

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Monday, September 9, 1963

The Senate, sitting as a court for the trial of Articles of Impeachment against the Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida, convened at 11:00 o'clock A. M., pursuant to the Order taken on Friday, June 14, 1963, on motion of Senator Cross.

The Chief Justice presiding.

The original of the following oath of Chief Justice E. Harris Drew of the Supreme Court of Florida, taken on the 1st day of July, 1963, as successor to Chief Justice B. K. Roberts, was filed with the Senate, viz:

"I solemnly swear that in all things appertaining to the trial of the impeachment of the Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida, now pending, I will do impartial justice according to the Constitution and Laws of the State of Florida; so help me God."

The Managers on the part of the House of Representatives, Honorable William G. O'Neill and Honorable C. Welborn Daniel, and their attorneys, Honorable James J. Richardson and Honorable Leo C. Jones, appeared in the seats provided for them.

The Honorable Richard Kelly, respondent, with his counsel, Honorable Perry Nichols, Honorable B. J. Masterson and Honorable Harvey V. Delzer, appeared in the seats provided for them.

The Chief Justice administered the following oath to Senators Boyd, Johnson (19th) and Tucker, who had not been previously sworn:

"I do solemnly swear that in all things appertaining to the trial of the impeachment of the Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida, now pending, I will do impartial justice according to the Constitution and Laws of the State of Florida; so help me God."

By direction of the Presiding Officer, the roll was called and the following Senators answered to their names:

Senator Clayton W. Mapoles—1st District
Senator Reubin O'D. Askew—2nd District
Senator Clyde Galloway—3rd District
Senator Robert Williams—4th District
Senator Luther Tucker—5th District
Senator Dewey M. Johnson—6th District
Senator Scott Kelly—7th District
Senator Wilson Carraway—8th District
Senator James E. Connor—9th District
Senator L. P. Gibson—10th District
Senator C. W. Young—11th District
Senator John M. McCarty—12th District
Senator W. C. Herrell—13th District

Senator G. T. Melton—14th District
Senator Charley E. Johns—15th District
Senator Harry O. Stratton—16th District
Senator Houston W. Roberts—17th District
Senator John E. Mathews, Jr.—18th District
Senator Beth Johnson—19th District
Senator L. K. Edwards, Jr.—20th District
Senator Etter Usher—21st District
Senator Warren S. Henderson—22nd District
Senator S. D. Clarke—22ndX District
Senator J. A. Boyd—23rd District
Senator Elmer O. Friday, Jr.—24th District
Senator Dempsey J. Barron—25th District
Senator B. C. Pearce—26th District
Senator G. W. Williams—27th District
Senator E. William Gautier—28th District
Senator Merrill P. Barber—29th District
(Resignation from the Senate of the Honorable Edwin G. Fraser created a vacancy in the 29thX District)
Senator A. J. Ryan, Jr.—30th District
Senator Verle A. Pope—31st District
Senator J. Emory Cross—32nd District
Senator Irlo O. Bronson—33rd District
Senator Tom Whitaker, Jr.—34th District
Senator Ralph J. Blank, Jr.—35th District
Senator Ed H. Price, Jr.—36th District
Senator Bernard Parrish—37th District
Senator D. D. Covington, Jr.—38th District
Senator Ferrin C. Campbell—39th District
Senator Hayward H. Davis—40th District
Senator John M. Spottswood—41st District
Senator Mack N. Cleveland, Jr.—42nd District
Senator George L. Hollahan, Jr.—43rd District
—44.

A quorum present.

At the request of the Presiding Officer, Senator Edwards of the 20th Senatorial District offered the following Prayer:

Our Father, as we open this Senate sitting as a Court of Impeachment we ask for your mercy, your forgiveness of all our sins. We seek your guidance, wisdom and love.

We give thanks for our country, our state and our government. Please be with all of us all the time. Give us each one the desire to do right and accomplish the act of being fair.

We pray blessings upon the state and the defense. This we pray in the name of Jesus who died on the Cross in order that sinners might be saved. Amen.

By direction of the Presiding Officer, the Sergeant At Arms made the following proclamation:

Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Articles of Impeachment, exhibited by the House of Representatives against the Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Friday, June 14, 1963, was dispensed with.

The Senate daily Journal of Friday, June 14, 1963, was corrected and as corrected was approved.

(Oath of office as Secretary of the Senate was administered to Edwin G. Fraser, successor to the late Honorable Robt. W. Davis, by Chief Justice E. Harris Drew at 10:30 o'clock A. M. this day.)

The Chief Justice then administered the following oath to Edwin G. Fraser, Secretary of the Senate:

"I do solemnly swear that I will faithfully and impartially perform the duties of Secretary to the Senate of the State of Florida, sitting as a Court of Impeachment in the trial of the Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida, now pending, so help me God."

Writ of summons and precept were issued and service thereof made upon the Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida, by the Sergeant At Arms of the Senate on the 25th day of July, 1963, by delivering a true and attested copy of the same at the residence of Judge Kelly, leaving same with his wife, at Route 2, Box 255A, Zephyrhills, Florida.

Senator Cross asked for the following order:

ORDERED: That Rule 32 previously adopted by this Senate be amended to read as follows:

During the deliberations of the Senate of the State of Florida, sitting as a Court of Impeachment, all the members of the Court, witnesses, attaches, and others connected with the Court or attached to it in any way, who fail to respond with their presence at the appointed hour of each of its meetings, shall have imposed upon them a fine of fifty dollars unless a reasonable excuse to be accepted by the Court is offered for their absence. An excuse should be in the hands of the Secretary on meeting. However, members of the Court may be temporarily excused for short absences during given sessions of the Court, without disqualifying them from further participation in the proceedings, providing applications for such temporary absences are presented to the Secretary, stating reasons for such absence, and such applications are approved by the Court, and with the further provision that such temporarily excused member shall agree to familiarize himself with the proceedings of the Court taking place during his absence.

Senator Cross moved the adoption of the order.

CHIEF JUSTICE DREW: Is there a second?

The motion was duly seconded.

CHIEF JUSTICE DREW: Is there any discussion or question to be asked concerning the proposal?

Hearing none, as many as favor the proposed order let it be known by saying "aye." Opposed "no."

The "ayes" have it; the order is adopted.

Senator Cross asked for the following order:

ORDERED: That Rule 3 previously adopted by this Senate be amended to read as follows:

CHIEF JUSTICE DREW: Gentlemen, would you turn to Rule 3 in your desk book, please, and you can understand it, I believe.

Upon such Articles being presented to the Senate, the Senate shall, at 11:00 o'clock A. M., of the day fixed to commence the consideration of such Articles proceed to the consideration of such Articles, and shall continue in session from 9:30 o'clock A. M., Monday, until 1:00 o'clock P. M., Friday each week after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the Articles of Impeachment, the presiding officer shall administer the oath hereinafter provided to the members of the Senate as they shall appear, whose duty it shall be to take the same.

Senator Cross moved the adoption of the order.

CHIEF JUSTICE DREW: Is there any discussion or question concerning the proposed amendment?

Hearing none, as many as favor the proposed order let it be known by saying "aye." Opposed "no."

The "ayes" have it; the order is adopted.

CHIEF JUSTICE DREW: Mr. Secretary, would you administer the oath to the Sergeant At Arms. While waiting for the Sergeant At Arms to appear in the Chamber the following further proceedings were had:

CHIEF JUSTICE DREW: Do counsel desire any notation of additional appearances in these proceedings? Counsel for the House?

MR. O'NEILL: Mr. Chief Justice, Mr. Leo C. Jones is additional counsel for the Board of Managers. There has been filed the entry of his appearance.

CHIEF JUSTICE DREW: Is there any additional announcement from the Respondent?

MR. NICHOLS: Mr. Chief Justice, we have no additional counsel for the party. All parties representing the Respondent have previously filed their appearances.

By direction of the Presiding Officer, the Secretary of the Senate administered the oath to LeRoy Adkison, Sergeant At Arms of the Senate and returning officer, in the following language:

"I, LeRoy Adkison, do solemnly swear that the return made by me upon the process issued on the 25th day of July, 1963, by the Senate of the State of Florida against Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida, is truly made, and that I have performed such service as therein described; so help me God."

CHIEF JUSTICE DREW: At this time the Presiding Officer wishes to make these announcements to the gallery and the spectators.

On behalf of the Court, I wish to make it clear that during these proceedings of this high Court of Impeachment, this is a judicial proceeding. At no time, from the beginning of this trial to its conclusion, will there be any demonstrations of any kind in the gallery. There will be no photographs taken. And that must be observed from the opening to the closing of the trial. I further wish to

admonish all of those in the gallery and otherwise that it is improper for any person to attempt to discuss the facts in this case in any way with any member of this Court during the proceedings in this Court. I also wish to announce that the hours during which this trial will be conducted will be from 9:30 in the morning to 1:00 o'clock, and from 2:30 to 5:15 o'clock in the afternoon, except, as you will note by the amendment, on Friday afternoon this Court will stand in recess until the following Monday morning at 9:30.

CHIEF JUSTICE DREW: Mr. Secretary, will you read the Articles of Impeachment, omitting the formal parts.

MR. NICHOLS: Mr. Chief Justice, on behalf of the Respondent, we are willing to waive the reading of the Articles of Impeachment.

We think they are before all members of the Senate, and we think that may save some time.

CHIEF JUSTICE DREW: Gentlemen, you have heard the suggestion of counsel that he will waive the reading of the Articles of Impeachment.

In view of the fact that some of the members of the Senate may not have had time to thoroughly read these Articles and understand them, and in view of the fact that we will probably immediately proceed with an argument on Motions to Dismiss, I am going to overrule the suggestion and order the Articles of Impeachment to be read.

By direction of the Presiding Officer the Secretary of the Senate read the Articles of Impeachment.

CHIEF JUSTICE DREW: Inasmuch as the Bill of Particulars which has been filed in this case will neither add to nor detract from the sufficiency of the Articles of Impeachment in any way, it will not be read at this time.

Do you desire to read your motion, Mr. Nichols, or do you desire to have the Secretary read it?

MR. NICHOLS: I think we'll let the Secretary read the motions.

By direction of the Presiding Officer, the Secretary of the Senate read the motions which have been filed by the Respondent.

CHIEF JUSTICE DREW: Are there two motions? Did you read both of them, Mr. Secretary?

SECRETARY FRASER: We have three.

CHIEF JUSTICE DREW: You read the motions to strike and dismiss?

SECRETARY FRASER: I read the motion to strike the individual Articles of Impeachment.

CHIEF JUSTICE DREW: Have all of them been read that you care to have read?

MR. NICHOLS: We would like to have read the motions to dismiss all of the Articles, all of them.

CHIEF JUSTICE DREW: All right. Do you have that, Mr. Secretary?

By direction of the Presiding Officer the Secretary of the Senate read the Motion to Strike and Dismiss Articles of Impeachment.

MR. O'NEILL: Mr. Chief Justice, it's the position of the Board of Managers on the part of the House that the Motion to Strike and the Motion to Dismiss is not proper, and should not lie, and are prepared at this time to argue the point as to whether or not a Motion to Strike and a Motion to Dismiss lie to Articles of Impeachment under the Constitution and the precedents that have been set by the various impeachment trials throughout the country.

CHIEF JUSTICE DREW: In the former trial in this court, Articles of Impeachment - - - I mean, such motions were allowed and were voted on.

MR. O'NEILL: Yes sir, we are aware of that, but there was no objection on the part of the Board of Managers as to the making of those motions. It is our position, the Board of Managers having not objected, and having not been ruled on at that time, it is not precedent in this case.

MR. NICHOLS: Mr. Chief Justice, the Senate is now organized as a Court and, certainly, any Court has a right to dismiss any action that's before it, and Mr. Justice Terrell, in the Holt proceedings, clearly said, in the Holt trial, which is precedent for this particular trial, he said "In trying impeachment charges the Senate has been fully aware of its exalted duty, that it must follow the law as found in the Constitution and in the common law, and the precedents, and from them determine the indicia of that which is impeachable. It is only after such research that the Senate can determine whether or not the Articles of Impeachment state an impeachable offense."

So, we are here, and certainly, this Senate has a right to determine whether or not these Articles state an impeachable offense; that was the law and - - - that Justice Terrell filed in the former trial. The motion was presented in the Judge Holt matter, and certainly a Court has a right to determine whether or not there is an impeachable offense involved.

By way of illustration, if the House sent over to the Senate, in these Articles of Impeachment, and simply charged Judge Kelly with being six foot three, and having a long face and a sharp chin, and therefore, it constitutes a misdemeanor in office, certainly, this Senate would not have to sit here and try it, and we have prepared a brief, addressed to this Court and to each member of the Senate, showing that this is not an impeachable offense, and certainly, this Court has a right, and the Court is - - - the Senate is the Court, and certainly, this Court has a right to determine whether or not there has been an impeachable offense involved.

We certainly think we are entitled to present fully our motion to dismiss these Articles.

MR. O'NEILL: Mr. Chief Justice, Mr. Jones, on the part of the Board of Managers, will respond.

CHIEF JUSTICE DREW: Mr. Jones.

MR. JONES: Mr. Chief Justice, Members of the Court:

If I could, and not to take up any more of your time than is absolutely necessary, I would like to refer briefly to the origin of impeachment.

Back in the days of England, when the Court was all-powerful, it was decided that some method must be brought about to protect the people from the tyranny of the Courts. It was decided at that time that there would be a Court of Impeachment, but the authority to impeach would not vest in a single house, but would vest in two houses.

So, the Articles, or the method of impeachment originated in England - - - and it still prevails there, under the common law, provides that the House of Representatives or the House of Commons shall have the sole power to impeach, and that the House of Lords shall have the sole power to try a case of impeachment which has been brought by the House of Commons.

When our country was founded, we adopted the same provision in the Constitution of the United States, and if you will refer to your desk books just for a moment, on Page 4, you will see that the provision of the Constitution which is applicable, of the Federal Constitution, Section 2, Article 1, vests in the House of Representatives the sole power of impeachment; Section 3, Article 1, Federal Constitution, vests in the Senate the sole power to try all impeachments.

The Constitution of Florida was followed thereafter in almost identical language, and you will find that in your desk book, on Page 3, at the top of the page:

"The House of Representatives shall have the sole power of impeachment, but a vote of two-thirds of all members present shall be required to impeach any officer, and all impeachments shall be tried by the Senate."

So, you can see that we have adopted here in Florida the same method of impeachment which has come along through the ages.

This question of whether or not a motion to dismiss, or any motion, lies to the Articles of Impeachment, as found by the House of Representatives, has never been raised in Florida. In all the research which we have done in the past weeks, which have extended back to the cases and the precedents of common law, we have never found a case in the history of that country or this country where the Senate has granted - - - where the Senate, sitting as a Court, has granted or allowed such motions to Articles of Impeachment found by the House of Representatives. They have often been put in, as they were in the Holt case, but they have never been granted, not in the history of our research, and in the Holt case, this specific point was never raised by the Board of Managers, but we are raising it now, and we think that the House of Representatives has the sole power to bring Articles of Impeachment.

In all the research that we have done we find only one specific statement, and that was made by the eminent Judge Terrell, in the case of 93 So. (2d), 601, in re: Investigation of Circuit Judge Holt.

Judge Terrell there was discussing the method whereby a Circuit Judge may be expelled from his office for impeachable offenses, and he had this to say, on Page 603:

"The House of Representatives is clothed with the sole power to impeach, and all impeachments are tried by the Senate. Since the House of Representatives is clothed with the sole power of impeachment, it necessarily follows that it has the power to determine whether the charges brought against one amount to a misdemeanor in office, as contemplated by our Constitution."

So, gentlemen, and Members of the Court, we feel that the only precedent that we have in Florida or in the Constitution clearly says that the House of Representatives shall have the sole power of impeachment, and is to the effect that the House of Representatives does have that power; and the Senate, therefore, has the command of the Constitution, upon impeachment by the House of Representatives, to sit in judgment and try the case of impeachment brought by the House of Representatives.

We would respectfully ask this Court to deny any argument or presentation of motions to the Articles of Impeachment as adopted by the House of Representatives.

Thank you.

MR. NICHOLS: Mr. Chief Justice, just briefly: Again I point out that the Court has a right to pass on the sufficiency of allegations and pleadings.

Justice Terrell, in this same brief that we are referring to, pointed out that these are somewhat quasi-criminal in nature. It is just like a grand jury's having made an indictment and the Court coming along to pass on whether or not - - - on the sufficiency of the Articles or the indictment.

And, again, clearly the ruling was in the Holt matter - - - this was presented. I have no objection to them - - - and I presume that they will oppose the motion to dismiss.

Certainly the matter should be fully laid before this Court.

I think that Mr. Chief Justice Drew as presiding officer, and the Court, should certainly hear the law; that is, the law of the Constitutional provisions and the law relating to these Articles, because if they are not legally sufficient, then we shouldn't be in this Court Room. And that is all that we think is necessary at this time, Mr. Chief Justice.

CHIEF JUSTICE DREW: The presiding officer is going to rule that, for the present time, - - - Senator?

Senator Mathews moved that the Senate go into closed session.

Which was agreed to.

Whereupon, at 12:05 o'clock P. M., the Senate closed its doors.

Senator Cross moved that the records of the proceedings of the Senate with doors closed be made public upon the doors being opened.

Which was agreed to and it was so ordered.

Proceedings of the Senate with doors closed:—

Senator Blank asked for the following order:

ORDERED: That both sides be granted until 9:30 o'clock A. M., Tuesday, September 10, 1963, to file briefs upon the question of whether or not motions to dismiss or to strike Articles of Impeachment lie and that both sides be granted a brief limited time to argue the question, following which the Court will decide that issue.

Senator Blank moved the adoption of the order.

Senator Pope moved as a substitute motion that the Senate do now proceed to hear arguments and consider a decision at 9:30 o'clock A. M., Tuesday, September 10, 1963. (Recognize right to file motion and to hear argument.)

The question was put on the substitute motion by Senator Pope.

A roll call was requested and upon call of the roll the vote was:

Yeas—20.

Barber	Cleveland	Gibson	Pope
Barron	Covington	Henderson	Spottswood
Bronson	Cross	Johnson (6th)	Stratton
Carraway	Davis	Kelly	Usher
Clarke	Edwards	Mapoles	Williams (27th)

Nays—24.

Askew	Galloway	McCarty	Roberts
Blank	Gautier	Mathews	Ryan
Boyd	Herrell	Melton	Tucker
Campbell	Hollahan	Parrish	Whitaker
Connor	Johns	Pearce	Williams (4th)
Friday	Johnson (19th)	Price	Young

So the motion failed of adoption.

The question recurred on the motion by Senator Blank.

A roll call was requested and upon call of the roll on the motion the vote was:

Yeas—41.

Askew	Covington	Johns	Ryan
Barber	Cross	Johnson (19th)	Spottswood
Barron	Davis	Johnson (6th)	Tucker
Blank	Edwards	Kelly	Usher
Boyd	Friday	McCarty	Whitaker
Bronson	Galloway	Mapoles	Williams (27th)
Campbell	Gautier	Mathews	Williams (4th)
Carraway	Gibson	Melton	Young
Clarke	Henderson	Parrish	
Cleveland	Herrell	Price	
Connor	Hollahan	Roberts	

Nays—3.

Pearce	Pope	Stratton
--------	------	----------

So the order was adopted.

Senator Cross moved that the doors of the Senate Chamber be opened, and the doors were opened at 1:08 o'clock P. M.

Whereupon, at 1:10 o'clock P. M., the Senate, sitting as a Court of Impeachment, adjourned on a point of order until 9:30 o'clock A. M., Tuesday, September 10, 1963.