

adopted by the yeas and nays—yeas 306, nays 62.⁽⁵⁾

The Speaker had previously stated, in response to a parliamentary inquiry by Mr. Charles R. Crisp, of Georgia, that pursuant to Rule XVI clause 6, a separate vote could be demanded on any substantive proposition contained in the resolution of impeachment.⁽⁶⁾

Discontinuance of Proceedings

§ 16.4 Judge George English having resigned from the bench, the House adopted a resolution instructing the managers to advise the Senate that the House declined to further prosecute charges of impeachment.

On Dec. 11, 1926, the House adopted the following resolution in relation to the impeachment proceedings against Judge English:

Resolved, That the managers on the part of the House of Representatives in the impeachment proceedings now pending in the Senate against George W. English, late judge of the District Court of the United States for the Eastern District of Illinois, be instructed to appear before the Senate, sitting as a court of impeachment in

5. *Id.* at pp. 6734, 6735.

6. *Id.* at pp. 6589, 6590, see *House Rules and Manual* § 791 (1973).

said cause, and advise the Senate that in consideration of the fact that said George W. English is no longer a civil officer of the United States, having ceased to be a district judge of the United States for the eastern district of Illinois, the House of Representatives does not desire further to urge the articles of impeachment heretofore filed in the Senate against said George W. English.⁽⁷⁾

On Dec. 13, 1926, the Senate adjourned *sine die* as a court of impeachment after agreeing to the following order, which was messaged to the House:

Ordered, That the impeachment proceedings against George W. English, late judge of the District Court of the United States for the Eastern District of Illinois, be and the same are, duly dismissed.⁽⁸⁾

§ 17. Impeachment of Judge Louderback

Consideration of Committee Report

§ 17.1 The House considered the matter of the impeachment of U.S. District Judge Harold Louderback under a unanimous-consent agreement which allowed the minority of the Committee on

7. 68 CONG. REC. 297, 69th Cong. 2d Sess.

8. *Id.* at p. 344.

the Judiciary to offer, to the reported resolution recommending abatement of proceedings, a substitute amendment impeaching Judge Louderback and setting forth articles of impeachment.

On Feb. 24, 1933, Speaker John N. Garner, of Texas, recognized Mr. Thomas D. McKeown, of Oklahoma, to call up a resolution, reported by the Committee on the Judiciary, recommending that charges against Harold Louderback, U.S. District Judge for the Northern District of California, did not merit impeachment (H. Res. 387; H. Rept. No. 2065). The minority report dissented from that recommendation and proposed a resolution and articles of impeachment.⁽⁹⁾

Mr. Earl C. Michener, of Michigan, commented on the fact that the report of the committee recommended censure of the judge, rather than impeachment:

MR. MICHENER. Mr. Speaker, in answer to the gentleman from Alabama, let me make this observation. The purpose of referring a matter of this kind to the Committee on the Judiciary is to determine whether or not in the opinion of the Committee on the Judiciary there is sufficient evidence to warrant impeachment by the House. If the

9. 76 CONG. REC. 4913, 4914, 72d Cong. 2d Sess. See, generally, 6 Cannon's Precedents § 514.

Committee on the Judiciary finds those facts exist, then the Committee on the Judiciary makes a report to the House recommending impeachment, and that undoubtedly is privileged. However, a custom has grown up recently in the Committee on the Judiciary of including in the report a censure. I do not believe that the constitutional power of impeachment includes censure. We have but one duty, and that is to impeach or not to impeach. Today we find a committee report censuring the judge. The resolution before the House presented by a majority of the committee is against impeachment. The minority members have filed a minority report, recommending impeachment. I am making this observation with the hope that we may get back to the constitutional power of impeachment.⁽¹⁰⁾

Discussion ensued as to controlling debate on the resolution so as to effectuate the understanding agreed on in committee that the previous question not be ordered until the minority had an opportunity to offer an amendment in the nature of a substitute for the resolution.

The House agreed to the following unanimous-consent request

10. *Id.* at p. 4914. The committee report stated "the committee censures the judge for conduct prejudicial to the dignity of the judiciary in appointing incompetent receivers . . . for allowing fees that seem excessive, and for a high degree of indifference to the interest of litigants in receiverships." H. REPT. NO. 2065, Committee on the Judiciary, 72d Cong. 2d Sess.

propounded by Mr. McKeown (and suggested by Speaker Garner):

THE SPEAKER: Under the rules of the House the gentleman from Oklahoma [Mr. McKeown] has one hour in which to discuss this resolution, unless some other arrangement is made.

MR. MCKEOWN: Mr. Speaker, I ask unanimous consent that two hours' time be granted on a side. One-half of mine I shall yield to the gentleman from Missouri [Mr. Dyer]. At the end of the two hours' time, that the previous question shall be considered as ordered.

MR. [FIORELLO H.] LAGUARDIA [of New York]: Mr. Speaker, will the gentleman yield?

MR. MCKEOWN: Yes.

MR. LAGUARDIA: The gentleman will remember that the committee unanimously voted that the previous question should not be considered as ordered until the majority had opportunity to offer the articles of impeachment.

MR. MCKEOWN: I yield now to the gentleman for that purpose.

THE SPEAKER: If gentlemen will permit, let the Chair make a suggestion. The Chair understands that the committee has something of an understanding that there would be an opportunity to vote upon the substitute for the majority resolution. Is that correct?

MR. MCKEOWN: Yes.

THE SPEAKER: Then the Chair suggests to the gentleman from Oklahoma that he ask unanimous consent that general debate be limited to two hours, one-half to be controlled by himself, and one-half to be controlled by the gentleman from New York.

MR. MCKEOWN: I want one-half of my time to be yielded to the gentleman from Missouri, and that the other hour shall be controlled by the gentleman from Texas.

THE SPEAKER: Then the Chair suggests that the gentleman from Oklahoma control all of the time.

MR. [HATTON W.] SUMNERS [of Texas]: Mr. Speaker, I am quite willing that the gentleman from Oklahoma may control the time, because I am sure that he will make a fair distribution of it.

MR. MCKEOWN: Mr. Speaker, I ask unanimous consent that the time for debate be limited to two hours to be controlled by myself, that during that time the gentleman from New York [Mr. La Guardia] be permitted to offer a substitute for the resolution and at the conclusion of the time for debate the previous question be considered as ordered.

THE SPEAKER: Then the Chair submits this: The gentleman from Oklahoma asks unanimous consent that debate be limited to two hours, to be controlled by the gentleman from Oklahoma, that at the end of that time the previous question shall be considered as ordered, with the privilege, however, of a substitute resolution being offered, to be included in the previous question. Is there objection?

MR. [WILLIAM B.] BANKHEAD [of Alabama]: Mr. Speaker, reserving the right to object for the purpose of getting the parliamentary situation clarified before we get to the merits, is there any question in the mind of the Speaker, if it is fair to submit such a suggestion, as to whether or not the substitute providing for absolute im-

peachment would be in order as a substitute for this report?

THE SPEAKER: That is the understanding of the Chair, that the unanimous-consent agreement is, that the gentleman from New York [Mr. LaGuardia] may offer a substitute, the previous question to be considered as ordered on the substitute and the original resolution at the expiration of the two hours. Is there objection?

There was no objection.⁽¹¹⁾

Voting

§ 17.2 At the conclusion of debate on the resolution and substitute therefor, in the Harold Louderback impeachment proceedings, a yea and nay vote was taken on the substitute, which was agreed to.

On Feb. 24, 1933, the House had under consideration a resolution abating impeachment proceedings against Judge Louderback. A unanimous-consent agreement was adopted, as follows:

THE SPEAKER:⁽¹²⁾ . . . The gentleman from Oklahoma (Mr. Thomas D. McKeown) asks unanimous consent that debate be limited to two hours . . . that at the end of that time the

11. *Id.* For more comprehensive treatment of impeachment proceedings against Judge Louderback, see 6 Cannon's Precedents §§ 513-524.

12. John N. Garner (Tex.).

previous question shall be considered as ordered, with the privilege, however, of a substitute resolution being offered, to be included in the previous question. . . .

There was no objection.⁽¹³⁾

At the conclusion of the two hours' debate on the resolution abating the impeachment proceedings and on the amendment in the nature of a substitute, the Speaker put the question on the substitute and answered a parliamentary inquiry as to the effect of the vote:

THE SPEAKER: The question is on the substitute of the gentleman from New York [Mr. LaGuardia].

The question was taken, and the Chair announced that he was in doubt.

MR. [THOMAS D.] MCKEOWN of Oklahoma: Mr. Speaker, a division.

MR. [CARL G.] BACHMANN [of West Virginia]: Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered.

MR. [EARL C.] MICHENER [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MICHENER: As I understand, a vote of "aye" is a vote for impeachment and a vote of "no" is against impeachment; is that correct?

THE SPEAKER: An aye vote on the substitute of the gentleman from New York is a vote to impeach and a "no" vote is a vote against impeachment.

13. 76 CONG. REC. 4914, 72d Cong. 2d Sess.

The Clerk will call the roll.

The question was taken; and there were—yeas 183, nays 142, answered “present” 4, not voting 97.⁽¹⁴⁾

Election of Managers; Continuation of Proceedings Into New Congress

§ 17.3 The House having adopted articles of impeachment against Judge Harold Louderback, the House adopted resolutions appointing managers and notifying the Senate of its actions, but did not resolve the question whether such managers could, without further authority, continue to represent the House in the succeeding Congress.

The House having adopted the articles of impeachment against Judge Louderback on Feb. 24, 1933, Chairman Hatton W. Sumners, of Texas, of the Committee on the Judiciary, called up on Feb. 27, 1933, resolutions appointing managers and notifying the Senate of the action of the House. Discussion ensued as to the power of the managers beyond the termination of the Congress (the Congress was to expire on Mar. 3):

14. *Id.* at p. 4925. The resolution, as amended by the substitute, was then agreed to. H. JOUR. 306, 72d Cong. 2d Sess., Feb. 24, 1933.

IMPEACHMENT OF JUDGE HAROLD
LOUNDERBACK

MR. SUMNERS of Texas: Mr. Speaker, I offer the following privileged report from the Committee on the Judiciary, which I send to the desk and ask to have read, and ask its immediate adoption.

The Clerk read as follows:

HOUSE RESOLUTION 402

Resolved, That Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Harold Louderback, United States district judge for the northern district of California; and 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 Harold Louderback of 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 the House; and that the said managers do demand the Senate take order for the appearance of said Harold Louderback to answer said impeachment, and demand his impeachment, conviction, and removal from office.

THE SPEAKER PRO TEMPORE: The question is on agreeing to the resolution.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, will the gentleman yield?

MR. SUMNERS of Texas: Yes.

MR. BLANTON: Is it not usual in such cases to provide for the managers on the part of the House to interrogate witnesses?

MR. SUMNERS of Texas: This is the usual resolution which is adopted.

MR. BLANTON: But this resolution does embrace that power and authority?

MR. SUMNERS of Texas: Yes. It is the usual resolution.

MR. [WILLIAM H.] STAFFORD [of Wisconsin]: Mr. Speaker, will the gentleman yield?

MR. SUMNERS of Texas: Yes.

MR. STAFFORD: This House, which is about to expire, has leveled impeachment articles against a sitting judge. It is impracticable to have the trial of that judge in the expiring days of the Congress. Has the gentleman considered what the procedure will be in respect to having the trial before the Senate in the next Congress?

MR. SUMNERS of Texas: The Committee on the Judiciary today gave full consideration to all of the angles that suggested themselves to the committee for consideration, and this arrangement seems to be more in line with the precedents and to be most definitely suggested by the situation in which we find ourselves.

MR. STAFFORD: Then, I assume, from the gentleman's statement, that it is the purpose that the gentlemen named in the resolution shall represent the House in the next Congress?

MR. SUMNERS of Texas: No; I believe not. I think it is pretty well agreed that the next Congress will probably have to appoint new managers before they may proceed. I think gentlemen on each side agree substantially with that statement as to what probably would be required.

MR. STAFFORD: There is nothing in the Constitution that would prevent

Members of this Congress from serving as representatives of this House before the Senate in the next Congress, even though they be not Members of that Congress.

MR. SUMNERS of Texas: I hope my friend will excuse me for not taking the time of the House to discuss that feature of the matter.

MR. STAFFORD: It is quite an important subject.

MR. SUMNERS of Texas: It is an unsettled subject, and one we have tried to avoid.

THE SPEAKER PRO TEMPORE: The question is on agreeing to the resolution.

The resolution was agreed to.

A motion to reconsider the vote by which the resolution was agreed to was laid on the table.

MR. SUMNERS of Texas: Mr. Speaker, I desire to present a privileged resolution.

The Clerk read as follows:

HOUSE RESOLUTION 403

Resolved, That a message be sent to the Senate to inform them that this House has impeached Harold Louderback, United States district judge for the Northern District of California, for misdemeanors in office, and that the House has adopted articles of impeachment against said Harold Louderback, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate, and that Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of this House, have been appointed such managers.

The resolution was agreed to.

A motion to reconsider the vote by which the resolution was agreed to was laid on the table.⁽¹⁵⁾

Parliamentarian's Note: In the succeeding Congress, an issue arose as to the power of managers elected in one Congress to continue their functions in a new Congress. On Mar. 13, 1933, the 73d Congress having convened, the Senate convened as a Court of Impeachment and received the managers on the part of the House, who were those Members re-elected to the House who had been appointed as managers in the 72d Congress (two of the five managers were not reelected to the House). On Mar. 22, Mr. Sumners called up a resolution appointing two new Members, and reappointing the three re-elected Members, as managers on the part of the House to conduct the impeachment trial of Judge Louderback. Nevertheless, Mr. Sumners asserted that the managers elected in one Congress had the capacity to continue in that function in a new Congress without reappointment.⁽¹⁶⁾

In arguing that the impeachment managers elected by one House should retain their powers

in a succeeding Congress, Chairman Sumners referred to the lengthy period of time that could occur between the appointment of managers, the adjournment of Congress, and the commencement of a trial.⁽¹⁷⁾

§ 17.4 The resolution of impeachment against Judge Louderback having been presented to the Senate on the last day of the 72d Congress, the Senate conducted the trial in the 73d Congress.

On Mar. 3, 1933, the last day of the 72d Congress under constitutional practice prior to the adoption of the 20th amendment, the managers on the part of the House in the Harold Louderback impeachment appeared before the Senate and read the resolution and articles of impeachment. The Senate adopted a special order that the Senate begin sitting for trial on the first day of the 73d Congress.⁽¹⁸⁾

President Franklin D. Roosevelt convened the 73d Congress on Mar. 9, 1933, prior to the constitutional day of the first Monday in December, and the Senate organized for trial on that date, pursuant to its special order.⁽¹⁹⁾

15. 76 CONG. REC. 5177, 5178, 72d Cong. 2d Sess.

16. See 6 Cannon's Precedents §§ 516, 517.

17. See 6 Cannon's Precedents § 517.

18. 6 Cannon's Precedents § 515.

19. 6 Cannon's Precedents § 516. For the proclamation convening the 73d Con-