

the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be without debate and without a division, unless the yeas and nays be demanded by one-fifth of the Members present, when the same shall be taken.<sup>226</sup>

In the trial of Judge Archbald in 1912, no new rules were adopted; the rules framed in former trials were considered as being operative. This was the same procedure as had been followed in the trials of Secretary of War Belknap and Judge Swayne.<sup>227</sup>

### *Senators*

#### *Disqualification of, in Trials Failed:*

There have been two trials in which attempts were made to disqualify certain Senators, and in both instances the Senators involved were permitted to vote.

In the trial of Judge Pickering, three Senators, Samuel Smith, Israel Smith, and John Smith, who had been Members of the House of Representatives, and who had voted on the question of impeaching Judge Pickering, were members of the Senate during the trial. A resolution was introduced to provide that any Senator of the United States, having previously acted and voted, as a Member of the House on the question of impeachment, be disqualified, but this resolution was simply ordered to lie over for consideration, and all three Senators voted during the trial of Judge Pickering.<sup>228</sup>

During the trial of President Andrew Johnson, the issue of disqualification arose prior to the administration of the oath to Senator Benjamin Wade of Ohio. The argument was raised by Senator Thomas Hendricks of Indiana that since Senator Wade had an interest in the outcome of the trial, inasmuch as he would succeed to the office of President if conviction had been obtained, that he was not competent to sit as a member of the court, Senator Oliver Morton of Indiana pointed out that under the Constitution the Senate has the sole power to try all impeachments and that Senator Wade, as a member of the Senate, had a constitutional right to sit there. After thorough discussion of the issue, Senator Hendricks withdrew his objection, stating that he thought that the question might more properly be raised when the Senate would be fully organized for a trial and when the accused party was present; the oath was administered to Senator Wade.<sup>229</sup>

#### *Excused from Participation in Trial or from Voting:*

Senators from time to time have asked to be excused from participation in an impeachment trial. During the trial of Halsted L. Ritter, the Senator from Colorado (Mr. Costigan) asked unanimous

<sup>226</sup> April 11, 1933, 73-1, *Senate Journal*, p. 318.

<sup>227</sup> July 15, 1912, 62-2, *Senate Journal*, p. 454.

<sup>228</sup> January 4, 1804, S-1, *Senate Journal*, pp. 382-83.

<sup>229</sup> March 5, 6, 1868, 40-2, *Senate Journal*, pp. 809-11.