developed if the motion had carried; but in point of fact it failed. Thirty-one rules of procedure were adopted by the first court.[14] 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.[15] 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

[14] *1923 Proceedings*, 6-16.
[15] *Ibid.*, 1938.

Texas.[1] The law of impeachment must then be sought in the proceedings of the Ferguson trial, the opinions of the attorney-general, and the opinion of the supreme court in 1924 in the case of Ferguson v. Maddox, which reviewed the legality of the 1917 proceedings in determining whether Mr. Ferguson was eligible to have his name placed on the primary election ballot as a candidate for governor.[2]

Impeachment at a Special Session. The constitution provides that the governor may on extraordinary occasions convene the legislature in special sessions limited to thirty days' duration, during which there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling the session or presented by him.[3] The facts in the Ferguson case may be reviewed briefly. The speaker of the House of Representatives, on his own motion, had issued a call for the House to meet in special session on August 1, 1917, to consider the impeachment of the governor. Before the members could assemble, the governor issued a call for a special session of the legislature to meet at the same time as that set by the speaker's call for the purpose of considering the matter of university appropriations. The House proceeded with the investigation and impeached the governor, who was thereupon suspended from office.

The legality of the House's action was upheld in an opinion of the attorney-general on August 21. The law officer concluded that the impeachment power was judicial in nature, that the House, in impeachments, acted, not as a part of the legislature, but as a separate entity, in no way dependent upon the exercise of a legislative or executive power. The limitations and requirements of the constitution as to how and when the legislative power shall be exercised have no application to the use of the impeachment power. Moreover, to hold that the exercise of this power is dependent upon the governor would allow that official to prevent his own impeachment except at a regular session of the legislature.[4]

In the Maddox case, the defendant urged the illegality of impeachment at a special session, and added that the charges were adopted by the House at one special session and trial by the Senate was begun,

[1] Cf. "Impeachment of Governor Ferguson," 12 *American Political Science Review* 111-115 (1918).

[2] Ferguson v. Maddox, 263 S. W. 888 (1924).

[3] *Constitution*, Art. III, sec. 40; Art. IV, sec. 8.

[4] *Biennial Report of the Attorney-General*, 427-439 (1916-1918).

but concluded at a subsequent session called by the acting governor.

The supreme court held that the House had authority to impeach the governor and the Senate to enter upon the trial of the charges at the called session of the legislature, although the matter of impeachment was not mentioned in the proclamation convening it. The constitutional powers of the House and Senate in impeachment "are essentially judicial in their nature. Their proper exercise does not, in the remotest degree, involve any legislative function." The section which provides that legislation at a special session shall be confined to the subjects mentioned in the proclamation of the governor convening it imposes no limitation, save as to legislation.

Impeachment proceedings, begun at one session of the legislature, may lawfully be concluded at a subsequent one, the court declared. "Each house is empowered by the constitution to exercise certain functions with reference to the subject-matter; and as they have not been limited as to time or restricted to one or more legislative sessions, they must necessarily proceed in the exercise of their powers without regard thereto."[5]

May the House and Senate meet for impeachment purposes at any time, regardless of the governor, and independently of regular or special legislative sessions? There are no recorded instances of the impeachment and trial of a governor by a self-convened special session, and the authorities are divided.[6] While the question was not involved in the Ferguson impeachment, the opinion of the attorney-general, noted above, and certain dicta in the Maddox case indicate that had the House and Senate convened without the call of the governor, the validity of the proceedings would have been sustained. The attorney-general was emphatic in his statement that the constitution imposes no limitation upon the power of impeachment. It is vested without limitation as to time of use. The constitution being silent as to when it shall execute the command laid upon it, the House may act at any time.

Similar expressions were used by the court in the Maddox case. "The powers of the House and Senate in relation to impeachment exist at all times. . . . . Without doubt, they may exercise them during a special session, unless the constitution itself forbids." "The broad

[5] Ferguson v. Maddox, 263 S. W. 890-891 (1924).

[6] M. T. Van Hecke, "Impeachment of Governor at Special Session," *Wisconsin Law Review*, 155-169 (1925).

power conferred by Article 15 stands without limit or qualification as to the time of its exercise."

To provide a method for the houses to convene for impeachment purposes, when they are not in session, the third called session of the Thirty-fifth Legislature enacted a law supplementing existing provisions on impeachment.[7] If the House of Representatives is not in session when the cause for impeachment arises, or when it is desired to institute an investigation pertaining to a contemplated impeachment, the House may be convened in any of three ways: (a) by proclamation of the governor, (b) by proclamation of the speaker of the House, which shall be made only when petitioned for in writing by not less than fifty members of the House; or (c) by proclamation in writing signed by a majority of the members of the House.

The Senate may be convened for the purpose of considering such articles of impeachment by the following methods: (a) by proclamation of the governor, or upon his failure to act within ten days after the articles of impeachment are preferred by the House, then (b) by proclamation of the lieutenant-governor, who has fifteen days from adoption of the articles to act, (c) by proclamation of the president *pro tempore* of the Senate, who has twenty days to act; and (d) by proclamation in writing signed by a majority of the members of the Senate.

In the autumn of 1925 an attempt was made to convene the House of Representatives to investigate certain alleged irregularities under the administration of Governor Miriam A. Ferguson. The speaker was petitioned by a number of members to call the House in session, and on November 17 he sought advice from the attorney-general. The law officer, referring to the opinion of his department in 1917 and to the Maddox case, replied that the House and Senate could constitutionally convene, in the manner provided by the statute, for impeachment purposes or to make an investigation pertaining to a contemplated impeachment. But the House and Senate sitting in their judicial capacities in connection with impeachments do not constitute the legislature. As the two bodies would not be assembled for legislative purposes in regular session, or special session called by the governor, no appropriation could be made by the houses to pay the expenses of the session.[8]

[7] *Laws*, 35th Leg., 3d called sess., 102-106 (1917)

[8] *Biennial Report of the Attorney-General*, 283-287 (1924-1926).

Three weeks later the attorney-general advised the speaker that the financing, or underwriting, of the expenses of a session of the House for impeachment purposes from private or individual sources (which had been offered) would be unauthorized and unwarranted as against public policy.[9]

In a subsequent opinion to a member of the House, it was held: (1) that members of the House attending a session convened upon proclamation of the speaker would have valid claims against the state for mileage and per diem, notwithstanding the fact that no previous appropriation had been made for such purpose by the legislature; (2) that there would be no legal authority for the House to convene except for actual impeachment purposes or for investigation pertaining to an actual contemplated impeachment; (3) that claims of members of the House for earned mileage and per diem would be assignable, but not in advance of earning; and (4) that it would not be unlawful for citizens to purchase such claims or to announce their willingness to do so. But no agreement could legally be made in advance that they would do so.[10]

Faced with these practical difficulties of insuring payment of members of the House, the speaker abandoned the attempt to assemble the members. Thus the question of the constitutionality of a self-convened session of the House for impeachment purposes remains to be judicially determined.

May an Impeached Officer Resign before Final Judgment? Ex-Governor Ferguson contended in the Maddox case that the judgment of the court of impeachment was void, because he was not subject to its jurisdiction, having the day before the court's judgment was pronounced filed his written resignation, to take effect immediately, in the office of the secretary of state. The court denied that the governor could thus escape the impending judgment. The court of impeachment had heard the evidence and declared him guilty. Its power to conclude the proceedings and to enter judgment was not dependent upon the will or act of the governor. "Otherwise, a solemn trial before a high tribunal would be turned into a farce."[11]

Nature of Impeachable Offenses. The constitution is silent as to what constitutes impeachable offenses; neither does it prescribe the

[9] *Ibid.*, 211-213.
[10] *Ibid.*, 329-333.
[11] P. 893.

mode of impeachment, other than to provide that the power of impeachment shall be vested in the House of Representatives and trial shall be before the Senate, sitting as a court of impeachment, with the senators on oath impartially to try the person impeached. While admitting that impeachable offenses are not defined in the constitution, the Court in the Maddox case held that they are very clearly designated or pointed out by the term "impeachment," which at once connotes the offenses to be considered and the procedure for the trial thereof. "The grant of the general power of 'impeachment' properly and sufficiently indicates the causes for its exercise. . . . . There is no warrant for the contention that there is no such thing as impeachment in Texas because of the absence of a statutory definition of impeachable offenses."[12]

Penalty on Conviction for Impeachment. According to the constitution, "judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor, trust or profit under this state. A party convicted on impeachment shall also be subject to indictment, trial, and punishment, according to law."[13]

The validity of the disqualification part of the judgment of the court of impeachment was attacked in the Maddox case, because the statutes did not provide that impeachment should constitute disqualification to hold office. This was immaterial, said the court, for the constitution, in the matter of impeachment of the officers designated, is clearly self-executing and needs no aid from the legislature. "Obviously the legislature may not deprive the Senate of the power to enter such judgment as the constitution authorizes."[14]

When the Supreme Court decided in June, 1924, that Mr. Ferguson was constitutionally ineligible to hold office, the name of his wife was placed on the primary election ballot as a candidate for governor, and in the ensuing campaign she was nominated. Suit was brought to prevent the printing of Mrs. Ferguson's name on the official ballot at the general election in November, on the ground that she was ineligible because, among other reasons, she was the wife of James E. Ferguson, who stood impeached and disqualified to hold any office. Appellant contended that the emoluments of the office of governor were

[12] P. 892.
[13] *Constitution*, Art. XV, sec. 4.
[14] Pp. 892-893.

community property and that Mr. Ferguson could not receive his community half of his wife's salary without violating the decree of impeachment. The supreme court could not see that Mr. Ferguson would be receiving any emolument or profit derived from any office held by himself. The disqualification insisted upon could be supported on no other theory than that of legal identity of husband and wife, which theory the court repudiated. The constitution limits the Senate's judgment of impeachment to removal and disqualification and will not permit the imposition of penalties on members of the family of an impeached governor.[15]

Status of the House and Senate in Impeachment Proceedings. In the Maddox case the court declared that in impeachments the House acts somewhat in the capacity of a grand jury, while the Senate acts as a court. "The Senate sitting in an impeachment trial is just as truly a court as is this court. Its jurisdiction is very limited, but such as it has is of the highest. It is original, exclusive, and final. Within the scope of its constitutional authority, no one may gainsay its judgment."[16]

May the Legislature Pardon for Impeachment? The Thirty-ninth Legislature in 1925 enacted a law granting to any person convicted on impeachment "a full and unconditional release of any and all acts and offenses of which he was so convicted," and providing that all penalties or punishment imposed by the impeachment court should be "fully cancelled, remitted, released, and discharged." It was clearly the intent of the law to restore political rights to ex-Governor James E. Ferguson.[17] In response to a request from the House of Representatives, the attorney-general, on February 12, 1925, presented an opinion to the speaker holding this amnesty measure unconstitutional.[18] Legal opinion in general supported the attorney-general's contentions,[19] and the Fortieth Legislature, in 1927, repealed the act.[20]

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[15] Dickson v. Strickland, 265 S. W. 1012 (1924).

[16] Pp. 890-891.

[17] *Laws,* 39th Leg., reg. sess., 454-455 (1925).

[18] *Biennial Report of the Attorney-General,* 199-211 (1924-1926).

[19] See M. T. Van Hecke, "Pardons in Impeachment Cases," 24 *Michigan Law Review* 657-674 (1926); C. S. Potts, "Impeachment as a Remedy," 12 *St. Louis Law Review* 16 (1926).

[20] *Laws,* 40th Leg., reg. sess., 360-361 (1927).