

Chapter CXCIX.¹

RULES OF EVIDENCE IN AN IMPEACHMENT TRIAL.

1. Strict rules of the courts followed. Sections 403, 494.
 2. As to opinions of witnesses. Section 495.
 3. General decisions as to evidence. Sections 496, 497.
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493. Under recognized rules of evidence, leading questions were ruled out in a trial of impeachment and witnesses were admonished to observe established procedure.

On December 4, 1912,² in the Senate, sitting for the trial of the impeachment of Judge Robert W. Archbald, during the direct examination of a witness on behalf of the House of Representatives, Mr. Worthington, of counsel for the respondent, objected to a question propounded by Mr. Manager Edwin Yates Webb, of North Carolina, and said:

One moment, please. I submit, Mr. President, we had as well try this case with some appearance of conformity to the rules of a court. That was a leading question, which ought never to have been asked and should not be allowed to be answered.

The President pro tempore ruled:

Counsel, as far as possible, will avoid leading questions.

During the examination of the same witness by Mr. Manager Webb, Mr. Worthington objected to a question asked the witness by Mr. Manager Webb as a leading question. The witness, however, answered the question and Mr. Worthington said:

As the witness has already answered the question, for the present purposes it is futile to proceed. I think the witness should be cautioned, when objection is made, not to answer a question until the Presiding Officer or the Senate has ruled upon it.

The PRESIDENT PRO TEMPORE. That is a very proper suggestion. The witness will be governed by that. Hereafter when there is an objection to testimony the witness will not reply until after the matter has been pawed upon.

494. Evidence may be introduced by counsel to contradict testimony in chief given by their own witness only upon statement that such testimony is at variance with that expected and that relying on evidence previously given by the witness, they have been surprised and entrapped.

Instance wherein the President pro tempore ruled on the admission of evidence in the trial of an impeachment.

¹Supplementary to Chapter LXIX.

²Third session Sixty-second Congress, Record, p. 98.

On December 6, 1912,¹ in the Senate, sitting for the impeachment trial of Judge Robert W. Archbald, Mr. John A. Sterling, of Illinois, of the managers on the part of the House of Representatives, offered testimony in the following words:

Mr. President, we offer Exhibit 7, the examination of Edward J. Williams at Scranton, Pa., March 16 and March 17 of this year, made by Mr. Wrisley Brown, representing the Department of Justice, who was sent there by the Attorney General to investigate this case.

Objection to admission of the deposition was made by Mr. A. S. Worthington, of counsel for the respondent.

After extended argument by managers and counsel, the President pro tempore ruled:

If the proposition be simply to disprove the statement of the witness as to the number of questions which had been asked by Mr. Boland, the Chair would undoubtedly rule that only the questions themselves could be put in evidence for the purpose of contradicting him to that extent. But the Chair thinks it is a well-recognized rule, which is found in every jurisdiction, that where a witness is put up by a party and where the party who offers him as a witness has had previous information from him as to what his testimony would be, and upon his examination he gives testimony contrary to that former testimony, the party offering that witness can prove the former statements of the witness if he will state in his place that he has been entrapped by him; that relying upon the evidence that he had given and that he would again testify as he had previously done, they have put him up and they have been entrapped and surprised by the fact that he then testified to matters in conflict to what he had previously testified.

The Chair thinks that is a well-recognized rule of law. It is not for the purpose of impeaching the witness, though it might be called one class of impeachment. It is for the purpose of negating testimony which he had given and which the counsel otherwise would be bound by, they themselves having put him up.

The Chair will add, so far as the bulk of this testimony is concerned, unless it is in the main, generally as well as specifically upon the particular points in which the counsel have been entrapped, that only such parts of it as do relate to than contradiction in his testimony would be admissible, but on the statement of the counsel that they have been thus entrapped the Chair is of the opinion that to that extent it is admissible .

The President pro tempore further held:

Counsel for the respondent will, of course, have the right to recall the witness and require him to make such explanation of the apparent conflict as is proper and consistent with his information; he is not debarred from that privilege, but the purpose of that rule is not to impeach a witness and establish the fact that he is not to be believed on oath, because of that were the case a party could never put up an adverse witness. He is entitled to the testimony of this witness, and he is entitled to have the truth ascertained from the testimony of the witness and from his conflicting statements. The Chair thinks that is a correct rule of law, and that is the principle upon which it is based.

495. In the Archbald trial it was held that while witnesses might testify as to the general reputation of the respondent, and as to his reputation for judicial integrity in particular, it was not competent to introduce evidence as to his reputation for ability and industry; and in no event was the personal opinion of a witness on questions of character or reputation admissible.

On December 17, 1912,¹ in the Senate, sitting for the impeachment trial of Judge Robert W. Archbald, this question was asked by Mr. A. S. Worthington, of

¹Third session Sixty-second Congress, Record, p. 222.

counsel for respondent, on the direct examination of Everett Warren, a witness subpoenaed on behalf of the respondent.

Now, Major Warren, I want to ask you to tell us from your long acquaintance with Judge Archbald and your observation of him as a judge what were his principal characteristics as a judge, as to integrity, ability, and industry.

Mr. Manager Norris objected, saying:

Mr. President, I object to the question as immaterial and irrelevant. The counsel has a right to ask the witness as to reputation, but I do not believe he can go beyond that.

Mr. Worthington argued:

I ask you to remember, Mr. President, that we are not trying this case before a jury. We are trying this case before a tribunal which is the judge of the law and the judge of the facts, and the tribunal which is to inflict the sentence as well.

The question which the Senate is to determine at the end of this case is not the mere question whether this or that thing is proved, but whether upon the whole, taking into consideration the character of the man, the good that he has done, the kind of judge that he is, what the people in and about Scranton think of him and know of him, he shall be deprived of office, and be held forever incapable of showing his head as a reputable man, because of the contention that has been made here that he is not fit to hold any office of any kind under the Government of the United States.

Now, one thing more, it seems to me, takes this entirely out of the considerations which are invoked in ordinary courts of justice when a similar question arises. When our forefathers framed this Constitution of ours, they put into it the provision that the trial of persons accused of crime shall take place in the districts where the crime was committed.

Now, Mr. President, in this case the trial has to be here in the Senate Chamber. This defendant can not have the benefit of being tried by his neighbors, the people who know him and know the witnesses against him.

We can not take the Senate to Scranton, but we do want to bring to this trial the atmosphere of Scranton so far as relates to Judge Archbald's reputation, and, as far as we can, give him the benefit of that which the meanest criminal throughout the Union has—to be tried in the place where the crime was committed and among people who know him and who know those who testify against him. We can not go there; where the witnesses generally know the man. We want Senators to know what the men who have spent their lives in and around Scranton practicing before Judge Archbald—his neighbors and friends—think of him and what his reputation is throughout the whole State of Pennsylvania.

Mr. Manager Clayton argued:

Mr. President, it is perhaps unnecessary for me to state the general rules governing the admission of character testimony, and perhaps it is also unnecessary for me to state the questions which have generally been propounded in such matters of inquiry and recognized as proper in places where character is put in issue.

I may say, Mr. President, in the beginning that we have not controverted the good character of Judge Archbald. Perhaps if we had controverted that a larger range would be permissible for the respondent in reply to that controversy raised by the managers. But the managers have not raised that question.

So, Mr. President, I take it that the rules of evidence are to be applied by the Senate in this case, first, for the purpose of doing justice both to the managers who represent the accusation, the House of Representatives, and of also doing justice to this respondent. Secondly, and perhaps just as important, these rules are for the expeditious disposition of the cause. It is not to militate against the doing of justice in this case that we raise this question. We say that justice can be done within the rules which permit ordinary questions which are asked in ordinary cases about character, and the answers thereto. There is enough latitude in that to do justice

¹Third session Sixty-second Congress, Record, p. 772.

to both sides in this controversy, especially to the respondent, where the managers have not assailed his character by introducing evidence for that specific purpose.

Mr. President, the next reason, to which I have adverted, is for the dispatch of his case. Any rule looking to the speedy termination of this case ought to be enforced unless its relaxation would favor the doing of more ample justice to all parties concerned. In this case I take it that the Senate will consider the respondent as having gotten all he is entitled to when he proves by those who know him the fact that they know him; the fact that they know his general reputation, and that his general reputation and his character, predicated upon that general reputation, is good. We have not controverted that, and therefore it does not seem to me that there is any necessity here for the enlargement of the rule.

The Presiding Officer said:

The Chair thinks there is, of course, basis for the contention that rules should be liberal in practice in certain circumstances. Nevertheless, generally, the rules of law must be applied. The Chair thinks that the rule, generally, as to proof of character is, first, that anyone who is accused of misconduct may put in issue his general character, irrespective of what the charge is, because general character always is involved in any question of violation of law or misbehavior. Further, he may put in evidence his character as to the particular quality or characteristic which will elucidate the particular charge. With that view, the Chair thinks it is perfectly competent for the counsel to prove the general reputation of the respondent, as to whether or not he bears a good character, in the broadest sense of that term, and also that he may prove his general reputation as to the particular matter involved in issue.

Now, as the Chair understands, the particular matter involved here is a question of judicial integrity. So the Chair would not, if the Senate approves the opinion of the Chair, limit the counsel to proof of reputation for general good character, but would recognize the right of the respondent also to prove his general reputation for judicial integrity. But the Chair knows of no rule of law which permits a witness to give his individual opinion of the character of an accused. If there is any such case, the Chair has failed absolutely to learn of it in such experience as he has been fortunate enough to have.

This particular question is as to the opinion of the witness himself. If the counsel would limit his question to the witness's knowledge of the general character of the respondent for judicial integrity, the Chair would think that was competent; but this question not only asks the individual opinion of the witness, leaving aside the question of general reputation, but it goes further and asks for the opinion of the witness, not only as to integrity, but as to ability and industry, none of which characteristics or features are involved, as the Chair understands, in any issue before the Senate at this time. The Chair is therefore obliged to sustain the objection to this particular question, but will recognize the right of the respondent to proceed along the lines indicated, with every disposition to be as liberal as the rule will possibly permit.

496. Decision by the President pro tempore in the impeachment trial of Judge Archbald, on the latitude of counsel in cross-examination of witness relative to testimony previously given by the witness before a committee of the House.

On December 6, 1912,¹ in the Senate sitting for the impeachment trial of Judge Robert W. Archbald, during the cross-examination of W. A. May, a witness on behalf of the managers, by Mr. A. S. Worthington, of counsel for the respondent, Mr. Manager George W. Norris, of Nebraska, objected, saying:

Mr. President, before the witness answers the question, I desire to object to this form of interrogation of the witness. As I understand, we would not be allowed to call his attention to the testimony unless we had first asked him about the same matter and he had testified differently. Counsel has been asking questions of this witness, reading evidence that was taken before the

¹Third session, Sixty-second Congress, Record, p. 217.

Judiciary Committee, without any intimation that there is anything different in his testimony now. He reads a lot of testimony and asks the witness if that was true. It seems to me that that is not a proper examination of the witness.

The President pro tempore said:

The previous testimony of this witness can be read to him for two purposes. As the Chair recollects the rule, it can be read for the purpose of contradicting him or for the purpose of refreshing his memory. If counsel examine the witness as to a matter and his testimony is not clear on the subject, the Chair would hold that then, after having attempted to elicit testimony in the usual way without success, he could go further and call attention to the witness to what he had previously testified to by way of refreshing his memory. The Chair thinks that is the correct rule of law.

The Chair would suggest to counsel for the respondent that it is perfectly competent for him to put questions as to the particular matters that he desires to have testimony upon without reading from the questions and answers; but in either case the Chair would rule that counsel has the right to bring out the testimony if it is either for the purpose of calling attention to the fact that the witness had previously made conflicting statements, or for the purpose of refreshing his memory upon some things in regard to which he is not now clear.

497. A contract having been admitted as evidence in an impeachment trial, it was held competent to show the intention of the parties thereto.

Instance of a ruling by the President pro tempore on a question of evidence in an impeachment trial.

On December 6, 1912,¹ in the Senate, sitting in trial of the impeachment of Judge Robert W. Archbald, one of the managers called William L. Pryor, a witness to prove the charge that the respondent had been a silent party to a written contract previously admitted in evidence by vote of the Senate.

Mr. A. S. Worthington, counsel for the respondent, objected to questions propounded and submitted:

Mr. President, it was held by the Senate, by the vote on the first day of our taking testimony here, that this silent-party paper was admissible in evidence, or at least should be introduced here, although no evidence was offered tending to show Judge Archbald knew of it or authorized it. But I do not understand that that ruling went so far as to hold that the parties who may have made statements about Judge Archbald would be competent witnesses against him, or that any statement made against Judge Archbald by Pryor, or perhaps other persons who were in Boland's office, would be competent and proper evidence in this matter.

The President pro tempore ruled:

The paper has been admitted as a legitimate piece of evidence. The Chair is of the opinion that everything that is necessary for a proper explanation of the meaning of that paper is competent. What effect it would have upon the respondent is a question of law that would afterwards be determined. But as to the question of the admissibility of the evidence, the Chair is of opinion that whenever there is an ambiguity in an instrument which itself is admitted in evidence it is competent to show what those who made the paper intended. How far that would be binding upon the respondent is an altogether different question, and the Chair does not mean in the ruling to rule on that point. That would be a question for the Senate to determine when it comes to consider the weight of the evidence. As to whether or not a partnership has been proven and whether the respondent should be bound by statements made by one who is alleged to be his partner, is a question to be determined by the Senate sitting as a court.

Upon the naked question as to whether or not the paper which is proven to have been executed, and which the Senate has decided to be proper evidence, shall have any ambiguous term explained by showing what the parties to it said it meant, the Chair is not in any doubt whatever.

¹Third session Sixty-second Congress, Record, p. 226.