Notes on Two Kansas Impeachments

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I. JOSIAH HAYES, 1874

THE fourth Kansas impeachment was that of State Treasurer Josiah Hayes in 1874.[1] Hayes was elected in 1872, taking office in the January following. The financial and business depression was then reaching its climax, and bank failures were common throughout the country. State officials were concerned over the safety of state funds, especially as there existed a strong demand for state loans from bankers who sought to postpone public admission of the insolvency of their institutions. It was obvious that a temporary loan might be lost to the state if the borrowing banker was not able to stave off ruin.

At the time of his election, Hayes was president of the First National Bank of Olathe. He retained his connections with that institution after his induction into office. During the year and more that Hayes was state treasurer, he was continuously in poor health; and as a result, the care and management of the state finances devolved upon his chief clerk, John C. Collins. Before assuming these duties, Collins had been engaged in farming. His conduct of the treasury was not featured by any particular business acumen, nor even by a fairly faithful adherence to the statutory regulations relating to the reception, retention, investment, and disbursement of state funds.

In all fairness to Hayes and Collins, some of the unreasonable statutory provisions relating to the state treasury should be mentioned. In the first place, the state auditor, secretary of state, and governor constituted an *ex officio* board of examiners, and were required by law to make a monthly examination of the condition of the treasurer's office.[2] The statutory intent was a close scrutiny of public accounts, but no test of thoroughness was specified. The legislators were apparently convinced that frequent examinations would effectively thwart any evil or irregular designs that the custodian of the public funds might harbor. But, largely on account of the excessive frequency stipulated, the three members neglected

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1. The first three were of Gov. Charles Robinson, Secretary of State John W. Robinson, and State Auditor George S. Hillyer, in 1862. *See* my "Early Kansas Impeachments," *Kansas Historical Quarterly*, v. 1 (1932), pp. 307-325.

2. *The General Statutes of the State of Kansas*, 1868, p. 982.

to perform their function. They even failed to act in a perfunctory capacity. Knowing that the provisions of the law had not been complied with in the past, Governor Osborn recommended its repeal in 1873, but the bill embodying his recommendations failed of adoption in the senate. This bill would have provided for semi-annual examinations.

Instead of the 12 examinations required by law, only two were made in 1873, and both were performed, not by the board, but by a Topeka grocer, employed for that purpose. His examinations were of a perfunctory nature. In fact, he was a most agreeable examiner. His reports were colorless documents, not intended to embarrass either the treasurer or the board. For instance, his only evidence of one ten-thousand-dollar item was a verbal statement by Collins that it was all right; whereupon, through courtesy, it was immediately listed as cash in hand.[3]

A second important factor that rendered administration of state finances difficult was the general instability of banking institutions. Large Eastern banks were dragged down, one after another, in an orgy of financial failure. The state of Kansas maintained a financial agency in New York for the payment of state bond coupons. That agency failed also. Moreover, the state treasurer could not, without grave risk, put the surplus state funds out on time or call loans. As a result, most tax moneys were retained in the vaults of the treasury.

A third embarrassing problem with which Hayes was confronted was the retirement of issues of state scrip. In 1872 Congress appropriated $336,817.37 for the payment of state scrip issued to conduct the two campaigns of 1864, one against Gen. Sterling Price and the other against insurrectionary Indians. This scrip was issued to pay for services, supplies, and even damages resulting from these military episodes. In paying some 15,000 of these claims, many irregularities naturally occurred.[4] Duplicates of scrip were retired; individual pieces of scrip were paid without indorsement either of the person to whom it had been originally issued or of the final payee; some payments were made without the signature of the treasurer.

In the early autumn of 1873 the state auditor, D. W. Wilder, was aware that the irregularities in the state treasurer's office had reached

3. *Proceedings of the Court of Impeachment Sitting for the Trial of Josiah E. Hayes, Treasurer* (Topeka, 1874), p. 39. Hereafter, this document will be cited as *Hayes Impeachment Proceedings*.

4. An itemized record of these payments is printed, as an appendix, in *Hayes Impeachment Proceedings*, pp. 140-352.

a status not conducive to public confidence. Wilder was told by Governor Osborn that Hayes would resign. However, it was not yet generally known that Hayes had been drawing on the New York funds of the state in favor of Kansas bankers. Wilder wanted to conduct an examination in December, 1873, without giving prior notice to Hayes or Collins, but the governor thought the examination should be deferred until January 1. When McFadden, the groceryman auditor, attempted to make the inspection, Hayes' "man Friday," Collins, begged for time, saying that he would have to do a little work on the records so as to bring them down to date. Wilder favored the institution of legal proceedings against Hayes, and the publication of McFadden's report. In the meantime a newspaper correspondent picked up a clue concerning the treasury troubles from another source. The silence was immediately broken and demands for the impeachment of Hayes became insistent. In his annual report of 1873, Wilder demanded a legislative investigation of Hayes' official conduct; and on January 19, 1874, a resolution was adopted in the lower house providing for such an investigation.

The committee on state affairs, which conducted the investigation, reported on March 2, after having examined 26 witnesses. The majority report, signed by four members, recommended the impeachment of Hayes and a revision of the laws relating to the administration of the treasury office. The minority report, signed by Eli Gilbert, stated that the condition of the treasurer's office was apparently as satisfactory as it had been since Kansas was admitted to statehood. Moreover, Gilbert charged that the legislative investigation had been conducted to the plain prejudice of Hayes and that it had failed "to bring out fully and completely all the facts and circumstances connected with the affairs of the Treasurer." The house immediately adopted the majority report by a vote of 74 to 20. The senate was notified on the day following and, on March 5, the articles of impeachment were formally adopted in the house. In brief, they alleged:

1. That Hayes, despite the duty to receive moneys due the treasury in either gold or silver, treasury notes of the United States, or national bank notes, did receive and accept evidences of indebtedness in lieu of the above legal tender; and specific allegations of his misconduct in this regard were set forth in four specifications;

2. That he, in violation of law, lent state moneys to certain parties, corporations, companies and individuals, and specific allegations of this misdemeanor were set forth in 14 specifications;

3. That he, in violation of law, and of his oath of office, deposited state moneys with certain companies, corporations, and individuals, and specific allegations of this misdemeanor were set forth in ten specifications;

4. That he did not, as stipulated by law, retain in the state treasury all of the state funds until proper orders came for their disbursement;

5. That he, wrongfully and illegally, contrived to conceal the true condition of the treasury from McFadden, who had been duly selected by the board of examiners to make a thorough and complete examination of the treasury;

6. That he, in deceiving the board of examiners, presented to McFadden a letter which falsely stated that $50,000 was then in a New York bank subject to the call of the treasurer, when no portion of that amount was ever deposited in that New York bank;

7. That he appropriated the sum of $10,000 to his own use, and that he refused to produce the same upon the demand of McFadden;

8. That he willfully neglected to perform his duties as state treasurer, and that he committed his duties to the charge of John C. Collins, under whose care there had been gross neglect in the discharge of those duties; and specific allegations of the same were set forth in five specifications;

9. That he had failed personally to examine and count the state funds in the treasury, and that he had failed to remove Collins or to give his personal attention to his official duties, thereby committing a misdemeanor;

10. That he had paid out of the funds appropriated by the United States Government to reimburse those who rendered service in the Indian wars of 1864, and that these payments were made without authority of law;

11. That scrip issued to suppress and repulse the Price invasion of 1864 was retired by him out of money appropriated by the United States Government, and that of all sums paid out, he specifically paid to one Alois Thoman and others the sum of $4,000 without authority of law;

12. That under the above presumed duty, he paid out $3,000 without having signed his name as treasurer;

13. That for the above, he paid out the sum of $5,000 when the names of the payees were not appearing on the said pieces of scrip which were retired.[5]

5. For complete and official text of the articles, *see Hayes Impeachment Proceedings*, pp. 18-32.

The impeachment court was organized on March 5 and 6, and the managers of the house appeared and exhibited the articles of impeachment against Hayes. Formal answer to the charges was presented by the respondent. The managers made replication. Because of the necessity of taking depositions of banking officials in New York City, the impeachment court adjourned till May. When the court met on May 12, the resignation of Hayes was announced by the board of managers. The attorney general advised the abandonment of the impeachment. The board of managers deemed it inadvisable to proceed with the trial merely to effect Hayes' disqualification for future office holding. Besides, the two officers against whom impeachment articles had been sustained in 1862 were not disqualified by the court, so further prosecution might result in no alteration of the existing situation.[6]

The impeachment court adjourned *sine die* on May 13, after wrangling for a day over the matter of printing the depositions taken in New York and other such insignificant evidence. One enthusiastic member of the court introduced a resolution calling for a thorough investigation of the treasury office by a committee of the impeachment court. This would, incidentally, have represented an unusual usurpation of authority by an impeachment court, if it had been adopted. Such court is constitutionally mandated to try impeachments, and when that has been done, its duties end. If the court member had realized it, the investigation which he sought could, without violating the constitution, have been effected only by order of a legislative body. The action of the court in permitting the dismissal of the impeachment proceedings against Hayes was in conformity with the preponderance of American impeachment precedents that are at point. The court's duty is to try, and not prosecute, impeachments. Only a few examples of the refusal to dismiss impeachments after the resignation of the impeached officers are extant in American impeachment history. Most important of these were the trials of Secretary of War William W. Belknap and Judge Crum (Montana).

II. JUDGE THEODOSIUS BOTKIN, 1891

The fifth Kansas impeachment was that of Theodosius Botkin in 1891. Botkin was judge of the 32d judicial district, which comprised six counties in the extreme southwestern part of the state.

6. In the cases against J. W. Robinson and George S. Hillyer (1862), each was removed from office but, on the separate motions to disqualify them for future office holding, only one member of the court voted to disqualify.—*See Proceedings in the Cases of the Impeachment of Charles Robinson, Governor; John W. Robinson, Secretary of State; George S. Hillyer, Auditor of State, of Kansas,* (Lawrence, 1862) pp. 349, 397.

Frontier conditions of an intensely bold and mendacious nature dominated the life of that section when Botkin was appointed by the governor in 1889. In the following year he was duly elected for a four-year term. Botkin's appointment was purely political. He was a Republican, and had performed yeoman's service for his party during the period immediately preceding his selection.

The impeachment remedy is, at best, a complicated political method for the riddance of incompetent or corrupt public officers. If it had been employed merely for that purpose, it might well have remained an efficient and trustworthy remedy. That it did not is primarily due to the fact that it was dominated by partisan politics.

Like many other states, Kansas experienced particular tumult from 1865 to 1895. Agrarian revolts stirred the political waters into a maelstrom. The Greenback movement was more than a mere gesture. It represented a political attempt to solve agricultural economic ills. When it spent itself, the malcontents discarded the political weapon and returned to an economic organization that closely resembled the powerful Granger movement of the early 1870's. This new organization was known as the Farmers' Alliance.[7] Embracing many of the features of a secret fraternal society, its membership increased to an astounding total. Contemporaneously, the Knights of Labor were enrolling urban workers into another great economic organization. Scheming politicians dreamed of realizing at last a Farmer-Labor party which would sweep the country and seize from the great corporate interests the destiny of the country. The age of Popocracy was at hand in 1890, and with it the determination among the farmers of the West "to raise less corn and more hell."

The counties comprising the 32d judicial district were agricultural counties, and the Alliance was well organized there. In the election of 1890, the Democrats practically merged with the Alliancemen, presaging the complete assimilation of six years later. There were, it should be noted, four important factions in the pre-impeachment situation in Botkin's district. In the middle 1880's a bitter fight had arisen over the location of the county seat of Seward county. Partisans of Springfield and Fargo Springs belabored one another with all manner of opprobrium. When Springfield finally emerged victor, the inhabitants of Fargo Springs removed to Arkalon, and there was every indication that Springfield's victory was regarded as merely temporary. Judge Botkin had be-

7. There existed both southern and northern branches of the Farmers' Alliance.

longed to the Fargo Springs forces during the fight and, as a result, Springfieldians never forgave him even though he established a permanent residence in their town. Added to this issue was a bank fight. Two banks sought the patronage of Springfield. The Adams bank supported Botkin; the Kennard bank opposed him. The whole community took sides in the controversy. A third factor was the aforementioned struggle between the Alliance and the Republicans. This was primarily local in its character, and was extremely personal. Col. Samuel Wood, an experienced Kansas politician, was the acknowledged leader of the Alliance. The Republican forces followed the leadership of Botkin, since he was the highest official of the district. The fourth issue centered about the personality of Judge Botkin.

From the testimony elicited from witnessess during the subsequent trial, it is easy to gather some of the salient features of Judge Botkin's character. He was domineering, vindictive, and the possessor of a tremendous capacity for indignation, and of a temper that was unpredictable. His knowledge of the law was certainly not particularly noteworthy, yet it could scarcely be expected that a John Marshall would have been riding the circuit on the Kansas frontier. Like many men of his district, he indulged an appetite for strong liquor. Yet no one, except his personal enemies, seemed to perceive any misbehavior in that fact. At one county seat, a communicating door of the courtroom opened into a liquor joint. It was, thus, no difficult matter for a judge to find himself swigging a social dram with attorneys, jurors, spectators, or even litigants. Both the law and the judicial ermine lost much of their traditional majesty in such surroundings, but the formal judicial process was only a recent innovation in that section.

Soon after Botkin's election in November, 1890, his enemies began to gather evidence preparatory to his removal by the legislature. The judge and his supporters collected depositions and signed statements that testified, favorably, to Botkin's character, ability, and record as a judicial officer. On February 6, 1891, a petition was presented to the Kansas house of representatives, praying that Botkin be removed from office "for unfitness, immorality, and corruption in office."[8] The local political fight of Seward county was thereby projected into the larger arena of state politics. Such is the usual origin of state impeachments, and when they are viewed in the larger perspective they appear child-

8. *Daily Journal of the Senate, Trial of Theodosius Botkin . . . on Impeachment by the House . . . 1891* (Topeka, 1891), p. 5. Hereafter this official transcript of proceedings shall be cited as *Botkin Proceedings.*

ish and insignificant. Moreover, Kansas politicians were by no means certain as to the ultimate outcome of the Alliance bid for political power. It represented a threat to Republican political hegemony. To oppose it unequivocally might mean political decapitation. For that reason, trembling before the torrent, the lower house, on February 27, impeached Botkin of high misdemeanors in office and specifically charged the same in ten formal articles of impeachment. In this case the impeachment was voted in the house through the adoption of the articles against Botkin.[9]

The house managers presented the ten articles before the senate on March 3. In brief, they alleged:

1. That Judge Theodosius Botkin, unmindful of the high duties of his office, had been repeatedly intoxicated in public places in his district, and specific indictments of such public intoxication were charged in ten specifications;

2. That he, unmindful of the dignity and proprieties of his office, had during terms of court been intoxicated, and this charge was set forth in ten specifications;

3. That he had, while sitting on the bench as judge, been intoxicated, and express indictment of the same was set forth in four specifications;

4. That on August 29, 1890, he was publicly intoxicated on the streets of Leoti, and while thusly intoxicated he engaged in a drunken and boisterous quarrel, thereby bringing his office into contempt, ridicule, and disgrace;

5. That despite the fact of the state prohibition law, Judge Botkin has frequently repaired to places where liquor was sold in violation of such law, to the great scandal of all good citizens, and specific indictment of the same was set forth in three specifications;

6. That, unmindful of the prohibitory law, he has frequently purchased liquor in violation of such law, and specific allegation of the same was set forth in three specifications;

7. That during his term, he has been an habitual user of intoxicating liquor to the extent of impairing and incapacitating him for a clear-minded discharge of his judicial functions and duties;

8. That he, on January 10, 1891, in a drug store which sold liquor in violation of law, cursed and swore in a blasphemous manner and said in the presence of others that "God Almighty was a God-

9. It is the usual procedure for an investigating committee to recommend the adoption of an impeachment resolution to the house; thereafter, if impeachment is voted, the committee presents specific articles for adoption by the house. However, in this case, the two steps were merged.

damned fool," whereby he brought his office to contempt, ridicule, and disgrace;

9. That he, on four specific occasions set forth in separate specifications, was guilty of "willfully, maliciously, oppressively, partially and illegally" exercising the duties of his office, by issuance of fraudulent warrants, illegal arrests, and failure to permit filing of exceptions;

10. That he, unlawfully and corruptly, aided and abetted officers and others to boodle the city of Springfield out of $5,897, which illegal expenditures were made with the aid of Judge Botkin and his receivership order and his subsequent approval of such items of expenditure; and that when he had so defrauded the city out of this amount he dissolved the receivership and departed from the county.[10]

After the upper house had duly organized itself into a high court of impeachment and had adopted rules for the conduct of the trial, the respondent appeared and demurred to each and every article. In the discussion upon the demurrer, counsel for both sides presented able and interesting arguments either for or against the articles as charging impeachable offenses. The Kansas constitution specified that the governor and other named officers of the state, including judges of the district courts, "shall be impeached for misdemeanors in office." Counsel for respondent argued, therefore, that these enumerated officers could be lawfully impeached only for violation of the constitution and laws of the state: thus, impeachment would lie only against an indictable offense. Moreover, in relation to the constitutional provision "in office," respondent's counsel contended that officers could be impeached only for acts done under color of office. Under this interpretation, none of the specific charges against Botkin relating to his conduct off the bench constituted an impeachable offense.

The managers replied by stating that "misdemeanor" and "crimes" were synonymous terms within the meaning of the constitution, and that they were so defined by Blackstone. Moreover, impeachment being a civil process, the term "misdemeanor" also included misconduct and even incompetency. The English impeachment had been altered to fit the American political scene. It thereby became the instrument of the citizenry to protect itself against corrupt or incompetent officers. Wherein lies protection to the officer against irregular and unjustifiable removal; it lies where Chief Justice

10. *Botkin Proceedings*, pp. 31-42.

Marshall once said it lay as a protection to corporations against unreasonable regulation—in the consciences of the state legislators. The managers argued that impeachable offenses were not necessarily indictable offenses, for impeachment was a civil process. If it were not, then the demurrer was entirely illegal, and the respondent was here offering his demurrer in apparent good faith. Heretofore, Kansas impeachment trials had not included the use of the demurrer. In all four of them, the respondents had proceeded immediately to make answer to the articles, whereupon the managers submitted that the answers were insufficient, and, under joiners of that nature, the opening arguments were begun.

Both the prosecution and defense supported the condonation principle of impeachment, which denies that an officer may be impeached for acts committed prior to his election or re-election by popular vote. In the case of Judge Botkin, it implied that he could be impeached for no act committed by him during his term under the governor's appointment up to and including election day in November, 1890. The articles of impeachment were so phrased as not to include allegations of impeachable misdemeanors before that date, except in the charges of intoxication. In order to prove the habitual use of intoxicants, proof of inebriations prior to his election were admissible.

Sen. R. R. Hays, a member of the impeachment court, presented an interesting question as to the authority of the senate court to sustain a demurrer. Was not the house of representatives, the impeaching body, the sole judge of what constituted an impeachable offense? Was not the senate court constitutionally obligated to try all impeachments? On what authority could the senate court dismiss a single article when they were specifically charged with the duty of trying all impeachments? Under this interpretation, a demurrer was "an innovation and an anomaly in impeachment proceedings."[11] The attorney general, who, in Kansas, is empowered with the duty of aiding the board of managers, declared that the impeachment court could enter a plea of guilty for the respondent, in that he had admitted the allegations.[12]

The respondent withdrew the eighth article from the scope of his demurrer before the argument was finished. When the de-

11. *Botkin Proceedings*, p. 258.

12. Yet, on his demurrer, the respondent had reserved the right to submit further answers to the articles. Despite the logical strength of Senator Hays' argument, there are numerous examples of demurrers being interposed and, in certain cases, sustained by the impeachment court. The cases of Judge William Russell (Texas, 1871) and of Supreme Court Commissioner Chas. Ruth (Oklahoma, 1923) are examples of impeachments being terminated through demurrers.

murrer was put to a vote, it was sustained for the fourth, fifth, and sixth articles. TABLE I shows how the individual members voted on the separate articles. Seven articles remained for further disposition.

During the testimony-taking stage of the proceeding, the state called 49 witnesses to the stand. The respondent called 64. During the investigation in the house, Botkin had refused to call a single witness when the committee would not let him subpoena an unlimited number from his remote district. In the trial proper, he subpoenaed 98 persons, but the court, on several occasions, banned further testimony concerning certain specifications. At the outset, the court had limited each side to five witnesses per specification, but that dispensation was not strictly adhered to during the trial. For the most part, this feature of the case was uninteresting. The managers put witnesses on the stand who testified that the judge was a notorious drunkard; the defense produced an equal number who denied that they had ever seen him under the influence of intoxicants.

The final arguments were long and spirited. Most generally impeachment trials peter out in spirit before the final balloting. It was not so in this case. The lawyers flung the lie back and forth among them for 15 hours. The managers were fairer in their summary of the evidence. W. P. Hackney, for the respondent, introduced bold partisanship into the case; it was merely an attempt of the "contemptible" Alliance to dishonor a "faithful" Republican. Concerning the Alliance, he said:

> It is a small outfit, from stem to stern. Why, the first thing we find is, they are sneaking around, looking through windows of a bank, in that town down there, to find if the Judge was taking a drink. Then they bring these witnesses on the stand who say that they smelled his breath. It is on the principle of the smelling committee appointed to investigate the Governor, and to investigate his appointments, and to investigate the Coffeyville dynamite matter; and they are smelling around, and are yet, in this case. Their infernal olfactories are ready to smell everything. That is the cardinal doctrine of the Alliance. It is a political organization of outcasts and characterless scoundrels, and no honest man can get in to deny it. That's your political party. . . . The time will come in this State when every man within the sound of my voice will know that this infamous political side-show is more damnable than the Jacobins of France.[13]

From the beginning of the trial, members of the court were far from regular in their attendance. At times the proceedings were postponed until a quorum was present. The attorney general

13. *Botkin Proceedings*, p. 1320.

TABLE I [14]

VOTE ON DEMURRERS: BOTKIN IMPEACHMENT TRIAL

MEMBER	Party	I.	II.	III.	IV.	V.	VI.	VII.	IX.	X.	Total	
											A.	N.
Bentley	Rep.	N	N	N	A	A	A	N	N	N	3	6
Berry	Rep.	A	A	N	A	A	A	N	N	N	5	4
Buchan	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Carroll (Leavenworth)	Dem.	N	N	N	A	A	A	N	N	N	3	6
Carroll (Miami)	Rep.	N	N	N	A	N	N	N	N	N	1	8
Elliston	Rep.	N	N	N	N	N	N	N	N	N	.....	9
Emery	Rep.	N	N	N	A	A	A	N	N	N	3	6
Forney	Rep.	N	N	N	N	N	N	N	N	N	.....	9
Gillett	Rep.	A	A	N	A	A	A	N	N	N	5	4
Harkness	Rep.	N	N	N	N	A	A	N	N	N	2	7
Hays	Rep.	N	N	N	N	N	N	N	N	N	.....	9
Howard	Rep.	A	A	N	A	A	A	N	N	N	5	4
Johnson	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Kelley (Crawford)	Rep.	N	A	N	N	A	A	N	N	N	3	6
Kelly (McPherson)	Rep.	N	N	N	A	A	A	N	N	N	3	6
Kimball	Rep.	A	N	N	N	A	A	N	N	N	3	6
King	Rep.	N	N	N	N	N	N	N	N	N	.....	9
Kirkpatrick	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lockard	Rep.	A	A	N	A	A	A	N	N	N	5	4
Long	Rep.	N	N	N	N	N	N	N	N	N	.....	9
McTaggart	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Martin	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mechem	Rep.	A	A	N	A	A	A	N	N	N	5	4
Mohler	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

VOTE ON DEMURRERS: BOTKIN IMPEACHMENT TRIAL—*Concluded*

MEMBER	Party	I.	II.	III.	IV.	V.	VI.	VII.	IX.	X.	Total	
											A.	N.
Moody	Rep.	N	N	N	A	A	A	N	N	N	3	6
Murdock	Rep.	N	N	N	A	A	A	N	N	N	3	6
Norton	Rep.	N	A	N	A	A	A	N	N	N	4	5
Osborn	Rep.	N	N	N	N	N	N	N	N	N	.....	9
Rankin	Rep.	N	N	N	A	N	N	N	N	N	1	8
Richter	Rep.	N	N	N	A	A	A	N	N	N	3	6
Roe	Rep.	A	A	N	A	A	A	N	N	N	5	4
Rush	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Schilling	Rep.	A	A	N	A	A	A	N	N	N	5	4
Senior	Rep.	N	N	N	A	A	A	N	N	N	3	6
Smith	Rep.	N	N	N	N	N	N	N	N	N	.....	9
Tucker	Rep.	N	N	N	N	A	N	N	N	N	1	8
Wheeler	All'nce	N	N	N	N	A	A	N	N	N	2	7
Woodward	Rep.	N	N	N	N	N	N	N	N	N	.....	9
Wright	Rep.	A	A	N	A	A	A	N	N	N	5	4
Total "A"s	.....	9	10	.....	19	22	21	.....	.....	.....	81	.....
Total "N"s	.....	23	22	32	13	10	11	32	32	32	.....	207
Demurrers sustained	.....	.....	.....	.....	+	+	+	.....	.....	.....	.....	.....
Demurrers Overruled	.....	+	+	+	.....	.....	.....	+	+	+	.....	.....

14. Data compiled from *Botkin Proceedings*, v. 1, pp. 245-248. "A" means a vote to sustain the demurrer; and "N" means to overrule the demurrer. The record shows that Sen. Hill P. Wilson took the oath but failed to attend any of the sessions of the impeachment court. Sen. Sydney C. Wheeler was listed as a member of the Alliance party.

practically demanded that at least two thirds, 27 members, should be in constant attendance, arguing that that was the number required to sustain the articles. The court did not regard the dictation as valid, and there were motions presented to force regular attendance on the part of the attorney general.[15]

On May 5, sixteen days after the trial began, the court adopted a stringent rule requiring that 30 members, at least, be in attendance at all times. If that number were not present, warrants were to be issued for all members absent without leave of the court.[16] Thereafter the attendance was perceptibly higher. On May 14 a resolution was adopted which called for each member to be present at the final balloting and declaring that no member would be excused except in case of sickness.[17]

At the close of the final arguments, the court engaged in a controversy as to whether the vote should be taken upon each of the 31 specifications or upon each of the seven articles. It was finally decided to vote only upon the separate articles, thereby avoiding the question that might have arisen as to whether votes on specifications within an article were to be counted cumulatively. Thirty-five members voted in the final balloting. Only on articles nine and ten were a majority of the votes cast in favor of sustaining the charges, and the 18 total that each of these articles received was nine votes short of the necessary two thirds majority. On the three articles charging intoxication, not a single vote was cast for conviction. TABLE II records how members voted on each article. Fifteen of the members voted unanimously for acquittal, which number, in itself, was sufficient to prevent a sustainment of any article.

It is unnecessary to recapitulate the various factors that produced the final acquittal. The trial soon degenerated into a wrangling partisan scuffle. One court member was led to declare that it seemed that no one was on trial except the Republican party. Others were acid in their criticism of the personalities engaged in by counsel on both sides. The whole trial was extremely tedious, and there were constant interruptions and objections concerning the admissibility of testimony. Especially in regard to proving Botkin was an habitual drunkard, the burden of proof was upon the managers, and in the face of a mass of contradicting evidence the charges broke down.

15. After a few days, the attorney general ceased to attend and thereby repudiated the statutory mandate that he should aid the state in impeachment cases. Presumably, he discerned the rabid partisan character into which the trial degenerated and was desirous of evading partisan criticism.

16. *Botkin Proceedings*, p. 527.

17. *Ibid.*, p. 1142.

TABLE II [18]

FINAL VOTE IN BOTKIN IMPEACHMENT

MEMBER	Party	I.	II.	III.	VII.	VIII.	IX.	X.	Total	
									A.	N.
Bentley	Rep.	N	N	N	N	N	N	N	.....	7
Berry	Rep.	N	N	N	N	N	N	N	.....	7
Buchan	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Carroll (Leavenworth)	Dem.	N	N	N	N	N	E	N	.....	6
Carroll (Miami)	Rep.	N	N	N	N	N	A	A	2	5
Elliston	Rep.	N	N	N	N	N	A	A	2	5
Emery	Rep.	N	N	N	N	N	N	N	.....	7
Forney	Rep.	N	N	N	N	N	A	A	2	5
Gillett	Rep.	N	N	N	N	N	N	A	1	6
Harkness	Rep.	N	N	N	A	N	A	A	3	4
Hays	Rep.	N	N	N	A	A	A	A	4	3
Howard	Rep.	N	N	N	N	N	A	A	2	5
Johnson	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Kelley (Crawford)	Rep.	N	N	N	N	N	N	N	.....	7
Kelly (McPherson)	Rep.	N	N	N	N	N	N	N	.....	7
Kimball	Rep.	N	N	N	E	E	A	A	2	3
King	Rep.	N	N	N	A	N	A	A	3	4
Kirkpatrick	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lockard	Rep.	N	N	N	N	N	N	N	.....	7
Long	Rep.	N	N	N	A	N	A	A	3	4
McTaggart	Rep.	N	N	N	A	A	A	A	4	3
Martin	Rep.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mechem	Rep.	N	N	N	N	N	N	N	.....	7

FINAL VOTE ON BOTKIN IMPEACHMENT—*Concluded*

MEMBER	Party	I.	II.	III.	VII.	VIII.	IX.	X.	Total	
									A.	N.
Mohler	Rep.	N	N	N	N	N	N	N	.....	7
Moody	Rep.	N	N	N	N	N	N	N	.....	7
Murdock	Rep.	N	N	N	N	N	N	N	.....	7
Norton	Rep.	N	N	N	N	N	N	N	.....	7
Osborn	Rep.	N	N	N	N	N	A	N	1	6
Rankin	Rep.	N	N	N	A	N	A	A	3	4
Richter	Rep.	N	N	N	N	N	N	N	.....	7
Roe	Rep.	N	N	N	N	N	N	N	.....	7
Rush	Rep.	N	N	N	A	A	A	A	4	3
Schilling	Rep.	N	N	N	N	N	N	N	.....	7
Senior	Rep.	N	N	N	N	N	A	A	2	5
Smith	Rep.	N	N	N	N	N	A	A	2	5
Tucker	Rep.	N	N	N	N	N	A	A	2	5
Wheeler	All'nce	N	N	N	A	A	A	A	4	3
Woodward	Rep.	N	N	N	N	N	A	A	2	5
Wright	Rep.	N	N	N	N	N	N	N	.....	7
Total "A"s	.....	0	0	0	8	4	18	18	47	.....
Total "N"s	.....	35	35	35	26	30	16	17	.....	194

18. Data compiled from *Botkin Proceedings*, v. 2, pp. 1380-1400. "A" means a vote to sustain the article of impeachment and, is, therefore, a vote for conviction; "N" is a vote for acquittal; "E" represents excused from voting; and blank spaces signify that the members were absent and unexcused.

A curious bit of irony occurred during the trial. One of the witnesses who was summoned by the prosecution to prove Botkin's unfailing appetite for strong drink was twice arrested for drunkenness by the Topeka police during the trial. In regard to the tenth article, the state built up a good case against Botkin, and the evidence would seem to have justified a conviction. The managers even traced money to Botkin, but he did not take the stand, and his attorney, Hackney, who had given him the $750, testified that it was only a loan and that it had been repaid. No documentary proof was offered to show that it had been.

Thirty-seven of the 39 court members were members of the Republican party. Botkin was a Republican. Moreover, he was an old soldier, and he was popular with the veterans, who, at this time, provided most of the leaders for that party. To sustain the impeachment of Botkin would have represented a substantial victory for the Populist crusade, and the Republican party could, in that threatening period, ill afford to admit corruption within its own ranks. To anyone reading carefully the proceedings and the contemporary comments on the trial, there comes the impression that the impeachment was unfortunately transplanted from its legitimate milieu—local government—and that it should have been decided in a regular court of law rather than in a political tribunal.