

## Chapter CXCVII.<sup>1</sup>

### CONDUCT OF IMPEACHMENT TRIALS.

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1. Form of summons. Section 479.
  2. Answer of respondent, replication, etc. Sections 480, 481.
  3. Counsel and motions. Sections 482, 483.
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#### **479. The writ of summons issued for the appearance of Judge Archbald to answer articles of impeachment does not appear in the Journal.**

##### **Form of return appended to the writ of summons served by the Sergeant at Arms on the respondent.**

On July 16, 1912,<sup>2</sup> the Senate, sitting for the trial of the impeachment of Robert W. Archbald, agreed to an order directing that a summons be issued as required by the rules of procedure and practice, returnable on Friday, the 19th.

The text of this writ does not appear either in the Record or in the Journal.

On July 19,<sup>3</sup> however, immediately after the approval of the Journal, the Secretary, by direction of the President pro tempore, read the return appended to the writ of summons as follows:

SENATE OF THE UNITED STATES,  
OFFICE OF THE SERGEANT AT ARMS.

The foregoing writ of summons, addressed to Robert W. Archbald, and the foregoing precept, addressed to me, were duly served upon the said Robert W. Archbald, by delivery to and leaving with him true and attested copies of the same at 236 Monroe Avenue, Scranton, Pa., the residence of Robert W. Archbald, on Wednesday, the 17th day of July, 1912, at 11 o'clock and 30 minutes in the afternoon of that day.

DANIEL M. RANSDALL,  
*Sergeant at Arms United States Senate.*

#### **480. In the trial of the impeachment of Judge Robert W. Archbald the procedure of former trials of impeachment was observed, in that briefs were not submitted until after managers and counsel for respondent had made opening statements and introduced witnesses.**

Form of order providing for filing and printing of briefs by managers and respondent in trial of impeachment.

On December 4, 1912,<sup>4</sup> in the Senate, sitting for the trial of Robert W. Archbald, Mr. William E. Borah, of Idaho, sent to the desk a question, in writing, addressed to the managers on the part of the House of Representatives.

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<sup>1</sup> Supplementary to Chapter LXVII.

<sup>2</sup> Second session Sixty-second Congress, Senate Journal, p. 629; Record, p. 9124.

<sup>3</sup> Record, p. 9275; Senate Journal, p. 629.

<sup>4</sup> Third session Sixty-second Congress, Record, p. 97.

The President pro tempore said:

The Senator from Idaho propounds, in writing, the following inquiry for the consideration of the managers, and the Secretary will read it.

The Secretary read as follows:

Are the managers prepared at this time to present their brief as to our power to impeach for offenses or acts which were not committed or done during the term of the office which the party charged now holds?

In reply to this inquiry Mr. Henry D. Clayton, of Alabama, for the managers, submitted:

Mr. President, on behalf of the managers, in reply to the suggestion, I beg to say that that question has been thoroughly considered by the managers, and they have no doubt that this judge can be impeached for a misbehavior of a grave character that he may have committed while he held the office of district judge, his tenure of the one having dovetailed into the tenure of the present office.

We have gathered as best we could the authorities to sustain that position. We have made a brief, and we are prepared to make the argument on that proposition.

But, Mr. President, the managers have not up to this time deemed it proper or, I might say, advisable to bring that question to the attention of the court, for the reason that we are pursuing in this case the practice which was pursued in other cases, notably the practice in the Swayne case. After the statement of facts in that case, as the present occupant of the chair knows, immediately the managers began the introduction of their witnesses, and neither the law nor the facts bearing upon any phase of the different controversies involved in that case were argued until the respondent had also made his opening statement and introduced his witnesses; and after all the witnesses had been examined, then the case was opened for discussion both upon the law and the facts.

So, Mr. President, the managers have followed what they deemed the practice to be in like cases.

On the following day,<sup>1</sup> 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.

Mr. Worthington, of counsel for the respondent, then said:

I can say, Mr. President, we can certainly have that done this week.

**481. Correction of errors in the report of the proceedings of the Senate, sitting in trial of impeachment as reported in the Record, is properly made after the reading and approval of the Journal.**

On December 4, 1912,<sup>2</sup> in the Senate, sitting for the impeachment trial of Judge Robert W. Archbald, after the reading and approval of the Journal, Mr. Henry D. Clayton, of Alabama, of the managers on the part of the House of Representatives, called attention to inaccuracies in the report of the proceedings of the previous day as printed in the Record, and said:

Mr. President, the managers desire to call the attention of the court to a verbal inaccuracy in the proceedings of yesterday. It, perhaps, is immaterial to the statement as made on yesterday, but for the sake of better English I desire to have a correction made in the Record.

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<sup>1</sup> Senate Journal, p. 318.

<sup>2</sup> Third session Sixty-second Congress, Record, p. 96.

Mr. Manager Clayton then referred to particular pages of the record and indicated a number of corrections desired.

The President pro tempore said:

The correction will be made as desired by the manager.

**482. Instance in which on motion of counsel for respondent, and over protest of managers for the House, the Senate granted the respondent 10 days in which to answer articles of impeachment.**

On July 19, 1912,<sup>1</sup> in the Senate, sitting for the impeachment trial of Robert W. Archbald, counsel for the respondent submitted the following motion:

IN THE SENATE OF THE UNITED STATES,  
SITTING AS A COURT OF IMPEACHMENT.

UNITED STATES *v.* ROBERT W. ARCHBALD.

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

R. W. ARCHBALD, JR.  
A. S. WORTHINGTON.

JULY 19, 1912.

Thereupon Mr. Clark, of Wyoming, asked for the adoption of the following order:

*Ordered*, That the respondent present his answer to the articles of impeachment at 12 o'clock and 30 minutes postmeridian on the 24th day of July, 1912.

Whereupon Mr. Worthington, of counsel for the respondent, submitted:

Mr. President, I should like to state that that time seems very short to the counsel for the respondent, in view of the number of articles of impeachment which are here and the customs which have been followed heretofore in cases of this kind, and also because of certain circumstances which exist in this case, which I wish to bring to the attention of the court.

It was for that reason that in the motion which we made we left blank the number of days which we were to have, to be filled at the pleasure of the court.

I had hoped we might get 20 days for that purpose. As I calculate the time proposed to be given by the order which has just been presented by a member of the court, it would give us but 5 days, which, I think, would be entirely insufficient, in view of the fact that one of those days is dies non.

On behalf of the respondent and his counsel, I therefore respectfully ask that we be given at least 20 days for the purpose indicated.

To which Mr. Manager Clayton responded:

After a conference had this morning the managers reached the conclusion, that perhaps four or five days would be ample time to afford the accused the opportunity of fully answering all the articles of impeachment in this case.

The managers think there is nothing by way of surprise contained in the articles of impeachment. We believe Judge Archbald and his counsel are well informed as to every charge set forth in the articles of impeachment. We think five days—or four days, if one day be excluded on account of its being dies non juridicus—are quite sufficient for Judge Archbald to answer these articles of impeachment. Their nature is fully understood. The testimony which induced the House to adopt these articles is perfectly familiar to the counsel and perfectly familiar to the accused.

<sup>1</sup>Second session Sixty-second Congress, Senate Journal, p. 630; Record, p. 9277.

Mr. Porter J. McCumber, of North Dakota, moved to amend the order to read:

*Ordered*, That the respondent present his answer to the articles of impeachment at 12 o'clock and 30 minutes postmeridian on the 31st day of July, 1912.

A suggestion by Mr. Henry Cabot Lodge, of Massachusetts, that the date proposed be amended to read "Monday, the 19th day of July," was accepted and the order with this amendment was agreed to.

**483. In the Archbald trial new rules of procedure and practice of the Senate, when sitting in impeachment trials, were not adopted, the rules framed in former trials being considered as operative.**

On July 15, 1912,<sup>1</sup> on motion of Mr. Clarence D. Clark, of Wyoming, extracts from the Journals of the Senate containing the record of former impeachment trials were ordered printed. No further preliminary action with reference to procedure in the pending trial of the impeachment of Judge Archbald appears, and the "Rules of procedure and practice of the Senate when sitting in impeachment trials" observed in former trials, and to all intents identical with those revised and adopted in 1868<sup>2</sup> for the Johnson trial, and followed in the Belknap and Swayne trials, were treated as existing rules.

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<sup>1</sup>Second session Sixty-second Congress, Senate Journal, p. 454.

<sup>2</sup>Second session Fortieth Congress, Senate Journal, pp. 794, 870, 878, 937; Senate Report No. 59.