

# RESEARCH RESPONSE

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## ARTICLES VOTED IN 1833 IMPEACHMENT PROCEEDINGS

**Overview** The only impeachment proceedings previously held in Illinois were the 1832-33 impeachment and trial of Theophilus W. Smith, a justice of the Illinois Supreme Court. The House of Representatives voted to impeach Justice Smith on January 5, 1833 and then prepared seven articles of impeachment and exhibited them on January 9, 1833 to the Senate (which failed to convict). Those seven articles are reprinted verbatim below.

**Article I** That unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them "without sale or denial," "favor or affection, conformably to the laws," he authorized and permitted his son, John R. Smith, on the 7th day of November, in the year of our Lord, one thousand eight hundred and twenty-nine, then a minor under the age of twenty-one years, and having no legal appointment thereto, or lawful authority to do the same, to bargain off the office of clerk of the circuit court of Madison county, and hire and employ one George Kelly to do and perform the duties thereof, at twenty-five dollars per month, reserving the fees and emoluments of the said office to himself; and that the said Theophilus W. Smith, corruptly, and against law, with intent to favor his said son, ratified and confirmed the said contract.

**Article II** That prompted by a spirit of cupidity<sup>1</sup> and injustice, the said Theophilus W. Smith, subsequently bergained [sic] off the said office of the clerk of the circuit court of Madison county, and hired and employed the said George Kelly to do and perform the duties of the said clerk's office, for the sum of twenty-five dollars per month, reserving to himself, the fees and emoluments thereof, with the corrupt and unlawful intention of reserving the future appointment to said office for his said son, and appropriating the gains and emoluments thereof, to himself and family.

**Article III** He has made appointments to office of clerk of the circuit court, within his judicial circuit, without requiring bonds, according to law, with the corrupt intention of rendering said office subject to his will:

1. That on the thirtieth day of July, in the year of our Lord eighteen hundred and twenty-nine, he conferred upon John B. E. Canal, the appointment of clerk of the said circuit court of Madison county, and continued him therein, until the seventh day of November, 1829, and allowed him to hold and discharge the duties of said appointment, during the term aforesaid, without requiring or receiving of the said Canal, any bond as required by law.

2. That on the seventh day of November, in the year of Lord [sic], one thousand eight hundred and twenty-nine, he conferred upon the said George Kelly, the appointment of clerk of the circuit court of Madison county, and continued him therein, and allowed him to hold and discharge the duties of said appointment, for the term of twenty-two months thereafter, without requiring or receiving of the said Kelly, any bond as required by law.

3. That he appointed Hosea T. Camp, clerk of the circuit court of Bond county, within the said second judicial circuit, and continued him therein, and allowed him to hold and discharge the duties of said appointment, from the eighth of October, 1829, to the October term of said court, in 1831, without requiring or receiving of the said Camp, any bond as required by law.

**Article IV**

That the said Theophilus W. Smith, disregarding the solemn duties of his station, has, by his influence over a clerk of one of the circuit courts in the second judicial circuit, whom he had rendered subservient to his will, by appointing from his own family, converted his elected and responsible office into an instrument of tyranny and oppression to our fellow citizens.

1. The said Theophilus W. Smith, unmindful of the solemn duties of his station, on the twenty-sixth day of January, in the year of our Lord, one thousand eight hundred and thirty-two, commenced, as plaintiff to the suit, without any just or lawful cause therefor, and in an unauthorized, informal and illegal manner, a vexatious action against one Vincent Tallon, and one Nicholas Filker, as defendants, for an alleged trespass upon property to which he had no legal right, and in which, by his affidavit in said case, he admitted himself to be a joint proprietor with others, in the Madison circuit court, wherein, he himself presided, and wrongfully, without any legal cause therefor, or legal affidavit thereunto, caused the said defendants to be held to bail, in an excessive sum, and upon the most trifling pretext, with design wrongfully and unjustly to oppress and injure the said defendants, has arbitrarily continued the same from term to term in the same court.

2. That the said Theophilus W. Smith, in like manner, unmindful of the solemn duties of his station, on the said twenty-sixth day of January, in the year of our Lord, one thousand eight hundred and thirty-two, commenced as plaintiff in the suit, without any just or lawful cause therefor, and in an unauthorized, informal and illegal manner, a vexatious action against one Culliness Rogers, Nicholas Filker and Howard Clark, as defendants, for an alleged trespass upon property to which he had no legal right, and in which by his affidavit in said case, he admitted himself to be a joint proprietor with others, in the Madison circuit court, wherein he himself presided, and wrongfully, without any legal cause therefor, or legal affidavit thereunto, caused the said defendants to be held to bail, in an excessive sum, and upon the most trifling pretexts, with design, wrongfully and unjustly, to oppress and injure said defendants, has arbitrarily continued the same from term to term, in said court.

**Article V** That at the circuit court for the county of Montgomery, the same being within the second judicial circuit, a certain case was therein pending, at the term of October, in the year of our Lord, one thousand eight hundred and thirty-one, in which Samuel Jackson was plaintiff, and Frederick Hilsabeck was defendant, wherein such proceedings were had, that the said plaintiff, by his attorney, submitted to the said Smith, presiding judge of said court, an application for a change of venue therein; and the said Hilsabeck, the defendant in said case, in a conversation with one John S. Greathouse, an attorney and counsellor at law, in this state, and employed by him to manage and conduct said case for him, received instructions from the said Greathouse, without the court house, and without the hearing of the said judge Smith, to consent to any change of venue in the said cause, which would remove the said cause to any court where his honor, the said Smith, did not preside, which said instructions, the said Hilsabeck communicated to the said court, whereupon the said Smith, presiding judge thereof, and then sitting as judge, required the said Hilsabeck to make affidavit thereof, which said affidavit is in the following words, to wit: "Frederick Hilsabeck makes oath, that John S. Greathouse, counsel for said Hilsabeck, told him he was willing, on the motion for change of venue in the case, Jackson vs. Hilsabeck, that the cause should be removed to any place, where his honor did not preside, and desired him to make that remark to the court; also, that Hilsabeck ought not to have paid the jury's fee in the case.

(Signed,) FREDERICK HILSABECK

Upon which, the said Smith, presiding judge of the said court, directed the following order, to be made upon the records of said court, to wit: "It is ordered by the court, that rule of summons issue against John S. Greathouse, directed to the sheriff of Madison county, citing the said John S. Greathouse to appear before this court, on the first day of the next term thereof, to shew cause, if any he can, why his name shall not be stricken from the roll of attorneys, for contempt offered this court." Although the said Smith well knew that the said order was an arbitrary and unauthorized exercise of illegal power, and was made with the sole intent and design to injure and oppress the said Greathouse; and afterwards, such proceedings were had by the said court, and the said judge, upon the said rule, that at the Oct. term of said court, in the year of our Lord, one thousand eight hundred and thirty two, the said Smith, presiding judge of said court as aforesaid, ordered that the said John S. Greathouse be suspended from practising as an attorney and counsellor at law, in this court, until the first day of the next term thereof, and the further order of this court; all which was done by the said Smith, with the intention wrongfully and unjustly to oppress and injure the said Greathouse, and under pretense and color, that the said Greathouse was answerable to the said court for the said conversation, as for a contempt; and that the said court had power under the rule aforesaid, or other legal authority, to award and pronounce the decree or judgment aforesaid, and did then and there cause the unjust and oppressive sentence to be carried into execution; and the said John S. Greathouse was thereupon suspended from practicing as such attorney and counsellor in the said court, and still is suspended to the great disparagement of public justice, and the abuse of judicial authority, in the state of Illinois.

**Article VI** That at the October term of the circuit court in the county of Montgomery, within the second judicial circuit, one John L. Dryer, of the sect of ancient Friends, or Quakers, and having conscientious scruples against uncovering himself, was summoned to serve as a petit juror; who being called as such juror, presented himself according to the ancient and well known and recognized custom of said sect, having his hat on; and that the said Smith well knowing that the said Dryer was of the faith of the said sect, and had conscientious scruples against uncovering himself, and being then and there admonished and advised thereof, in the exercise of an arbitrary, unjust, tyrannical, and oppressive disposition, ordered the said Dryer to uncover himself, and refusing to hear from the said Dryer any explanation or reason therefor, upon the non-compliance of the said Dryer with the said unjust and arbitrary command, with the intention wrongfully and against law, to oppress, imprison, and otherwise injure the said Dryer, ordered and directed him to be committed to the common jail of the said county of Montgomery; and that the same should be certified to the county commissioners' court of said county; and also that said Dryer was incompetent to serve as a juror, by reason of his want of soundness of mind; and that the said county commissioners' court should be requested not to return said Dryer again as a juror; and that the said Dryer was conveyed to the said common jail, and imprisoned, in obedience to the said unjust, arbitrary, tyrannical, and oppressive order.

**Article VII** That upon an agreed case, made up between the sheriff and treasurer of Madison county, without process or pleading, and without ever praying the judgment of the court, the said Theophilus W. Smith, with the intention to prejudice the said county in this behalf, rendered an opinion on the bench, after solemn argument, involving the rights of the said county of Madison, and prejudging those rights, which he well knew might, and which, in fact, were, afterwards submitted to his decision; which decision being in conformity with the previous opinion, obliged the said county of Madison to appeal to the supreme court—where the said suit is now pending.

Note 1. In this context, the evidently intended meaning of "cupidity" was avarice or greed.

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