

Chapter LXXIV.

THE IMPEACHMENT AND TRIAL OF WEST H. HUMPHREYS.

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2385. The impeachment and trial of West H. Humphreys, United States judge for the several districts of Tennessee.

It being declared by common fame that Judge Humphreys had joined the foes of the Government the House voted to investigate his conduct.

After an ex parte investigation the House voted to impeach Judge Humphreys.

Form of resolution providing for carrying the impeachment of Judge Humphreys to the Senate.

The impeachment of Judge Humphreys was carried to the Senate by a committee of two representing the two political parties.

On January 8, 1862,¹ Mr. Horace Maynard, of Tennessee, presented the following preamble and resolution, which were agreed to by the House without debate or division:

Whereas it is alleged that West H. Humphreys, now holding a commission as one of the judges of the district court of the United States, has, for nearly twelve months, failed to hold the courts for the districts of East, Middle, and West Tennessee, as by law he was required to do, and that he has accepted a judicial commission in hostility to the Government of the United States, and is assuming to act under it,

Resolved, That the Committee on the Judiciary inquire into the truth of the said allegations, with power to send for persons and papers, and report from time to time such action as they may deem proper.

On March 4, 1862,² Mr. John A. Bingham, of Ohio, submitted the report of the committee. This report showed that the committee examined four witnesses,

¹Second session Thirty-seventh Congress, Journal, p. 150; Globe, p. 229.

²Journal, p. 400; Globe, p. 1062; House Report No. 44.

Mr. Maynard, Member of the House, and Messrs. Trigg, McFall, and Lelleyet, citizens of Tennessee. It does not appear that anyone was present to represent Judge Humphreys at the investigation, or that any suggestion was made in his behalf. From the testimony it appeared that Judge Humphreys, who still held and had not resigned his commission, had publicly declared in favor of secession; that he had neglected his duties as judge; that he had officiated as judge for the confederacy, and in that capacity had entertained proceedings against loyal citizens. Therefore the committee proposed this resolution:

Resolved, That West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, be impeached of high crimes and misdemeanors.

On May 6,¹ after the reading of the report and very brief debate, the House agreed to the resolution without division.

Thereupon, Mr. Bingham, stating that he followed the usual precedents, offered the following resolution, which was agreed to without division:

Resolved, That a committee of two be appointed to go to the Senate, and at the bar thereof, in the name of the House of Representatives and of all of the people of the United States, to impeach West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, of high crimes and misdemeanors, and to acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same, and that the committee do demand that the Senate take order for the appearance of said West H. Humphreys to answer said impeachment.

The Speaker² thereupon appointed Mr. Bingham and Mr. George H. Pendleton, of Ohio, as the committee; both were members of the Judiciary Committee, and Mr. Bingham represented the majority party in the House and Mr. Pendleton the minority party.

2386. Humphreys's impeachment continued.

Forms and ceremonies of presenting the impeachment of Judge Humphreys in the Senate.

Form of resolution adopted by the Senate in taking order for the impeachment of Judge Humphreys.

On May 7,³ in the Senate, a message was received from the House by its Clerk, announcing the passage of the resolution and the committee appointed in accordance therewith.

Immediately thereafter the committee, Messrs. Bingham and Pendleton, appeared at the bar of the Senate, and Mr. Bingham spoke as follows:

Mr. President, by order of the House of Representatives, we appear at the bar of the Senate, and in the name of the House of Representatives and of all the people of the United States, we do impeach West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, of high crimes and misdemeanors, and we do further inform the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him, and make good the same, and in their name we do demand that the Senate take order for the appearance of said West H. Humphreys to answer to said impeachment.

The Presiding Officer⁴ said:

The Senate will take order in the premises.

¹ Journal, p. 646; Globe, pp. 1966, 1967.

² Galusha A. Grow, of Pennsylvania, Speaker.

³ Senate Journal, p. 454; Globe, p. 1991.

⁴ Lafayette S. Foster, of Connecticut, in the chair.

It does not appear that the committee from the House reported to that body on their return from the Senate.

In the Senate, on May 8,¹ the message from the House was read, and on motion of Mr. Lafayette S. Foster, of Connecticut, the subject was referred to a select committee of three, to be appointed by the Chair. Thereupon the President pro tempore² appointed Messrs. Foster, James R. Doolittle, of Wisconsin, and Garrett Davis, of Kentucky.

On May 9,³ in the Senate, Mr. Foster reported from the select committee the following resolution, which was agreed to without division or debate:

Whereas the House of Representatives, on the 7th day of the present month, by two of their Members, Messrs. Bingham and Pendleton, at the bar of the Senate impeached West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, of high crimes and misdemeanors, and informed the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him, and make good the same, and likewise demanded that the Senate take order for the appearance of the said West H. Humphreys to answer the said impeachment: Therefore,

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

On the same day a message announcing the action of the Senate was received in the House.⁴

2387. Humphreys's impeachment continued.

The committee to draw the articles in the Humphreys impeachment were appointed by the Speaker, and all but one was of the majority party.

The articles of impeachment against Judge Humphreys were agreed to by the House without debate.

On May 14,⁵ in the House, Mr. Bingham submitted the following resolution, which was agreed to without debate or division:

Resolved, That a committee of five be appointed to prepare and report articles of impeachment against West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, with power to send for persons, papers, and records.

The Speaker thereupon appointed Messrs. Bingham, John Hickman, of Pennsylvania, George H. Pendleton, of Ohio, Charles R. Train, of Massachusetts, and Charles W. Walton, of Maine. All of this committee but Mr. Pendleton, of Ohio, appear to have been of the majority party in the House. All but Messrs. Train and Walton were members of the Judiciary Committee.

On May 19⁶ Mr. Bingham, from the select committee, reported articles of impeachment, which were read and at once, without debate or division, were adopted by the House and ordered printed. They appear in fall in the Journal of the House of this date.

¹ Senate Journal, pp. 456, 457; Globe, p. 2010.

² Solomon Foot, of Vermont, President pro tempore.

³ Senate Journal, pp. 464, 465; Globe, p. 2039.

⁴ House Journal, p. 665.

⁵ House Journal, p. 684; Globe, p. 2134.

⁶ House Journal, pp. 709–712, Globe, pp. 2205, 2206.

2388. Humphreys's impeachment continued.

Form of resolutions providing for selection of managers and the presentation of the articles to the Senate in the Humphreys impeachment.

The managers of the Humphreys impeachment were appointed by the Speaker, and all but one belonged to the majority party.

The message informing the Senate that articles impeaching Judge Humphreys would be brought contained the names of the managers.

Mr. Bingham then offered the following resolutions, which were agreed to without debate or division:

Resolved, That five managers be appointed by the Speaker of this House to conduct the impeachment against West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee.

Resolved, That the articles agreed to by this House, to be exhibited, in the name of themselves and of all the people of the United States, against West H. Humphreys in maintenance of their impeachment against him for high crimes and misdemeanors, be carried to the Senate by the managers appointed to conduct the impeachment.

Resolved, That a message be sent to the Senate to inform them that this House have appointed managers on their part to conduct the impeachment against West H. Humphreys, and have directed the said managers to carry to the Senate the articles of impeachment agreed upon by the House to be exhibited in maintenance of their impeachment against the said West H. Humphreys.

On May 20¹ the Speaker announced the appointment of the following managers: Messrs. Bingham, Hickman, Pendleton, Train, and George W. Dunlap, of Kentucky. All but Mr. Pendleton belonged to the majority party in the House.

On May 21² the Clerk of the House delivered the message in the Senate as follows:

Mr. President: I am directed to inform the Senate that the House of Representatives has appointed Mr. Bingham, of Ohio, Mr. Hickman, of Pennsylvania, Mr. Pendleton, of Ohio, Mr. Train, of Massachusetts, and Mr. Dunlap, of Kentucky, managers to conduct the impeachment against West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, and has directed the said managers to carry to the Senate the articles of impeachment agreed upon by the House, to be exhibited in maintenance of their impeachment against the said West H. Humphreys.

2389. Humphreys's impeachment, continued.

The Senate followed the precedents in adopting rules prescribing forms and ceremonies for receiving the articles in the Humphreys impeachment.

Forms of oath taken and proclamations made in the court opened to receive the articles impeaching Judge Humphreys.

The message having been delivered, the resolution of the House was read, and thereupon Mr. Foster proposed the following:

Resolved, That at 1 o'clock to-morrow afternoon the Senate will resolve itself into a court of impeachment, at which time the following oath and affirmation shall be administered by the Secretary to the President of the Senate, and by him to each Member of the Senate, to wit: "I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of West H. Humphreys, judge of the district court of the United States for the districts of Tennessee, I will do impartial justice, according to law;" which court of impeachment, being thus formed, will, at the time

¹ House Journal, pp. 717, 718; Globe, p. 2262.

² Senate Journal, pp. 515-517; Globe, pp. 2247, 2248.

aforesaid, receive the managers appointed by the House of Representatives to exhibit articles of impeachment in the name of themselves and of all the people of the United States against West H. Humphreys, judge of the district court of the United States for the districts of Tennessee, pursuant to notice given to the Senate this day by the House of Representatives that they had appointed managers for the purpose aforesaid.

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

The resolution having been agreed to, Mr. Foster offered the following, which was also agreed to:

Resolved, That after the managers of the impeachment shall be introduced to the bar of the Senate, and shall have signified that they are ready to exhibit articles of impeachment against West H. Humphreys, the President of the Senate shall direct the Sergeant-at-Arms to make proclamation, who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against West H. Humphreys, judge of the district court of the United States for the districts of Tennessee; "after which the articles shall be exhibited, and then the President of the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

On the same day the first of the above resolutions was communicated to the House by message.¹

On May 22,² in the Senate, the Vice-President³ announced:

The hour of 1 o'clock having arrived, the Senate will now resolve itself into a court of impeachment, in pursuance of its order of yesterday, for the trial of West H. Humphreys, judge of the district court of the United States for the State of Tennessee.

The following oath was administered to the Vice-President by the Secretary of the Senate:

I, Hannibal Hamlin, do solemnly swear that in all things appertaining to the trial of the impeachment of West H. Humphreys, judge of the district court of the United States for the districts of Tennessee, I will do impartial justice according to law. So help me God.

The Vice-President said:

The Secretary will now call the roll of Senators alphabetically, calling them in numbers of four, and Senators will please to advance as they are called.

The Secretary called the names of Senators, and they advanced by fours to the desk, when the Vice-President administered the oath to them.

2390. Humphreys's impeachment, continued.

The House being notified that the Senate was ready to receive the articles impeaching Judge Humphreys, the managers attended unaccompanied.

The articles impeaching Judge Humphreys and their presentation.

The articles impeaching Judge Humphreys were signed by the Speaker and attested by the Clerk.

The oath having been administered to the Senators, it was then—

Ordered, That the Secretary inform the House of Representatives that the Senate has resolved itself into a high court of impeachment, and is now ready to receive the managers appointed by the House to

¹ House Journal, p. 723; Globe, p. 2271.

² Senate Impeachment Journal, pp. 889–892; Globe, pp. 2277, 2278.

³ Hannibal Hamlin, of Maine, Vice-President and President of the Senate.

exhibit articles of impeachment against West H. Humphreys, judge of the district court of the United States for the districts of Tennessee.

This message was duly delivered in the House, and presently four of the managers appointed by the House of Representatives, namely, Mr. Bingham, Mr. Pendleton, Mr. Train, and Mr. Dunlap (Mr. Hickman not being present), appeared below the bar.

Mr. Bingham advanced and said:

Mr. President, myself and associates are managers appointed by the House of Representatives, and instructed in their name to appear at the bar of the Senate, and present articles of impeachment against West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, for high crimes and misdemeanors.

The VICE-PRESIDENT. The managers on the part of the House of Representatives will please be seated, at seats prepared for them within the bar of the Senate.

The managers were conducted to the seats prepared for them in the area between the Secretary's desk and the seats of the Senators.

The VICE-PRESIDENT. The Sergeant-at-Arms of the Senate will now make the usual proclamation,

The Sergeant-at-Arms, GEORGE T. BROWN, Esq. Oyez! oyez! oyez! All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against West H. Humphreys, judge of the district court of the United States for the districts of Tennessee.

Mr. Bingham (all the managers standing) read the articles of impeachment, as follows:

Articles exhibited by the House of Representatives of the United States in the name of themselves and of all the people of the United States against West H. Humphreys, judge of the district court of the United States for the several districts of the State of Tennessee, in maintenance and support of their impeachment against him for high crimes and misdemeanors..

ARTICLE 1. That, regardless of his duties as a citizen of the United States, and unmindful of the duties of his said office, and in violation of the sacred obligation of his official oath "to administer justice without respect to persons," "and faithfully and impartially discharge all the duties incumbent upon him as judge of the district court of the United States for the several districts of the State of Tennessee agreeable to the Constitution and laws of the United States," the said West H. Humphreys, on the 29th day of December, A. D. 1860, in the city of Nashville, in said State, the said West H. Humphreys then being a citizen of the United States, and owing allegiance thereto, and then and there being judge of the district court of the United States for the several districts of said State, at a public meeting, on the day and year last aforesaid, held in said city of Nashville, and in the hearing of divers persons then there present, did endeavor by public speech to incite revolt and rebellion within said State against the Constitution and Government of the United States, and did then and there publicly declare that it was the right of the people of said State, by an ordinance of secession, to absolve themselves from all allegiance to the Government of the United States, the Constitution and laws thereof.

ART. 2. That, in further disregard of his duties as a citizen of the United States, and unmindful of the solemn obligations of his office as judge of the district court of the United States for the several districts of the State of Tennessee, and that he held his said office, by the Constitution of the United States, during good behavior only, with intent to abuse the high trust reposed in him as such judge, and to subvert the lawful authority and Government of the United States within said State, the said West H. Humphreys, then being judge of the district court of the United States, as aforesaid, to wit, in the year of our Lord 1861, in said State of Tennessee, did, together with other evil-minded persons within said State, openly and unlawfully support, advocate, and agree to an act commonly called an ordinance of secession, declaring the State of Tennessee independent of the Government of the United States, and no longer within the jurisdiction thereof.

ART. 3. That in the years of our Lord 1861 and 1862, within the United States, and in said State of Tennessee, the said West H. Humphreys, then owing allegiance to the United States of America, and

then being district judge of the United States, as aforesaid, did then and there, to wit: within said State, unlawfully, and in conjunction with other persons, organize armed rebellion against the United States and levy war against them.

ART. 4. That on the 1st day of August, A. D. 1861, and on divers other days since that time, within said State of Tennessee, the said West H. Humphreys, then being judge of the district court of the United States, as aforesaid, and J. C. Ramsay, and Jefferson Davis, and others, did unlawfully conspire together "to oppose by force the authority of the Government of the United States," contrary to his duty as such judge and to the laws of the United States.

ART. 5. That said West H. Humphreys, with intent to prevent the due administration of the laws of the United States within said State of Tennessee, and to aid and abet the overthrow of "the authority of the Government of the United States" within said State, has, in gross disregard of his duty as judge of the district court of the United States, as aforesaid, and in violation of the laws of the United States, neglected and refused to hold the district court of the United States, as by law he was required to do, within the several districts of the State of Tennessee, ever since the 18th day of July, A. D. 1861.

ART. 6. That the said West H. Humphreys, in the year of our Lord 1861, within the State of Tennessee, and with intent to subvert the authority of the Government of the United States, to hinder and delay the due execution of the laws of the United States, and to oppress and injure citizens of the United States, did unlawfully act as judge of an illegally constituted tribunal within said State, called the district court of the Confederate States of America, and as judge of said tribunal last named said West H. Humphreys, with the intent aforesaid, then and there assumed and exercised powers unlawful and unjust, to wit, in causing one Perez Dickinson, a citizen of said State, to be unlawfully arrested and brought before him, as judge of said alleged court of said Confederate States of America, and required him to swear allegiance to the pretended government of said Confederate States of America; and upon the refusal of said Dickinson so to do, the said Humphreys, as judge of said illegal tribunal, did unlawfully, and with the intent to oppress said Dickinson, require and receive of him a bond, conditioned that while he should remain within said State he would keep the peace, and as such judge of said illegal tribunal, and without authority of law, said Humphreys there and then decreed that said Dickinson should leave said State.

2. In decreeing within said State, and as judge of said illegal tribunal, the confiscation to the use of said Confederate States of America of property of citizens of the United States, and especially of property of one Andrew Johnson and one John Catron.

3. In causing, as judge of said illegal tribunal, to be unlawfully arrested and imprisoned within said State citizens of the United States because of their fidelity to their obligations as citizens of the United States, and because of their rejection of, and their resistance to, the unjust and assumed authority of said Confederate States of America.

ART. 7. That said West H. Humphreys, judge of the district court of the United States as aforesaid, assuming to act as judge of said tribunal known as the district court of the Confederate States of America, did, in the year of our Lord 1861, without lawful authority, and with intent to injure one William G. Brownlow, a citizen of the United States, cause said Brownlow to be unlawfully arrested and imprisoned within said State in violation of the rights of said Brownlow as a citizen of the United States, and of the duties of said Humphreys as a district judge of the United States.

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

GALUSHA A. GROW,
Speaker House of Representatives.

Attest:

EMERSON ETHERIDGE,
CLERK HOUSE OF REPRESENTATIVES.

Mr. Bingham delivered the articles to the Secretary, who handed them to the Vice-President.

The VICE-PRESIDENT. The Chair informs the managers on the part of the House of Representatives that the Senate will take proper order upon the impeachment preferred, of which notice will be furnished to the House of Representatives.

The managers thereupon retired.

2391. Humphreys's impeachment, continued.

Form of resolution directing the issue of a writ of summons to Judge Humphreys, and fixing the return day.

The House was informed by message of the issuance of a writ of summons to Judge Humphreys.

Mr. Foster then offered in the high court of impeachment the following, which was agreed to:

Resolved, That the Secretary be directed to issue a summons, in the usual form, to West H. Humphreys, judge of the district court of the United States for the districts of Tennessee, to answer a certain article of impeachment exhibited against him by the House of Representatives on this day, and that the said summons be returnable here on Monday, the 9th day of June next, and be served by the Sergeant-at-Arms, or some person deputed by him, at least ten days before the return day thereof.

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

Then the court, on motion of Mr. Foster, adjourned until Monday, June 9, at 1 o'clock p. m.

In the House it does not appear that the managers reported after they had presented the articles of impeachment in the Senate.

On May 23¹ in the House a message from the Senate informed the House that the issuance of a summon had been directed.

2392. Humphreys's impeachment, continued.

On the day set for the appearance of Judge Humphreys the House in Committee of the Whole House attended its managers.

Forms observed by the House attending the Humphreys trial as a Committee of the Whole (footnote).

Forms of oath, proclamation, and ceremonies at the calling of Judge Humphreys to appear and answer articles of impeachment.

On June 9,² in the high court of impeachment, the Vice-President having administered the prescribed oath to certain Senators, and the court having been opened by proclamation, it was—

Ordered, That the Secretary inform the House of Representatives that the Senate is now sitting as a high court of impeachment for the trial of West H. Humphreys, and that seats are provided for the accommodation of the Members of the House in the Senate Chamber.

The message having been delivered, it was then resolved by the House as follows:³

Resolved, That the House will this day, and at such hour as the Senate shall appoint, resolve itself into a Committee of the Whole House, and attend in the Senate on the trial of the impeachment

¹ House Journal, p. 731.

² Senate Impeachment Journal, pp. 893, 894; Globe, pp. 2617, 2618.

³ House Journal, p. 821; Globe, p. 2621.

of West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee.

Accordingly the House resolved itself into a Committee of the Whole House, Mr. E. B. Washburne, of Illinois, being chairman, and proceeded to the Senate Chamber.¹

Previous to the arrival of the House the Senators took seats on a platform prepared on the right and left of the Vice-President, leaving the body of the Hall for the House of Representatives.

The managers and Representatives having arrived, the following occurred:

The VICE-PRESIDENT. The Sergeant-at-Arms will make proclamation opening the court.

The SERGEANT-AT-ARMS. Oyez! Oyez! Oyez! All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the United States is sitting as a court of impeachment on the case of West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee.

The Sergeant-at-Arms handed his return to the Vice-President.

The VICE-PRESIDENT. The return of the officer will be read by the Secretary.

The Secretary read, as follows:

UNITED STATES OF AMERICA, *City of Washington, ss:*

I, George T. Brown, Sergeant-at-Arms of the Senate of the United States, in obedience to the within and foregoing writ of summons and precept to me directed, did proceed to the usual place of residence of the within-named West H. Humphreys, in the vicinity of Nashville, in the State of Tennessee, on the 29th day of May, A. D. 1862, and then and there made diligent inquiry for the said West H. Humphreys, but he could not be found. I further certify, that on the same day and year, and at the usual place of residence of the said West H. Humphreys, in the vicinity of Nashville, in the State of Tennessee, I did then and there leave true and attested copies of the within and foregoing writ of summons and precept.

GEORGE T. BROWN,

Sergeant-at-Arms of the Senate.

JUNE 9, 1862.

The VICE-PRESIDENT. The Secretary will administer the oath to the Sergeant-at-Arms touching the truth of his return.

The Secretary administered the oath to the Sergeant-at-Arms, as follows:

“George T. Brown, Sergeant-at-Arms of the Senate of the United States, do solemnly swear that the return made and subscribed by me upon the process issued on the 22d day of May last, by the Senate of the United States against West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, is truly made, and that I have performed said services as therein described. So help me God.

The VICE-PRESIDENT. The Sergeant-at-Arms will make proclamation for the appearance of West H. Humphreys.

¹The Globe (p. 2617) has the following as to the order: “The form in which it appears on such occasions displaces its high functionary, the Speaker, its Sergeant-at-Arms, and the emblem of its authority—the mace.

“The chairman, supported by Emerson Etheridge, esq., the Clerk, and Ira Goodnow, esq., the Door-keeper, were conducted to seats in the center aisle, in front of the Vice-President; the managers on the part of the House of Representatives, Messrs. Bingham, Pendleton, Dunlap, and Train, took the seats which they previously occupied in the right section of the central area; that on the left, with similar accommodations, was provided for the judge impeached and his counsel, if they should appear. The Members of the House occupied the body of the Senate Chamber.”

The SERGEANT-AT-ARMS. Oyez! Oyez! Oyez! West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, come forward and answer the articles of impeachment exhibited against you by the House of Representatives of the United States.

2393. Humphreys's impeachment continued.

Judge Humphreys did not appear, in person or by attorney, to answer the articles of impeachment.

Judge Humphreys not appearing, the case was continued on motion of the managers, to enable the production of testimony.

Judge Humphreys having failed to appear to answer the articles of impeachment, the court directed publication of a proclamation for him to appear.

In the Humphreys impeachment it was first provided that the subpoenas should be served by the Sergeant-at-Arms or his deputy.

Form of report of Chairman of the Committee of the Whole on returning from the Humphreys trial.

Whereupon, West H. Humphreys not appearing in person, or by counsel, to answer the said articles of impeachment, the following occurred:

Mr. Manager BINGHAM (after a pause). On behalf of the managers of the House of Representatives, I move the continuance of this cause until the 26th day of June, 1862, in order to obtain the attendance of witnesses necessary to the prosecution of the impeachment.

The VICE-PRESIDENT. Senators, the following motion is submitted for the decision of the court: On behalf of the managers of the House of Representatives, Mr. Bingham moves that further proceedings in the impeachment of West H. Humphreys, be postponed until Thursday, the 26th day of June, 1862.

The roll being called, there appeared, yeas 35, nays 4. So the motion was agreed to.

The Vice-President then informed the managers that of such other proceedings as should be taken by the Senate in the case of the impeachment of West H. Humphreys, the House of Representatives should be duly notified.

Thereupon the managers, attended by the House of Representatives, withdrew and having returned into their own Hall, the Committee of the Whole House rose,¹ and the Speaker having resumed the Chair, Mr. Washburne reported—

that the committee had, according to order, attended the trial by the Senate of the said impeachment, when the Senate postponed the further consideration of the case until Thursday, the 26th instant.

Meanwhile, in the high court of impeachment, on motion of Mr. Foster, and by a vote of yeas 36, nays 0, the following was agreed to:²

Ordered, That this high court of impeachment stand adjourned till the 26th day of June next, at 12 o'clock, meridian; and as the said West H. Humphreys has failed to make his appearance to answer the said articles of impeachment, though duly summoned, it is further ordered that proclamation for his appearance on that day be made by publishing this order in the National Intelligencer, National Republican, and Evening Star, newspapers printed in the city of Washington, for at least ten days successively, before said 26th day of June, instant, and also in the Nashville Union, a newspaper published in the city of Nashville, State of Tennessee, on at least five several days before said 26th day of June, instant.

¹House Journal, p. 821; Globe, p. 2621.

²Senate impeachment Journal, p. 894; Globe, pp. 2617, 2618.

And further, on motion of Mr. Foster, and in order to obviate the difficulty which might arise from there being no marshal of the United States in certain districts where it might be necessary to send subpoenas, it was further

Ordered, That subpoenas may be issued by the Secretary of the Senate, according to the rules¹ of proceedings of the Senate, when acting as a court of impeachment, and directed to the Sergeant-at-Arms of the Senate, or his deputy, as well as to the marshal of the district of—.

The court then adjourned to Thursday, June 26, at 12 o'clock, meridian.

On June 10² a message was received in the House giving information of the resolutions adopted by the court after the House had retired, and of the date to which the court had adjourned.

2394. Humphreys's impeachment, continued.

Judge Humphreys's having failed to appear in answer both to the summons and proclamation, the Presiding Officer announced that the managers might proceed in support of the articles.

Form of proclamation for appearance of Judge Humphreys, and the proof thereof on the day set for appearance.

In the absence of the Vice-President the President pro tempore took the oath and presided at the Humphreys trial.

At the beginning of the Humphreys trial the returns on the subpoenas were read and the names of the witnesses called.

A witness unable to attend the Humphreys trial was excused by the court.

On June 26,³ when the high court of impeachment again opened, the Vice-President was absent and the President pro tempore⁴ of the Senate was in the chair. At once the Secretary administered to him the prescribed oath. The court was then opened by proclamation as follows by the Sergeant-at-Arms:

Oyez! Oyez! Oyez! Silence is commanded on pain of imprisonment while the Senate of the United States is sitting as a high court of impeachment for the trial of West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee.

On motion of Mr. Foster—

Ordered, That the Secretary inform the House of Representatives that the Senate is in its Chamber and ready to proceed on the trial of the impeachment of West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, and that seats are provided for the accommodation of the Members.

This message being received in the House⁵ that body resolved itself into a Committee of the Whole House and proceeded to the Senate. When they arrived the Sergeant-at-Arms of the Senate appeared before the bar and announced:⁶

The honorable the House of Representatives of the United States.

¹The rules governing impeachments, adopted at the trial of Judge Chase and followed without re-adoption in the trial of Judge Peck and in this trial, provided that subpoenas should in every case be directed to the marshal of the districts wherein the witnesses might reside.

²House Journal, p. 832.

³Senate Impeachment Journal, p. 895; Globe, p. 2942.

⁴Solomon Foot, of Vermont, President pro tempore.

⁵House Journal, p. 940.

⁶Senate Impeachment Journal, p. 895; Globe, p. 2942.

The Members then entered and took the seats assigned them, the chairman of the Committee of the Whole House occupying a seat in the aisle in front of the President pro tempore, and the Clerk of the House having a seat near him. The managers on the part of the House were conducted to seats assigned to them in the area in front of the Secretary's desk.

By direction of the President pro tempore, the Secretary read the return made by the Sergeant-at-Arms on the 9th instant and already read in the high court on that day. The Secretary also read the proclamation made by order of the court on the 9th and published in certain newspapers. This proclamation¹ was as follows:

The Senate of the United States of America, as the court of impeachment, sitting on the case of West H. Humphreys, judge of the district court of the United States for the several districts of the State of Tennessee.

MONDAY, JUNE 9, 1862.

Ordered, That this high court of impeachment stands adjourned till the 26th day of June, instant, at 12 o'clock meridian; and, as the said West H. Humphreys has failed to make his appearance to answer the said articles of impeachment, though duly summoned, it is further ordered that proclamation for his appearance on that day be made by publishing this order in the National Intelligencer, National Republican, and Evening Star newspapers, printed in the city of Washington, for at least ten days, successively, before said 26th day of June, instant, and also in the Nashville Union newspaper, printed in the city of Nashville, in the State of Tennessee, at least five several days before said 26th day of June, instant.

Attest:

J. W. FORNEY,
Secretary of the Senate.

A question being raised as to the proof of the proclamation, the production of copies of the several papers in which it was published was considered sufficient.

Then the following proceedings occurred:

The PRESIDENT pro tempore. The Sergeant-at-Arms will now make proclamation for the appearance of the accused.

THE SERGEANT-AT-ARMS! Oyez! Oyez! Oyez! West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, come forward and answer the articles of impeachment exhibited against you by the House of Representatives of the United States.

No response being made,

The PRESIDENT pro tempore. The accused West H. Humphreys being in default, not appearing in pursuance of the summons or proclamation, the managers on the part of the United States House of Representatives are now at liberty to proceed in support of the articles of impeachment exhibited against him.

Mr. BINGHAM. Mr. President, on behalf of the managers for the House of Representatives, I ask that the returns of the Sergeant-at-Arms to the subpoenas issued for witnesses in support of this impeachment may be reported, and the names of the witnesses called over and those present recorded.

The Secretary then read the returns on the subpoenas, and the names of the witnesses were called on motion of Mr. Manager Bingham. The witnesses were assigned seats on the left of the chair, in the rear of the seats usually occupied by Senators.

Among the witnesses called was Andrew Johnson, who failed to respond. Mr. Bingham, of the managers, stated that Mr. Johnson was detained by his duties as governor of Tennessee, and moved that he be excused from obeying the process of the court. This motion was unanimously agreed to.

¹Journal, pp. 895, 896; Globe, p. 2943.

2395. Humphreys's impeachment continued.

In the Humphreys trial, with no representative for the respondent, witnesses were not cross-examined.

The respondent not being represented in the Humphreys trial, the managers, without argument, demanded judgment.

In the absence of representation of respondent in the Humphreys trial, the Senator insisted on the rules of evidence.

Mr. Train then opened the case for the managers, outlining at not great length what it was proposed to prove.

Mr. Bingham, for the managers, then proceeded to offer evidence, documentary and oral, witnesses being sworn, in accordance with the rule, by the Secretary.

The witnesses were then examined by the managers.¹ There was no cross-examination, as there was no appearance for Judge Humphreys. At the close of each witness's testimony the President pro tempore announced that any Senator might propose a question by reducing it to writing and having it read by the Secretary. But no questions were proposed.

Twice objection was made by Senators to questions put by the managers, as eliciting testimony inadmissible as evidence, but either the question or the objection was withdrawn without a decision by the court.²

At the conclusion of the testimony Mr. Bingham stated that the managers did not deem it necessary to introduce further testimony or to submit argument; and he respectfully demanded of the court, in the name of all the people of the United States, a judgment of guilty, in manner and form as prescribed by the Constitution of the United States.

2396. Humphreys's impeachment continued.

The decision of the court on the articles in the Humphreys case was guilty as to a portion of the articles.

Form of question on verdict of the court in the Humphreys trial.

Various Senators were excused from voting on the judgment in the Humphreys case.

The presiding officer ruled that testimony might not be read during the voting on the articles impeaching Judge Humphreys.

By unanimous consent, in the Humphreys trial a Senator was permitted to vote after the decision on the articles had been declared.

Then, by direction of the President pro tempore, the articles of impeachment were read one by one, and at the conclusion of the reading of each article the President pro tempore took the opinion of the members of the court,³ respectively, in the form following:

Mr. Senator —, how say you? Is the accused, West H. Humphreys, guilty or not guilty of the high crimes and misdemeanors as charged in this article of impeachment?

And the Senators having answered, the President declared West H. Humphreys guilty or not guilty of the charge, according as two-thirds voted him guilty or failed to do so.

¹ Globe, pp. 2944–2949.

² Globe, p. 2946.

³ Senate Impeachment Journal, pp. 897–903; Globe, pp. 2949, 2950.

Very frequently a Senator would give a brief explanation of his reason for his vote, and several Senators were by vote excused from voting on a particular article, reasons in each case being assigned as absence when the testimony was given or inability to hear the testimony.

In voting on the second specification of the sixth article Mr. Preston King, of New York, asked that the testimony in support of the specification be referred to.

The President pro tempore¹ said:

That proceeding is entirely out of order at this stage.

The sixth article containing several specifications, a vote was taken separately on each one at the suggestion of a Senator and by direction of the President pro tempore.

The vote was as follows:

	Guilty.	Not guilty.
Article 1	39	0
Article 2	36	1
Article 3	33	4
Article 4	28	10
Article 5	39	0
Article 6, specification 1	36	1
Article 6, specification 2	12	24
Article 6, specification 3	35	1
Article 7	35	1

Mr. James H. Lane, of Kansas, was by unanimous consent permitted to record his vote after the results had been announced and declared.²

On motion of Mr. Foster it was—

Ordered, That the court take a recess until 4 o'clock p.m., at which hour the court will proceed to pronounce judgment in the case of West H. Humphreys, judge of the district court of the United States for the eastern, middle, and western districts of Tennessee.

2397. Humphreys's impeachment, continued.

The court declined to consider in secret session the question of final judgment in the Humphreys case.

Having found Judge Humphreys guilty, the court proceeded to pronounce judgment of removal and disqualification.

The presiding officer held that the question on removal and disqualification was divisible.

Debate as to whether or not the Constitution requires both removal and disqualification on conviction by impeachment.

Form of judgment pronounced by the presiding officer in the Humphreys trial.

Judgment being pronounced in the Humphreys case, the court adjourned without day.

The judgment of the court in the Humphreys trial was communicated to the House by the report of the chairman of the Committee of the Whole.

¹ Solomon Foot, of Vermont, President pro tempore.

² Globe, p. 2951.

The Senate ordered an attested copy of the court's decision in the Humphreys case to be sent to the President of the United States.

The high court met again at 4 p.m., and the House was informed by message that the court was ready to pronounce judgment and requested the attendance of the House of Representatives.¹

Before the arrival of the Members of the House Mr. Edgar Cowan, of Pennsylvania, suggested² a short secret session; but Mr. John P. Hale, of New Hampshire, suggested that the rule required the doors to be kept open. Mr. Cowan suggested that the rule referred only to the trial and not to proceedings relating to the verdict.

The President pro tempore said he would entertain a motion for a secret session, but Mr. Cowan did not insist on it.

The House of Representatives having entered the Chamber, Mr. Foster offered³ the following as an interrogation to be put to each member of the court in order that judgment might be perfected.

Is the court of the opinion that West H. Humphreys be removed from the office of judge of the district court of the United States for the districts of Tennessee?

To this Mr. Lyman Trumbull, of Illinois, offered an amendment as follows:

Add thereto: "and be disqualified to hold and enjoy any office of honor, trust, or profit under the United States."

Mr. Trumbull quoted the Constitution to show that both removal from office and disqualification should be the punishment.

Mr. Foster explained that the question proposed was in exactly the form used in the case of Judge Pickering, and that it was the only question propounded in rendering that judgment.

After debate, Mr. Trumbull's amendment was agreed to, yeas 27, nays 10.

Thereupon, Mr. Garrett Davis, of Kentucky, asked for a division of the question. Upon this demand there was debate. Mr. Trumbull said:

I have very serious doubts whether it is a double question; whether the whole is not one judgment. "Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States." I am not sure but that when the Constitution says it shall not extend further than that, it necessarily follows that it shall extend that far. It is not in the alternative, and I am by no means satisfied that that consequence does not necessarily follow the conviction. It is a limitation. As is well suggested by my friend from Pennsylvania [Mr. Wilmot], could you impose that latter part without the former? Could you decide that he should be disqualified to hold and enjoy any office of honor, trust, or profit? If each proposition is independent, it must be able to stand by itself without affecting any other. I am by no means satisfied that these are independent propositions. It seems to me that altogether the safer way is to take the question on them together.

Mr. Jacob Collamer, of Vermont, said:

Mr. President, I take it the test of the divisibility of a question depends upon whether there can be a vote left after it is divided, let the first be decided as it may. That is the criterion; that, if after you have voted "yea" or "nay" upon the first article of division, there is still a question to be decided

¹ House Journal, p. 943.

² Globe, p. 2951.

³ Senate Impeachment Journal, pp. 903, 904; Globe, pp. 2951–2953.

if the decision be either way. Now, in this case, suppose the proposition to be that this man be deprived of office, and that he be rendered ineligible, and it is divided, and the vote shall be that he be not deprived of his office; is there anything left? There would be nothing left to vote on, because the rendering him ineligible hereafter is only a consequence of the first, and rests in judicial discretion whether we put it on or not. It is not, in my apprehension, divisible, because a vote in one way on the first branch would render it impossible to get along with the second.

Mr. O. H. Browning, of Illinois, said:

We have the authority of an adjudicated case of the action of the Senate, in which they found a judge guilty upon impeachment and entered against him a judgment of ouster from his office; going no further. I apprehend it was competent for them to do that. They were not bound to attach to it the other consequence that may be attached to it under the Constitution, of disqualification forever thereafter to hold office. It may frequently occur—it occurred in that case, it may occur again—that a majority of the Senators would feel it their duty to vote for his ouster from office, and would not feel it their duty to vote for his disqualification forever thereafter to hold any other office under the Government, however unimportant. If you are compelled to put the question, and the whole question, as one question—to put it all together—men who are unwilling to vote to disqualify him forever, disfranchise him forever, will be constrained to vote that he be ousted from office, and also to vote for another proposition, which in their judgments would be unjust. That would follow inevitably; and after you had taken the question on them jointly, I apprehend you could not return and divide them, and take the propositions separately, so as to say whether he should be ousted from office.

The President pro tempore¹ said:

In the judgment of the Chair these are separate and divisible propositions. * * * From the authority of the Pickering case the Chair is obliged to say that it is a divisible proposition.

The question was then taken on the first proposition, and it was determined in the affirmative, yeas 38, nays 0.

On the second branch of the question there appeared, yeas 36, nays 0.

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

This court, therefore, do order and decree, and it is hereby adjudged: That West H. Humphreys, judge of the district court of the United States for the eastern, middle, and western districts of Tennessee, be and he is removed from his said office; and that he be and is disqualified to hold and enjoy any office of honor, trust, or profit under the United States.

Then, on motion of Mr. Foster, the court adjourned without day.

On the same day, the Committee of the Whole House having returned to Representatives Hall, the Committee of the Whole rose, and the Speaker having resumed the chair, Mr. E. B. Washburne, of Illinois, the Chairman, reported—

that the committee had, according to order, attended the trial by the Senate of the said impeachment; and that the said West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, had been found guilty by the Senate of the matter whereof he stood charged by the House of Representatives, as contained in its articles of impeachment exhibited against him.²

In the Senate, on June 27,³ on motion of Mr. Foster, it was,

Ordered, That the Secretary lay before the President of the United States an attested copy of the judgment of the Senate as the high court of impeachment in the case of West H. Humphreys.

¹ Solomon Foot, of Vermont, President pro tempore.

² House Journal, pp. 943, 944.

³ Senate Journal, p. 718; Globe, p. 2957.