

we have endowed our highest tribunals be maintained in the face of such adverse circumstances? The remedy for our "judicial oligarchy" is worse than the evil which it was designed to alleviate.<sup>27</sup>

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**Impeachment of Oklahoma Governors.** In Oklahoma, impeachment is of the soil racy. In the twenty-three years of statehood, thirteen impeachment messages have been received in the Senate from the House. Governor Williams (1914-18) has been the only one of six elected governors against whom House investigations were not ordered, and he may have been spared by the unusual House rule which declared any members guilty of perjury who swore to charges that were not substantiated in an investigation.

Backed by the farmer-labor group, John C. Walton was elected governor in 1922 in a campaign marked by bitterness and party bolting.<sup>1</sup> Before he was inaugurated, rumor had it that he would be impeached. Opposition to him sprang from three main sources—disappointed office-seekers, the klan, and the school *bloc*. However, it was the klan that finally dragged him down. To prevent klan outrages and to punish their perpetrators, Walton attempted to employ the military forces of the state. Martial law was declared in the city of Tulsa on August 13, 1923. It was soon extended to the whole of Tulsa county, to Okmulgee county, and finally on September 1 to the whole state. Adding to the confusion, the legislature tried to convene itself in extraordinary session, under the excuse that the governor's action had made such a step necessary and essential to the welfare of the state. Walton countered by branding the legislators as klansmen and a meeting of the legislature as an unlawful klan assembly. An attempted convening was frustrated by armed force on September 16.

<sup>27</sup> Since this article was written, two additional cases have been reported in which a minority of the court determined the decision. *State, ex rel. Bryant v. Akron Metropolitan Park District for Summit County, et al.* (166 N.E. 407, March 27, 1929) upheld the constitutionality of the Park District Act (Sections 2976-1 to 2976-10i, General Code). Two judges concurred in the opinion. On the same day, the same judges upheld the Sanitary District Act (Sections 6602-34 to 6602-106, General Code), in *Shook, et al. v. Mahoning Valley Sanitary District, et al.* (166 N.E. 415). One judge did not participate in the latter case.

<sup>1</sup> For a brief account, see Ernest T. Bynum, *Personal Recollections of Ex-Governor Walton*.

In August, Walton had set October 2 as the date for a special referendum election, and he enumerated in the proclamation the measures to be submitted. Soon thereafter, Campbell Russell, known to Oklahomans as the champion sponsor and user of the popular initiative, circulated a petition to amend the constitution so as to permit the legislature to convene itself upon a petition signed by a majority of its members. The Russell petition, known as Initiated Petition No. 79, was placed on the ballot over the protest of the governor. To forestall the legislature, Walton issued another proclamation countermanding the August proclamation and setting December 6 as the date for the special election; and he directed telegrams to all the local election officials informing them of the change. Some of the local officials ignored the order, while others obeyed it. Struggles for the possession of ballots and other election equipment were common, and in some precincts the voters spent considerable time trying to locate the official polling places. With this sort of balloting, the petition carried by a vote of 188,572 to 57,899.

Walton's defense was shattered. On October 5, the legislative leaders announced that the legislature would convene twelve days later under the authority of Petition No. 79. On October 6, the governor, hoping to limit the legislature to legislative matters, issued a call for a special session to meet on the 11th for the purpose of investigating the klan. The legislators ignored the governor's offer to resign following the passage of an anti-klan statute, laughed at his message, and successfully opposed his attempts to build up an organization in the House. On the 23rd the Senate received a message from the House stating that articles of impeachment had been prepared against Walton and that the same had been adopted.<sup>2</sup> The Senate immediately suspended the governor.

The Senate then organized itself into a court of impeachment, with the chief justice of the supreme court in the chair, and adopted rules under which the trial was conducted. With preliminaries over, the trial actually began on November 1. It lasted but twenty calendar days. Twenty-two articles of impeachment charged the governor with unlawful appointment of officers, padding the payrolls, using the pardon power to defraud, accepting monies from persons who had business transactions with boards of which he was a member, illegal

<sup>2</sup> *Transcript of Proceedings of the Senate of the Ninth Legislature (Extraordinary Session), State of Oklahoma*, xiii.

and unwarranted use of the military, unconstitutional suspension of the writ of habeas corpus, suppression of a legally instituted grand jury, and general incompetency.<sup>3</sup>

Only one side of the case was presented for trial, since the defense did not place a single witness on the stand. On November 17, following an adverse ruling of the court on the admissibility of evidence, Walton rose and said: "Mr. Chief Justice, and members of this Court: I have been sitting here fighting for my honor, for my rights, and for my home for ten days. I don't wish here to criticize any of these honorable members; some of them no doubt want me to have a fair trial; but I have reached the conclusion that I cannot have a fair trial in this Court. Knowing that, I am withdrawing from this room. I don't care to stand this humiliation any longer for myself, my family, or my honorable attorneys. You may proceed as you see best."<sup>4</sup>

After this dramatic episode the trial was quickly drawn to a close. There were no doubts as to what the decision would be. Article XIX, charging abuse of the pardon power, was presented and sustained by a unanimous vote of the 41 members present.<sup>5</sup> The managers thereupon submitted fifteen other articles, ten of which received the necessary two-thirds. On motion of the prosecution, the other counts were dropped, though the request precipitated a debate as to the authority of the managers to ask for the dismissal and the court to grant it.<sup>6</sup>

Lieutenant-Governor Trapp succeeded to the governorship. Prior to the 1926 primary, the court held him ineligible to succeed himself, even though he had not been elected governor.<sup>7</sup> This decision materially aided Henry S. Johnston, the avowed klan candidate, who defeated two other candidates by narrow margins. The anti-klan, disappointed office-seekers, and the personal enemies of Mrs. Hammonds, who was Johnston's private secretary, coalesced into a strong opposition which showed its strength before the close of the first legislative session and which demanded a show-down eight months later in what is now known facetiously as the "Ewe Lamb Rebellion." An attempted convening of the legislature at the capitol was frustrated by armed guards; hence rump sessions were held in the Huckins Hotel. A test case was

<sup>3</sup> For text of articles of impeachment, see *ibid.*, 19-55.

<sup>4</sup> *Ibid.*, 1523.

<sup>5</sup> Senator Barker was absent throughout the balloting.

<sup>6</sup> *1923 Proc.*, 1936-9.

<sup>7</sup> *Fitzpatrick v. McAlister*, 121 Okla. 83.

brought by the administration to decide the constitutionality of Petition No. 79. The court held it unconstitutional, inasmuch as it had not been included in Walton's first proclamation; and, since the election scheduled for December had not been held, the court declared that the petition had never been legally submitted to the electorate.<sup>8</sup> The court affirmed that the legislature possessed inherent investigative power, but that, until duly organized, it had no more power to investigate state officers than had any ordinary assembly of citizens.

The thirteen months of forced inactivity merely intensified the determination of the opposition to remove the governor, and when the legislature met in regular session in January, 1929, no time was lost in voting the articles of impeachment.<sup>9</sup> Six of the eleven counts charged unlawful issuance of deficiency certificates, two claimed illegal appointment, and the other three charged unlawful use of the military to prevent an assembly of the legislature, corrupt use of the pardon power, and general incompetency.<sup>10</sup> The trial lasted from February 11 to March 20, and the record of the proceedings contains more than five thousand pages. Focussing their attention upon the incompetency charge, the managers sought to justify it by showing that the governor was dominated by Mrs. Hammonds. There was no attempt to prove him viciously corrupt or morally derelict. Submitted first, the incompetency article was sustained by a vote of thirty-five to nine.<sup>11</sup> Thereafter, the other ten counts were put, but each failed to obtain the necessary majority. The outcome was indeed curious. Johnston was adjudged incompetent, yet no specific act was deemed sufficiently flagrant to merit conviction.

In both these impeachments, the articles were voted in the House by decisive majorities; in fact, twenty of the twenty-two counts voted against Walton secured a three-fourths majority.<sup>12</sup> Upon the receipt of the House message, the Senate in each case suspended the governor. However, when the 1929 message was presented, a senator moved that it be neither received nor filed.<sup>13</sup> An interesting situation might have

<sup>8</sup> *Simpson v. Hill*, 128 Okla. 90, 236 Pac. 384.

<sup>9</sup> *Transcript of Proceedings of the Senate of the Twelfth Legislature, State of Oklahoma (sitting as a Court of Impeachment)*, I, xiv, xv.

<sup>10</sup> *Ibid.*, I, xvii-xxxii.

<sup>11</sup> *Ibid.*, II, 5399.

<sup>12</sup> *1923 Proceedings*, 56.

<sup>13</sup> *1929 Proceedings*, I, xxiv.

developed if the motion had carried; but in point of fact it failed. Thirty-one rules of procedure were adopted by the first court.<sup>14</sup> With one omission, the same rules were in force during the second trial. The omitted rule prescribed that members, desirous of questioning witnesses, should reduce their questions to writing and forward them to the presiding officer, who would put them. The court showed no disposition to enforce the rule. On the court there were practicing attorneys who enjoyed questioning witnesses. Further, by putting very leading questions, the members violated the spirit of the rule prohibiting their giving testimony. A few motions from the floor sought to strike such questions, but none carried in the face of the excuse that the member was only seeking to bring out all of the facts. The rules provided that, for the admissibility of evidence, the rules of the criminal courts of the state should obtain.

The Walton attorneys worked under the presumption that an appeal might be taken from the decision of the court. In fact, they entered 170 exceptions to overruled objections, and at the conclusion of the balloting, they asked that a bill of exceptions be prepared. They also made a motion for a new trial, which was denied.<sup>15</sup> The court thereupon adopted a motion denying appeal from its decision. The Johnston attorneys, more conversant with legislative procedure, entered no exceptions, and they accepted the decision without protest.

Many explanations are offered for the popularity of the impeachment process in Oklahoma. To the writer, it seems to flow from five main sources: (1) it is now thoroughly precedented; (2) the population of the state is pronouncedly heterogeneous as to historical antecedents; (3) the Democratic party contains several unreconciled factions; (4) legislative *blocs* make political bartering profitable to members and dangerous to the governor's tenure; and (5) the legislature recognizes in itself the omniscient guardian of the state's welfare, and this hegemony remains unchallenged.

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**Impeachment in Texas.** The Ferguson case in 1917 represents the only instance of the impeachment and conviction of a state official in

<sup>14</sup> 1923 *Proceedings*, 6-16.

<sup>15</sup> *Ibid.*, 1938.