats assigned them in the area in front of the Chair, and Mr. Manager Clayton, its chairman, said:

Mr. President, the managers on the part of the House of Representatives are here present and ready to present the articles of impeachment which have been preferred by the House of Representatives against Robert W. Archbald, a circuit judge of the United States and designated a judge of the Commerce Court of the United States. The House adopted the following resolution, which I will read to the Senate:

By direction of the President pro tempore, 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 House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Robert W. Archbald, circuit judge of the United States and designated a judge of the United States Commerce Court.

Mr. Manager Clayton then read the articles of impeachment, and continued:

And, Mr. President, 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 Robert W. Archbald, a circuit judge of the United States and designated as a judge of the

¹ Second session Sixty-second Congress, Record, p. 8989.

² Record, p. 9051.

United States Commerce Court, and also of replying to his answers which he shall make unto the articles preferred against him, and of offering proof to the same and every part thereof, and to all and every other article of accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Robert W. Archbald may be put to answer the high crimes and misdemeanors in office which have been charged against him in the articles which have been exhibited to the Senate, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

Mr. President, the managers on the part of the House of Representatives, in pursuance of the action of the House of Representatives by the adoption of the resolutions and articles of impeachment which have just been read to the Senate, do now demand that the Senate take order for the appearance of said Robert W. Archbald to answer said impeachment, and do now demand his impeachment, conviction, and removal from office.

The articles of impeachment signed by the Speaker and attested by the Clerk, were handed to the Secretary of the Senate,¹ and 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 order in the matter of the impeachment of Judge Archbald and communicate its action to the House of Representatives.

Mr. Manager Clayton replied:

Mr. President, in behalf of the House of Representatives the managers of the House beg to thank the Presiding Officer and the Senate for the courtesy extended to the managers upon the part of the House of Representatives.

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

The committee of the House of Representatives having returned to the Hall of the House, Mr. Clayton submitted as privileged:

Mr. Speaker, as one of the managers, and in behalf of all the managers on the part of the House of the impeachment proceedings, I beg to report to the House that the articles of impeachment prepared by the House of Representatives and preferred against Robert W. Archbald, a United States circuit judge and designated as a judge of the Commerce Court of the United States, have been exhibited and read to the Senate; that the Presiding Officer of that body stated to the managers that the Senate would take order in the premises, and that due notice of the same would be given to the House of Representatives.

502. The Archbald impeachment continued.

The articles of impeachment in the Archbald trial were ordered printed by the Senate and referred to a special committee appointed by the President pro tempore.

In the organization of the Senate for the Archbald trial the oath was administered to the President pro tempore by a Senator designated by order of the Senate for that purpose.

The President pro tempore, after being sworn, administered the oath to the Senators sitting for the trial of Judge Archbald.

The Senate notified the House by message that it was organized for the trial of the Archbald impeachment.

¹These articles of impeachment appear in full in the Journals of both the House and Senate, in the House Journal on July 11, (p. 854), the day of their adoption, and in the Senate Journal on July 15, (p. 454), the day they were presented and read.

The hour prescribed by the rule having arrived, the President pro tempore declared legislative business suspended and the Senate in order to proceed for the impeachment trial.

Whereupon¹ Mr. George Sutherland, of Utah, offered the following order, which was agreed to:

Ordered, That the articles of impeachment presented against Robert W. Archbald be printed for use of the Senate.

The following resolution offered by Mr. Clarence D. Clark, of Wyoming, was also agreed to:

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

The President pro tempore appointed Messrs. Clarence D. Clark, of Wyoming; Knute Nelson, of Minnesota; William P. Dillingham, of Vermont; Augustus O. Bacon, of Georgia; and Charles A. Culbertson, of Texas, as members of this select committee.

On July 16² at 1 o'clock p. m., the President pro tempore of the Senate announced:

The hour of 1 o'clock has arrived, and in accordance with the rule the legislative business will be suspended, and the Senate will proceed upon the impeachment of Robert W. Archbald.

On motion of Mr. Reed Smoot, of Utah, by unanimous consent, Mr. Shelby M. Cullom, of Illinois, was designated to administer the constitutional oath.

Mr. Cullom administered the oath to the President pro tempore:

You do solemnly swear that in all things appertaining to the trial of the impeachment of Robert W. Archbald, additional circuit judge of the United States for the third judicial district, designated a judge of the Commerce Court, now pending, you will do impartial justice according to the Constitution and laws. So help you God.

The President pro tempore said:

Without objection, the Chair will suggest that the Secretary will call the roll, calling 10 Senators at a time, and that as their names are called the Senators advance to the desk to have the oath of office administered to them.

Accordingly the roll was called and those Senators present advanced to the desk in groups of 10 and the oath was administered by the President pro tempore to the several groups as called.

The oath having been administered to those present, the names of the absentees were again called, and Senators who had entered the Chamber since the first call advanced to the desk and were sworn.

The President pro tempore announced:

Senators, the Senate is now sitting for the trial of the impeachment of Robert W. Archbald additional circuit judge of the United States for the third judicial district, designated a judge of the United States Commerce Court.

¹Second session Sixty-second Congress, Senate Journal, p. 628.

²Record, p. 9117.

On motion of Mr. Clark, 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 Robert W. Archbald, United States circuit judge, and is ready to receive the managers on the part of the House at its bar.

A message announcing the passage of this order was delivered in the House by Mr. Crockett, one of the clerks of the Senate.

Mr. Lodge then submitted:

I am about to make a motion that the Senate, sitting as a court of impeachment, take a recess until 3 o'clock in order to give the managers on the part of the House time to assemble and appear here. Before making the motion, however, I call attention to the fact that the Senate, sitting as a court, when it takes a recess brings the Senate back into legislative session where it was. I now make the motion that the Senate, sitting as a court of impeachment, take a recess until 3 o'clock.

The motion was agreed to, and at 1 o'clock and 45 minutes, p. m., the Senate, sitting as a court of impeachment, took a recess until 3 o'clock p.m., and a message notifying the House of this recess was transmitted¹ to the House.

503. The Archbald impeachment, continued.

The ceremony of formal demand by the managers that process issue in the trial of the Archbald impeachment.

On demand of the managers, the Senate ordered summons to be issued for the appearance of Judge Archbald, fixing the day and hour of return.

The proceedings of the Senate, sitting in the impeachment trial of Judge Archbald, were recorded in a separate journal.

In the meanwhile² the resolution notifying the House that the Senate was now organized for the trial was delivered in the House, and, at 3 o'clock and 1 minute 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 PRESIDENT PRO TEMPORE. 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 PRESIDENT PRO TEMPORE. Gentlemen managers, the Senate is now organized for the trial of the impeachment of Robert W. Archbald, additional circuit judge of the United States for the third judicial circuit, designated a judge of the Commerce Court.

Whereupon Mr. Manager Clayton, chairman of the managers on the part of the House, rose and said:

Mr. President, we, as managers on the part of the House of Representatives, are directed by the House of Representatives to appear at the bar of the Senate, which we now do, and demand that process be issued to Robert W. Archbald, additional circuit judge of the United States for the third judicial circuit, designated a judge of the Commerce Court, and that he be required to answer at the bar of the Senate the said articles of impeachment.

¹ Record, p. 9145.

² Second session Sixty-second Congress, Record, p. 9123.

Thereupon Mr. Clark offered the following, which was agreed to by the Senate:

Ordered, That a summons be issued, as required by the Rules of Procedure and Practice in the Senate when sitting for the trial of the impeachment of Robert W. Archbald, returnable on Friday, the 19th day of the present month, at 12.30 o'clock in the afternoon.

Mr. Manager Clayton said:

Mr. President, I beg to say on behalf of the managers on the part of the House of Representatives that they will await the further pleasure of the Senate.

And then, at 3 o'clock and 5 minutes p. m., the managers on the part of the House retired from the Chamber.

On motion of Mr. Clark, the Senate, sitting for the trial of the impeachment, adjourned until Friday, July 19, at 12.30 o'clock in the afternoon. A message advising the House of this action on the part of the Senate was transmitted to the House.

The proceedings of the court of impeachment do not appear in the daily Journal of the Senate but are recorded in a separate journal appended thereto and entitled "Proceedings of the Senate on the Trial of Robert W. Archbald, etc."

The daily Journal of the Senate merely records the announcement of the session of the Senate sitting on the trial, and in each instance concludes:

After proceedings had therein as stated in the record, the Senate resumed its legislative business.

504. The Archbald impeachment trial.

Form of oath of the Sergeant at Arms and form of proclamation opening sessions of the Senate sitting in the impeachment trial of Judge Archbald.

In response to the writ of summons, Judge Archbald appeared in person attended by counsel to answer the articles of impeachment.

In the Archbald trial the Senate adopted orders supplementing the rules of procedure and practice for the Senate when sitting in impeachment trials.

Order of the Senate prescribing method of submitting requests, applications, or objections, and regulating colloquys and questions.

In response to a motion by respondent's counsel that time be allowed to present the answer, the Senate granted 10 days.

On July 19,¹ in the Senate, the following appears:

The PRESIDENT PRO TEMPORE. The hour of 12.30 o'clock, to which the Senate sitting as a court in the impeachment of Judge Robert W. Archbald adjourned, has arrived. 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 Robert W. Archbald, additional circuit judge of the United States for the third judicial circuit, designated a judge of the United States Commerce Court.

By direction of the President pro tempore, the names of those Senators who had not been sworn were called. There were no responses.

¹Second session Sixty-second Congress, Record, p. 9275; Senate Journal, p. 629.

Mr. Clark offered this resolution, which was agreed to:

Ordered, 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 Robert W. Archbald.

On motion of Mr. Clark, it was:

Ordered, That the Presiding Officer on the trial of the impeachment of Robert W. Archbald, circuit judge of the United States, be, and is hereby, authorized to sign all orders, mandates, writs, and precepts authorized by the Rules of Procedure and Practice in the Senate when sitting on impeachment trials and by the Senate.

At 12 o'clock and 37 minutes p. m. the Assistant Doorkeeper announced the managers on the part of the House, who were conducted to the seats assigned to them in the area in front of the Secretary's desk, on the left of the Chair.

At 12 o'clock and 39 minutes p. m. the respondent, Robert W. Archbald, and his counsel, A. S. Worthington and Robert W. Archbald, jr., entered the Chamber and were conducted to seats assigned them in the space in front of the Secretary's desk on the right of the Chair.

The PRESIDENT PRO TEMPORE. The Secretary will read the Journal of the proceedings of the last session of the Senate while sitting in the trial of the impeachment of Robert W. Archbald.

The Secretary read the Journal of proceedings of the Senate sitting for the trial of the impeachment of Tuesday, July 16, 1912.

By direction of the President pro tempore, the Secretary read the following return appended to the writ of summons and administered the following oath to the Sergeant at Arms:

"I, Daniel M. Ransdell, Sergeant at Arms of the Senate of the United States, do solemnly swear that the return made by me upon the process issued on the 16th day of July, 1912, by the Senate of the United States, against Robert W. Archbald, additional circuit judge of the United States for the third judicial circuit and designated a judge in the Commerce Court, is truly made, and that I have performed such service therein described. So help me, God."

Whereupon the Sergeant at Arms made proclamation:

Robert W. Archbald! Robert W. Archbald! Robert W. Archbald, circuit judge of the United States and designated as a judge of the United States Commerce Court: Appear and answer to the articles of impeachment exhibited by the House of Representatives against you.

The President pro tempore announced:

Counsel for the respondent are informed that the Senate is now sitting for the trial of Robert W. Archbald, additional circuit judge of the United States for the third judicial circuit and designated a judge of the Commerce Court, upon articles of impeachment exhibited by the House of Representatives, and will hear his answer thereto.

Mr. Worthington, of counsel for the respondent, entered formal appearance, which was read by the Secretary and ordered placed on file.

Mr. Worthington then submitted a motion on behalf of the respondent praying that time be granted in which to prepare an answer to the articles of impeachment.

On motion of Mr. Clark, of Wyoming, amended by motion of Mr. Porter J. McCumber, of North Dakota, and further modified on suggestion of Mr. Henry Cabot Lodge, of Massachusetts, it was:

Ordered, That the respondent present the answer to the articles of impeachment at 12 o'clock and 30 minutes post meridian on Monday, the 29th day of July, 1912.

The following orders were then severally agreed to:

Ordered, That the managers on the part of the House be allowed until the 1st day of August, 1912, at 1 o'clock in the afternoon, to present a replication, or other pleading, of the House of Representatives to the answer of the respondent. That any subsequent pleadings, either on the part of the managers or of the respondent, shall be filed with the Secretary of the Senate, of which notice shall be given to the House of Representatives and the respondent, respectively, so that all pleadings shall be closed on or before the 4th day of August, 1912.

Ordered, That in all matters relating to the procedure of the Senate, sitting in the trial of the impeachment of Robert W. Archbald, circuit judge of the United States, 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.

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

And then, at 1 o'clock and 19 minutes p. m., the Senate, sitting for the trial of the impeachment, adjourned, and the managers on the part of the House and the respondent and his counsel withdrew from the Chamber.

505. The Archbald impeachment continued.

The answer of Judge Archbald to the articles of impeachment was signed by himself and his counsel.

The answer in the Archbald case was read by the Secretary of the Senate.

The answer of Judge Archbald demurred severally to all the articles of impeachment, alleging that no impeachable offense had been charged and then replying in detail to the charges set forth in each article.

The managers were not supplied with a copy of the answer of Judge Archbald at the time of filing.

On July 29¹ the Senate, at the appointed hour, discontinued its legislative business, and the session for the impeachment proceedings was opened with the usual proclamation by the Sergeant at Arms.

The oath was administered to certain Senators not previously sworn.

¹Second session Sixty-second Congress, Senate Journal, p. 630; Record, p. 9795

The managers, and the respondent with his counsel, having attended, the President pro tempore directed the Journal of the last session's proceedings to be read. The Journal having been approved, Mr. Worthington presented the respondent's answer, consisting of a separate demurrer and answer to each of the 13 articles of impeachment, which was read by the Secretary.

This answer of respondent appears in full in the Journal.¹

At the conclusion of the reading Mr. Manager Clayton inquired if the counsel could furnish the managers on the part of the House of Representatives with a copy of this answer by the respondent to the articles of impeachment.

Mr. Worthington, of counsel for the respondent, replied:

Mr. President, I regret to say that we had obtained a copy for that purpose, but different newspapers and press associations exhausted the copies, even our own office copy. Otherwise we should be very happy to hand a copy to the managers.

And then, on motion of Mr. Lodge, at 2 o'clock and 5 minutes p.m., the Senate, sitting on the trial of impeachment, adjourned until Thursday, August 1, 1912, at 1 o'clock, p.m.

506. The Archbald impeachment continued.

An attested copy of Judge Archbald's answer, having been messaged to the House by the Senate, was referred to the managers.

The managers having prepared a replication to the answer of Judge Archbald, submitted it to the House for approval and adoption.

The House notified the Senate by message that it had adopted a replication in the Archbald trial and had authorized its managers to file with the Secretary of the Senate any further pleading deemed necessary.

On July 31,² in the House, the Speaker announced the reference to the managers on the part of the House of Representatives of an attested copy of the answer of Robert W. Archbald to the articles of impeachment messaged to the House from the Senate on the previous day.

Mr. Manager Clayton said:

Mr. Speaker, I am directed by my associate managers on the part of the House to say that the managers were furnished on yesterday with a certified copy of the answer of Judge Archbald, additional circuit judge for the first judicial circuit, designated a judge in the Commerce Court.

And I am further directed to say that the managers have considered the answer in the matter of the impeachment proceedings against Judge Archbald and have directed me to present to the House, and ask its adoption, the replication³ to such answer, and I ask that the Clerk read the replication, which I send to the desk.

The Clerk read the replication. On motion of Mr. Manager Clayton, the replication was unanimously adopted.

Mr. Manager Clayton then offered the following resolution, which was agreed to:

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 Robert W.

¹ Senate Journal, pp. 630–639.

² Second session Sixty-second Congress, House Journal, p. 910; Record, p. 9954.

³ House Report No. 1119.

Archbald, additional circuit judge of the United States for the third judicial circuit, and designated a judge of the United States Commerce Court, 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 of Representatives, any subsequent pleadings which they shall deem necessary.

507. The Archbald impeachment, continued.

The replication in the Archbald trial was presented by the managers and read by the Secretary of the Senate.

The replication of the House to the answer of Judge Archbald was submitted without signature.

The replication of the House consisted of a general denial of all allegations set forth in Judge Archbald's answer and an averment that the charges contained in the articles of impeachment set forth impeachable offenses.

On August 1¹ the Senate went into session for the trial in the usual form.

The President pro tempore laid before the Senate a message received from the House of Representatives, which was read by the Secretary, as follows:

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 Robert W. Archbald, additional circuit judge of the United States for the third judicial circuit and designated a judge of the United States Commerce Court, 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 of Representatives, any subsequent pleadings which they shall deem necessary.

Mr. Manager Clayton said:

Mr. President, on behalf of the House of Representatives and on behalf of the managers of the House of Representatives I now present the replication of the House of Representatives to the answers made by Robert W. Archbald, United States circuit judge for the third judicial circuit and designated a judge of the United States Commerce Court. The replication is to the answer of the respondent. I ask that it be read by the Secretary.

The replication was read by the Secretary and ordered to be printed.

Mr. Manager Clayton then submitted the following order for adoption by the Senate:

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 at 12 o'clock and 30 minutes postmeridian on the 7th day of August, 1912.

Ordered, That the cause shall be opened and the trial proceeded with at 12 o'clock and 30 minutes postmeridian on the 7th day of August, 1912.

Mr. Worthington, of counsel for the respondent, objected:

Mr. President, as far as I know, it is unprecedented to ask the court to fix a time for the trial of a case until it is at issue. By an order which has heretofore been made by the Senate it is provided that after this replication shall have been filed further pleadings on either side may be filed with the Secretary of the Senate, the pleadings to be closed by next Saturday. Having heard the replication read, I am quite clear that it will be necessary to file a further pleading on

¹Second session Sixty-second Congress, Senate Journal, p. 638; Record, p. 9983.

behalf of the respondent in order to have this case in such shape that it can be legally determined. So far as we are concerned, I think that further pleading may in all probability be filed certainly by 12 o'clock to-morrow.

I would respectfully suggest that it is not in order to fix a time for the trial until what is to be tried is fixed by the pleadings in the case.

Upon further argument by Mr. Manager Clayton and Mr. Worthington—

The PRESIDENT PRO TEMPORE. The Chair will be glad to submit any motion which counsel for the respondent may make.

Mr. WORTHINGTON. The rule which you have adopted would permit counsel for the respondent or the managers to make orally any request for an order, but it must be reduced to writing if required.

I make orally the motion that the question of fixing a date for the trial be postponed until the court convenes on Saturday next.

After further discussion, Mr. Thomas S. Martin, of Virginia, suggested that the managers on the part of the House permit consideration of their motion to go over until Saturday, August 1.

The President pro tempore submitted:

Counsel on the part of the respondent asks that the consideration of the question as to when the trial shall be proceeded with be postponed for determination until Saturday. Is there objection? If not, by unanimous consent it is so ordered. Is there any other matter the managers on the part of the House desire to present?

Mr. Manager CLAYTON. There is nothing else, Mr. President, and having no other business before the Senate, we beg leave at this time to retire.

Thereupon the managers and respondent, with his counsel, withdrew and adjournment was taken until August 3, at 2 o'clock p.m.

508. The Archbald impeachment, continued.

Counsel for Judge Archbald having elected not to plead further notified the managers by letter of that decision.

In response to an objection by the managers to the designation "board of" managers, contained in a communication incorporated in the record of proceedings, the Secretary of the Senate was authorized to correct the designation.

In the Archbald trial the Senate provided that lists of witnesses to be subpoenaed should be furnished by managers or counsel to the Sergeant at Arms and that additional witnesses desired later should be subpoenaed on application to the Presiding Officer.

The Senate considered in secret session a motion by the managers fixing the date on which the Archbald trial should be opened.

The Senate declined to grant the motion of the managers, submitted August 3, that the trial of Judge Archbald begin August 7, and, on motion of a Senator, set the opening of the trial for December 3.

On August 3¹ a letter addressed to Mr. Manager Clayton by Mr. Worthington, of counsel for the respondent, was, by request of Mr. Worthington, seconded by Mr., Manager Clayton, read and incorporated in the record as follows:

WASHINGTON, D. C., *August 2, 1912.*

Hon. HENRY D. CLAYTON,

Chairman Board of Managers in the matter of

the impeachment of Robert W. Archbald.

DEAR SIR: Inasmuch as counsel for Judge Archbald have decided not to file any further pleadings in his case, it is due to the board of managers that I should notify them of that fact and inform them why counsel have changed their minds on this subject since the argument in the Senate yesterday.

In the respondent's first answer to each of the articles of impeachment he avers in substance that the article does not set forth an impeachable offense. In the first paragraph of the replication filed on behalf of the House of Representatives issue was joined on these answers. But as to whole of the sixth article and as to part of the thirteenth article the respondent pleads in substance that even if the article sets forth an impeachable offense it sets it forth in such general and indefinite terms that the respondent should not be called upon to answer it. And as to the thirteenth article, the plea is made that it is bad because it undertakes to charge in one article two separate and distinct offenses.

We do not find in the replication any distinct reference to either of these two last-mentioned defenses, relating one to both the sixth and the thirteenth articles and the other to the thirteenth article alone. It was our impression yesterday that for this reason some further pleading would be necessary on our part as to these two matters. However, as you stated in the Senate yesterday that it is the understanding of the board of managers that their replication is a denial of all of our allegations as to the insufficiency of the articles of impeachment, whether on one ground or another, counsel for tale respondent have decided that they will accept this construction of the replication made by the board of managers. This being so, no further pleading seems to be necessary, and we will be ready, when the Senate meets to-morrow, to take up the question of the date of trial.

Yours, very truly,

A. S. WORTHINGTON

Of Counsel for Respondent.

Thereupon Mr. Manager Clayton said:

Mr. President, I do not desire to be hypercritical of the language employed by the counsel, but so far as my investigation goes, I am led to understand that the managers of the House have never before been spoken of as a board of managers. I therefore ask the counsel to strike from his letter the words "board of" wherever they occur. We are not a board of managers. We are managers on the part of the House of Representatives; and while not a purist, not a hairsplitting dealer in technicalities, I think it is proper that in papers of this character and of this solemnity the usual forms be followed.

The PRESIDENT PRO TEMPORE. The Secretary will make the correction.

On request of Mr. Manager Clayton, the order pending before the Senate at adjournment was reported. On motion of Mr. Manager Clayton, the order was amended to read as follows:

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 at 12 o'clock and 30 minutes postmeridian on the 7th day of August, 1912.

And further ordered, That in case hereafter the managers or the respondent may desire the attendance of additional witnesses, in such case the managers or the respondent may have the

¹ Second session Sixty-second Congress, Senate Journal, p. 638; Record, p. 10132.

witness or witnesses desired subpoenaed, in accordance with the practice and usage of the Senate, upon application in such form as may be approved by the Presiding Officer.

Ordered, That the cause shall be opened and the trial proceeded with at 12 o'clock and 30 minutes postmeridian on the 7th day of August, 1912.

The PRESIDENT PRO TEMPORE. The Presiding Officer would inquire whether the counsel for the respondent desires to submit any order.

Mr. WORTHINGTON, No, Mr. President.

After argument by Mr. Manager Clayton and Mr. Worthington on the adoption of the order as amended, Mr. Clark, of Wyoming, submitted:

Mr. President, anticipating that the decision of this matter will lead to some debate, and as under the rules it must be considered behind closed doors, I move that the doors be closed for the purpose of deliberation.

The motion was agreed to, and the President pro tempore directed the Sergeant at Arms to clear the galleries and close the doors. The managers and the respondent, with his counsel, withdrew, and at 4 o'clock and 30 minutes p. m., the doors were closed until 5 o'clock and 32 minutes p. m., when the doors were reopened.

The managers on the part of the House and the respondent, accompanied by counsel, entered the Chamber and took the seats assigned them.

Mr. Jacob H. Gallinger, of New Hampshire, offered the following order:

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 at 12 o'clock and 30 minutes postmeridian on the 3d day of December, 1912.

Ordered, That the cause shall be opened and the trial proceeded with at 12 o'clock and 30 minutes postmeridian on the 3d day of December, 1912.

Mr. Henry L. Meyers, of Montana, offered the following as a substitute for the order submitted by Mr. Gallinger:

Ordered, That the trial of the accused under these impeachment proceedings and charges be, and is hereby, set for the 15th day of August, 1912, at 12:30 p. m., and that orders for witnesses be filed on or before August 10, 1912, and thereafter as the Senate may order.

The order submitted by the managers on the part of the House of Representatives was also read. The pending question was then put by the President pro tempore, as follows:

The several orders are before the Senate for consideration. Under the view taken by the Presiding Officer, the question should first be put on the order fixing the most distant time. That is in accordance with parliamentary procedure and also in accordance with such procedure as might be considered proper in a court. The order proposed by the Senator from New Hampshire, Mr. Gallinger, is the one which fixes the longest period, and the vote will first be taken upon that. The rule¹ of the Senate requires that the vote shall be taken by yeas and nays. It is therefore not necessary that the yeas and nays should be ordered as in other instances. As Senators' names are called, those who favor the date fixed by the order proposed by the Senator from New Hampshire will vote "yea." Those who are opposed to that date and favor other dates will as their names are called, vote "nay." The Secretary will call the roll.

The roll being called, it was decided in the affirmative, yeas 44, nays 19, and the order submitted by Mr. Gallinger was agreed to.

¹ Standing Rules of the Senate, Rule V, p. 174.

The managers on the part of the House thereupon retired from the Chamber.

The Senate sitting for the trial of the impeachment continued in session and considered briefly a matter of procedure² relating to the trial.

Following the disposition of the question of procedure, the respondent retired from the Chamber, and the Senate, sitting for the trial of the impeachment, adjourned until Tuesday, December 3, at 12:30 o'clock p. m.

509. The Archbald impeachment, continued.

The opening addresses in the Archbald trial were regulated by order of the Senate.

Managers and counsel made extended opening statements in the Archbald trial, the managers outlining charges which they proposed to establish and counsel for the respondent setting forth the contention that impeachment could be sustained only on conviction of offenses punishable in criminal court and controverting charges preferred in the articles of impeachment.

On December 3, 1912,¹ Mr. Worthington introduced Mr. Alexander Simpson, Jr., of the Philadelphia bar, as associate counsel for the respondent.

The following orders were severally agreed to:

Ordered, That the daily sessions of the Senate sitting in the trial of impeachment of Robert W. Archbald, additional circuit judge of the United States, shall, unless otherwise ordered, commence at 2 o'clock in the afternoon.

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

Upon suggestion of Mr. Manager Clayton and Mr. Worthington, respectively, it was agreed that the managers on the part of the House of Representatives and the respondent and his counsel should, during the remainder of the proceedings, appear without the formality of an announcement.

Mr. Manager Clayton opened the case for the House of Representatives as follows:

Mr. President, as I understand the action of the Senate, it contemplated that at this time the managers should proceed to make a statement embodying the facts upon which the articles of impeachment are predicated in this case.

Mr. Manager Clayton then proceeded with a statement of what the managers proposed to prove.

He was followed by Mr. Worthington, who said:

Mr. President and Senators, for the first time in an impeachment trial in this tribunal the opening statement for the respondent is to be made at the beginning of the case instead of at the close of the testimony on behalf of the managers. We have desired to do this and are doing it with the acquiescence of the honorable managers for two reasons. One is that the Members of the Senate may know when the introduction of testimony is going on what are the questions of fact in dispute. The other is that Senators may know from the beginning what we rely upon as the law of the case.

¹Third session Sixty-second Congress, Senate Journal, p. 317; Record, p. 21.

²See section 7714, Chapter CXCI in this volume.

Mr. Worthington then stated the contention of counsel on behalf of the respondent, that Judge Archbald could be properly convicted in impeachment proceedings only when convicted of an offense punishable in a criminal court, and controverted and discussed in detail allegations contained in the charges preferred in the articles of impeachment.

In reply to an allusion made by Mr. Worthington in discussing the theory that impeachment could be only for indictable offenses, Mr. Manager Clayton said by way of rebuttal:

Mr. President, in reply to the complaint which has been made by the honorable gentleman who represents the respondent that we did not go into the discussion of the law in the preliminary statement which the managers had the honor to submit this afternoon, I beg to say that we followed what we believed to be the practice in such cases. I have before me the record in the case of Judge Swayne. I observe that Judge Palmer, who was then the manager speaking for all the managers, after he concluded his statement of facts, winding up, with a condensed summary of all the statements which he had made at length, ended the preliminary statement of facts which is required according to the rules and practice of the Senate. He did not at that time present any brief or any argument or any views on the law of impeachment. The managers, Mr. President, have already prepared in a formal way a brief, and can present that brief, and in argument fully cover their views as to the law of impeachment; but we thought that this brief and what the managers said last summer, which is in the Record and to which I have referred, would amply apprise the honorable counsel for the respondent of the line of argument on the law in this case that the managers would pursue.

On December 5,¹ on motion of Mr. John D. Works, of California, it was—

Ordered, That such briefs and citations of authorities as have already been prepared by the managers on the part of the House and counsel for the respondent be filed with the Secretary and printed in the Record for the immediate use of Senators.

510. The Archbald impeachment, continued.

The presentation of evidence in the Archbald trial.

Instances wherein the Senate by order restricted the number of character witnesses which might be called to testify.

An instance in which the Senate by order disregarded an established rule of evidence.

On December 4,² following the reading and approval of the Journal, the names of witnesses on behalf of the managers were read to ascertain their presence, and the introduction of testimony on behalf of the managers began.

This presentation of testimony continued on December 5, 6, 7, 9, 10, 11, 12, and was concluded on December 14, when Mr. Manager Clayton announced that examination in chief had been concluded.

The introduction of testimony on behalf of the respondent was begun on December 16 and continued until December 19, when adjournment was taken until January 3, 1913.

¹ Record, p. 151.

² Third session Sixty-second Congress, Record, p. 98.

On December 17,³ following the introduction of a number of witnesses called by counsel on behalf of the respondent to testify as to respondent's character, Mr. Manager Clayton said:

Mr. President, the managers have offered no character witnesses anywhere in these proceedings; it is not their purpose to offer any character witnesses. Ten character witnesses have been examined. The rule adopted, or the practice I may say, to be more accurate, in all the courts of justice so far as I know is that the court has the discretionary power to limit the number of witnesses as to character. I take it that that power is an inseparable incident of the court to regulate its proceedings and for the purpose, among others, of bringing the trial to an end.

In so far as I know, all courts permit a reasonable number of witnesses to be examined on character; but where the testimony of the character of the party is not controverted, the court has always, after a reasonable number of witnesses have been examined, held that no more should be examined on that particular matter. Some of the courts of the Union hold that four character witnesses are sufficient where the testimony of those witnesses is not controverted.

So, Mr. President, I respectfully submit to you and to the Senate that after these gentlemen have examined 10 witnesses on character and when the testimony of those character witnesses is not disputed—is not controverted—and when the managers tell the Senate it will not be controverted, it seems to me that the further examination of character witnesses might well be dispensed with.

The Presiding Officer said:

The Chair recognizes, of course, that the practice is such as the manager has indicated, and the necessity of it is apparent. Otherwise the time of a court might be indefinitely taken up through the introduction of innumerable witnesses. At the same time the Chair recognized that in this case the character of the respondent is necessarily in issue, and on account of the gravity of the case and the peculiar position which the Presiding Officer holds, simply as the mouthpiece of the Senate, the Chair does not feel authorized to take the responsibility of shutting off the respondent in the proof which he seeks to make upon this line. The Senate has full control over the matter whenever it sees proper to exercise it.

Thereupon, on motion of Mr. James A. Reed, of Missouri, it was—

Ordered, That the number of character witnesses shall be limited to 15.

On December 18,¹ on cross-examination, Mr. Manager Webb proposed to interrogate Miss Mary F. Boland, a witness called in behalf of the respondent, about certain matters relative to a conversation which had not been referred to in the examination in chief. Objection by counsel for the respondent was sustained by the presiding officer.

The PRESIDING OFFICER. The rule is plain that the counsel can only cross-examine the witness about matters upon which the witness has been interrogated on direct examination.

Whereupon, on motion of Mr. James A. Reed, of Missouri, it was—

Ordered, That the witness now on the stand, Miss Mary F. Boland, be at this time interrogated by the managers relative to that part of the conversation sought to be elicited.

511. The Archbald impeachment, continued.

In the impeachment trial of Judge Archbald the respondent took the stand and testified in his own behalf.

No rebuttal evidence was offered by the managers in the Archbald trial.

¹Third session Sixty-second Congress, Senate Journal, p. 322; Record, p. 841.

²Record, p. 774.

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

The order in which closing arguments in the Archbald trial should be made was arranged by stipulation between managers and counsel.

The Senate permitted argument in manuscript to be filed with the reporter and included in the printed report of the proceeding.

Counsel having withheld remarks from the record in violation of the rule, the managers called attention to the infraction and asked that the rule be enforced.

The Senate fixed the time at which a final vote should be taken on the articles of impeachment presented against Judge Archbald and notified the House by message.

The voting on the articles in the Archbald impeachment was without debate but each Senator was permitted to file an opinion to be published in the printed proceedings.

The presentation of testimony on behalf of the respondent was resumed on January 3, 1913, and continued on January 4 and January 6, and concluded on January 7. On the last two days the respondent was called to the stand in person by counsel and testified in his own behalf,¹ being cross-examined by the managers and answering numerous questions propounded by Senators in writing. No rebuttal evidence was presented by the managers.

The taking of evidence having been concluded on both sides, on suggestion of the managers, all witnesses summoned on behalf of either side were finally discharged.

On motion of Mr. Reed Smoot, of Utah, it was:

Ordered, That hereafter the daily sessions of the Senate sitting in the trial of impeachment of Robert W. Archbald, additional circuit judge of the United States, shall commence at 1 o'clock in the afternoon and shall continue until 6 o'clock p. m.; that the time for final argument of the case shall be limited to three days from and including January 8, 1913, and shall be divided equally between the managers on the part of the House of Representatives and the counsel for the respondent, the time thus assigned to each side to be divided as each side may for itself determine.

On January 8² agreement between managers and counsel for the respondent as to order in which argument should be made was indicated by Mr. Worthington, as follows:

Mr. President, I may say it is entirely agreeable to counsel for the respondent. We have had some conference with the managers about it, and we understand that all the managers who are to speak, except the one who is to make the closing argument, will speak before we begin.

The following orders were severally agreed to:

Ordered, That the time for final arguments in the trial of impeachment of Robert W. Archbald, additional circuit judge of the United States, shall be limited to three days from and including January 8, 1913, and shall be divided equally between the managers on the part of the House of Representatives and the counsel for the respondent, the time thus assigned to each side to be divided as each side may for itself determine.

¹This is apparently the only instance in which a respondent in an impeachment case before the Senate has taken the stand in his own behalf.

²Third session Sixty-second Congress, Senate Journal, p. 325; Record, p. 1208.

Ordered, That any of the managers or counsel for the respondent having all or any portion of his argument in manuscript may deliver a copy of the same to the Reporter or 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, and the same shall be incorporated by the Reporter as a part of the argument delivered, and any manager or counsel who does not address the court may file and have printed as a part of the proceedings an argument before the close of the discussion.

Mr. Manager Sterling, on behalf of the managers, began the argument in support of the articles of impeachment, and was followed by Messrs. Manager Webb and Manager Floyd. Mr. Manager Howland also addressed the Senate and had not concluded at adjournment. On January 9³ Mr. Manager Howland concluded his argument, and Messrs. Manager Norris and Manager Davis continued for the managers.

Mr. Simpson then opened the argument on behalf of the respondent, and was followed by Mr. Worthington, who concluded his argument on January 10.⁴ Mr. Worthington was followed by Mr. Manager Clayton, who closed the argument on behalf of the managers.

At the conclusion of the argument, Mr. Reed, proposed to submit to the respondent for answer the following question which he sent to the desk in writing:

You have testified that you were in doubt with reference to the proper construction to be placed upon the testimony of Mr. Compton, and that thereupon you wrote a letter to Helm Bruce, the attorney, asking him for his construction of the evidence and you have further stated that you attached the reply written by Helm Bruce to the record. It appears in the original record that in the sentence which appears in typewriting, "We did apply it there," an alteration is made by pen and ink, a caret being inserted between the words "did" and "apply," and a line is drawn from the caret to the margin, and the word "not" written. Did you make this alteration?

On motion of Mr. Clark, of Wyoming, the doors were closed for deliberation. After one hour and four minutes the doors were reopened, and the President pro tempore announced that the Senate in private conference had determined that the question should not be asked. Mr. Reed withdrew the request.

On January 11,⁵ upon the approval of the minutes, Mr. Clark, of Wyoming, moved that the doors be closed for deliberation on the part of the Senators, and the question was put, when Mr. Manager Clayton said:

Before the motion is announced as having been carried, I will state that I submitted a communication to the President of the Senate this morning directing attention to what I think is an infraction of the rules of the Senate on the part of Mr. Worthington, of counsel for the respondent, who has withheld his remarks from the Record.

Mr. President, everyone else printed his remarks when those remarks were completed without withholding them, and I know of no rule of any court which permits this to be done. Against that, Mr. President, I desire to say that I think it is improper. I have called the attention of the Presiding Officer to that fact, and I hope that the order made in this case will be observed.

Mr. Worthington said:

I have only to say, Mr. President, that after the late hour when we adjourned here last night, as soon as possible I got to work at the manuscript which had been forwarded to me and continued to work on it until midnight. I was then told that it was too late to get it in the Record of to-day.

I was not aware of any rule of the Senate which prevented this from being done, and I observed I think that the remarks of one of the managers, Mr. Manager Howland, had been withheld.

³ Record, p. 1258.

⁴ Record, p. 1329.

⁵ Record, p. 1385.

To which Mr. Manager Clayton rejoined:

Mr. President, may I not make, with the permission of the Senator, another suggestion? The manager who is now addressing you remained at his office last night until the hour of 12:30 in order to read the manuscript of the report of his remarks made here yesterday, made after the gentleman who has just addressed you made his. And it will be borne in mind that Mr. Worthington made part of his argument day before yesterday.

Mr. President, it seems to me that in all fairness and due observance of this rule his remarks should have been in the Record this morning. This manager, who labored under greater disadvantage than he did, has put his in the Record this morning.

Mr. Frank B. Brandegee, of Connecticut, having made the point of order that made the motion to close the doors is not debatable, the President *pro tempore* said:

The Chair withheld the announcement of the vote out of courtesy to the manager on the part of the House of Representatives, which the Chair supposed would meet with the acquiescence and approval of the Senate. Strictly, of course, the order to close the doors ought to have been made, but this was the only opportunity, and the manager on the part of the House of Representatives, in the opinion of the Chair, was entitled to that courtesy. The Chair will now, however, declare that the motion of the Senator from Wyoming is carried, and the Sergeant at Arms is directed to clear the galleries and close the doors.

The doors having been reopened, on motion of Mr. Clark of Wyoming, it was severally:

Ordered, That on Monday, January 13, 1913, at the hour of 1 o'clock p.m., a final vote be taken on the articles of impeachment presented by the House of Representatives against Robert W. Archbald, additional circuit judge of the United States.

Ordered, That the Secretary of the Senate do acquaint the House of Representatives that the Senate sitting as a High Court of Impeachment will on Monday, the 13th day of January instant, at the hour of 1 o'clock, p.m., proceed to pronounce judgment on the articles of impeachment exhibited by the House of Representatives against Robert W. Archbald.

Mr. Elihu Root of New York then submitted the following:

Ordered, That upon the final vote in the pending case each Senator may, in giving his vote, state his reasons therefor, occupying not more than one minute, which reason shall be entered in the Journal in connection with his vote; and each Senator may, within two days after the final vote, file his opinion, in writing, to be published in the printed proceedings in the case.

Mr. McCUMBER. I move to amend the proposed order by striking out the first of it, relating to the one-minute explanation of a vote, so that the latter portion may still stand.

The amendment was agreed to, yeas 40, nays 31, and the order as amended was unanimously adopted.

512. The Archbald impeachment, continued.

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

The Presiding Officer announced the result of the vote on each article of the Archbald impeachment and the conviction or acquittal of respondent on each.

The respondent, who had attended throughout the Archbald trial, was represented by counsel, but was not present at the time of rendering judgment.

Having found Judge Archbald guilty, the Senate proceeded to pronounce judgment of removal and disqualification.

The Presiding Officer held that the question on removal and disqualification was divisible.

Form of judgment pronounced by the Presiding Officer in the Archbald case.

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

No report, on the conclusion of the Archbald trial, was made to the House by the managers, but the Senate, by message, announced the judgment.

On January 13¹ the President pro tempore announced that the time had arrived for the consideration of the impeachment. Mr. Worthington, Mr. Robert W. Archbald, jr., and Mr. Martin, of counsel for the respondent, and the managers on the part of the House of Representatives appeared in the seats provided for them.

The Sergeant at Arms made the usual proclamation and the Journal was read and approved.

On motion of Mr. Root, it was:

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

“Senators, How say you? Is the respondent, Robert W. Archbald, guilty or not guilty as charged in this article?”

Thereupon the roll of the Senate shall be called, and each Senator as his name is called shall arise in his place and answer “guilty” or “not guilty.”

Several Senators were by unanimous consent excused from voting on plea of having been unavoidably detained from the Senate during a portion of the trial or having come into the Senate since the beginning of the trial. Other Senators were excused from voting on those articles specifying offenses occurring prior to appointment of the respondent as circuit judge, expressing themselves as entertaining doubts as to his impeachability for offenses committed in an office other than that he held at time of impeachment. Mr. Benjamin R. Tillman, of South Carolina, was excused from voting on all save the first count. The Speaker pro tempore, as presiding officer, was also excused from voting except in the case of an article where his vote would affect the result.

By direction of the President pro tempore, the first article of impeachment was read.

The PRESIDENT PRO TEMPORE.

The Chair now submits article 1 to the judgment of the Senate.

Senators, how say you? Is the respondent, Robert W. Archbald, guilty or not guilty as charged in this article? The Secretary will call the roll of the Senate for the separate response of each Senator.

¹Third session Sixty-second Congress, Senate Journal, p. 326; Record, p. 1438.

The roll was called and the President pro tempore announced:

It appears from the responses given by Senators that 68 Senators have voted guilty and 5 Senators have voted not guilty. More than two-thirds of the Senators having voted guilty, the Senate adjudges the respondent, Robert W. Archbald, guilty as charged in the first article of impeachment.

The Secretary proceeded to read the second article, when Mr. Hoke Smith, of Georgia, moved that the Senate close the doors and go into secret session.

Mr. CULBERSON. Mr. President, a point of order. The Senate has already decided to vote at this hour on the articles of impeachment.

The President pro tempore said:

That is true; and in the absence of any order to the contrary, that order would undoubtedly be carried out. It is, however, for the Senate to determine whether it will at any time suspend that order. It is not a matter of unanimous consent, but it is an order which can be changed or not changed, as the Senate may see proper to do.

Pending the vote, Mr. Worthington inquired:

Mr. President, before the question is put, I ask, if the motion be carried, whether it will result in excluding counsel for the respondent from the Senate Chamber?

The PRESIDENT PRO TEMPORE. Yes; it would, while the Senate was in secret deliberation, exclude everybody except Senators and those who are privileged under such circumstances.

Mr. WORTHINGTON. I trust that nothing will be done which will exclude counsel for the respondent while the vote is being taken.

The PRESIDENT PRO TEMPORE. There will be no vote taken in secret session; there can not be. The question is on the motion of the Senator from Georgia [Mr. Smith], to now close the doors.

Thereupon Mr. Smith withdrew his motion.

The remaining articles of impeachment were read by the Secretary, and at the conclusion of the reading of each article the roll was called. After each roll call the vote was recapitulated and the President pro tempore announced the result.

The results were as follows:

	Guilty.	Not guilty.
Article I	68	5
Article 2	46	25
Article 3	60	11
Article 4	52	20
Article 5	66	6
Article 6	24	45
Article 7	29	36
Article 8	22	42
Article 9	23	39
Article 10	1	65
Article 11	11	51
Article 12	19	46
Article 13	42	20

At the conclusion of the voting Mr. James A. O’Gorman, of New York, presented the following:

Ordered, That the respondent, Robert W. Archbald, circuit judge of the United States from the third judicial circuit and designated to serve in the Commerce Court, be removed from office and be forever disqualified from holding and enjoying any office of honor, trust, or profit under the United States.

A division being demanded, the first portion of the order was agreed to.

The question being taken on the second portion of the order, it was decided in the affirmative—yeas 39, nays 35. So the order was adopted.

The President pro tempore thereupon pronounced the judgment of the Senate as follows:

The Senate therefore do order and decree, and it is hereby adjudged, that the respondent Robert W. Archbald, circuit judge of the United States from the third judicial circuit, and designated to serve in the Commerce Court, be, and he is hereby, removed from office; and that he be and is hereby forever disqualified to hold and enjoy any office of honor, trust, or profit under the United States.

On motion of Mr. Gallinger, it was:

Resolved, That the Secretary be directed to communicate to the President of the United States and to the House of Representatives the foregoing order and judgment of the Senate and transmit a certified copy of the same to each.

Whereupon, on motion of Mr. Gallinger, the Senate, sitting for the trial of the article of impeachment against Robert W. Archbald, adjourned without day.

On January 14, in the House, a message was received from the Senate, by one of its clerks, announcing that the Senate had passed the following order:

Ordered, That the respondent, Robert W. Archbald, circuit judge of the United States from the third judicial circuit, and designated to serve in the Commerce Court, be removed from office and be forever disqualified from holding and enjoying any office of honor, trust, or profit under the United States.

Resolved, That the Secretary be directed to communicate to the President of the United States and to the House of Representatives the foregoing order and judgment of the Senate and transmit a certified copy of the same to each.

No report was made by the managers to the House.