On January 6, 1880, 2d session of the 46th Congress (Congressional Record, vol. 10, p. 203) a report was adopted fixing membership of committees at 15 from that time forward.

On August 21, 1893, 1st session of the 53d Congress (Congressional Record, vol. 25, p. 554) Speaker announced the appointment of 17 members to the Committee on the Judiciary.

On April 5, 1911, 1st session of the 62d Congress (Congressional Record, vol. 47, pp. 55–80) House Resolution 30 provided for increase of committee membership from 15 to 21.

On December 11, 1925, 1st session of the 69th Congress:

> On motion of Mr. Tilson, by unanimous consent,
> *Ordered*, That the membership of the Committee on the Judiciary be increased from 22 to 23 members until March 2, 1927 (Congressional Record, vol. 66, p. 725).

On December 12, 1927, 1st session of the 70th Congress (H. Res. 53 and H. Res. 54, Congressional Record, vol. 69, p. 491), election of 23 Members of to the Committee on the Judiciary announced.

On December 14, 1931, 1st session, 72d Congress (Congressional Record, vol. 75, p. 465) House Resolution 54, providing for 23 members on the Committee on the Judiciary agreed to by the House.

On March 14, 1933, 1st session of the 73d Congress (Congressional Record, vol. 77, p. 43) House Resolution 43, providing for 25 members on the Committee on the Judiciary agreed to by the House.

The Legislative Reorganization Act of 1946 calls for 27 members on the Judiciary Committee and this is the number specified in rule X of the House Rules. However, the membership has often been changed for a particular Congress by the passage of a House resolution calling for a greater number of members than prescribed by the current rule and/or by electing a greater number of members than is prescribed by the current rule. For example, at present there are 35 members on the Judiciary Committee. House Resolutions 120 and 132 increased the committee to this number for the 89th Congress.

IMPEACHMENTS

Since, under the Constitution, impeachment proceedings must originate in the House of Representatives, and since the Committee on the Judiciary is the law committee of the House, all its members being lawyers, all matters of impeachment, and resolutions calling for investigation of such charges are referred by the House to the Committee on the Judiciary in the first instance.

In the nine impeachment proceedings which have resulted in trial, since the formation of the committee in 1813, the Committee on the Judiciary has done much to develop, clarify, and state the law of impeachment and in this respect has performed a great and lasting service to the country as a whole.

While the House of Representatives has the sole power of impeachment the Senate has the sole power to try all impeachments. However, the jurisdiction of the Senate does not attach until articles of impeachment have been exhibited to it by the House.

The several sections of the Constitution applicable to impeachment proceedings are hereinafter set out.

CONSTITUTION

Article I

Section 2, clause 5:

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachments.

Section 3, clause 6:

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the Members present.

Clause 7:

Judgment in cases of impeachment shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictments, trial, judgments, and punishments according to law.

Article II

Section 4, clause 1:

The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

GOOD BEHAVIOR

Article III

SECTION I. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.

SEC. II. The trial of all crimes, except in cases of impeachment, shall be by jury.

NATURE OF IMPEACHMENT

On January 3, 1913, in the Senate sitting in the trial of the impeachment of Judge Robert W. Archbald, Mr. Manager Henry D. Clayton, of Alabama, submitted on behalf of the House of Representatives a brief from which the following is an excerpt:

THE GENERAL NATURE OF IMPEACHMENTS

The fundamental law of impeachment was stated by Richard Wooddeson, an eminent English authority, in his Law Lectures, delivered at Oxford in 1777, as follows (pp. 499 and 501, 1842 ad.):

"It is certain that magistrates and officers entrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community and at the same time in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly. The Commons, therefore, as the Grand Inquest of the Nation, became suitors for penal justice, and they cannot consistently either with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the legislature.

"On this policy is founded the origin of impeachments which began soon after the Constitution assumed its present form.

* * * * * * *

"Such kinds of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are most proper—and have been the most usual—grounds for this kind of prosecution."

Referring to the function of impeachments, Rawle, in his work on the Constitution (p. 211) says:

"The delegation of important trusts affecting the higher interests of society is always from various causes liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign States, or the baser appetite for illegitimate emoluments are sometimes productions of what are not unaptly termed 'political offenses' (Federalist, No. 65), which it would be difficult to take cognizance of in the ordinary course of judicial proceeding.

"The involutions and varieties of vice are too many and too artful to be anticipated by positive law."

In Story on the Constitution (vol. 1, 5th ed., p. 584) the parliamentary history of impeachments is briefly stated, as follows:

"800. In examining the parliamentary history of impeachments it will be found that many offenses not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. * * * One cannot but be struck, in this slight enumeration, with the utter unfitness of the common tribunals of justice to take cognizance of such offenses, and with the entire propriety of confining the jurisdiction over them to a tribunal capable of understanding and reforming and scrutinizing the polity of the State, and of sufficient dignity to maintain the independence and reputation of worthy public officers."

Elmore Whitehurst, Esq., formerly clerk of the Committee on the Judiciary of the House, in a brief prepared on this subject, has summed up, the "Nature of Impeachments," in the following manner:

Impeachment came into our Constitution from England. There it was a criminal proceeding with all the accouterment of a criminal trial, and with a possible penalty upon conviction of a sentence of ignominious death with confiscation of property. When it reached the United States Constitution the criminal penalties were stripped from impeachment. Judgment upon conviction was limited to removal from office with a possible judgment barring the defendant from again holding office of trust or profit. Impeachment was changed from a criminal to a civil proceeding. Since there were no other precedents to guide, when the first impeachments came to trial in this country, English precedents naturally were followed. Thus it came about that for more than 150 years of our history the real nature of impeachment under our Constitution was obscured by confusion of thought brought about by the fact that impeachment proceedings were conducted as if they were criminal trials. The Judiciary Committee, particularly in recent years, has fought vigorously and successfully to establish general acceptance that impeachments in this country are not criminal trials but are solely ouster proceedings and should be tried as such.

Another very able statement of the nature of impeachment is found in the speech of Hon. Hatton W. Sumners in the House, in the Congressional Record, June 12, 1933.

Mr. Whitehurst has also set out the method of examination of impeachment charges, as follows:

It is the practice of the Judiciary Committee to make a preliminary informal examination of charges brought against judges. If, in the opinion of the committee, the action is warranted, a resolution is reported to the House authorizing and directing the committee to conduct an investigation of the charges and giving the power to subpena persons and papers. An exhaustive examination into the charges follows the adoption of the resolution by the House. Hearings are conducted before a subcommittee at which the accused and the accusers are accorded the privilege, usually exercised, to appear in person, to be represented by counsel, and to examine and cross-examine witnesses. The accused may testify in his own behalf. The evidence is printed, and after full consideration in executive session the committee makes its report to the House. If the judgment of the committee is for impeachment, articles of impeachment are drafted and presented to the House with the committee report. After debate, the House votes on the question of impeachment. If an impeachment is voted by a majority of the House, managers are appointed to conduct the trial in the Senate. The managers are agents of the House. In practice they are named from members of the Judiciary Committee by the chairman, who presents the names to the House in a resolution,

55-514—65——5

which is ordinarily agreed to without debate. The managers present themselves at the bar of the Senate and demand the impeachment of the accused in the name of the House of Representatives and of all of the people of the United States. A summons is issued to the accused to appear and answer. The Senate organizes itself into a court of impeachment, and the trial is held in the Senate Chamber. The managers conduct the prosecution, while the respondent, as the accused is termed, is represented by counsel of his own choosing.

CASES OF IMPEACHMENT

In the 176 years of this Nation's existence under the Constitution the Senate of the United States has sat as a Court of Impeachment in 12 cases.

Prior to the creation of the Committee on the Judiciary three of these had been disposed of, to wit:

That of William Blount, a Senator of the United States from Tennessee, in 1798–99; John Pickering, judge of the U.S. District Court for the District of New Hampshire, 1803–4; and that of Samuel Chase, Associate Justice of the Supreme Court of the United States, 1804–5. The charges against Blount were dismissed for want of jurisdiction, Pickering was removed from office, and Chase acquitted.

The first Court of Impeachment to be held after the creation of the Committee on the Judiciary of the House in 1813 was that of James H. Peck, judge of the U.S. District Court for the District of Missouri. This trial lasted from Monday, April 26, 1830, to Monday, January 31, 1831.

The case of Judge Peck originated as a result of a memorial by an individual, which was referred to the Committee on the Judiciary and was by that committee reported to the House with a recommendation in favor of impeachment.

On March 23, 1830, Mr. Buchanan, chairman of the committee, submitted a report from the Committee on the Judiciary recommending the impeachment of James H. Peck.

Judge Peck was impeached in a single article containing a number of specifications on the ground that he had grossly abused his power as a judge in sentencing an attorney to 24 hours' imprisonment and suspension from the bar of his court for 18 calendar months for writing and publishing a moderate criticism of one of Judge Peck's decisions in a case in which the attorney had appeared on behalf of the plaintiff, with the result that the attorney was practically prevented from further participation in the case. The respondent was acquitted by the Senate on all of the articles presented against him on the ground that he was justified in assuming that he was legally clothed with the power that he had exercised, and that the element of malice had not been established. The vote was 22 to 21 against conviction.

Five managers were selected by ballot, three of whom were members of the Committee on the Judiciary. They were Mr. Buchanan, of Pennsylvania; Mr. Storrs, of New York; Mr. Wickliffe, of Kentucky; Mr. Spencer, of New York; and Mr. McDuffie, of South Carolina, the three first named being members of the committee.

On April 26, 1830, Messrs. Buchanan and Storrs appeared before the bar of the Senate and impeached Judge Peck in the following manner, to wit:

Mr. President, we have been directed in the name of the House of Representatives and of all the people of the United States, to impeach James H. Peck, judge

of the District Court of the United States for the District of Missouri, of high misdemeanors in office, and to acquaint the Senate that the House of Representatives will in due time exhibit particular aticles of impeachment against him and make good the same. We have also been directed to demand that the Senate take order for the appearance of the said James Peck to answer to said impeachment.

While Judge Peck was acquitted, nevertheless, as a result of this trial, the act of March 12, 1831, defining and limiting the power of judges to punish for contempt was passed. It is entitled "An act declaratory of the law concerning contempt of court," and was enacted to remedy the wrongs this case disclosed. The history of this act is interesting and important. One of the main questions in the case was whether the power of the Federal courts to punish contempts was derivable from the common law or whether it was limited by the act of September 24, 1789, the 17th section of which provided that all the said courts of the United States—

shall have power to administer all necessary oaths or affirmations, and to punish by fine and imprisonment, at the discretion of said courts, all contempts of authority in any cause or bearing before the same.

Upon the one hand, the contention was that the Federal courts were of limited jurisdiction, and unless a statute or constitutional provision could be found conferring power, no such power could be exercised. Upon the other hand, the claim was made with great vigor and zeal that all courts have the inherent right to protect themselves and to maintain their authority by punishing for contempt all who disturb the court or who directly or indirectly defy its orders and decrees or do anything to bring court or judge into disrepute. It was claimed that all the power to punish contempts of every kind possessed and exercised by the courts in England before the Revolution was possessed by and could be lawfully exercised by the Federal courts. Nothing was settled by the result of the trial of Judge Peck. To meet the doubt and settle the uncertainty as to the power of the Federal courts to punish contempt, Mr. Draper, a Member of the House, introduced the following resolution:

Resolved, That the Committee on the Judiciary be directed to inquire into the expediency of defining by statute all offenses which may be punished as contempt of the courts of the United States.

To which the following amendment was added:

And also to limit the punishment of the same (Gales & Seaton, for 1831, p. 559).

The act of 1831 was reported by Mr. Buchanan from the Committee on the Judiciary in pursuance of this resolution.

In the decision of the Supreme Court in *Ex Parte Robinson* (19 Wall. 211) there is found a very clear statement as to the nature and character of the offenses punishable under this act.

Following the foregoing impeachment trial which has been set out somewhat in detail came the impeachments of West H. Humphreys, judge of the U.S. District Court for the Middle, Eastern, and Western Districts of Tennessee; he was removed from office; the trial lasted from May 7 to June 26, 1862.

Next was that of Andrew Johnson, President of the United States; he was acquitted; the trial lasted from February 25 to May 26, 1868.

Next was that of William W. Belknap, Secretary of War; he was acquitted; the trial lasted from March 3 to August 1, 1876.

Next was that of Charles Swayne, judge of the U.S. District Court for the Northern District of Florida; he was acquitted; the trial lasted from December 14, 1904, to February 27, 1905.

Then followed the trial of Robert W. Archbald, additional circuit judge of the United States from the third judicial circuit and designated a judge of the U.S. Commerce Court; he was removed from office; the Senate sat as a Court of Impeachment from July 13, 1912, to January 13, 1913.

Next was that of George W. English, judge of the U.S. District Court for the Eastern District of Illinois; he resigned from office November 4, 1926; the Court of Impeachment adjourned to December 13, 1926, when on request of the House managers, the impeachment proceedings were dismissed.

Next came the trial of Harold Louderback, judge of the U.S. District Court for the Northern District of California; he was acquitted; the trial lasted from May 15 to 24, 1933.

The last time that the Senate sat as a Court of Impeachment was that of Halsted L. Ritter, judge of the U.S. District Court for the Southern District of Florida; he was removed from office; the trial lasted from April 6 to 17, 1936.

These trials have vastly changed the concept of the real nature of impeachments in this country, but due to their great length, the mass of testimony, the law, and the rulings, they are not separately discussed at this time.

PROCEDURE IN IMPEACHMENT TRIALS

The accused may appear in person or by attorney, or he may not appear at all. In case he does not appear the House does not ask that he be compelled to appear, but the trial proceeds on a plea of "not guilty."

It has been decided that the Senate has no power to take into custody the body of the accused. The writ of summons to the accused recites the articles and notifies him to appear at a fixed time and place and file his answer.

In all cases respondent may appear by counsel, and in one trial, when a petition set forth that respondent was insane, the counsel of his son was admitted to be heard and present evidence in support of the petition but not to make arguments.

In trials before the Senate witnesses have always been examined in open Senate and never by a committee, although such procedure has been once suggested.

No jury trial is possible as a part of an impeachment trial under the Constitution.

The House of Representatives has consulted its own inclination and convenience about attending its managers at an impeachment. It did not attend at all in the trials of Blount, Swayne, and Archbald, and after attending at the answer of Belknap, decided that it would be represented for the remainder of the trial by its managers alone.

At the trial of the President the House in Committee of the Whole attended throughout the trial, but this is exceptional.

In the Peck trial the House discussed the subject and reconsidered its decision to attend the trial daily.

While the Senate is deliberating the House does not attend; but when the Senate votes on the charges, as at the other open proceedings of the trial, it may attend. While it has frequently attended in Committee of the Whole, it may attend as a House.

The question in judgment in an impeachment trial has occasioned contention in the Senate, and in the trial of President Johnson the form was left to the Chief Justice. In the Belknap trial there was much deliberation over this subject. In the Chase trial the Senate modified its former rule as to form of final question. The yeas and nays are taken on each article separately, but in the trial of the President the Senate, by order, voted on the articles in an order differing from the numerical order, adjourned after voting on one article, and adjourned without day after voting on 3 of the 11 articles. After a conviction, the Senate votes on the punishment.

The Constitution of the United States (art. 1, sec. 3, par. 7) limits the judgment to removal and disqualification.

In Congress impeachment proceedings are not discontinued by a recess, and the Pickering impeachment was presented in the Senate on the last day of the Seventh Congress, and at the beginning of the Eighth Congress the proceedings went on from that point.

But an impeachment may proceed only when Congress is in session.