STARS

Florida Historical Quarterly

Volume 36
Number 4 *Florida Historical Quarterly, Vol 36, Issue 4*

Article 3

1957

Florida Reconstruction Impeachments

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FLORIDA RECONSTRUCTION IMPEACHMENTS

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1. IMPEACHMENT OF GOVERNOR HARRISON REED

THE IMPEACHMENT of Governor Harrison Reed not only contributes an interesting chapter to the history of Reconstruction but it also offers a number of novel precedents to the history of American impeachments. Throughout his gubernatorial term (1868-1872), Reed fought a consistent and courageous struggle against carpetbag politicians in Florida. I know of no other state or national civil officer against whom the impeachment remedy was so frequently attempted. On four occasions, he was threatened with legislative removal. Twice the lower house passed impeachment resolutions. Finally, in the last year of his term, his enemies voted a bona fide and legal impeachment against him; reported it to the senate in due form; suspended him from office; and, after all these apparent indices of triumph, they had to return him to power on account of an unusual and embarrassing political situation.

At the close of the war, Reed was employed as a representative of the Post Office Department and was domiciled in Jacksonville. He was originally from Wisconsin, where he was recognized as a journalist of ability. Being convinced that the freedmen would have to be protected in their newly acquired liberty, Reed took a prominent part in the affairs of the Jacksonville Republican Club. The functions of this organization were not merely partisanly political. If a Negro were ill-treated, the club informed the proper authorities; if a freedman sought advice, he was given it. The original purpose of this society is not to be confused with the later program that it embraced. If Reed was a carpetbagger at all, he was certainly not the selfish, unprincipled, "fly-by-night" species.

As a compromise candidate, Reed was nominated in 1868 by the Republicans for the governorship. He was elected in May of that year. Under the new Reconstruction constitution, the governor exercised a generous power of appointment. He selected his administrative cabinet of eight members, the judges of the supreme and circuit courts, and a host of local county officers. In

choosing his appointees, Reed revealed a sincere desire to establish an honest and efficient government. Nor did he limit his appointments to Republicans, for at least two prominent secession Democrats were placed in important positions. The nomadic carpetbagger type, which figured so prominently in many Reconstruction regimes, received little attention from this discriminating and well-meaning governor. Yet Reed's determination to establish an honest government created the decisive issue in Florida politics, divided the Republican party, and led ultimately to the four attempts to impeach him.

The coalescence of the disappointed Radical Republican politicians was effected during the legislative session that convened immediately after Reed's inauguration in the summer of 1868. The governor used his veto power to thwart useless expenditures. Before the legislature adjourned in August, there were veiled threats that impeachment would be used if the governor did not show more interest in "Republican welfare." This "piebald" legislature met as a convention to choose presidential electors on November 3. Upon the completion of this perfunctory duty, consummated in a partisan spirit, the legislators demanded that Reed call them into special session. [1] The governor complied with their wishes. They immediately enacted a salary and mileage bill, which Reed promptly vetoed on the grounds that they had already received their salaries for 1868. The bill was unhesitatingly passed over his veto. Reed's conscience had further alienated the corruptionists led by United States Senator Osborn and Lieutenant Governor Gleason. To this group, the governor was demonstrating a ridiculous stupidity in his opposition to the legitimate profits of politics. They, therefore, laid their plans to destroy him as quickly as possible and to install Lieutenant Governor Gleason in his place. Already the hungry politicians had waited five months - an interminable period for an impatient and aspiring corruptionist - for the governor to signify that he was ready to "play ball;" if Reed couldn't make up his mind in that length of time, he was either too stupid or to scrupulous to carry out the great principles of Reconstruction!

The governor had been informed that he would be impeached

1. The call was made so that the members could appropriate mileage for themselves.

if he vetoed the salary bill. [2] He accepted the challenge. Thereupon, State Senator Jenkins presented charges against Reed in the house of represenatives. Without further deliberation, the resolution impeaching Reed was adopted by a vote of 25 to 6. Two committees were appointed, one to report the action of the house to the senate, the other to prepare articles of impeachment. In contrast to most impeachments, no legislative inquiry was conducted by the house before the impeachment was voted. There can be no doubt that this impeachment resulted from purely political motives. And there is a close analogy between it and the impeachment of President Johnson earlier in the year; both were voted by intransigent members of the administration party.

The special committee reported to the senate, or assumed that it had done so. No journal of the senate is now extant. A sturdy defender of Reed maintained that no quorum was present, "as the Democrats were not in their seats, as were not some of the Republicans."[3] The Osborn-Gleason faction declared that twelve members and the president of the senate (Gleason) constituted a quorum when the impeachment was reported and received. [4] But, it is interesting to note, four of the twelve senators present at that time had already been appointed to, and had occupied, administrative offices through the appointing power of the governer. Thus, they were attempting to occupy incompatible offices. Reed interpreted the constitution to mean that when an officer qualified for an office, he thereby automatically became ineligible to hold any office that he might have been occupying at the time of his appointment. Furthermore, he had issued a proclamation setting forth his contention. If these four were ineligible to sit in the senate, there remained no doubt that the senate did not muster a quorum when the impeachment was

2. W. W. Davis, *Reconstruction in Florida* (1913), 547; John Wallace, *Carpetbag Rule in Florida* (1888), 89. Wallace wrote: "The Governor, although fully advised of the purpose of Osborn and his satellites to suspend him by a resolution of impeachment, thinking it best to have the fight opened then and there, acceded to the demand and called them into special session for a specific purpose."
3. Wallace, *supra,* 89.
4. There were twenty-four members of the senate, so the twelve would not have constituted a quorum. A quorum, by the constitution, was a majority; and the president of the senate, not being a member, could not have been counted as present for that purpose.

reported; unless the impeachment were lawfully reported to the senate, it was still an incomplete impeachment; and pending the completion of the same, Reed would naturally continue to exercise the authority of governor. Reed was striving to prevent Lieutenant Governor Gleason from becoming the acting governor.

The committee selected to draft articles of impeachment made no progress. In fact, it did nothing before the legislature adjourned on November 7 to meet two months later. The wild and unverified accusations that comprised the bill which Jenkins presented against Reed remained the only tangible evidence of the charges against Reed. In his memorial, Jenkins charged:

> 1st. He {Reed} has been guilty of falsehood and lying while transacting business with the members of the legislature and other officers of the State.
>
> 2nd. I charge him with incompetency in as much as he has filled commissions to officers in blank, and other irresponsible persons having issued them.
>
> 3rd. He has issued a proclamation declaring many seats of the Legislature vacant before the members duly elected and returned had resigned or legal term of service expired.
>
> 4th. He has been guilty of embezzlement, having taken from the State Treasury securities and money, and sold such securities, and then failed to return a portion or all of the proceeds of the sale to the Treasury.
>
> 5th. He has been guilty of corruption and bribery, he having bartered and sold prominent offices in the State to sundry persons, for money to him in hand paid, and nominating such persons to the Senate for confirmation. [5]

On the day of the impeachment, Gleason issued a bold proclamation, declaring that he, lieutenant governor of the state, was by the constitution empowered to take over the duties of governor pending the outcome of the impeachment. [6] Quite contrary to the predictions of the Osborn group, Reed showed no inclination to surrender his position. On November 9, he appealed to the supreme court for an opinion as to whether he had

5. See *Weekly Constitutionalist*, (Augusta, Ga.) Nov. 11, 1868.
6. For complete text, see *Weekly Constitutionalist*, Nov. 11, 1868.

been lawfully impeached.[7] Secretary of State Alden, who also still retained his seat in the senate, deserted Reed and carried with him the Great Seal of the state to the Gleason gubernatorial had waited five months - an iterminable period for an impatient office, which was established in a hotel across the street from the capitol building.[8] Reed cursorily removed Alden and appointed Jonathan Gibbs, a Negro, as secretary of state. This proved to be an act pregnant with political wisdom, for the Negroes stood firmly for Reed throughout the crisis. Both Gleason and Alden were arrested for conspiring to overthrow the government of the state, but were released without bail, and they, the twin pretenders, continued to "govern" from their hotel until after the supreme court rendered its decision upon the validity of the impeachment.

In his communication to the supreme court, Reed offered, if Gleason would agree, to regard the opinion of the court as binding. In a written statement to the court, Gleason refused to become a party to such an agreement on the grounds that he was, by the constitution, obligated to assume the responsibility of acting governor until the impeachment case was finally decided.[9] The court announced its opinion on November 24. In answer to Reed's second question - as to whether the lack of a quorum in the senate did not reduce to a nullity the legislative and other acts of the house that required the joint action of both houses - the court answered in the affirmative. In rendering its opinion, the court recognized Reed as the lawful governor, for the constitution made no provision for officers and persons other than the governor to submit questions to the court, except through the

7. Article V, sect. 16, of the constitution of 1868, provided that the governor might submit any question concerning the interpretation of the constitution or laws of the state to the supreme court for its opinion. In both Davis, *Reconstruction in Florida*, and Caroline Mays Brevard, *A History of Florida*, II, the date of the submission of this formal request to the court is given as November 3. The latter evidently relied upon the former's inaccurate statement. As a matter of fact, the house did not vote the impeachment until on November 6.
8. For good accounts of these spectacular episodes, see Davis, *supra*, 547-556; Wallace, *supra*, 89-92; Brevard, *supra*, 149-151; *Weekly Floridian*, Nov. 4 to Nov. 25, 1868; *Weekly Constitutionalist*, Nov. 4 to Nov. 25, 1868.
9. *In the Matter of the Executive Communication of the 9th of November*, A.D., 1868, 12 Fla., 659, 660.

usual practice of suits at law.[10] There is no doubt that the court was politically favorable to Reed. All of its members had received their positions through his appointing power. However, the court's opinion was not unjust. Since no more than twelve members of the senate were present at any session of this short legislature, from the third to the seventh of November, no quorum was ever present in that body; and, therefore, from a purely legal standpoint, the legislature never convened in special session under the governor's call of November 3.[11] There had been no constitutional session of the legislature thereunder - only a meeting of certain of its members in a private capacity.[12] With the court's expressed opinion that the legislature was never lawfully convened, there remained no doubt as to the invalidity of the impeachment resolution. The governor's call provided for de convening of the legislature, and not of de house of representatives alone.

The designs of his enemies frustrated, Governor Reed inaugurated a policy of chastisement and reprisals. On November 19, Attorney General Meek filed before the supreme court an information in the nature of a *quo warranto* against Gleason, claiming that the latter had never lawfully qualified for his office since he was not a citizen of the state for three years next preceding his election.[13] After numerous petitions, motions, answers, and demurrers, the court finally, on December 14, disqualified Gleason.[14]

The legislature convened in January, 1869, and several abor-

10. At a later time, the governor again submitted a question to the supreme court relating to the authority of the impeachment court to postpone his trial to a date beyond the expiration of his term of office. With the governor suspended from office, the court refused to grant him relief, but it did receive his question on the ground that he was the *de jure* governor and that mere suspension did not deprive him of the right to submit questions to the court. *American Annual Cyclopaedia, 1872,* 305.
11. Thirteen was the smallest number that would constitute a quorum.
12. The Oklahoma court ruled that a meeting of members of the legislature did not necessarily constitute a legislative session. During the "Ewe Lamb Rebellion" of 1927 in Oklahoma, the state supreme court held that a legislature, regardless of the number of members present, was illegal unless called into special session by the governor or meeting under the provisions of the constitution. *Simpson* v. *Hill,* 128 Oklahoma 90 (1927).
13. The qualifications for lieutenant governor were, by Article V, sect. 14 of the constitution of 1868, identical to those stipulated for the governor in section 3 of the same article.
14. See *State* v. *Gleason,* 12 Fla. 190 (1868).

tive attempts were made immediately to instigate investigation of the governor's official acts.[15] Reed's friends secured the adoption of a resolution in the senate which declared that no session of the legislature had been in existence in the preceding November.[16] On the second day of the session, the house appointed a committee to make such an investigation.[17] This committee reported three weeks later, and submitted the evidence which it had taken.[18] The majority report recommended impeachment, but the house passed a resolution, forty-three to five, declaring that nothing in the report justified impeachment proceedings. Wallace charges that Reed's enemies attempted to bribe members to vote for impeachment.[19] Indeed, a resolution was introduced to investigate these informal persuasion tactics, but nothing of importance resulted from it.

The third attempt to impeach Reed occurred in January, 1870. An investigating committee was apointed on January 21.[20] On February 4, the committee made its report recommending impeachment, which was defeated twenty-nine to twenty-one.[21] The governor had again routed his enemies, but they were manifestly gaining strength at his expense. For the next two years the Osborn-Gleason faction built their political fences. At the beginning of the January, 1872, session of the legislature, the Radical strategy began to take form. Demands were made for the removal of certain of Reed's appointees. The governor was warned that he would be impeached unless he acceded to these demands. He flatly refused. Caucuses of Democrats and Radicals were held and pledged to vote for impeachment. An investigation was ordered.[22] The caucuses continued. Pressure was brought upon the Negro members to deliver the Negro population of the state and

15. *House Journal 1869*, 4; *Am. An. Cyc.*, 1868, 275, 276.
16. *Senate Journal 1869*, 4. The resolution read: "*Resolved*, That the Senate recognize no other Journal of its proceedings for this session, than the Journal commencing Tuesday, January 5th, 1869, and that all other so-called Journals, appearing in or attached to, be suppressed from its records."
17. *House Journal 1869*, 5, 6.
18. For text of the report, see *ibid.*, 101-111.
19. Wallace, 94.
20. *Ibid.*, 116.
21. Wallace, 124. The minority report against impeachment was adopted, 27 to 22.
22. *House Journal* 1872, 54, 71.

the Republican Party from Reed's vicious administration. [23] Finally, on February 6, the committee reported in favor of impeachment and, after a short discussion, it was unanimously adopted. [24] Although ordered to be spread on the journal, the report was suppressed through the machinations of the impeachers. A committee of three notified the senate. Another committee of seven was selected to prepare articles of impeachment and present them at the bar of the senate. The labor of this latter committee was apparently not of a strenuous nature, for one of its members averred that he never saw a copy of the articles, to which his name was signed, until after the articles were presented to the house for adoption. [25]

In substance, the articles alleged:

I. That Reed, in 1870, officially signed state bonds to the amount of $528,000 in excess of the amount authorized by law;

II. That he, in 1870, conspired and fraudulently attempted to issue state bonds to the amount of one million dollars, which bonds were intended to be used by the Florida, Atlantic and Gulf Central Railroad Company;

III. That he, in 1870, did sign and issue bonds to the amount of one million dollars for the purpose of purchasing stock of the Florida, Atlantic and Gulf Central Railroad Company, which was in violation of the constitution and laws of the state;

IV. That he, in 1870, did sign and cause to be issued bonds to the amount of four million dollars for the use and benefit of the Jacksonville, Pensacola and Mobile Railroad Company, after he had already received "full notice of the fraudulent title of the said Company to the property of the Pensacola & Georgia and Tallahassee Railroads;"

V. That he, in 1871, did conspire with one David L. Yulee, and other persons unknown, to issue bonds to the amount of one million dollars for the use and benefit of the said Yulee and other persons, in relation to the construction of public works;

VI. That he, in 1871, did sign and issue bonds to the amount of one million dollars for the use and benefit of David L. Yulee and other persons;

23. Wallace, 158, 159.
24. *House Journal 1872,* 252.
25. Wallace said that they were prepared by Fred Dockray, whom Reed had alienated by refusing to appoint him to the attorney generalship.

VII. That he, in 1869, did conspire with Milton S. Littlefield to embezzle the moneys received from the hypothecation of state bonds, and did embezzle the sum of $22,000 in that manner;

VIII. That he, in 1871, did fraudulently receive from Milton S. Littlefield the sum of $3,500 as a consideration to influence his official action in sustaining the claim of the J., P. & M. R. R. Co. to the property of the other railroads mentioned above;

IX. That he, in 1868 and 1869, did conspire with one E. B. Bulkley of New York to defraud the state of $15,000, and in pursuance of said conspiracy did defraud the state of that amount by purchasing arms and equipment with the same;

X. That he, in 1869, received from I. K. Roberts a draft for the sum of $1,140 which was paid in United States currency, and that he thereafter tendered to the Treasurer state scrip in lieu of the currency which he had received;

XI. That he, in January, 1872, did conspire to influence J. W. Toer, justice of the peace, in the exercise of his judicial action upon a case wherein the state brought suit against George W. Swepson;

XII. That he, in 1871, did unlawfully conspire with one Aaron Barnett, and did receive from Barnett the sum of $10,000 for consideration of approving and signing a contract for the conveyance of internal improvement lands to the said Barnett. [26]

The articles were presented to and unanimously adopted by the house on February 10. Immediately thereafter, in conformity to the traditional custom of the British House of Commons, the house rose and accompanied the managers to the bar of the senate where the specific articles were exhibited to that body. Lieutenant Governor Day was sworn in as acting governor by Justice Wescott of the supreme court. [27] Three days later, Day issued a proclamation declaring himself the chief executive until the impeachment against Reed was decided. [28]

26. For complete text of the articles, see *House Journal 1872*, 257-263, and Wallace, 160-166.
27 Day had been elected to fill the vacancy caused by the ouster of Gleason from the lieutenant governorship. Gleason had been elected to the lower house.
28. For text, see *House Journal 1872*, (reg. sess,) 275, 276.

The enemies of the governor set about to secure as many votes in the senate for conviction as possible, so they elected Billings, an erstwhile Reed man, president *pro tempore* of that body. [29] The conspirators soon discovered evidence of disaffection in their ranks. The Democrats who had so heartily entered into the impeachment agreement threatened to throw their strength to Reed unless Articles V and VI were immediately withdrawn. These articles related to an alleged conspiracy between Reed and David Yulee, a prominent Democrat. The ring hastened to comply with the request for withdrawal. [30] To cover up the motives which promoted the withdrawal, the managers began the preparation of additional articles.

Governor Reed peaceably submitted to the suspension and made ready to defend himself before the impeachment court. He showed his canny political sense by employing Democratic counsel. This feature is usually overlooked in the study of impeachment trials. In many ways, the employment of counsel who have political influence is a long step towards the ultimate defeat of the impeachment charges. The senate court was duly organized on February 14, with Chief Justice Randall as presiding officer. [31] The respondent filed his answer on the day following. No demurrers were offered. The managers asked for a continuance for the purpose of preparing additional articles and of amending those already presented, and for the production of witnesses residing outside the state. The court adourned for a day. On the sixteenth, four additional articles were exhibited. In brief they alleged :

29. Wallace, 168.

30. The authority of the house to withdraw articles once formally exhibited before and filed in the senate court has been questioned in certain American impeachment cases; *viz.*, the McGaughey (Texas) trial of 1893 and the Walton (Oklahoma) trial of 1923. The arguments against the withdrawal of articles is that the senate court has no constitutional authority to dispose of articles except by trial. However, the power of the senate court to sustain demurrers has been exercised on many occasions. Permission to withdraw would, if complete enough to include all articles presented, secure an effect not dissimilar to a *nolle prosequi* in a criminal court. English precedents permitted the House of Commons to withdraw impeachments at any time prior to the final balloting.

31. Davis remarks that the impeachment court was organized on February 10. He has confused the organization of the court with the exhibition of the articles at the bar of the senate.

XIII. That Reed, in 1868 and 1869, improperly and unlawfully appropriated state moneys, by substituting scrip which he had bought at a discount for currency which he had received from J. D. Westcott, Jr., to the sum of $6,948.63;

XIV. That he, in 1870, embezzled state money to the amount of $1,897.24, which sum had prior to the embezzlement been in the custody of Jonathan Gibbs, secretary of state;

XV. That he, on April 24, 1871, did unlawfully apply and apropriate the sum of $11,000 from the governor's contingent fund;

XVI. That he, in 1870, did wrongfully and maliciously misrepresent the facts of his official acts to one T. W. Brevard, for the purpose of adversely affecting the interests of certain persons and parties. [32]

The impeachers thereafter began to maneuver for a sine die adjournment of the legislature. Reed demanded an immediate trial, saying that such an adjournment would postpone the trial to an impossible day for him, in that his term of office would expire before the next regular session of the legislature. There was no reason to believe that Acting Governor Day would convene the legislature in special session; for he was definitely aligned with the Osborn group. A concurrent resolution was adopted in both houses, providing for *sine die* adjournment on Friday 19. The anti-Reed members succeeded in adjoining the impeachment court on that day. Apparently no one connected with the case was aware that an impeachment court might continue in session after adjournment of the legislature, and that such continued existence of the court would not violate the state constitutional time limit on legislative sessions. Its functions being non-legislative in character, the impeachment court would not be construed as coming within the constitutional limitation. [33]

32. For text of these additional articles, see *House Journal 1872,* (reg. sess.) 303-305; Wallace, 169-171.

33. There are, of course, many American impeachment precedents which confirm this construction, one of the best of which derives from the Civil War impeachments of Kansas. See *Kansas* ex rel. *Daniel M. Adams v. George S. Hillyer,* 2 Kans. 17 (1863); see also *Trial of the Hon. Albert Jackson* (Missouri, 1859) 55; in 1873, the Texas senate court adjourned without having completed either the Scott or Chambers impeachments. The Mississippi constitution requires that the trial shall be held after the adjournment of the legislature.

The conspirators were jubilant at having effected the suspension of Reed and the *sine die* adjournment. For all practical purposes, their nemesis was efficaciously dispossessed of his office for the remainder of his term. According to Wallace, the militantly able defender of Reed, the impeachers knew that Reed would not agree to a fraudulent canvass of the votes in the election of that year, and they were determined to elect a governor and a congressman even if they had to employ illegal methods. [34] Reed retired to his Jacksonville home; but, on April 8, he appeared in Tallahassee, during the temporary absence of Day, and entered and took possession of the gubernatorial office.

In this clever *coup d'etat*, he was materially assisted by Gibbs, the secretary of state. Reed immediately issued a proclamation declaring himself to be the lawful governor and forbidding obedience to Day or the legislature. [35] He also announced several executive appointments. Two days later, Reed wrote to Day offering to submit the whole tangled situation to the supreme court for a decision. Receiving no reply, Reed presented the question to the court.[36] On the fifteenth, Day issued a proclamation, boldly setting forth the authority by which he exercised the powers of the governor.[37] Nevertheless, Reed, even though he did not attempt to retain control of the governor's office, had confused the Osborn forces. They were at a loss to know what to do under the existing circumstances. What if the supreme court were to render an opinion in favor of Reed? Driven from pillar to post by the exasperating tenacity of Reed, Day turned to the legislature for aid. He issued a call for it to meet in special session on April 22.[38] The appearance of giving the governor a trial might have some influence upon the court's opinion on the Reed petition. Afterwards, the legislature could again adjourn. The legislative members did not display much enthusiasm for their responsibilities in the matter, and it was not until the 26th that a quorum was present in each house.

In his message to the legislature setting forth the purpose of the special session, Day condemned the "atrocious attempt of

34. Wallace, 180.
35. For text of this proclamation see *Am. Ann. Cyc. 1872,* 303.
36. April 17, 1872.
37. *Am. Ann. Cyc. 1872,* 303, 304.
38. The call was issued on the 17th. Wallace, 184, 185.

Governor Reed to seize the powers of the government, under color of a self-asserted right and in defiance of the judicial proceedings of a high constitutional forum, by which he was deprived of all authority whatever." The acting governor did not recommend that the trial proceed, but asked only for the passage of "such legislation as in your wisdom the circumstances may seem to require." [39] Of course, the conspirators still had a chance to sustain the impeachment and thereby remove Reed. They might even postpone the trial by another *sine die* adjournment. If convicted, Reed would certainly have accepted the verdict in good faith. By his *coup d'etat,* he had only forced the impeachment to an issue. Justice demands that an impeached officer be granted a reasonably speedy trial, if his impeachment deprives him of his office pending the outcome of the trial. However, by neither law nor constitution was Reed authorized to employ the revolutionary tactics which he used, The constitution of 1868 had been amended to provide that "any officer so impeached and in arrest may demand his trial by the Senate within one year from the date of his impeachment." [40] A very abstruse provision, that! Did it imply that the impeached officer could select any date within the period and force the senate to organize itself into a 'court of impeachment and thereafter render a decision upon the impeachment? Did it imply that an impeached officer could not be tried by a senate court if he failed to demand a trial within a year? This provision represents an unusual accretion to the body of constitutional law relating to impeachment. To permit the impeached officer to demand a trial when the legislature was not in session would give to an impeached officer an authority which even the governor did not possess - that of calling the senate court into existence. It would, therefore, redefine the meaning of *sine die* adjournment.

On April 29, the supreme court delivered its opinion as to the legal status of the impeachment. Two of the judges - Hart and Westcott - believed that the court could not interfere until the senate court had finally disposed of the impeachment. In a dissenting opinion, Chief Justice Randall argued that the supreme court could not review a decision of the court of impeachment,

39. *Senate Journal 1872,* (extra. sess.) 10-16.
40. Article XVI, sect. 9.

or vice versa; but he declared that the failure of the senate court to convict Reed operated as an acquittal of the respondent, in that the constitution contempted a trial and not an interminable delay. In summing up his opinion, Randall said: ". . . I must upon my convictions of duty, say that, in my opinion, Governor Reed had the right officially to solicit the opinion of the court, whenever, after the adjournment of the legislature, he saw fit to do so. . . ." [41]

The majority members of the court relied upon British precedents to show that a subsequent session of the legislature might decide an impeachment voted in a prior session. Most American impeachment precedents also support this authority. [42] Although the majority opinion denied the jurisdiction of the supreme court over an existing impeachment, it declared that, by all the rules of justice, the senate court should decide the impeachment against Reed. In arriving at this conclusion, the two judges said:

> The adjournment was not the result of any necessity, either of law or of unanticipated occurrence. Gov. Reed was arraigned; the Senate organized as a court; a plea was filed and issue made. The accused demanded a trial as he had a right to do under the express terms of the constitution. Without any reason declared, or so far as we know existing, the adjournment was ordered, and by the operation of the constitution, known to the Senate, that the adjournment carried the Senate over to next January, which was, as also known to the Senate, beyond the official life of the Governor. The deduction of fact, as well as of law, which we hold to follow from this is, that the adjournment of the Senate and the continuance of the impeachment before it, was not for the purpose of a trial, but that there should be no trial; and we hold it to be against any known principle, of law, that a party arraigned can be held to prevent a trial instead of to give him a trial, and that natural justice at least requires that in all such cases the effect should be a discharge; and any and all courts should, when the question properly comes before it, so declare. And why? Simply because, as it seems to us, the spirit of the law which gives power in order to try is violated, and the spirit of justice requires that the party should be dis-

41. Wallace, 203; *Senate Journal* 1872, (extra. sess.) 47. For some unexplained reason this opinion was not published in the Florida supreme court reports of 1872.

42. It would even operate in cases of prior and succeeding legislatures as well as of prior and succeeding sessions of the same legislature. The Chambers impeachment offers an excellent precedent. Texas *Senate Journal 1874,* 42.

> charged, for he is presumed to be innocent until the contrary is proven, and, as in such case, no chance to prove him guilty exists, he is entitled to the practical benefit of the principle applicable in his behalf.

Thus, in so far as the effect of the adjournment upon the impeachment was concerned, all three judges were in concurrence. They differed only in the matter of a proper remedy. The two majority judges evidently did not wish to attempt judicial enforcement of a decree in the teeth of political opposition. The North Carolina supreme court took the same attitude in the Holden fracas of 1870 in the matter of enforcement of writs of *habeas corpus.* Being less hazardous to deny jurisdiction than to assume it in a hostile case, the Florida court chose the safe alternative, and then proceeded to forge public opinion through the utterance of *obiter dicta.*

The Osborn faction was in an embrassing position. On May 1, a motion to resolve the senate into a court of impeachment was introduced and, after an interesting parliamentary battle, adopted unanimously. Faced now with the task of prosecuting the impeachment, the house adopted a resolution on May 2, providing for the procurement of papers and witnesses. Four members of the board of managers were not even in attendance during this session. When the court of impeachment met on May 2, J. P. C. Emmons, counsel for Reed, moved that the respondent "be acquitted and discharged of and from all and singular said impeachment." [43] Senator Henderson, Democrat, moved that the granting of the respondent's motion be ordered. Emmons proceeded with his argument upon the motion, which he concluded on the following day. On May 4, the Henderson order was finally adopted by a vote of ten to seven. The Chief Justice announced that Governor Reed was thereby discharged from the custody of the impeachment court. [44]

The manner in which the senate court terminated the proceedings represents an unusual impeachment precedent. While it is not an uncommon occurrence for such a court to sustain a demurrer and thereby conclude an impeachment trial, it is rare indeed for an impeachment court to terminate a legal proceeding

43. *Senate Journal* 1872 (extra. sess.) 37.
44. *Senate Journal 1872* (extra. sess.) 68.

without hearing arguments upon the impeachability of the acts alleged or without receiving testimony and evidence upon the separate articles. This procedure smacks of the political burlesque, despite the warranted justice that was thereby effected. While not so curt a dismissal of an impeachment as occurred in the case against Governor Long (Louisiana, 1929), the action of the Florida senate court in this case was, from the standpoint of constitutional precedents, as unwarranted as its was revolutionary. [45] The constitutional and imperative demand upon the senate court is to try all impeachments which are legally presented to it by the only body which has the authority to impeach, the house of representatives. To do less than to try is to shirk an express constitutional duty.

The decision of the senate court was a purely political one. By its action, the court merely indicated, and with a gesture of finality and even of exasperation, that there existed no probability of sustaining the articles against Reed. To discharge the respondent would make unnecessary a futile and tiresome proceeding.

The Osborn coterie did not have a sufficient majority in the senate court to sustain the articles. Moreover, the Democratic members were, by this time, more inclined to support Reed than Day. With good fortune and a fair election, the Democrats might possibly elect their candidates in the impending election. With Day in the governor's office, there was less chance for an honest election than with Reed there. This accounts for the late switch of the Democrats. [46] The anti-Reed Republicans were also anxious to terminate the party schism. The rising Democracy offered a serious threat to continued Republican hegemony, if the party split continued to dissipate the normal Republican strength. Moreover, the supreme court was about to hand down a decision in the suit brought by Bloxham-Democratic candidate for lieu-

45. See N. F. Baker, "Some Legal Aspects of Impeachment in Louisiana," *Southwestern Political and Social Science Quarterly*, X (March, 1930), 359-387.

46. Davis remarks (p. 635) that the Democrats were eager for the trial and were bent upon removing Reed, but this is apparently an error. Wallace says (p. 207) that the Democrats united with the Reed forces in making it possible for Reed to secure his discharge. The unhappy Osbornites were pressed from either side and were without a reasonable chance to succeed.

tenant governor against Day - against the board of state canvassers. [47] If the supreme court held that Bloxham had been legally elected instead of Day, and the impeachment court removed Reed or kept him suspended, a Democrat would become governor and the whole army of Republican office-holders would be ousted in one wholesale removal program. Impaled upon the horns of this dilemma, the Democrats were convinced that there was a greater chance that Reed could be convicted than the supreme court would declare Bloxham acting governor; so, they chose to support Reed. It is small wonder, then, that the Osborn conspirators were in no mood to prosecute the impeachment in energetic fashion.

2. IMPEACHMENT OF JUDGE JAMES T. MAGBEE

From a techinal standpoint, it must be admitted that the impeachment of Judge Magbee, of the sixth circuit court, was the first impeachment in Florida politics. We was formally and fully impeached in the regular legislative session of 1870. Governor Reed, as we have seen, was not validly impeached until 1872; however, the incomplete impeachment of 1868 contributed a more important precedent to impeachment history than did the Magbee case. Judge Magbee was a member of the Reed faction of the Republican party. In early 1870, the Gleason-Cessna faction of boodlers sought to bargain with Governor Reed in regard to the post occupied by Magbee. The boodlers promised to abandon further attempts to oust Reed if he would force Magbee's retirement and appoint to the vacancy a candidate of the Gleason-Cessna group. [48] Reed refused. An attempt was forthwith made to impeach Reed, but he parried the thrust sucessfully. The investigatorial power of the house was then turned against Magbee. After a perfunctory inquiry, he was impeached. The senate was notified thereof on February 18. Before the five articles were exhibited at the evening session of that day, a resolution was

47. *Bloxham v. Board of State* ***Canvassers,*** 13 Fla. 55.
48. *Senate Journal, 1870,* 314, 315.

adopted by the senate, providing for the organization of a court of impeachment at the next session of the legislature. [49]

The articles against Magbee appear especially superficial. In brief, they alleged:

I. That Magbee, in 1868, unlawfully declared one William Henderson to be in contempt of his court for having written and published an article attacking and criticising a speech made by Magbee; when, as a matter of fact, the article was published while the court was out of session, and could not, therefore, have been contemptuous; and that Magbee caused the imprisonment of said Henderson in lieu of the latter's payment of a fine of one hundred dollars assessed against him for the said illegal contempt;

II. That he, in 1869, struck from the panel of grand jurors the names of two men which had been legally drawn, and inserted in place thereof the names of two men which had been drawn on the regular panel of petit jurors;

III. That he, in 1869, endeavored to cause the clerk of his court to commit a fraud, by urging him not to record the names of certain persons on the jury list in case they should be drawn in the jury drawing;

IV. That he, in 1869, bought for his own use certain pipes, tobacco, envelopes, and stamps and caused the same to be charged against the state under the title "stationary;"

V. That he, in 1869, persuaded one Irene Jenkins to plead guilty to an indictment charging adultery, promising her a mitigation of the penalty; but after she, as induced, pleaded guilty to such charge he assessed against her the extreme penalty of imprisonment for twenty-one months at hard labor; all of which he did, despite the fact that he had sentenced one Louis Jenkins, indicted on a similar offense, to pay a fine of seventy-five dollars upon a plea of guilty. [50]

49. This resolution represents a curious specimen in impeachment procedural data. As a matter of fact, the senate had not yet resolved itself into a court of impeachment, nor did it do so during this session. Unquestionably, the resolution consists of and constitutes an exercise of legislative authority. Of what moment was the resolution in providing for the trial of the respondent? The later session would not necessarily be bound by the resolution of the prior session. The usual procedure under the circumstances would have been for the senate to organize a court of impeachment, which court could then adjourn to some day of a later or subsequent legislative session.

50. *Senate Journal, 1870,* 232-325.

The regular session of legislature adjourned *sine die* on the day following the exhibition of the articles in the senate. To all appearances, Magbee's case had been postponed until January, 1871. To keep the case suspended from final determination would be to increase the bargaining power of Reed's enemies. However, the governor convened the legislature in special session on May 23. Persuant to the resolution of February 18, the senate organized itself into a court of impeachment. On June 1, the respondent appeared before the court in person and by counsel and entered a general plea of not guilty to the charges. [51] Thereupon, the managers petitioned the court for a continuance, which was granted. It is very evident that the managers were not desirous of prosecuting the impeachment to a conclusion. On June 2, the respondent submitted a number of important documentary records of his court which served to disprove specific allegations of the articles and to reduce further the enthusiasm of the managers for their responsibilities in the case. [52]

The legislature met on January 3, 1871. Three days later, a special committee of five members was appointed in the lower house to ascertain the actual status of the impeachment. [53] On the 9th, the committee reported; it recommended the selection of managers to replace those whose authority had expired. A substitute was offered, which proposed an abrupt abandonment of the charges. On January 10, the senate notified the house that the impeachment court had been organized; and it further informed the house that immediate action in the impeachment case was desired by the senate court. [54] This latter information was, no doubt, unwelcome news to Cessna and Gleason. Governor Reed's strength in and control of the 1871 session of the legislature were greater than in any session since he assumed the executive office. The Cessna group knew that the articles against Magbee were of little real substance. Accordingly, in this political situation, the committee which had advised prosecution of the im-

51. For text of the plea, see *House Journal, 1870* (extra. sess.), 40, 41.
52. See *ibid.,* 47-72. The presentation of these documents to the house evidences a desire of Magbee to obviate the necessity for a trial. Ordinarily, however, a respondent would not reveal the evidence upon which he expected to base his defense.
53. *House Journal, 1871,* 35, 36.
54. *Ibid.,* 43.

peachment on January 9 recommended the abandonment of the impeachment on the 10th. The second report admitted that the articles were frivolous and the evidence entirely insufficient. Through adoption of the second report, the impeachment was abated.

The Magbee impeachment contributed little to the body of American impeachment precedents. It is unusual only in that it was under consideration, in one form or another, in three separate and distinct sessions of the legislature. However, the time factor was not great, for less than twelve months intervened between original investigation and abandonment of the charges. In essence, the whole episode was no more than an attempt to embarrass Governor Reed.