TRIAL

OF

ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES,

BEFORE THE SENATE OF THE UNITED STATES,

ON

IMPEACHMENT

BY THE HOUSE OF REPRESENTATIVES

FOR

HIGH CRIMES AND MISDEMEANORS.

PUBLISHED BY ORDER OF THE SENATE.

VOLUME I.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1868.

IN THE SENATE OF THE UNITED STATES, *March* 23, 1868.

Resolved, That three hundred copies of the edition of the report of the impeachment trial published at the Congressional Printing Office be furnished, as the trial progresses, for the use of the Senate, and that five thousand copies of the entire work, with an index, be printed and bound for the use of the Senate.

APRIL 14, 1868.

Resolved, That there be printed for the use of the Senate, at the close of the pending impeachment trial, five thousand copies of the report thereof, in addition to the number of copies thereof heretofore ordered to be printed.

IN THE HOUSE OF REPRESENTATIVES, *March* 13, 1868.

Resolved, That the Congressional Printer be directed to furnish five copies of the trial of impeachment of the President of the United States, in book form, to each member of the House, the next morning after its publication in the Daily Globe, and to print and bind five thousand copies, when completed, for the members of the House.

NOTE BY THE EDITOR.—The phonographic report of the trial (from which the present volumes have been made up) was made for the Congressional Globe, by its Senate reporters, Messrs. Richard Sutton, D. F. Murphy, and James T. Murphy. The index was prepared by Mr. Fisher A. Foster.

It was necessary to print the work as the trial progressed, and the limited space left for the sketches of the introductory proceedings rendered it necessary to abridge them, and to publish the report of the debate on the right of Senator Wade to sit as a member of the court, in the appendix at the end of the third volume. This appendix also contains a few authorities in addition to those composing the brief prepared by Hon. William Lawrence, M. C. from Ohio, and presented by Mr. Manager Butler as a part of his opening argument, which have been furnished by the first-named gentleman.

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PRELIMINARY PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES

IN THE IMPEACHMENT OF ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES,

FOR HIGH CRIMES AND MISDEMEANORS.

FORTIETH CONGRESS, SECOND SESSION.—Hon. SCHUYLER COLFAX, Speaker.

IN THE HOUSE OF REPRESENTATIVES,
Friday, February 21, 1868.

Mr. COVODE. I rise to a privileged question. I offer the following resolution:

Resolved, That Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors.

Mr. WOOD. I object.

The SPEAKER. It is a privileged question.

Mr BOUTWELL. I move to refer it to the Committee on Reconstruction. The motion was agreed to.

Mr. COVODE moved to reconsider the vote by which the resolution was referred; and also moved to lay the motion to reconsider on the table. The latter motion was agreed to.

SATURDAY, *February* 22, 1868.

Mr. STEVENS, of Pennsylvania, presented from the Committee on Reconstruction the following report, with an accompanying resolution; which was considered:

The Committee on Reconstruction, to whom was referred, on the 27th day of January last, the following resolution:

Resolved, That the Committee on Reconstruction be authorized to inquire what combinations have been made or attempted to be made to obstruct the due execution of the laws; and to that end the committee have power to send for persons and papers and to examine witnesses on oath, and report to this house what action, if any, they may deem necessary; and that said committee have leave to report at any time.

And to whom was also referred, on the 21st day of February, instant, a communication from Hon. Edwin M. Stanton, Secretary of War, dated on said 21st day of February, together with a copy of a letter from Andrew Johnson, President of the United States, to the said Edwin M. Stanton, as follows:

EXECUTIVE MANSION,
Washington, D. C., February 21, 1868.

SIR: By virtue of the power and authority vested in me, as President, by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon the receipt of this communication.

You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

Hon. EDWIN M. STANTON, *Washington, D. C.*

And to whom was also referred by the House of Representatives the following resolution, namely:

Resolved, That Andrew Johnson, President of the United States, be impeached for high crimes and misdemeanors—

Have considered the several subjects referred to them, and submit the following report:

That in addition to the papers referred to the committee, the committee find that the President, on the 21st day of February, 1868, signed and issued a commission or letter of authority to one Lorenzo Thomas, directing and authorizing said Thomas to act as Secretary of War *ad interim*, and to take possession of the books, records, and papers, and other public property in the War Department, of which the following is a copy:

EXECUTIVE MANSION, *Washington, February* 21, 1868.

SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately

enter upon the discharge of the duties pertaining to that office. Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

Brevet Major General LORENZO THOMAS,
Adjutant General U. S. Army, Washington, D. C.

Official copy respectfully furnished to Hon. E. M. Stanton.

L. THOMAS,
Secretary of War ad interim.

Upon the evidence collected by the committee, which is herewith presented, and in virtue of the powers with which they have been invested by the House, they are of the opinion that Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors. They therefore recommend to the House the adoption of the accompanying resolution.

THADDEUS STEVENS.
GEORGE S. BOUTWELL.
JOHN A. BINGHAM.
C. T. HULBURD.
JOHN F. FARNSWORTH.
F. C. BEAMAN.
H. E. PAINE.

Resolution providing for the impeachment of Andrew Johnson, President of the United States:

Resolved, That Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors in office.

MONDAY, *February* 24, 1868.

The House met at ten o'clock, and resumed the consideration of the resolution reported by the Committee on Reconstruction.

After debate, the question was taken, and it was decided in the affirmative—yeas, 126; nays, 47; not voting, 17; as follows:

YEAS—Messrs. Allison, Ames, Anderson, Arnell, Delos R. Ashley, James M. Ashley, Bailey, Baker, Baldwin, Banks, Beaman, Beatty, Benton, Bingham, Blaine, Blair, Boutwell, Bromwell, Broomall, Buckland, Butler, Cake, Churchill, Reader W. Clarke, Sidney Clarke, Cobb, Coburn, Cook, Cornell, Covode, Cullom, Dawes, Dodge, Driggs, Eckley, Eggleston, Eliot, Farnsworth, Ferriss, Ferry, Fields, Gravely, Griswold, Halsey, Harding, Higby, Hill, Hooper, Hopkins, Asahel W. Hubbard, Chester D. Hubbard, Hulburd, Hunter, Ingersoll, Jenckes, Judd, Julian, Kelley, Kelsey, Ketcham, Kitchen, Laflin, George V. Lawrence, William Lawrence, Lincoln Loan, Logan, Loughridge, Lynch, Mallory, Marvin, McCarthy, McClurg, Mercur, Miller, Moore, Moorhead, Morrell, Mullins, Myers, Newcomb, Nunn, O'Neill, Orth, Paine, Perham, Peters, Pike, Pile, Plants, Poland, Polsley, Price, Raum, Robertson, Sawyer, Schenck, Scofield, Selye, Shanks, Smith, Spalding, Starkweather, Aaron F. Stevens, Thaddeus Stevens, Stokes, Taffe, Taylor, Trowbridge, Twichell, Upson, Van Aernam, Burt Van Horn, Van Wyck, Ward, Cadwalader C. Washburn, Ellihu B. Washburne, William B. Washburn, Welker, Thomas Williams, James F. Wilson, John T. Wilson, Stephen F. Wilson, Windom, Woodbridge, and the Speaker—126.

NAYS—Messrs. Adams, Archer, Axtell, Barnes, Barnum, Beck, Boyer, Brooks, Burr, Cary, Chanler, Eldridge, Fox, Getz, Glossbrenner, Golladay, Grover, Haight, Holman, Hotchkiss, Richard D. Hubbard, Humphrey, Johnson, Jones, Kerr, Knott, Marshall, McCormick, McCulloch, Morgan, Morrissey, Mungen, Niblack, Nicholson, Phelps, Pruyn, Randall, Ross, Sitgreaves, Stewart, Stone, Taber, Lawrence S. Trimble, Van Auken, Van Trump, Wood, and Woodward—47.

NOT VOTING—Messrs. Benjamin, Dixon, Donnelly, Ela, Finney, Garfield, Hawkins, Koontz, Maynard, Pomeroy, Robinson, Shellabarger, Thomas, John Trimble, Robert T. Van Horn, Henry D. Washburn, and William Williams—17.

When the roll-call had been concluded,

The SPEAKER said: The occupant of the chair cannot consent that his constituents should be silent on so grave a question, and therefore, as a member of this house, he votes "ay." On agreeing to the resolution, there are yeas 126, nays 47. So the resolution is adopted.

Mr. STEVENS, of Pennsylvania. Mr. Speaker, I submit the following resolutions, on which I demand the previous question:

Resolved, That a committee of two be appointed to go to the Senate, and at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Andrew Johnson, President of the United States, of high crimes and misdemeanors in office, and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him and make good the same; and that the committee do demand that the Senate take order for the appearance of said Andrew Johnson to answer to said impeachment.

2. *Resolved*, That a committee of seven be appointed to prepare and report articles of impeachment against Andrew Johnson, President of the United States, with power to send for persons, papers, and records, and to take testimony under oath.

After the rules had been suspended, the question was taken on the resolutions, and it was decided in the affirmative—yeas, 124; nays, 42; not voting, 23; as follows:

YEAS—Messrs. Allison, Ames, Anderson, Arnell, Delos R. Ashley, James M. Ashley, Bailey, Baker, Baldwin, Banks, Beaman, Beatty, Benton, Bingham, Blaine, Blair, Boutwell, Bromwell, Broomall, Buckland, Butler, Cake, Cary, Churchill, Reader W. Clarke, Sidney Clarke, Cobb, Coburn, Cook, Cornell, Covode, Cullom, Dawes, Dodge, Driggs, Eckley, Eggleston, Elliot, Farnsworth, Ferriss, Ferry, Fields, Gravely, Griswold, Halsey, Harding, Higby, Hill, Hooper, Hopkins, Chester D. Hubbard, Hulburd, Hunter, Ingersoll, Jenckes, Judd, Julian, Kelley, Kelsey, Ketcham, Kitchen, Laflin, George V. Lawrence, William Lawrence, Lincoln, Loan, Logan, Loughridge, Lynch, Mallory, Marvin, McCarthy, McClurg, Mercur, Miller, Moore, Moorhead, Morrell, Mullins, Myers, Newcomb, Nunn, O'Neill, Orth, Paine, Perham, Peters, Pike, Pile, Poland, Polsley, Price, Raum, Robertson, Sawyer, Schenck, Scofield, Selye, Shanks, Smith, Spalding, Starkweather, Aaron F. Stevens, Thaddeus Stevens, Stokes, Taffe, Taylor, Trowbridge, Twichell, Upson, Van Aernam, Burt Van Horn, Van Wyck, Ward, Cadwalader C. Washburn, Ellihu B. Washburne, William B. Washburn, Welker, Thomas Williams, James F. Wilson, John T. Wilson, Stephen F. Wilson, Windom, and Woodbridge—124.

NAYS—Messrs. Adams, Archer, Axtell, Barnes, Barnum, Beck, Boyer, Brooks, Burr, Eldridge, Getz, Glossbrenner, Golladay, Grover, Haight, Hohnan, Hotchkiss, Humphrey, Johnson, Jones, Kerr, Knott, Marshall, McCormick, McCullough, Morgan, Morrissey, Mungen, Niblack, Nicholson, Phelps, Pruyn, Randall, Ross, Sitgreaves, Stone, Taber, Lawrence S. Trimble, Van Auken, Van Trump, Wood, and Woodward—42.

NOT VOTING—Messrs. Benjamin, Chanler, Dixon, Donnelly, Ela, Finney, Fox, Garfield, Hawkins, Asahel W. Hubbard, Richard D. Hubbard, Koontz, Maynard, Plants, Pomeroy, Robinson, Shellabarger, Stewart, Thomas. John Trimble, Robert T. Van Horn, Henry D. Washburn, and William Williams—23.

Messrs. Koontz and Thomas, who were unavoidably absent, were the next day permitted to record their votes in the affirmative, so that the vote, as thus amended, stood, yeas, 126; nays, 42; not voting, 21.

The SPEAKER announced the following committees under the resolutions just adopted:

Committee to communicate to the Senate the action of the House ordering an impeachment of the President of the United States.—Thaddeus Stevens, of Pennsylvania, and John A. Bingham, of Ohio.

Committee to declare articles of impeachment against the President of the United States.—George S. Boutwell, of Massachusetts; Thaddeus Stevens, of Pennsylvania; John A. Bingham, of Ohio; James F. Wilson, of Iowa; John A. Logan, of Illinois; George W. Julian, of Indiana; and Hamilton Ward, of New York.

TUESDAY, *February* 25, 1868.

Mr. Stevens, of Pennsylvania, and Mr. Bingham, the committee appointed to communicate to the Senate the action of the House ordering an impeachment of the President of the United States, appeared at the bar of the House.

Mr. STEVENS, of Pennsylvania, said: Mr. Speaker, in obedience to the order of the House, we proceeded to the bar of the Senate, and in the name of this body and of all the people of the United States we impeached, as we were directed to do, Andrew Johnson, President of the United States, of high crimes and misdemeanors in office, and we demanded that the Senate should take order to make him appear before that body to answer for the same; and announced that the House would soon present articles of impeachment and make them good; to which the response was, "Order shall be taken."

Mr. WASHBURNE, of Illinois. I ask unanimous consent to offer the following resolution:

Resolved, That the rules be suspended, and that it is hereby ordered as follows:

When the committee to prepare articles of impeachment of the President of the United States report the said articles the House shall immediately resolve itself into the Committee of the Whole thereon; that speeches in committee shall be limited to fifteen minutes each, which debate shall continue till the next legislative day after the report, to the exclusion of all other business except the reading of the journal; that at three o'clock on the afternoon of said second day the fifteen-minute debate shall cease, and the committee shall then proceed to consider and vote upon amendments that may be offered under the five-minute rule of debate; but no merely *pro forma* amendment shall be entertained; that at four o'clock on the afternoon of said second day the committee shall rise and report their action to the House, which shall immediately and without dilatory motions vote thereon; that if the articles of impeachment are agreed on, the House shall then immediately and without dilatory motions elect by ballot seven managers to conduct said impeachment on the part of the House; and that during the pendency of resolutions in the House relative to said impeachment thereafter no dilatory motions shall be received except one motion on each day that the House do now adjourn.

Mr. WOOD. I object.

Mr. WASHBURNE, of Illinois. I move to suspend the rules for the purpose of considering the resolution at this time.

After debate, the question was taken, and it was decided in the affirmative--yeas, 106; nays, 37; not voting, 46. So (two-thirds voting in the affirmative) the rules were suspended, and the resolution was adopted.

SATURDAY, *February* 29, 1868.

Mr. BOUTWELL. I rise to a privileged question. The committee appointed to prepare and report articles of impeachment against Andrew Johnson, President of the United States, have instructed me to make a report, which I send to the Clerk's desk.

The Clerk read 10 articles to be exhibited by the House of Representatives of the United States, in the name of themselves and all the people of the United States, against Andrew Johnson, President of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office. These articles, as finally amended and adopted, will be found on pages 6–9 of this volume. The debate on them is reported in the Congressional Globe, fortieth Congress, second session.

The House, in accordance with its order of February 25, resolved itself into a Committee of the Whole, (Mr. Washburne, of Illinois, in the chair,) and proceeded to consider the report of the committee to prepare articles of impeachment against the President of the United States.

MONDAY, *March* 2, 1868.

The House resolved itself into the Committee of the Whole, (Mr. Scofield in the chair,) and continued the consideration of the report of the committee to prepare articles of impeachment, which were afterwards adopted by a separate vote on each.

The SPEAKER. Under the order adopted on the 25th of February, the House will now elect by ballot seven managers to conduct the impeachment before the Senate. Nominations are now in order.

Nominations were made and the House proceeded to ballot, the Chair having appointed as tellers to conduct the election Messrs. Poland, Spalding, Jenckes, and Blair.

The SPEAKER. The following gentlemen having received a majority of the votes cast by ballot for the election of managers to conduct the impeachment of the President of the United States, namely: John A. Bingham, George S. Boutwell, James F. Wilson, Benjamin F. Butler, Thomas Williams, Thaddeus Stevens, and John A. Logan, I declare them elected as such.

Mr. BOUTWELL. I beg leave to present the following resolution, and on it I demand the previous question:

Resolved, That a message be sent to the Senate to inform them that this house have appointed managers to conduct the impeachment against the President of the United States, and have directed the said managers to carry to the Senate the articles agreed upon by this house, to be exhibited in maintenance of their impeachment against said Andrew Johnson, and that the Clerk of the House do go with said message.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was agreed to.

Mr. BOUTWELL. I further offer the following resolution, and on it demand the previous question:

Resolved, That the articles agreed to by this house, to be exhibited in the name of themselves and of all the people of the United States, against Andrew Johnson, President of the United States, in maintenance of their impeachment against him of high crimes and misdemeanors in office, be carried to the Senate by the managers appointed to conduct said impeachment.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was agreed to.

TUESDAY, *March* 3, 1868.

The SPEAKER laid before the House the following:

IN THE SENATE OF THE UNITED STATES, *March* 3, 1868.

Ordered, That the Secretary of the Senate inform the House of Representatives that the Senate is ready to receive the managers appointed by the House of Representatives to carry to the Senate articles of impeachment against Andrew Johnson, President of the United States.

The SPEAKER. The message will be entered upon the journal of the House.

Mr. BUTLER reported an additional article of impeachment, which he was instructed by the board of managers on the part of the House to present; it was considered and adopted.

Mr. BINGHAM offered the following resolutions, which were considered and adopted:

Resolved, That the articles agreed to by the House this day, together with those adopted by the House on yesterday, to be exhibited in the name of the House of Representatives and of all the people of the United States, against Andrew Johnson, President of the United States, in maintenance of their impeachment against him for high crimes and misdemeanors in office, be carried to the Senate by the managers appointed to conduct said impeachment.

Resolved, That the managers on the part of the House, in the matter of the impeachment of the President, be, and hereby are, authorized to appoint a clerk and a messenger, to be paid for their services at the usual rates during the time that they are employed; and that the managers have power to send for persons and papers.

WEDNESDAY, *March* 4, 1868.

Mr. BINGHAM offered the following resolution, which was considered and adopted:

Resolved, That the House resolve itself into the Committee of the Whole, and attend the managers appointed by the House to the Senate to present by its managers the articles of impeachment exhibited by the House against Andrew Johnson, President of the United States.

The SPEAKER. In the absence of the senior member of the House, Mr. Washburne, of Illinois, the gentleman from Massachusetts, Mr. Dawes, will please take the chair in Committee of the Whole. The Committee of the Whole, preceded by its chairman, who will be supported by the Clerk and Doorkeeper, will follow the managers to the Senate chamber.

Accordingly, at 1 o'clock p. m., the House, as in the Committee of the Whole, preceded by its chairman, Mr. Dawes, who was supported by the Clerk and Doorkeeper of the House, followed the managers of the House to the Senate chamber.

[See the proceedings of the Senate.]

PRELIMINARY PROCEEDINGS IN THE SENATE

IN THE IMPEACHMENT OF ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES,

FOR HIGH CRIMES AND MISDEMEANORS.

FORTIETH CONGRESS, SECOND SESSION.—Hon. BENJAMIN F. WADE, President pro tem.

TUESDAY, *February* 25, 1868.

Mr. Representative Stevens and Mr. Representative Bingham appeared at the bar of the Senate, and were announced as the committee from the House of Representatives.

Mr. STEVENS. Mr. President, in obedience to the order of the House of Representatives, we appear before you, and in the name of the House of Representatives and of all the people of the United States we do impeach Andrew Johnson, President of the United States, of high crimes and misdemeanors in office; and we further inform the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and in their name we demand that the Senate take order for the appearance of the said Andrew Johnson to answer said impeachment.

The PRESIDENT *pro tempore*. The Senate will take order in the premises.

The committee of the House thereupon withdrew.

Mr. HOWARD, by unanimous consent, submitted the following resolution, which was read, considered, amended, and agreed to:

Resolved, That the message of the House of Representatives relating to the impeachment of Andrew Johnson, President of the United States, be referred to a select committee of seven, to be appointed by the Chair, to consider and report thereon.

The PRESIDENT *pro tempore* subsequently announced the committee, to consist of the following senators: Mr. Howard, Mr. Trumbull, Mr. Conkling, Mr. Edmunds, Mr. Morton, Mr. Pomeroy, and Mr. Johnson.

WEDNESDAY, *February* 26, 1868.

Mr. HOWARD, from the select committee appointed to consider and report upon the message of the House of Representatives in relation to the impeachment of Andrew Johnson, President of the United States, reported the following resolution:

Whereas the House of Representatives, on the 25th day of the present month, by two of their members, Messrs. Thaddeus Stevens and John A. Bingham, at the bar of the Senate, impeached Andrew Johnson, President of the United States, of high crimes and misdemeanors in office, and informed the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and likewise demanded that the Senate take order for the appearance of said Andrew Johnson to answer to the said impeachment: Therefore,

Resolved, That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives.

And the committee further recommend to the Senate that the Secretary of the Senate be directed to notify the House of Representatives of the foregoing resolution.

The resolution was considered by unanimous consent, and agreed to.

Mr. HOWARD. I ask that an order be made directing the Secretary to transmit the resolution just adopted, which is in the usual form, to the House of Representatives.

The PRESIDENT *pro tempore*. That will be done, as a matter of course, without any formal order.

FRIDAY, *February* 28, 1868.

The Senate postponed all other business, and proceeded to consider the report of the select committee respecting impeachment, presented by Mr. Howard. It embraced the rules of procedure and practice in the Senate when sitting for the trial of an impeachment; which, after discussion and amendment, were adopted on March 2, 1868. They will be found on pages 12–15 of this volume.

WEDNESDAY, *March* 4, 1868.

The managers of the impeachment on the part of the House of Representatives appeared at the bar, and their presence was announced by the Sergeant-at-arms.

The PRESIDENT *pro tempore*. The managers of the impeachment will advance within the bar and take the seats provided for them.

The managers on the part of the House of Representatives came within the bar and took the seats assigned to them in the area in front of the Chair.

Mr. Manager BINGHAM. Mr. President, the managers of the House of Representatives, by order of the House, are ready at the bar of the Senate, whenever it may please the Senate to hear them, to present articles of impeachment and in maintenance of the impeachment preferred against Andrew Johnson, President of the United States, by the House of Representatives.

The PRESIDENT *pro tempore*. The Sergeant-at-arms will make proclamation.

The SERGEANT-AT-ARMS. Hear ye! hear ye! hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Andrew Johnson, President of the United States.

The managers then rose and remained standing, with the exception of Mr. Stevens, who was physically unable to do so, while Mr. Manager Bingham read the articles of impeachment, as follows:

Articles exhibited by the House of Representatives of the United States, in the name of themselves and all the people of the United States, against Andrew Johnson, President of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office.

ARTICLE I.

That said Andrew Johnson, President of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully, and in violation of the Constitution and laws of the United States issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War, said Edwin M. Stanton having been theretofore duly appointed and commissioned, by and with the advice and consent of the Senate of the United States, as such Secretary, and said Andrew Johnson, President of the United States, on the twelfth day of August, in the year of our Lord one thousand eight hundred and sixty-seven, and during the recess of said Senate, having suspended by his order Edwin M. Stanton from said office, and within twenty days after the first day of the next meeting of said Senate, that is to say, on the twelfth day of December in the year last aforesaid having reported to said Senate such suspension with the evidence and reasons for his action in the case and the name of the person designated to perform the duties of such office temporarily until the next meeting of the Senate, and said Senate thereafterwards, on the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, having duly considered the evidence and reasons reported by said Andrew Johnson for said suspension, and having refused to concur in said suspension, whereby and by force of the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, said Edwin M. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice, and said Edwin M. Stanton, by reason of the premises, on said twenty-first day of February, being lawfully entitled to hold said office of Secretary for the Department of War, which said order for the removal of said Edwin M. Stanton is in substance as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D. C., February* 21, 1868.

"SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon the receipt of this communication.

"You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

"Respectfully yours,

"ANDREW JOHNSON.

"To the Hon. EDWIN M. STANTON, *Washington, D. C.*"

Which order was unlawfully issued with intent then and there to violate the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and with the further intent, contrary to the provisions of said act, in violation thereof, and contrary to the provisions of the Constitution of the United States, and without the advice and consent of the Senate of the United States, the said Senate then and there being in session, to remove said Edwin M. Stanton from the office of Secretary for the Department of War, the said Edwin M. Stanton being then and there Secretary for the Department of War, and being then and there in the due and lawful execution and discharge of the duties of said office, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE II.

That on the said twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, said Andrew Johnson, President of the United States, unmindful of the high duties of his office, of his oath of office, and in violation of the Constitution of the United States, and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, without the advice and consent of the Senate of the United States, said Senate then and there being in session, and without authority of law, did, with intent to violate the Constitution of the United States, and the act aforesaid, issue and deliver to one Lorenzo Thomas a letter of authority in substance as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D. C., February* 21, 1868.

"SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully yours,

"ANDREW JOHNSON.

"To Brevet Major General LORENZO THOMAS,
"*Adjutant General U. S. Army, Washington, D. C.*"

Then and there being no vacancy in said office of Secretary for the Department of War, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE III.

That said Andrew Johnson, President of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did commit and was guilty of a high misdemeanor in office in this, that, without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War *ad interim*, without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time, and which said appointment, so made by said Andrew Johnson, of said Lorenzo Thomas, is in substance as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D. C., February* 21, 1868.

"SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully yours,

"ANDREW JOHNSON.

"To Brevet Major General LORENZO THOMAS,
"*Adjutant General U. S. Army, Washington, D. C.*"

ARTICLE IV.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent, by intimidation and threats, unlawfully to hinder and prevent Edwin M. Stanton, then and there the Secretary for the Department of War, duly appointed under the laws of the United States, from holding said office of Secretary for the Department of War, contrary to and in violation of the Constitution of the United States, and of the provisions of an act entitled "An act to define and punish certain conspiracies," approved July thirty-first, eighteen hundred and sixty-one, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high crime in office.

ARTICLE V.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and on divers other days and times in said year, before the second day of March in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and in pursuance of said conspiracy, did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE VI.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas by force to seize, take, and possess the property of the United States in the Department of War, and then and there in the custody and charge of Edwin M. Stanton, Secretary for said department, contrary to the provisions of an act entitled "An act to define and punish certain conspiracies," approved July thirty-one, eighteen hundred and sixty-one, and with intent to violate and disregard an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty seven, whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.

ARTICLE VII.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas with intent unlawfully to seize, take, and possess the property of the United States in the Department of

War, in the custody and charge of Edwin M. Stanton, Secretary for said department, with intent to violate and disregard the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, whereby said Andrew Johnson, President of the United States, did then and there commit a high misdemeanor in office.

ARTICLE VIII.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in the office of Secretary for the Department of War, and with intent to violate and disregard the act aforesaid, then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing, in substance as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D. C., February* 21, 1868.

"SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully, yours,

"ANDREW JOHNSON.

"To Brevet Major General LORENZO THOMAS,
"*Adjutant General United States Army, Washington, D. C.*"

Whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE IX.

That said Andrew Johnson, President of the United States, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, in disregard of the Constitution, and the laws of the United States duly enacted, as commander-in-chief of the army of the United States, did bring before himself then and there William H. Emory, a major general by brevet in the army of the United States, actually in command of the department of Washington and the military forces thereof, and did then and there, as such commander-in-chief, declare to and instruct said Emory that part of a law of the United States, passed March second, eighteen hundred and sixty-seven, entitled "An act making appropriations for the support of the army for the year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes," especially the second section thereof, which provides, among other things, that "all orders and instructions relating to military operations, issued by the President or Secretary of War, shall be issued through the General of the army, and, in case of his inability, through the next in rank," was unconstitutional, and in contravention of the commission of said Emory, and which said provision of law had been therefore duly and legally promulgated by General Orders for the government and direction of the army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory, in his official capacity as commander of the department of Washington, to violate the provisions of said act, and to take and receive, act upon, and obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the army of the United States, according to the provisions of said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles, or other accusation or impeachment against the said Andrew Johnson, President of the United States, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other article, accusation, or impeachment which shall be exhibited by them, as the case shall require, DO DEMAND that the said Andrew Johnson may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

ARTICLE X.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the government of the United States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States, and the several branches thereof, to impair and destroy the regard and respect of all the good people of the United States for the Congress and legislative powers thereof, (which all officers of the government ought inviolably to preserve and maintain,) and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted; and in pursuance of his said design and intent, openly and publicly, and before divers assemblaggs of the citizens of the United States, convened in divers parts thereof to meet and receive said Andrew Johnson as the Chief Magistrate of the United States, did, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, and on divers other days and times, as well before as afterward, make and deliver, with a loud voice, certain intemperate, inflammatory, and scandalous harangues, and did therein utter loud threats and bitter menaces, as well against Congress as the laws of the United States duly enacted thereby, amid the cries, jeers, and laughter of the multitudes then assembled and in hearing, which are set forth in the several specifications hereinafter written, in substance and effect, that is to say:

Specification first.—In this, that at Washington, in the District of Columbia, in the Executive Mansion, to a committee of citizens who called upon the President of the United States, speaking of and concerning the Congress of the United States, said Andrew Johnson, President of the United States, heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, did, in a loud voice, declare, in substance and effect, among other things, that is to say:

"So far as the executive department of the government is concerned, the effort has been made to restore the

Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and (to speak in common phrase) to prepare, as the learned and wise physician would, a plaster healing in character and co-extensive with the wound. We thought, and we think, that we had partially succeeded; but, as the work progresses, as reconstruction seemed to be taking place, and the country was becoming reunited, we found a disturbing and marring element opposing us. In alluding to that element I shall go no further than your convention, and the distinguished gentleman who has delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and occasion justify.

"We have witnessed in one department of the government every endeavor to prevent the restoration of peace, harmony and union. We have seen hanging upon the verge of the government, as it were, a body called, or which assumes to be, the Congress of the United States, while, in fact, it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union, when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable. * * * We have seen Congress gradually encroach, step by step, upon constitutional rights, and violate, day after day and month after month, fundamental principles of the government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself."

Specification second.—In this, that at Cleveland, in the State of Ohio, heretofore, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and sixty-six, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare, in substance and effect, among other things, that is to say:

"I will tell you what I did do. I called upon your Congress that is trying to break up the government."

* * * * * * * * * * * * * *

"In conclusion, besides that, Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the union of these States? No; on the contrary, they had done everything to prevent it; and because he stood now where he did when the rebellion commenced, he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had undertaken to poison the minds of the American people."

Specification third.—In this, that at St. Louis, in the State of Missouri, heretofore, to wit, on the eighth day of September, in the year of our Lord one thousand eight hundred and sixty-six, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare in substance and effect, among other things, that is to say:

"Go on. Perhaps if you had a word or two on the subject of New Orleans you might understand more about it than you do. And if you will go back—if you will go back and ascertain the cause of the riot at New Orleans, perhaps you will not be so prompt in calling out 'New Orleans.' If you will take up the riot at New Orleans, and trace it back to its source or its immediate cause, you will find out who is responsible for the blood that was shed there. If you will take up the riot at New Orleans and trace it back to the radical Congress, you will find that the riot at New Orleans was substantially planned. If you will take up the proceedings in their caucusses you will understand that they there knew that a convention was to be called which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise one portion of the population, called the colored population, who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made, and take up the facts on the Friday and Saturday before that convention sat, you will there find that speeches were made incendiary in their character, exciting in that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. You will also find that that convention did assemble in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the government of the United States; and every man engaged in that rebellion in that convention, with the intention of superseding and upturning the civil government which had been recognized by the government of the United States, I say that he was a traitor to the Constitution of the United States, and hence you find that another rebellion was commenced, *having its origin in the radical Congress.*

* * * * * * * * * * * * * *

"So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed, and every drop of blood that was shed is upon their skirts, and they are responsible for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been introduced here, and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this radical Congress in connection with New Orleans and the extension of the elective franchise.

"I know that I have been traduced and abused. I know it has come in advance of me here as elsewhere, that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the government; that I had exercised that power; that I had abandoned the party that elected me, and that I was a traitor, because I exercised the veto power in attempting, and did arrest for a time, a bill that was called a 'Freedman's Bureau' bill; yes, that I was a traitor. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot, and all that. Now, my countrymen, here to-night, it is very easy to indulge in epithets; it is easy to call a man Judas and cry out traitor; but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot—Judas. There was a Judas, and he was one of the twelve apostles. Oh! yes, the twelve apostles had a Christ. The twelve apostles had a Christ, and he never could have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? These are the men that stop and compare themselves with the Saviour; and everybody that differs with them in opinion, and to try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas." * * * * * * * *

"Well, let me say to you, if you will stand by me in this action, if you will stand by me in trying to give the people a fair chance—soldiers and citizens—to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

"Let me say to you, in concluding, that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts, and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor ove awed by my friends. But, God willing, with your help, I will veto their measures when any of them come to me."

Which said utterances, declarations, threats, and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of a high misdemeanor in office.

ARTICLE XI.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit, on the eighteenth day of August, A. D. eighteen hundred and sixty-six, at the city of Washington, and the District of Columbia, by public speech, declare and affirm, in substance, that the thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, but, on the contrary, was a Congress of only part of the States, thereby denying, and intending to deny, that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same and also thereby denying, and intending to deny, the power of the said thirty-ninth Congress to propose amendments to the Constitution of the United States; and, in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterwards, to wit, on the twenty-first day of February, A. D. eighteen hundred and sixty-eight, at the city of Washington, in the District of Columbia, did, unlawfully, and in disregard of the requirements of the Constitution, that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, by unlawfully devising and contriving, and attempting to devise and contrive means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and, also, by further unlawfully devising and contriving, and attempting to devise and contrive means, then and there, to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes," approved March second, eighteen hundred and sixty-seven; and, also, to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, whereby the said Andrew Johnson, President of the United States, did, then, to wit, on the twenty-first day of February, A. D. eighteen hundred and sixty-eight, at the city of Washington, commit, and was guilty of, a high misdemeanor in office.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

Attest:
EDWARD MCPHERSON,
Clerk of the House of Representatives.

The PRESIDENT *pro tempore*. The Senate will take due order upon the subject of impeachment, of which proper notice will be given to the House of Representatives.

The managers of the House of Representatives, accompanied by the Speaker and a large number of members of the House who had been present during the presentation of the articles of impeachment, withdrew from the Senate chamber.

* * * * * * * * * * *

Mr. HOWARD submitted the following resolution and orders, which were read, considered, and adopted:

Resolved, That at one o'clock to-morrow afternoon the Senate will proceed to consider the impeachment of Andrew Johnson, President of the United States, at which time the oath or affirmation required by the rules of the Senate sitting for the trial of an impeachment shall be administered by the Chief Justice of the United States as the presiding officer of the Senate sitting as aforesaid, to each member of the Senate, and that the Senate sitting as aforesaid will at the time aforesaid receive the managers appointed by the House of Representatives.

Ordered, That the Secretary lay this resolution before the House of Representatives.

Ordered, That the articles of impeachment exhibited against Andrew Johnson, President of the United States, be printed.

Ordered, That a copy of the "rules of procedure and practice in the Senate when sitting on the trial of impeachments' be communicated by the Secretary to the House of Representatives, and a copy thereof delivered by him to each member of the House.

Mr. POMEROY submitted the following order, which was read and considered:

Ordered, That the notice to the Chief Justice of the United States to meet the Senate in the trial of the case of impeachment, and requesting his attendance as presiding officer, be delivered to him by a committee of three senators to be appointed by the Chair, who shall wait upon the Chief Justice to the Senate chamber and conduct him to the chair.

The order was agreed to; and the President *pro tempore* appointed Messrs. Pomeroy, Wilson, and Buckalew the committee.

TUESDAY, *March* 10.

The Senate considered the order offered by the senator from Rhode Island, [Mr. Anthony,] in relation to admissions to the Senate gallery during the trial of the impeachment of Andrew Johnson, as it was reported by Mr. Howard, chairman of the select committee to which it had been referred. After discussion and amendment, the order was adopted, as follows:

Ordered, That during the trial of the impeachment now pending no persons besides those who have the privilege of the floor and clerks of the standing committees of the Senate shall be admitted to that portion of the Capitol set apart for the use of the Senate and its officers, except upon tickets issued by the sergeant-at-arms. The number of tickets shall not exceed one thousand. Tickets shall be numbered and dated, and be good only for the day on which they are dated.

Second. The portion of the gallery set apart for the diplomatic corps shall be exclusively appropriated to it, and forty tickets of admission thereto shall be issued to the Baron Gerolt for the foreign legations.

Third. Four tickets shall be issued to each senator; four tickets each to the Chief Justice of the United States and the Speaker of the House of Representatives; two tickets to each member of the House of Representatives; two tickets each to the associate justices of the Supreme Court of the United States; two tickets each to the chief justice and associate justices of the supreme court of the District of Columbia; two tickets to the chief justice and each judge of the Court of Claims; two tickets to each Cabinet officer; two tickets to the General commanding the army; twenty tickets to the private secretary of the President of the United States for the use of the President; and sixty tickets shall be issued by the President *pro tempore* of the Senate to the reporters of the press. The residue of the tickets to be issued shall be distributed among the members of the Senate in proportion to the representation of their respective States in the House of Representatives, and the seats now occupied by the senators shall be reserved for them.

THE TRIAL OF ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES,

FOR HIGH CRIMES AND MISDEMEANORS.

THE UNITED STATES *vs.* ANDREW JOHNSON, *President.*

THE CAPITOL, THURSDAY, *March* 5, 1868.

At 1 o'clock p. m. the Chief Justice of the United States entered the Senate chamber, accompanied by Mr. Justice Nelson, and escorted by Senators Pomeroy, Wilson, and Buckalew, the committee appointed for that purpose.

The Chief Justice took the chair and said: Senators, I attend the Senate in obedience to your notice, for the purpose of joining with you in forming a court of impeachment for the trial of the President of the United States, and I am now ready to take the oath.

The oath was administered by Mr. Justice Nelson, the Senior Associate Justice of the Supreme Court of the United States, to Chief Justice Chase in the following words:

I do solemnly swear that in all things appertaining to the trial of the impeachment of Andrew Johnson, President of the United States, I will do impartial justice according to the Constitution and the laws: so help me God.

[The senators rose when the Chief Justice entered the chamber, and remained standing till the conclusion of the administration of the oath to him.]

The CHIEF JUSTICE. Senators, the oath will now be administered to the senators as they will be called by the Secretary in succession. (To the Secretary.) Call the roll.

The Secretary proceeded to call the roll alphabetically, and the Chief Justice administered the oath to Senators Anthony, Bayard, Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Davis, Dixon, Drake, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, McCreery, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of Tennessee, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull and Van Winkle.

The Secretary then called the name of Mr. Wade, who rose from his seat in the Senate and advanced toward the chair. His right to to sit as a member of the court was questioned by Senator Hendricks and discussed, and a motion to adjourn was made and carried. A report of the debate will be found in the third volume.

The Chief Justice thereupon declared the court adjourned until 1 o'clock to-morrow, and vacated the chair.

FRIDAY, *March* 6, 1868.

At 1 o'clock the Chief Justice of the United States entered the Senate chamber, escorted by Mr. Pomeroy, the chairman of the committee appointed for that purpose, and took the chair.

The CHIEF JUSTICE. The Senate will come to order. The proceedings of yesterday will be read.

The Secretary read the "proceedings of the Senate sitting on the trial of the impeachment of Andrew Johnson, President of the United States, on Thursday, March 5, 1868," from the entries on the journal kept for that purpose by the Secretary.

The CHIEF JUSTICE. At its adjournment last evening, the Senate, sitting for the trial of impeachment, had under consideration the motion of the senator from Maryland, [Mr. Johnson,] that objection having been made to the senator from Ohio [Mr. Wade] taking the oath, his name should be passed until the remaining members have been sworn. That is the business now before the body.

After discussion, Senator Hendricks withdrew his objection, and the Chief Justice announced that the motion made by the honorable senator from Maryland fell with it.

The Secretary called the name of Mr. Wade, who advanced and took the oath.

The Secretary then continued the call of the roll, and the Chief Justice administered the oath to Senators Willey, Williams, Wilson, and Yates, as their names were respectively called.

The Secretary then called the names of Senators Doolittle, Edmunds, Patterson of New Hampshire, and Saulsbury, who were not present yesterday; and Mr. Saulsbury appeared, and the oath was administered to him by the Chief Justice.

The CHIEF JUSTICE. All the senators present having taken the oath required by the Constitution, the Senate is now organized for the purpose of proceeding to the trial of the impeachment of Andrew Johnson, President of the United States. The Sergeant-at-arms will make proclamation.

The SERGEANT-AT-ARMS. Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence on pain of imprisonment while the Senate of the United States is sitting for the trial of the articles of impeachment against Andrew Johnson, President of the United States.

Mr. HOWARD. I move that the Secretary of the Senate notify the managers on the part of the House of Representatives that the Senate is now organized for the purpose of proceeding to the trial of the impeachment of Andrew Johnson.

The CHIEF JUSTICE. Before putting that question the Chair feels it his duty to submit a question to the Senate relative to the rules of proceeding. In the judgment of the Chief Justice the Senate is now organized as a distinct body from the Senate sitting in its legislative capacity. It performs a distinct function; the members are under a different oath; and the presiding officer is not the President *pro tempore* of the Senate, but the Chief Justice of the United States. Under these circumstances, the Chair conceives that rules adopted by the Senate in its legislative capacity are not rules for the government of the Senate sitting for the trial of an impeachment, unless they be also adopted by that body. In this judgment of the Chair, if it be an erroneous one, he desires to be corrected by the judgment of the court, or of the Senate sitting for the trial of the impeachment of the President, which in his judgment are synonymous terms, and therefore, if he may be permitted to do so, he will take the sense of the Senate upon this question, whether the rules adopted on the 2d of March, a copy of which is now laying before him, shall be considered the rules of proceeding in this body. ("Question.") Senators, you who think that the rules of proceeding adopted on the 2d of March should be considered as the rules of proceeding of this body will say "ay;" contrary opinion, "no." [The senators having answered] The ayes have it by the sound. The rules will be considered as the rules of proceeding in this body.

Rules of procedure and practice in the Senate when sitting on the trial of impeachments.

I. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person, and are directed to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment agreeably to said notice.

II. When the managers of an impeachment shall be introduced at the bar of the Senate, and shall signify that they are ready to exhibit articles of impeachment against any person, the presiding officer of the Senate shall direct the Sergeant-at-arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against ——— ———;" after which the articles shall be exhibited, and then the presiding officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such presentation, or sooner if so ordered by the Senate, proceed to the consideration of such articles, and shall continue in session from day to day, (Sundays excepted) after the trial shall commence, (unless otherwise ordered by the Senate,) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the presiding officer shall administer the oath hereinafter provided to the members of the Senate then present, and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

IV. When the President of the United States, or the Vice President of the United States, upon whom the powers and duties of the office of President shall have devolved, shall be impeached, the Chief Justice of the Supreme Court of the United States shall preside; and in a case requiring the said Chief Justice to preside, notice shall be given to him by the presiding officer of the Senate of the time and place fixed for the consideration of the articles of impeachment, as aforesaid, with a request to attend; and the said Chief Justice shall preside over the Senate during the consideration of said articles, and upon the trial of the person impeached therein.

V. The presiding officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules, or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

VI. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of and disobedience to its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules and regulations, which it may deem essential or conducive to the ends of justice. And the Sergeant-at-arms, under the direction the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

VII. The presiding officer of the Senate shall direct all necessary preparations in the Senate chamber, and the presiding officer upon the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. The presiding officer may, in the first instance, submit to the Senate, without a division, all questions of evidence and incidental questions; but the same shall, on the demand of one-fifth of the members present, be decided by yeas and nays. [This rule was amended on the 31st of March.]

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the accused, reciting said articles and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writs shall be served by such officer or person as shall be named in the precept thereof such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person accused, or, if that cannot conveniently be done, by leaving such copy at the last known place of abode of such person or at his usual place of business, in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the accused to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed there-

for as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered judgment may be entered thereon without further proceedings.

IX. At twelve o'clock and thirty minutes afternoon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer in the form following, viz: "I, ——— ———, do solemnly swear that the return made by me upon the process issued on the —— day of ——, by the Senate of the United States, against ——— ———, is truly made, and that I have performed such service as therein described: so help me God." Which oath shall be entered at large on the records.

X. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appear, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing, and the capacity in which he appears. If he do not appear, either personally or by agent or attorney, the same shall be recorded.

XI. At twelve o'clock and thirty minutes afternoon of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of ——— ———, in the Senate chamber, which chamber is prepared with accommodations for the reception of the House of Representatives.

XII. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) twelve o'clock m.; and when the hour for such sitting shall arrive, the presiding officer of the Senate shall so announce; and thereupon the presiding officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

XIII. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

XIV. Counsel for the parties shall be admitted to appear and be heard upon an impeachment.

XV. All motions made by the parties or their counsel shall be addressed to the presiding officer, and if he, or any senator, shall require it, they shall be committed to writing, and read at the Secretary's table.

XVI. Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

XVII. If a senator is called as a witness he shall be sworn and give his testimony standing in his place.

XVIII. If a senator wishes a question to be put to a witness, or to offer a motion or order, (except a motion to adjourn,) it shall be reduced to writing, and put by the presiding officer.

XIX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions.

XX. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall, by order, extend the time.

XXI. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side, (unless otherwise ordered by the Senate, upon application for that purpose,) and the argument shall be opened and closed on the part of the House of Representatives.

XXII. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.

XXIII. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present.

XXIV. Witnesses shall be sworn in the following form, namely: "You, ——— ———, do swear (or affirm, as the case may be) that the evidence you shall give in the case now depending between the United States and ——— ——— shall be the truth, the whole truth, and nothing but the truth: so help you God." Which oath shall be administered by the Secretary or any other duly authorized person.

Form of subpœna to be issued on the application of the managers of the impeachment, or of the party impeached, or of his counsel:

To ——— ——— greeting:

You and each of you are hereby commanded to appear before the Senate of the United States, on the ——— day of ———, at the Senate chamber, in the city of Washington, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives have impeached ——— ———.

Fail not.

Witness ——— ———, and presiding officer of the Senate, at the city of Washington, this ——— day of ———, in the year of our Lord ———, and of the independence of the United States the ———.

Form of direction for the service of said subpœna:

The Senate of the United States to ——— ———, greeting:

You are hereby commanded to serve and return the within subpœna according to law.

Dated at Washington, this ——— day of ———, in the year of our Lord ———, and of the independence of the United States the ———.

———— ————,
Secretary of the Senate.

Form of oath to be administered to the members of the Senate sitting in the trial of impeachments:

I solemnly swear (or affirm, as the case may be,) that in all things appertaining to the trial of the impeachment of ——— ———, now pending, I will do impartial justice according to the Constitution and laws: so help me God.

Form of summons to be issued and served upon the person impeached:

THE UNITED STATES OF AMERICA, *ss:*

The Senate of the United States to ——— ———, greeting:

Whereas the House of Representatives of the United States of America did, on the ——— day of ———, exhibit to the Senate articles of impeachment against you, the said ——— ———, in the words following:

[Here insert the articles.]

And demand that you, the said ——— ———, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice:

You, the said ——— ———, are therefore hereby summoned to be and appear before the Senate of the United States of America, at their chamber, in the city of Washington, on the ——— day of ———, at twelve o'clock and thirty minutes afternoon, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness ——— ———, and presiding officer of the said Senate, at the city of Washington, this ——— day of ———, in the year of our Lord ———, and of the independence of the United States the ———.

Form of precept to be indorsed on said writ of summons:

THE UNITED STATES OF AMERICA, *ss:*

The Senate of the United States to ——— ———, greeting:

You are hereby commanded to deliver to and leave with ——— ———, if conveniently to be found, or, if not, to leave at his usual place of abode, or at his usual place of business, in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service let it be done at least ——— days before the appearance day mentioned in said writ of summons.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon indorsed, on or before the appearance day mentioned in the said writ of summons.

Witness —— ——, and presiding officer of the Senate, at the city of Washington, this —— day of ——, in the year of our Lord ——, and of the independence of the United States the ——.

All process shall be served by the Sergeant-at-arms of the Senate, unless otherwise ordered by the court.

XXV. If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

THE CHIEF JUSTICE. The senator from Michigan moves—will the senator have the goodness to repeat his motion?

Mr. HOWARD. My motion is that the Secretary of the Senate notify the managers of the House of Representatives that the Senate is now organized for the purpose of trying the impeachment against Andrew Johnson, and is ready to receive them. The clerk will be good enough to put it in form.

The Secretary read the order, as follows:

Ordered, That the Secretary of the Senate notify the House of Representatives that the Senate is now organized for the trial of the articles of impeachment against Andrew Johnson, President of the United States, and is ready to receive the managers of the impeachment at its bar.

The motion was agreed to.

After a pause, and at 13 minutes before 3 o'clock, the managers of the impeachment on the part of the House of Representatives (with the exception of Mr. Stevens) appeared at the bar, and their presence was announced by the Sergeant-at-arms.

The CHIEF JUSTICE. The managers of the impeachment on the part of the House of Representatives will please take the seats assigned to them.

The managers having been seated in the area in front of the Chair,

Mr. Manager BINGHAM rose and said: Mr. President, we are instructed by the House of Representatives, as its managers, to demand that the Senate take process against Andrew Johnson, President of the United States, that he may answer at the bar of the Senate upon the articles of impeachment heretofore preferred by the House of Representatives through its managers before the Senate.

Mr. HOWARD. I move for an order that a summons do issue to Andrew Johnson, President of the United States, in accordance with the rules which we have adopted—I refer particularly to the eighth rule—returnable on Friday, the 13th day of March instant, at 1 o'clock in the afternoon.

The CHIEF JUSTICE. The Secretary will read the order.

The Secretary read as follows:

Ordered, That a summons do issue, as required by the rules of procedure and practice in the Senate when sitting on the trial of impeachments, to Andrew Johnson, returnable on Friday, the 13th day of March instant, at 1 o'clock in the afternoon.

The order was adopted.

Mr. ANTHONY offered an amendment to the rules for the consideration of the court, which, after discussion, was laid on the table at his request.

Strike out the last clause of rule seven in the following words:

The presiding officer may, in the first instance, submit to the Senate without a division all questions of evidence and incidental questions; but the same shall, on the demand of one-fifth of the members present, be decided by yeas and nays.

And in lieu of those words to insert:

The presiding officer of the court may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the court, unless some member of the court shall ask that a formal vote be taken thereon, in which case it shall be submitted to the court for decision; or he may, at his option, in the first instance submit any such question to a vote of the members of the court.

Mr. HOWARD. I move that the Senate, sitting upon the trial of the impeachment, adjourn to the time at which the summons just ordered is returnable—Friday, the 13th instant, at 1 o'clock in the afternoon.

The CHIEF JUSTICE. The question is upon the motion to adjourn until Friday, the 13th instant, at 1 o'clock in the afternoon.

The motion was agreed to; and the Chief Justice thereupon declared the Senate sitting for the trial of the impeachment adjourned to the time named, and vacated the chair.

FRIDAY, *March* 13, 1868.

The Chief Justice entered the Senate chamber and took the chair.

The CHIEF JUSTICE, (to the Sergeant-at-arms.) Make proclamation.

The SERGEANT-AT-ARMS. Hear ye! hear ye! All persons are commanded to keep silence while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Andrew Johnson, President of the United States.

Mr. HOWARD. Mr. President, I move for the order, which is usual in such cases, notifying the House of Representatives that the Senate is thus organized.

The CHIEF JUSTICE. The journal of the last day's proceedings will first be read.

Mr. GRIMES. Mr. Chief Justice, there are several senators to be sworn.

The CHIEF JUSTICE. The first business is to read the journal of the last session of the court, and then the senators will be sworn.

The Secretary read the journal of the proceedings of the Senate sitting for the trial of impeachment of Andrew Johnson, President of the United States, on Friday, March 6, 1868.

Mr. CONKLING. I move that the reading of the articles of impeachment *in extenso*, which I understand are entered on the journal, be dispensed with. I understand that the other house is ready to be announced.

The CHIEF JUSTICE. That suggestion will be considered as agreed to if no objection be made.

The Secretary continued and concluded the reading of the journal.

Mr. HOWARD. If it be now in order, to save time I ask that the order which I sent to the Chair be passed by the Senate, informing the House of Representatives that the Senate is organized for the trial of the impeachment.

The CHIEF JUSTICE. The Secretary will read the order submitted by the senator from Michigan.

The Secretary read as follows:

Ordered, That the Secretary inform the House of Representatives that the Senate is in its chamber, and ready to proceed with the trial of Andrew Johnson, President of the United States, and that seats are provided for the accommodation of the members.

The order was agreed to.

The CHIEF JUSTICE. The Sergeant at-arms will introduce the managers.

The managers on the part of the House of Representatives appeared at the bar, were announced by the Sergeant-at-arms, and conducted to the position assigned them.

Managers.—Hon. John A. Bingham, of Ohio; George S. Boutwell, of Massachusetts; James F. Wilson, of Iowa; John A. Logan, of Illinois; Thomas Williams, of Pennsylvania; Benjamin F. Butler, of Massachusetts; Thaddeus Stevens, of Pennsylvania.

Mr. GRIMES. Mr. Chief Justice, there are several senators who have not yet been sworn as members of this court. I therefore move that the oath be administered to them.

The CHIEF JUSTICE. The Secretary will call the names of senators who have not yet been sworn.

The Secretary called the names of senators who were not previously sworn.

Messrs. Edmunds. Patterson of New Hampshire, and Vickers, severally, as their names were called, advanced to the desk, and the prescribed oath was administered to them by the Chief Justice.

The CHIEF JUSTICE. The Secretary of the Senate will read the return of the Sergeant-at-arms to the summons directed to be issued by the Senate.

The chief clerk read the following return appended to the writ of summons:

The foregoing writ of summons, addressed to Andrew Johnson, President of the United States, and the foregoing precept, addressed to me, were this day duly served on the said Andrew Johnson, President of the United States, by delivering to and leaving with him true and attested copies of the same at the Executive Mansion, the usual place of abode of the said Andrew Johnson, on Saturday, the 7th day of March instant, at seven o'clock in the afternoon of that day.

GEORGE T. BROWN,
Sergeant-at-arms of the United States Senate.

WASHINGTON, *March* 7, 1868.

The chief clerk administered to the Sergeant-at-arms the following oath:

I, George T. Brown, Sergeant-at-arms of the Senate of the United States, do swear that the return made and subscribed by me upon the process issued on the 7th day of March, A. D. 1868, by the Senate of the United States against Andrew Johnson, President of the United States, is truly made, and that I have performed said service therein prescribed: So help me God.

The CHIEF JUSTICE. The Sergeant-at-arms will call the accused.

The SERGEANT-AT-ARMS. Andrew Johnson, President of the United States; Andrew Johnson, President of the United States: appear and answer the articles of impeachment exhibited against you by the House of Representatives of the United States.

Mr. JOHNSON. I understand that the President has retained counsel, and that they are now in the President's room attached to this wing of the Capitol. They are not advised, I believe, of the court being organized. I move that the Sergeant-at-arms inform them of that fact.

The CHIEF JUSTICE. If there be no objection, the Sergeant-at-arms will so inform the counsel of the President.

The Sergeant-at-arms presently returned with Hon. Henry Stanbery, of Kentucky; Hon. Benjamin R. Curtis, of Massachusetts, and Hon. Thomas A. R. Nelson, of Tennessee, who were conducted to the seats assigned the counsel of the President.

Mr. CONKLING. To correct a clerical error in the rules, or a mistake of the types which has introduced a repugnance into the rules, I offer the following resolution, by direction of the committee which reported the rules:

Ordered, That the twenty-third rule, respecting proceedings on trial of impeachments, be amended by inserting after the word "debate" the words "subject, however, to the operation of rule seven."

If thus amended the rule will read:

All orders and decisions shall be made and had by yeas and nays, which shall be entered on the record and without debate, subject, however, to the operation of rule seven, except when the doors shall be closed, &c.

The whole object is to commit to the presiding officer the option to submit a question without the call of the yeas and nays unless they be demanded. That was the intention originally, but the qualifying words were dropped out in the print.

The CHIEF JUSTICE. The question is on amending the rules in the manner proposed by the senator from New York.

The amendment was agreed to.

The Sergeant-at-arms announced the members of the House of Representatives, who entered the Senate chamber preceded by the chairman of the Committee of the Whole House, (Mr. E. B. Washburne, of Illinois,) into which that body had resolved itself to witness the trial, who was accompanied by the Speaker and Clerk.

The CHIEF JUSTICE, (to the counsel for the President.) Gentlemen, the Senate is now sitting for the trial of articles of impeachment. The President of the United States appears by counsel. The court will now hear you.

Mr. STANBERY. Mr. Chief Justice, my brothers Curtis and Nelson and my-

self are here this morning as counsel for the President. I have his authority to enter his appearance, which, with your leave, I will proceed to read:

In the matter of the impeachment of Andrew Johnson, President of the United States.

Mr. CHIEF JUSTICE. I, Andrew Johnson, President of the United States, having been served with a summons to appear before this honorable court, sitting as a court of impeachment, to answer certain articles of impeachment found and presented against me by the honorable the House of Representatives of the United States, do hereby enter my appearance by my counsel, Henry Stanbery, Benjamin R. Curtis, Jeremiah S. Black, William M. Evarts, and Thomas A. R. Nelson, who have my warrant and authority therefor, and who are instructed by me to ask of this honorable court a reasonable time for the preparation of my answer to said articles.

After a careful examination of the articles of impeachment and consultation with my counsel, I am satisfied that at least forty days will be necessary for the preparation of my answer, and I respectfully ask that it be allowed.

ANDREW JOHNSON.

The CHIEF JUSTICE. The paper will be filed.

Mr. STANBERY. Mr. Chief Justice, I have also a professional statement in support of the application. Whether it is in order to offer it now, or to wait until the appearance is entered, your honor will decide.

The CHIEF JUSTICE. The appearance will be considered as entered. You may proceed.

Mr. STANBERY. I will read the statement.

In the matter of the impeachment of Andrew Johnson, President of the United States.

Henry Stanbery, Benjamin R. Curtis, Jeremiah S. Black, William M. Evarts, and Thomas A. R. Nelson, of counsel for the respondent, move the court for the allowance of forty days for the preparation of the answer to the articles of impeachment, and in support of the motion make the following professional statement:

The articles are eleven in number, involving many questions of law and fact. We have, during the limited time and opportunity afforded us, considered as far as possible the field of investigation which must be explored in the preparation of the answer, and the conclusion at which we have arrived is that with the utmost diligence the time we have asked is reasonable and necessary.

The precedents as to time for answer upon impeachments before the Senate, to which we have had opportunity to refer, are those of Judge Chase and Judge Peck.

In the case of Judge Chase time was allowed from the 3d of January until the 4th of February next succeeding to put in his answer, a period of thirty-two days; but in this case there were only eight articles, and Judge Chase had been for a year cognizant of most of the articles, and had been himself engaged in preparing to meet them.

In the case of Judge Peck there was but a single article. Judge Peck asked for time from the 10th to the 25th of May to put in his answer, and it was granted. It appears that Judge Peck had been long cognizant of the ground laid for his impeachment, and had been present before the committee of the House upon the examination of the witnesses, and had been permitted by the House of Representatives to present to that body an elaborate answer to the charges.

It is apparent that the President is fairly entitled to more time than was allowed in either of the foregoing cases. It is proper to add that the respondents in these cases were lawyers fully capable of preparing their own answers, and that no pressing official duties interfered with their attention to that business; whereas the President, not being a lawyer, must rely on his counsel. The

charges involve his acts, declarations, and intentions, as to all which his counsel must be fully advised upon consultation with him, step by step, in the preparation of his defence. It is seldom that a case requires such constant communication between client and counsel as this, and yet such communication can only be had at such intervals as are allowed to the President from the usual hours that must be devoted to his high official duties.

We further beg leave to suggest for the consideration of this honorable court, that as counsel, careful as well of their own reputation as of the interests of their client in a case of such magnitude as this, so out of the ordinary range of professional experience, where so much responsibility is felt, they submit to the candid consideration of the court that they have a right to ask for themselves such opportunity to discharge their duty as seems to them to be absolutely necessary.

HENRY STANBERY,
B. R. CURTIS,
JEREMIAH S. BLACK,
WILLIAM M. EVARTS,
THOMAS A. R. NELSON,
Per H. S.
Of Counsel for the Respondent.

MARCH 13, 1868.

Mr. Manager BINGHAM. Mr. President, I am instructed by my associate managers to suggest to the Senate that, under the eighth rule adopted by the Senate for the government of this proceeding, after the appearance of the accused at its bar, until that rule be set aside by the action of the Senate, a motion for continuance to answer is not allowed, the provision of the rule being that if he appear he shall answer; if he appear and fail to answer, the case shall proceed as upon the general issue; if he do not appear, the case shall proceed as upon the general issue. The managers appeared at the bar of the Senate impressed with the belief that the rule meant precisely what it says, and that in default of an appearance the trial would proceed as upon the plea of not guilty; if upon appearance no answer should be filed, in the language of the rule the trial should still proceed as upon the plea of not guilty.

Mr. CURTIS. Mr. Chief Justice, if the construction which the honorable managers have placed upon this rule be the correct one, the counsel of the President have been entirely misled by its phraseology. They have construed the rule in the light of other similar rules existing in courts of justice. For instance, in a court of equity over which your Honor in another place presides, parties are by a subpœna required to appear on a certain day and answer the bill, but certainly it was never understood that they were to answer the bill on the day of the appearance. So it is in a variety of other legal proceedings; parties are summoned to appear on a certain day, but the day when they are to plead is either fixed by some general rule of the tribunal, or there is to be a special order in the particular case. Here we find a rule by which the President is required to appear on this day and "answer" and "abide." Certainly that part of the rule which relates to abiding has reference to future proceedings and to the final result of the case. And so, as we have construed the rule, that part of it which relates to answering has reference to a future proceeding, which occurs in the ordinary course of justice, as I have stated, either under some general rule or by a special order of the court. We submit, therefore, as counsel for the President, that this interpretation of the rule which is placed upon it by the honorable managers is not the correct one.

Mr. Manager WILSON. Mr. President, I desire to say on behalf of the managers that we do not see how it were possible for the eighth rule adopted by the Senate to mislead the respondent or counsel. That rule provides that—

Upon the presentation of the articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the accused, reciting said articles,

and notifying him to appear before the Senate on a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon.

The rule further provides that—

If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor, as aforesaid, or appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed nevertheless as upon a plea of not guilty.

The learned counsel, in the professional statement submitted to the Senate, refer to the cases of Judge Chase and Judge Peck. I presume that in the examination of the records of those cases the attention of counsel was directed to the rules adopted by the Senate for the government of its action on the trial of those cases. By reference to the rules adopted by the Senate for the trial of the cases of Judge Chase and Judge Peck, we find that a very material change has been made by the Senate in the adoption of the present rules. The third rule in the case of the trial of Judge Chase prescribed the form of summons, and required that on the day to be fixed the respondent should appear, and "then and there answer." The same rule was adopted in the Peck case. But the present rule adds to the rule of those cases the words to which I have called the attention of the Senate, that he shall appear "and file his answer to said articles of impeachment," and that if, on appearing, he "shall fail to file his answer to such articles of impeachment, the trial shall proceed nevertheless as upon a plea of not guilty."

I submit, therefore, Mr. President, that the change which has been made in the rules for the government of this case must have been made for some good reason. What that reason may have been may be a subject of discussion in this case hereafter; but the change meets us upon the presentation of this motion; and we therefore ask, on the part of the House of Representatives, which we are here representing, that the rule adopted by the Senate for the government of this case may be enforced. It is for the Senate to say whether the rule shall stand as a rule to govern the case, or whether it shall be changed; but, standing as a rule at this time we ask for its enforcement.

Mr. STANBERY Mr. Chief Justice, the objection taken by the honorable managers is so singular that in the whole course of my practice I have not met with an example like it. A case like this, Mr. Chief Justice, in which the President of the United States is arraigned upon an impeachment presented by the House of Representatives, a case of the greatest magnitude we have ever had, is, as to time, to be treated as if it were a case before a police court, to be put through with railroad speed on the first day the criminal appears! Where do my learned friends find a precedent for calling on the trial upon this day? It is in the language of their summons. They say, "We have notified you to appear here and answer on a given day." We are here; we enter our appearance; but they ask, "Where is your answer?" As my learned brother [Mr. Curtis] has said, you have used precisely the language that is used in a subpœna in chancery; but who ever heard that when the defendant in a chancery bill enters his appearance he must come with his answer, ready to go on with the case, and enter upon the trial? We were summoned to appear and answer; we have entered our appearance and stated that we propose to answer; we do not wish this case to go by default; we want a reasonable time; nothing more.

Consider, if you please, that it is but a few days since the President has been served with this summons; that, as yet, all his counsel are not present. Your honor will observe, that of the five counsel who have signed this professional statement, two are not present and cannot be present to-day, and are not (at least, I am sure, one is not) in the city to-day. Not one of us, on looking at these rules, ever suspected that it was the intention to bring on the trial this day. And yet I understand the learned gentlemen who read these rules to so read them according to the letter that we must go on to-day. Now, let us see how it will do to read them all according to the letter. If the gentlemen are right,

if we are here to answer to-day, and to go into the trial to-day, then this is the day fixed for the trial by your rules. Let us see whether it is.

Rule nine provides :

At twelve o'clock and thirty minutes afternoon of the day appointed for the return of the summons against the person impeached.

This is the return day ; it is not the trial day. The letter answers the gentlemen. According to the letter of the eighth rule they say "this is the trial day ; go on ; not a moment's delay ; file your answer and proceed to trial ; or without your answer let a general plea of not guilty be entered, and proceed at once with the trial." The ninth rule says this is the return day, not the trial day. Then the tenth rule says :

The person impeached shall then be called to appear and answer the articles of impeachment against him.

That is the call made on the return day. The accused is called to appear and answer. He is here ; he appears ; he states his willingness to answer ; he only asks a reasonable time to prepare the answer. Then rule eleven speaks "of the day appointed for the trial." That is not this day. This day, the day which the gentlemen would make the first day of the trial, is, in your own rules, put down for the return day, and you must have some other day for the trial day to suit the convenience of the parties ; so that the letter of one rule answers the letter of another rule.

But, pray, Mr. Chief Justice, is it possible that under these circumstances we are to be caught in this trap of the letter? As yet there has not been time to prepare an answer to a single one of these articles. As yet the President has been engaged in procuring his counsel, and all the time occupied with so much consultation as was necessary to enable us to fix the shortest period which in our judgment is necessary for the due preparation of his answer.

Now, look back through the the whole line of impeachments, even to the worst times, and where there was the greatest haste ; go back to English precedents, and English fair play always gave fair time. This is the first instance to be found on record anywhere, in which, upon the appearance day, the defendant was required to put in his answer and immediately proceed to the trial. Why, sir, we have not a witness summoned ; we hardly know what witnesses to summon until the pleadings are prepared. We are entirely at sea.

I submit, Mr. Chief Justice, to the honorable court that are to try this case, whether we are to be put through with this railroad speed? "Strike, but hear." Give us the opportunity that even in common civil cases is allowed to the defendant, hardly ever less than thirty days for his pleading and answer ; more often sixty. Give us time ; give us a reasonable time ; and then, with a fair hearing, we shall be prepared for that sentence, whatever it may be, that you shall pronounce.

Mr. Manager BINGHAM. Mr. President, it——

The CHIEF JUSTICE. Before counsel proceed, the Chief Justice desires to state to the Senate that he is embarrassed in the construction of the rule. The twenty-first rule provides that "the case on each side shall be opened by one person." He understands that as referring to the case when the evidence is in and the cause is ready for argument. The twentieth rule provides that "all preliminary or interlocutory questions and all motions shall be argued for not exceeding one hour on each side, unless the Senate shall by order extend the time." Whether that is intended to apply to the whole argument upon each side or to the argument of each counsel who may address the court is the question which the Chief Justice is at a loss to solve. In the present case he has allowed the argument to proceed without attempting to restrict it, and, unless the Senate order otherwise, he will proceed in that course.

Mr. Manager BINGHAM. Mr. President, it was not my purpose when I raised he question, under the rule, to be decided by the Senate, to touch in any way

upon the merits of any application that might hereafter be made, after issue joined, for an extension of time for preparation for the trial. The only object I had in view, Mr. President, was to see whether the Senate was disposed to abide by its own rules, and, by raising the question, to remind senators of what they do know, that in this proceeding they are a rule and a law to themselves. Neither the common law nor the civil law furnishes any rule whatever for the conduct of this trial, save, it may be, the rule which governs in matters of evidence.

There is nothing more clearly settled in this country, and in that country whence we derive our laws generally, than the proposition which I have just stated; and hence the necessity that the Senate should prescribe rules for the conduct of the trial; and, having prescribed rules, my associate managers and myself deemed it important to inquire whether those rules, upon the threshold of the proceeding, were to be disregarded and set aside.

I may be pardoned for saying that I am greatly surprised at the hasty word which dropped from the lips of my learned and accomplished friend who has just taken his seat, [Mr. Stanbery,] when he failed to discriminate between the objection made here and an objection that may hereafter be made to a motion for the continuance of the trial. When the learned gentleman spoke of the trial day, he seemed to forget that the trial day never comes until issue joined. Why, Mr. President, there is nothing clearer, nothing better known, I think, to my learned friend than this, that the making up of the issue before any tribunal of justice and the trial are very distinct transactions—perfectly distinct.

A very remarkable case in the twelfth volume of State Trials lies before me, wherein Lord Holt presided, on the trial of Sir Richard Grahme, Viscount Preston, and others, charged with high treason. In that case the accused appeared, as the accused by the learned gentlemen appears this morning, after the indictment presented in the court, and before plea asked for continuance. The answer that fell from the lips of the Lord Chief Justice was, we are not to consider the question of trial or the time of trial until plea be pleaded. Let me give his very words:

L. C. J. HOLT. My lord, we debate the time of your trial too early; for you must put yourself upon your trial first by pleading.

And when Lord Preston presses him again on the point, Lord Chief Justice Holt responds:

My lord, we cannot dispute with you concerning your trial till you have pleaded. I know not what you will say to it; for aught I know there may be no occasion for a trial. I cannot tell what you will plead; your lordship must answer to the indictment before we can enter into the debate of this matter.—12 *State Trials*, 664.

The eighth rule of the Senate, last clause, provides that if the party appearing shall plead guilty there may be no further proceedings in the case, no trial about it; nothing remains to be done but to pronounce judgment under the Constitution. It is time enough for us to talk about a trial when we have an issue. The rule is a plain one, a simple one.

And I may be pardoned for saying that I fail to perceive anything in rules ten or eleven, to which the learned counsel have referred, that by any kind of construction can be supposed to limit the effect of the words in rule eight, to wit:

If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or appearing shall fail to file his answer, [on the day on which he is summoned to appear,] the trial shall proceed nevertheless as upon a plea of not guilty.

When words are plain in a written law there is an end to all construction; they must be followed. The managers so thought when they appeared at this bar. All they ask is the enforcement of the rule, not a postponement of forty days, and at the end of that time to be met with a dilatory plea—a motion, if you please, to quash the articles, or a question raising the inquiry whether this is the Senate of the United States.

It seems to me, if I may be pardoned for making one further remark, that in

prescribing by this rule that the summons, with a copy of the articles, should issue, to be returned on a day certain, giving, as in this case, six days in advance, it was intended thereby to require as well as to enable the party on the day fixed for his appearance, as the rule prescribes, to come to this bar prepared to make answer to the articles.

Permit me to say further—what is doubtless known to every one within the hearing of my voice—that technical rules do in nowise control or limit or fetter the action of this body; and under the plea of "not guilty," as provided in the rules, every conceivable defence that the party accused could make to the articles here preferred can be admitted. Why, then, this delay of forty days to draw up an answer of not guilty?

But what we desire to know on behalf of the House of Representatives, by whose order we appear here, is whether an answer is to be filed in accordance with the rule; and, if it be not filed, whether the rule itself is to be enforced by the Senate which made it, and a plea of not guilty be entered for the accused. That is our inquiry. It is not my purpose to enter into any discussion upon the question of postponing the day for the commencement of the trial. My desire is at present to see whether, under this rule, and by force of this rule, we can obtain an issue.

The CHIEF JUSTICE. Senators, the counsel for the President submit a motion that forty days be allowed for the preparation of his answer. The rule requires that this, as other questions, shall be taken without debate. You who are in favor of that motion will say "aye."

Mr. EDMUNDS. Upon that subject I submit the following order:

Ordered, That the respondent file his answer to the articles of impeachment on or before the 1st day of April next, and that the managers of the impeachment file their replication thereto within three days thereafter, and that the matter stand for trial on Monday, April 6, 1868.

Mr. MORTON. I move that the Senate retire to consult in regard to its determination.

Mr. Manager BINGHAM. I am instructed by the managers respectfully to ask that the Senate shall pass upon the motion to reject, under the eighth rule of this Senate until that rule be set aside, the application to defer the day of answer.

The CHIEF JUSTICE. The motion of the counsel for the President is the motion in order before the Chair. The Chair regards the motion submitted by the senator from Vermont [Mr. Edmunds] as an amendment; and the question is upon agreeing to the order submitted by him as an amendment to the motion of the President's counsel.

Mr. CONKLING. What becomes of the motion of the senator from Indiana?

Mr. SUMNER. What was the motion of the senator from Indiana?

Mr. MORTON. That the Senate retire to consult in regard to its determination.

Mr. SUMNER. That is the true motion.

The CHIEF JUSTICE. The question is on the motion of the senator from Indiana, that the court now retire for consultation.

The motion was agreed to; and at three minutes before two o'clock the senators, with the Chief Justice, repaired to the reception-room of the Senate for consultation.

At eight minutes past four o'clock the senators returned to the Senate chamber, and the Chief Justice resumed the chair.

The CHIEF JUSTICE. The Chief Justice is instructed to state to the counsel for the accused that the motion made by them is overruled, denied, and that the Senate has adopted an order, which will be read by the Secretary.

The Secretary read as follows:

Ordered, That the respondent file answer to the articles of impeachment on or before Monday, the 23d day of March instant.

Mr. Manager BINGHAM. Mr. President, I am instructed by the managers to

submit to the consideration of the Senate a motion which I send to the desk to be read.

The Secretary read as follows:

The managers ask the Senate respectfully to adopt the following order:

Ordered, That upon the filing of a replication by the managers on the part of the House of Representatives the trial of Andrew Johnson, President of the United States, upon the articles of impeachment exhibited by the House of Representatives, shall proceed forthwith.

The CHIEF JUSTICE put the question upon the order asked by the managers and declared that it appeared to be rejected.

Mr. SUMNER called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 25, nays 26; as follows:

YEAS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Drake, Ferry, Harlan, Howard, Morgan, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Stewart, Sumner, Thayer, Tipton, Williams, Wilson, and Yates—25.

NAYS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Norton, Patterson of Tennessee, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers, and Willey—26.

ABSENT—Messrs. Cragin, Doolittle, and Wade—3.

The CHIEF JUSTICE. The order asked by the managers is denied.

Mr. SHERMAN. Mr. Chief Justice, I submit the following motion:

Ordered, That the trial of the articles of impeachment shall proceed on the 6th day of April next.

Mr. WILSON. I move to amend that order by striking out "the 6th day of April" and inserting "the 1st day of April."

Mr. Manager BUTLER. I should like to inquire of the President and the Senate if the managers in behalf of the House of Representatives have a right to be heard upon that motion?

Mr. SUMNER. Unquestionably.

The CHIEF JUSTICE. The Chair is of the opinion that the managers have a right to be heard, and also the counsel for the accused.

Mr. Manager BUTLER. Mr. President and gentlemen of the Senate, however ungracious it may seem on the part of the managers acting for the House of Representatives, and thereby representing the people of the United States, to press an early trial of the accused, yet our duty to those who sent us here, representing their wishes, speaking in their presence and by their command, the state of the country, the interests of the people, all seem to require that we should urge the speediest possible trial.

Among the reasons why the trial should be put off which the learned gentlemen who appear for the accused have brought to the attention of the Senate, are precedents of delay in the trials of the earlier days of the republic; and we were told that "railroad speed" ought not to be used in this trial. Sir, why not? Railroads have affected every other business in the civilized world; telegraphs have brought places together that were thousands of miles apart. It takes less time to send to California and get a witness—it takes infinitely less time, if I may use so strong an expression, to send a message for him—from California now than it took to send for a witness from Philadelphia to Boston at the trial of Judge Chase. We must not shut our eyes to the fact that there are railroads and that there are telegraphs, as bearing upon this trial. They give the accused the privilege of calling his counsel together instantly, of getting answers from any witness that he may have instantly, of bringing him here in hours where it once, and not long ago, took months; and, therefore, I respectfully submit that it is not to be overlooked that railroads and telegraphs have changed the order of time. In every other business of life we recognize that change, and why should we not in this?

But, passing from that, which is but an incident and a detail of the trial, will you allow me further to suggest that the ordinary course of justice, the ordinary

delays in court, the ordinary time given in ordinary cases for men to answer when called before tribunals of justice, have no application to this case. The rules by which cases are heard and determined before the Supreme Court of the United States are not rules applicable to the case at bar; and for this reason, if for no other, when ordinary trials are had, when ordinary questions are examined at the bar of any court, there is no danger to the common weal in delay; the republic may take no detriment if the trial is postponed; to give the accused time injures nobody; to grant him indulgence hurts no one, and may help one, and perhaps an innocent man. But here the House of Representatives have presented at the bar of the Senate, in the most solemn form, the Chief Executive officer of the nation. They say (and they desire your judgment upon their accusation) that he has usurped power which does not belong to him; that he is, at this very time, breaking the laws solemnly enacted by you, the Senate, and those who present him here, the Congress of the United States, and that he still proposes so to do.

Sir, who is the criminal—I beg pardon for the word—the respondent at the bar? He is the Chief Executive of the nation; and when I have said that, I have taken out from all ordinary rules this trial, because I submit with deference that here and now, for the first time in the history of the world, has any nation brought its ruler to the bar of its highest tribunal in a constitutional method, under the rules and forms prescribed by its constitution; and therefore all the rules, all the analogies, all the likeness to a common and ordinary trial of any cause, civil or criminal, cease at once, are silent, and ought not to weigh in judgment. Other nations have tried and condemned their kings and rulers, but the process has always been in violence and subversion of their constitutions and framework of government, not in submission to and in accordance with it.

When I name the respondent as the Chief Executive, I thereby say he is the Commander-in-chief of your armies; he specially claims that command, not by force and under the limitations of your laws, but as a prerogative of his office, and subject to his arbitrary will. He controls, through his subordinates, your treasury. He commands your navy. Thus he has all the elements of power. He controls your foreign relations. In any hour of passion, of prejudice, of revenge for fancied wrong in his own mind, he may complicate your peace with any nation of the earth, even while he is being arraigned as a respondent at your bar. And mark me, sir, may I respectfully submit that the very question here at issue this day and this hour is, whether he shall control beyond the reach of your laws, and outside of your laws, the army of the United States. The one greatest of all questions here at issue is whether he shall be able, against law—setting aside your laws, setting aside the decrees of the Senate, setting aside the laws enacted by Congress, overriding the legislative power of the country, claiming it as an attribute of executive power only—to control the great military arm of this government, and control it if he chooses, at his own good pleasure, to your ruin and the ruin of the country.

Indeed, sir, do we not know, may we not upon this motion assume, the fact upon common fame and the current history of events that the whole business of the War Department of this country pauses until this trial goes through? He will not recognize, as we all know, the Secretary of War; him whom this body has declared the legal Secretary of War, and whom Congress, under its power legitimately exercised, has determined shall be recognized as the legal Secretary of War. Do we not also know, that while he claims to have appointed a Secretary *ad interim*, he dare not recognize him, and thus the entire business of the War Department is stopped? The Senate of the United States have confirmed the appointment of many a gallant officer of the army who, by law and by right, ought to have his duties and pay commence the day and the hour when his commission reaches him; yet those commissions have been delayed weeks, and the proposition on the respondent's part is that they shall be

delayed at least forty days longer—as long as it took God to destroy the world by a flood—and for what? In order that five very respectable, highly intelligent, very learned and able lawyers may write an answer to certain articles of impeachment. Having failed in that, now the proposition is to delay more and more, while there is at least one department of the government thrown into confusion and disorganization as we are thus delaying.

But, sir, this is the least of the mischiefs of delay. The great pulse of the nation beats perturbedly while even this strictly constitutional, but highly and truly anomalous proceeding goes on. It pauses fitfully when we pause, and goes forward when we go forward; and the very question of national prosperity in this country arising out of the desire of men to have business interests settled, to have prosperity return, to have the spring open as auspiciously under our laws as it will under the laws of nature, depend upon our actions here and now. I say the very pulse of the country beats here, and beating fitfully, requires us to still it by bringing this respondent to justice, and may God send him a good deliverance, if he so deserve, at the earliest possible hour; ay, the very earliest hour consistently with the preservation of his rights. Instead, therefore, of fixing a time now in advance when he shall be tried, (if you will allow me respectfully to say as much,) giving him time, which he may be supposed to want for preparation of his trial, fix the trial at an early day, and then, if his counsel choose to draw analogies from the trials under criminal law or the civil law, let him when he comes here, under his oath and under the certificate of his counsel, say that he cannot get ready to meet a given article, and if he shows due diligence, then give him all the time he ought to have to fairly put before you the exact form and feature of everything he has done.

But, I humbly submit, do not in advance presume that he cannot get ready until he comes and shows to the Senate some reason, upon his oath, why he may not be ready. Let every part of the case stand upon its own merits. If the respondent comes here and says to the Senate, after he puts in his answer, "I am not ready for trial because I cannot get a given witness," let him, as his counsel claims we ought to do, follow the ordinary rule and say to the Senate, "If I could get that witness he would testify thus, and thus, and thus;" and the managers would answer, "We will either produce him here at the bar when you call him, or we will admit that he would testify thus, and thus, and thus," and you shall have the entire benefit of the testimony; for God forbid—and I speak with all reverence—that we should deprive him of a single right or a single indulgence consistent with the public safety and speedy justice. Therefore, whenever any such motion is made, you, senators, I respectfully submit, will be ready, able, and willing, desirous to meet it, and grant indulgence when a case is made out for indulgence.

Allow me one other word. We ask no more of the Senate as against this defendant than what we are willing to deal to ourselves. The great, perhaps the determining act, upon which the respondent is here brought to your bar, was committed by him on the 21st of February. He knew it and all its consequences then as well and better than we could. The House of Representatives dealt with the action of the respondent on the 22d. On the 4th of March we brought before the Senate and to his notice what we claimed were the legal consequences of that act. We are now come here ready for trial of our accusation founded upon that act. We are here instant for trial, pressing for trial *de die in diem*. Make the days as long as the judges of England made them, when they sat twenty-two hours out of the twenty-four in the trial of great criminals, and we, the managers on behalf of the House of Representatives, God giving us strength, will still attend here at your bar every hour and every moment, your humble servitors, for the purpose of justice. We have had only from the 22d of February to now to make ready for the trial of the accusation. He has had just as long. He knew at first more about this action of his than we could. He

knows all about it now. He knows exactly what he has done, and why and how he has done it. We can only partly guess at all he has done from the part we see; yet we are willing to go to trial on behalf of the people of the United States, say with only these fourteen days' preparation. You have granted him seven more, say twenty-one in all, and we ask, after you have given him one-third more time than we have had to prosecute, at least that he shall be held to meet us with the defence.

Sir, I trust you will pardon me a single further suggestion. I hope hereafter no man anywhere will say that the charges upon which we have arraigned Andrew Johnson at this bar are either frivolous, unsubstantial, or of none effect, because five gentlemen of the highest respectability, skill, and legal acumen, as counsel—I know one of them would not for his life say what he did not believe—have told us that the articles of impeachment were so grave and so substantial that it would take them forty days even to write an answer to them. The charges are so grave, so momentous, so potent, that, with all their legal ability, forty days will be required to write an answer; and then, after they have had forty days in addition to ten already, giving them fifty days, they say they would need still further time for preparation to meet us on the trial of these charges.

I may only humbly hope that I have made myself understood in this unprepared and hurried statement of some reasons which press on my associates and myself to urge forward this trial. You will see their force and the arguments which should accompany them much better than I can state them. If I have brought your minds—perhaps a little swerved by pity and clemency for so great an accused—again to their true poise of judgment upon the question of the necessity for this country that justice shall speedily be done upon the accused, I have succeeded in all I could hope. If we are mistaken in all our accusations, and the respondent is the great and good man he ought to be, and he shall go free, be it so; the country will have quiet then. If you come to the other determination which we present, and demand you shall do if it be proved, then be that so, and the country will have quiet. But upon this so great trial, I pray let us not belittle ourselves with the analogies of the common-law courts, or the equity courts, or the criminal courts, because nothing is so dangerous to mislead us. Let us deal with this matter as one wherein the life of the nation hangs trembling in the scale; where the rights of the nation are put in the balance, and a trial is to be had upon the greatest question that ever yet engaged the attention of any body, however learned or however wise, sitting in judgment.

Mr. NELSON. Mr. Chief Justice, and gentlemen of the Senate: I have entered this chamber as one of the counsel of the President, profoundly impressed with the idea that this is the most exalted judicial tribunal now upon earth. I have endeavored, in coming here, to divest my mind of the idea that we are to engage in political discussion, and to feel impressed with the thought that we appear before a tribunal, the members of which are sworn as judges, to try the great questions which have been submitted to their consideration, not as mere party questions, but as the grand tribunal of the nation, disposed to dispense justice equally between two of the greatest powers, if I may so express myself, in the land. I have come here under the impression that there is much force in the observation which the honorable manager made in regard to the forms of proceeding in this tribunal, that it is not to be governed by the iron and rigid rules of law, but that, seeking to attain justice, it is disposed to allow the largest liberty in the progress of the investigation, both to the honorable managers on the part of the House of Representatives, and to the counsel in behalf of the President of the United States.

Impressed with the idea that this tribunal will discard in a great degree those forms and ceremonies which are known to the common law; that it does not stand upon demurrers; that it will not stand particularly upon the forms of evi-

dence, or those technical rules which prevail in other courts, I have supposed that there was nothing improper in our making an appeal to this tribunal for time to answer the charges which have been preferred against the President of the United States; and that, instead of that being denied, much more liberality would be extended by the Senate of the nation, sitting as a court of impeachment, than we could even expect upon a trial in one of the courts of common law.

It is not my purpose, Mr. Chief Justice, to enter at this stage into a discussion of the charges which are preferred here, though it would seem to be invited by one or two of the observations which were made by the honorable manager, [Mr. BUTLER.] I do not propose at this stage of your proceedings to enter into any discussion of them. You are told, however, that it is right in a case of this kind to proceed with railroad speed; and that, in consequence of the great improvements which have been made in the country, we can proceed much more rapidly in the investigation of a case of this kind than such a case could be proceeded with a few years ago. Nevertheless, the charges which are made here are charges of the gravest importance. The questions which will have to be considered by this honorable body are questions of the deepest and profoundest interest. They are questions in which not only the representatives of the people are concerned, but the people themselves have the deepest and most lasting interest in the result of this investigation. Questions are raised here in regard to differences of opinion between the Executive of the nation and the honorable House of Representatives as to their constitutional powers, and as to the rights which they respectively claim. These are questions of the utmost gravity, and questions which, in the view we entertain of them, should receive the most deliberate consideration on the part of the Senate.

I trust that I shall be pardoned by the Chief Justice and the senators in making an allusion to a statute which has long been in force in the State from which I come. I only do it for the purpose of making a brief argument by analogy to you and the honorable body whom I am addressing. We have a statute in the State of Tennessee, which has long been in force, which provides that when a bill of indictment is found against an individual, and he thinks, owing to excitement or any other cause, he may not have a fair trial at the first term of the court, his case shall be continued until the next term. The mode of proceeding at law—and no man, I presume, in the United States is more familiar with it than the Chief Justice whom I have the honor of addressing on this occasion—is not a mode of railroad speed. If there is anything under the heavens that gives to judicial proceedings a claim to the consideration and the approbation of mankind, it is the fact that judges and courts hasten slowly in the investigation of cases that are presented to them. Nothing is done or presumed to be done in a state of excitement. Every moment is allowed for calm and mature deliberation. The courts are in the habit of investigating cases slowly, carefully, cautiously; and when they form their judgments and pronounce their opinions, and those opinions are published to the world, they meet the sanction of judicial minds and legal minds everywhere, and they meet the approbation and the confidence of the people before whom they are promulgated. If this is and ever has been one of the proudest characteristics, if I may so express myself, of the forms of judicial proceedings in our courts, how much more in an exalted and honorable body like this; how much more in an assembly composed of some of the wisest and greatest men in the United States, senators revered and honored by their countrymen, senators who from their position are presumed to be free from reproach, who from their position are presumed to be calm in their deliberations and in their investigations—how much more in such a body as this ought we to proceed cautiously, and ought every opportunity to be given for a fair investigation.

Mr. Chief Justice, I need not tell you, nor need I tell many of the honorable

senators whom I address on this occasion, many of whom are lawyers, many of whom have been clothed in times past with the judicial ermine, that in the courts of law the vilest criminal who ever was arraigned in the United States has been given time for preparation, time for hearing. The Constitution of the country secures to the vilest man in the land the right not only to be heard himself, but to be heard by counsel; and no matter how great his crime, no matter how deep may be the malignity of the offence with which he is charged, he is tried according to the forms of law; he is allowed to have counsel; continuances are granted to him; if he is unable to obtain justice, time is given to him, and all manner of preparation is allowed to him.

If this is so in courts of common law, that are fettered and bound by the iron rules to which I have adverted, how much more in a great tribunal like this, that does not follow the precedents of law, but that is aiming and seeking alone to attain justice, ought we to be allowed ample time for preparation in reference to charges of the nature which we have here! How much more, sir, should such time be given us!

We are told that the President acted in regard to one of the matters which is charged against him by the House of Representatives on the 21st of February, and that by the 4th of March—if I did not mistake the statement of the honorable manager—the House of Representatives had presented this accusation against the President of the United States; and that, therefore, the President, who knew what he was doing, should be prepared for his defence. Mr. Chief Justice, is it necessary for me to remind you and honorable senators that you can upon a page of foolscap prepare a bill of indictment against an individual which may require weeks in the investigation? Is it necessary for me to remind this honorable body that it is an easy thing to make charges, but that it is often a laborious and difficult thing to make a defence against those accusations?

Reasoning from the analogy furnished by such proceedings at law, I earnestly maintain before this honorable body that suitable time should be given us to answer the charges which are made here. A large number of these charges—those of them connected with the President's action in reference to the Secretary of War—involve questions of the deepest importance. They involve an inquiry running back to the very foundation of the government; they involve an examination of the precedents which have been set by different administrations; they involve, in short, the most extensive range of inquiry. The two last charges that were presented by the House of Representatives, if I may be pardoned for using the expression in the view which I entertain of them, open Pandora's box, and will cause an investigation as to the great differences of opinion which have existed between the President and the House of Representatives, an inquiry which, so far as I can perceive, will be almost interminable in its character.

Now, what do we ask for the President of the United States? The honorable manager corrected himself in the expression that he was a criminal. What do we ask in behalf of the President of the United States, the highest officer in this land? Why, sir, we ask simply that he shall be allowed time for his defence. And upon whose judgment is he to rely in regard to that? He must, in great part, rely upon the judgment of his counsel, those to whom he has intrusted his defence. We, upon our professional responsibility, have asserted, in the presence of this Senate, in the face of the nation and of the whole world, that we believe it will require the number of days to prepare the President's answer which we stated to the Senate in the paper which we submitted to the Senate. Such is still our opinion. And when these grave charges are presented are they to be rushed through the Senate, sitting as a judicial tribunal, in hot haste and with railroad speed, without giving to the President of the United States the opportunity to answer them; that same opportunity which you would give to the meanest criminal that ever was arraigned before the bar of

justice in any tribunal in this or in the country from which we borrowed our law?

I cannot believe, Mr. Chief Justice, that honorable senators will hesitate for one moment in granting us all the time that may be necessary to prepare our defence, and that may be necessary to enable them to decide as judges carefully, deliberately, conscientiously, and with a view of their accountability, not only to their constituents, but their accountability to posterity who are to come after us, for the names of American senators are dear not only to those who sent them here, but they are names which are to live after the scenes of to-day shall have passed away. I have no doubt that honorable senators, in justice to themselves and in justice to the great land which they represent, will endeavor to conduct this investigation in a manner that will stamp the impress of honor and justice upon them and upon their proceedings, not only now, but in all time to come, when they shall be cited after you, and I, and all of us, shall have passed away from the stage of human action.

Mr. Chief Justice, this is an exalted tribunal. I say it in no spirit of compliment. I say it because I feel it. I feel that this is the most exalted tribunal that can be convened under the sun, a tribunal of senators, honorable members, who are sent here to sit in judgment upon one of the gravest and greatest accusations that ever was made in the land. And I may say, in answer to an observation of the honorable manager on the other side, that I, for one, as an American citizen, feel proud that we are assembled here to-day, and assembled under the circumstances which have brought us together. It is one of the first instances in the history of the world in which the ruler of a people has been presented by a portion of the representatives of the people for trial before another branch of the law-making power sitting as a judicial tribunal. While that is so, it is equally true that on the other hand the President, through his counsel, comes here and submits himself to the jurisdiction of this court, submits himself calmly, peaceably, and with a confident reliance on the justice of the honorable Senate who are to hear his cause.

Mr. Chief Justice, I sincerely hope that the resolution which has been offered will meet the approbation of the honorable Senate. I hope that time will be given us, and that this proceeding, which in all time to come will be quoted as a precedent for others, will be conducted with that gravity, that dignity, that decorum which are fit and becoming in the representatives of a free and a great people.

Mr. CONKLING. I wish to submit an amendment to the proposition pending in the nature of a substitute:

Ordered, That, unless otherwise ordered by the Senate for cause shown, the trial of the pending impeachment shall proceed immediately after replication shall be filed.

The CHIEF JUSTICE. The amendment submitted by the senator from New York does not appear to the Chair to be in order at present. The motion of the senator from Ohio [Mr. Sherman] is that the Senate adopt the following order:

Ordered, That the trial of the articles of impeachment shall proceed on the 6th day of April next.

The senator from Massachusetts [Mr. Wilson] moves to amend it by striking out the word "sixth" and inserting "first." That is the present motion.

Mr. WILSON. I propose to modify my amendment by saying Monday, the 30th of March.

Mr. CONKLING. Does the Chair decide that my proposition is not in order?

The CHIEF JUSTICE. The Chair does not conceive it to be in order at present.

Mr. CONKLING. Then I beg to modify in this way: I move to amend the amendment of the senator from Massachusetts by striking out the date which he inserts, whatever that date may be, and inserting in lieu thereof the words, "immediately after replication filed, unless otherwise ordered by the Senate."

The CHIEF JUSTICE. The Chair conceives that the amendment offered by the senator from New York is not in order.

Mr. WILSON. For the purpose of bringing the motion made by the senator from New York before the body, I withdraw my amendment, so that his amendment will be in order.

Mr. CONKLING. Then I offer my original proposition as a substitute for the proposition of the senator from Ohio.

The CHIEF JUSTICE. The amendment of the senator from New York will be read.

The CHIEF CLERK. The amendment is to strike out all after the word "ordered," in the proposition of Mr. Sherman, and to insert in lieu thereof:

That, unless otherwise ordered by the Senate for cause shown, the trial of the pending impeachment shall proceed immediately after replication shall be filed.

Mr. Manager BINGHAM. Mr. President, I am instructed by the managers to say that the proposition just suggested by the honorable senator from New York [Mr. Conkling] is entirely satisfactory to the managers for the House, and to say further to the Senate that we believe it is in perfect accord with the precedents in this country. The Senate will doubtless remember that on the trial of Justice Chase, when a day was fixed for an answer, upon his own petition, verified by his affidavit, the Senate adopted an order which was substantially the order as suggested by the amendment of the honorable gentleman from New York. I beg leave to read that order in the hearing of the Senate:

Ordered, That the 4th day of February next shall be the day for receiving the answer and proceeding with the trial of the impeachment against Samuel Chase.

If nothing further had been said touching the original proposition we would have been content and satisfied to leave this question without further remark to the decision of the Senate; but in view of what has been said by the counsel for the accused we beg leave to respond that we are chargeable with no indecent haste when we ask that no unnecessary delay shall interpose between the people and the trial of a man who is charged with having violated the greatest trusts ever committed to a single person; trusts that involve the highest interests of the whole people; trusts that involve the peace of the whole country; trusts that involve in some sense the success of this last great experiment of representative government upon the earth.

We may be pardoned, further, sir, for saying that it strikes us somewhat with surprise, without intending the slightest possible disrespect to any member of this body, that any proposition should be entertained for the continuance of a trial like this, when no formal application has been made by the accused himself. To be sure, a motion was interposed here to-day in the face of the written rule, order, and law of this body, for leave to file an answer at the end of forty days. The Senate has disposed of that motion, and in a manner, we venture to say, satisfactory to the whole country, as it is certainly satisfactory to the representatives of the people at this bar. Now, sir, that being disposed of, the Senate having determined the day on which answer shall be filed, we submit, with all respect to the Senate, that it is but just to the people of this country that we shall await the incoming of the answer and the replication thereto by the representatives of the people, and then see and know what colorable excuse can be offered, either by the accused President in his own person or through his representatives, why this trial should be delayed a single hour.

If he be innocent of the grave accusations prepared against him, the truth will soon be ascertained by this enlightened body; and he has the right, if the fact so appear, to a speedy deliverance, and the country a right to a speedy determination of this important question. If, on the other hand, he be guilty of these grave and serious charges, what man is there within this body or outside of this body ready to say that he should one day or hour longer disgrace the

high position which has been held hitherto by some of the noblest and most illustrious of the land?

We think that the executive power of this nation can only be reposed in the hands of men who are faithful to their great trust. The people so think. They have made that issue with the President of the United States at this bar; and while we demand that there shall be no indecent haste, we, too, demand in the name of all the people, most respectfully, that there shall be no unnecessary delay, and no delay at all until good cause is shown for delay in the mode and manner hitherto observed in proceedings of this sort.

Mr. JOHNSON. Mr. President, I ask that the resolution offered by the honorable member from Ohio shall be read. I did not hear it distinctly.

The CHIEF JUSTICE. It will be reported.

The CHIEF CLERK. The order as submitted by Mr. Sherman is as follows:

Ordered, That the trial of the articles of impeachment shall proceed on the 6th day of April next.

The senator from New York [Mr. Conkling] moves to amend by striking out all after the word "ordered," and inserting:

That, unless otherwise ordered by the Senate for cause shown, the trial of the pending impeachment shall proceed immediately after replication shall be filed.

Mr. JOHNSON. Mr. President, I rise for information. Is there any period within which the replication is to be filed? There is nothing on the face of that order limiting the time within which the replication may be filed. If the managers propose to make that a part of the order to file the replication on the day the answer may come in, or on any specific day after the coming in of the answer, it would not, perhaps, be liable to objection; but the accused may well be in ignorance of the time when the trial will begin under the order as it stands.

Mr. Manager BINGHAM. Will the honorable senator allow me to suggest to him that we can only file the replication with the consent and after consultation with the House of Representatives; and therefore the answer to his suggestion is that as soon as answer be made here according to the usage and practice in cases of this sort we will respectfully demand a copy of the answer that we may lay it before the House and report to this body as soon as the House will order us its replication. I have no doubt it will be done within one or two days after the answer is filed.

Mr. JOHNSON. What I meant——

Mr. CONKLING. I rise to a question of order. Reluctant as I am to make it, I ask for the enforcement of the eighteenth and twenty-third rules.

The CHIEF JUSTICE. No debate can be had. The Chair understood the senator from Maryland as simply asking for an explanation from the managers.

Mr. JOHNSON. What is the rule, Mr. President?

The CHIEF JUSTICE. The Secretary will read the rule.

Mr. JOHNSON. The honorable member from New York is mistaken in supposing that I rose to debate the question. I only rose for the purpose of inquiring what the question was. I suppose that is allowable.

The CHIEF JUSTICE. Is the Senate ready for the question on the substitute proposed by the senator from New York?

Mr. DRAKE. On that question I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 40, nays 10; as follows:

YEAS—Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Henderson, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Willey, Williams, Wilson, and Yates—40.

NAYS—Messrs. Bayard, Buckalew, Davis, Dixon, Hendricks, Johnson, McCreery, Patterson of Tennessee, Saulsbury, and Vickers—10.

ABSENT—Messrs. Cragin, Doolittle, Norton, and Wade—4.

So the amendment was agreed to.

The CHIEF JUSTICE. The question recurs on the order as amended. The clerk will report the order.

The chief clerk read it, as follows:

Ordered, That, unless otherwise ordered by the Senate for cause shown, the trial of the pending impeachment shall proceed immediately after replication shall be filed.

The order was agreed to.

Mr. HOWARD. If there be no motion for the court on behalf of the honorable managers of the House of Representatives, or on the part of the counsel for the accused, I move that the Senate sitting on the present impeachment adjourn to the 23d day of the present month, at one o'clock in the afternoon. I send an order to the Chair for that purpose. My motion is made subject to any action the managers may see fit to lay before us, or the counsel for the accused. I will not press it if they have anything to propose.

The CHIEF JUSTICE. Have the managers on the part of the House of Representatives anything to propose?

Mr. Manager BINGHAM. Nothing further at present.

The CHIEF JUSTICE. Have the counsel for the accused anything to propose?

Mr. CURTIS. Nothing.

The CHIEF JUSTICE. Senators, the motion is to adjourn the Senate sitting for the trial of this impeachment until the 23d of March.

The motion was agreed to.

The Chief Justice thereupon vacated the chair.

MONDAY, *March* 23, 1868.

At 1 o'clock p. m. the Chief Justice of the United States entered the Senate chamber, escorted by Mr. Pomeroy, the chairman of the Senate committee heretofore appointed for that purpose, and took the chair.

The CHIEF JUSTICE. The Sergeant-at-arms will open the court by proclamation.

The SERGEANT-AT-ARMS. Hear ye, hear ye, hear ye: all persons are commanded to keep silence while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Andrew Johnson, President of the United States.

The managers of the impeachment on the part of the House of Representatives appeared at the door, and their presence was announced by the Sergeant-at-arms.

The CHIEF JUSTICE. The managers will take the seats assigned to them by the Senate.

The managers accordingly took the seats provided for them in the area of the Senate to the left of the presiding officer.

The counsel for the President, Hon. Henry Stanbery, of Kentucky; Hon. B. R. Curtis, of Massachusetts; Hon. Thomas A. R. Nelson, of Tennessee; William M. Evarts, esq., of New York, and Hon. William S. Groesbeck, of Ohio, appeared and took the seats assigned to them on the right of the Chair.

The Sergeant-at-arms announced the presence of the House of Representatives; and the Committee of the Whole House, headed by Mr. E. B. Washburne, of Illinois, the chairman of the Committee of the Whole, and the Clerk of the House, entered the chamber, and the members were conducted to the seats assigned them.

The Secretary called the name of Mr. Doolittle, who had not heretofore been sworn, and the oath prescribed by the rules was administered to him by the Chief Justice.

The CHIEF JUSTICE. The Secretary will read the minutes of the proceedings of the last sitting.

The Secretary read the journal of the proceedings of Friday, March 13, of the Senate sitting for the trial of the impeachment of Andrew Johnson, President of the United States, on articles of impeachment.

On the journal of those proceedings occur the following entries as to the proceedings of the Senate on that occasion, when it had retired for deliberation:

The Senate, with the Chief Justice, having retired to their conference chamber, proceeded to consider the motion presented by Mr. Edmunds; and,

After debate,

On motion by Mr. Drake to amend the motion submitted by Mr. Edmunds, by striking out all after the word "ordered," and in lieu thereof inserting:

That the respondent file answer to the articles of impeachment on or before Friday, the 20th day of March, instant,

It was determined in the affirmative—yeas 28, nays 20.

On motion by Mr. Drake,

The yeas and nays being desired by one-fifth of the senators present,

Those who voted in the affirmative are—

Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Drake, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Thayer, Trumbull, Willey, Williams, Wilson, and Yates.

Those who voted in the negative are—

Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Norton, Patterson of Tennessee, Saulsbury, Van Winkle, and Vickers.

So the amendment of Mr. Drake to the motion of Mr. Edmunds was agreed to.

On the question to agree to the motion of Mr. Edmunds, as amended,

After debate,

On motion of Mr. Trumbull, that the Senate reconsider its vote agreeing to the amendment proposed by Mr. Drake to the motion of Mr. Edmunds,

It was determined in the affirmative—yeas 27, nays 23.

On motion of Mr. Drake,

The yeas and nays being desired by one-fifth of the senators present,

Those who voted in the affirmative are—

Messrs. Anthony, Bayard, Buckalew, Cattell, Corbett, Davis, Dixon, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Morton, Norton, Patterson of Tennessee, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers, and Willey.

Those who voted in the negative are—

Messrs. Cameron, Chandler, Cole, Conkling, Conness, Drake, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Maine, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Sumner, Thayer, Tipton, Williams, Wilson, and Yates.

So the Senate reconsidered its vote agreeing to the amendment of Mr. Drake to the motion of Mr. Edmunds; and,

The question recurring on the amendment of Mr. Drake,

On motion of Mr. Trumbull to amend the amendment of Mr. Drake, by striking out the words "Friday, the 20th," and inserting the words "Monday, the 23d,"

It was determined in the affirmative; and,

On the question to agree to the amendment, as amended on the motion of Mr. Trumbull,

It was determined in the affirmative.

The question again recurring on the motion of Mr. Edmunds, as amended on the motion of Mr. Drake, as amended by Mr. Trumbull in the following words:

"*Ordered*, That the respondent file answer to the articles of impeachment on or before Monday, the 23d day of March instant,"

It was determined in the affirmative.

Thereupon,

The Senate returned to its chamber.

Mr. DAVIS. Mr. Chief Justice, I rise to make the same question to the Court which I made in the Senate, and I think that now is the appropriate time, before the Court has decided to take up the case. I therefore submit to the Court a motion in writing.

The CHIEF JUSTICE. The Secretary will read the motion

The Secretary read as follows.

Mr. DAVIS, a member of the Senate and of the Court of Impeachment, from the State of Kentucky, moves the Court to make this order:

The Constitution having vested the Senate with the sole power to try the articles of impeachment of the President of the United States preferred by the House of Representatives, and having also declared that "the Senate of the United States shall be composed of two senators from each State chosen by the legislatures thereof," and the States of Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Arkansas, Louisiana, and Texas having, each by its legislature, chosen two senators who have been and continue to be excluded by the Senate from their seats respectively, without any judgment by the Senate against them personally and individually on the points of their elections, returns, and qualifications, it is

Ordered, That a Court of Impeachment for the trial of the President cannot be legally and constitutionally formed while the senators from the States aforesaid are thus excluded from the Senate; and this case is continued until the senators from those States are permitted to take their seats in the Senate, subject to all constitutional exceptions to their elections, returns, and qualifications severally.

Mr. HOWARD. Mr. President——

The CHIEF JUSTICE. The rule does not admit of debate.

Mr. HOWARD. Mr. President, I object to the receiving of the paper as not in order.

Mr. CONNESS. Mr. President, I desire to submit a motion, which will cover the case, perhaps. I move that the paper be not received, upon which I call for the yeas and nays.

Mr. HOWE. Mr. President, I rise to submit a question of order.

The CHIEF JUSTICE. The senator from Wisconsin.

Mr. HOWE. I submit if the motion offered by the senator from Kentucky be in order.

The CHIEF JUSTICE. The motion comes before the Senate in the shape of an order submitted by a member of the Senate and of the Court of Impeachment. The twenty-third rule requires that "all the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of rule seven." The seventh rule requires the presiding officer of the Senate to "submit to the Senate, without a division, all questions of evidence and incidental questions; but the same shall, on the demand of one-fifth of the members present, be decided by yeas and nays." This rule applies to every order submitted by a member of the Senate under the twenty-third rule. The Chair rules that the order is in order.

Mr. CONNESS. Mr. President——

The CHIEF JUSTICE. No debate is allowed.

Mr. CONNESS. Is the motion submitted by me in order in connection with it?

The CHIEF JUSTICE. No, sir.

Several SENATORS. Let us have a square vote.

Other SENATORS. Let us have the yeas and nays on the order proposed.

The yeas and nays were ordered; and being taken, resulted—yeas 2, nays 49; as follows:

YEAS—Messrs. Davis and McCreery—2.

NAYS—Messrs. Anthony, Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Dixon, Doolittle, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Vickers, Willey, Williams, Wilson, and Yates—49.

ABSENT—Messrs. Bayard, Saulsbury, and Wade—3.

The CHIEF JUSTICE. On the motion to adopt the order of the senator from Kentucky, the yeas are 2 and the nays 49. The motion is lost.

Are the counsel for the President ready to file their answer?

Mr. STANBERY. Mr. Chief Justice, in obedience to the order of the honorable court, made at the last session, that the answer of the President should be filed to-day, we have it ready. The counsel, abandoning all other engagements,

some of us quitting our courts, our cases, and our clients, have devoted every hour to the performance of this duty. The labor has been incessant and exhaustive. We have devoted, as I say, not only every hour ordinarily devoted to labor, but many required for necessary rest and recreation have been consumed in this work. It is a matter, Mr. Chief Justice, of profound regret to us that the honorable court did not allow us more time. Nevertheless we hope that the answer will be found in all respects sufficient within the law. Such as it is, we are now ready to read and file it.

The CHIEF JUSTICE. The counsel will read the answer of the President.

Mr. CURTS proceeded to read the answer to the close of that portion relative to the first article of impeachment.

Mr. STANBERY read that portion of the answer beginning with the reply to the second article to the close of the response to the ninth article.

Mr. EVARTS read the residue of the answer.

The answer is as follows:

Senate of the United States, sitting as a Court of Impeachment for the trial of Andrew Johnson, President of the United States.

The answer of the said Andrew Johnson, President of the United States, to the articles of impeachment exhibited against him by the House of Representatives of the United States.

ANSWER TO ARTICLE I.

For answer to the first article he says: That Edwin M. Stanton was appointed Secretary for the Department of War on the 15th day of January, A. D. 1862, by Abraham Lincoln, then President of the United States, during the first term of his presidency, and was commissioned, according to the Constitution and laws of the United States, to hold the said office during the pleasure of the President; that the office of Secretary for the Department of War was created by an act of the first Congress in its first session, passed on the 7th day of August, A. D. 1789, and in and by that act it was provided and enacted that the said Secretary for the Department of War shall perform and execute such duties as shall from time to time be enjoined on and intrusted to him by the President of the United States, agreeably to the Constitution, relative to the subjects within the scope of said department; and furthermore, that the said Secretary shall conduct the business of the said department in such a manner as the President of the United States shall, from time to time, order and instruct.

And this respondent, further answering, says that by force of the act aforesaid, and by reason of his appointment aforesaid, the said Stanton became the principal officer in one of the executive departments of the government within the true intent and meaning of the second section of the second article of the Constitution of the United States, and according to the true intent and meaning of that provision of the Constitution of the United States; and, in accordance with the settled and uniform practice of each and every President of the United States, the said Stanton then became, and so long as he should continue to hold the said office of Secretary for the Department of War must continue to be, one of the advisers of the President of the United States, as well as the person intrusted to act for and represent the President in matters enjoined upon him or intrusted to him by the President touching the department aforesaid, and for whose conduct in such capacity, subordinate to the President, the President is, by the Constitution and laws of the United States, made responsible.

And this respondent, further answering, says he succeeded to the office of President of the United States upon, and by reason of, the death of Abraham Lincoln, then President of the United States, on the 15th day of April, 1865, and the said Stanton was then holding the said office of Secretary for the

Department of War under and by reason of the appointment and commission aforesaid; and, not having been removed from the said office by this respondent, the said Stanton continued to hold the same under the appointment and commission aforesaid, at the pleasure of the President, until the time hereinafter particularly mentioned; and at no time received any appointment or commission save as above detailed.

And this respondent, further answering, says that on and prior to the 5th day of August, A. D. 1867, this respondent, the President of the United States, responsible for the conduct of the Secretary for the Department of War, and having the constitutional right to resort to and rely upon the person holding that office for advice concerning the great and difficult public duties enjoined on the President by the Constitution and laws of the United States, became satisfied that he could not allow the said Stanton to continue to hold the office of Secretary for the Department of War without hazard to the public interest; that the relations between the said Stanton and the President no longer permitted the President to resort to him for advice, or to be, in the judgment of the President, safely responsible for his conduct of the affairs of the Department of War, as by law required, in accordance with the orders and instructions of the President; and thereupon, by force of the Constitution and laws of the United States, which devolve on the President the power and the duty to control the conduct of the business of that executive department of the government, and by reason of the constitutional duty of the President to take care that the laws be faithfully executed, this respondent did necessarily consider and did determine that the said Stanton ought no longer to hold the said office of Secretary for the Department of War. And this respondent, by virtue of the power and authority vested in him as President of the United States by the Constitution and laws of the United States, to give effect to such his decision and determination, did, on the 5th day of August, A. D. 1867, address to the said Stanton a note, of which the following is a true copy:

SIR: Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted.

To which note the said Stanton made the following reply:

WAR DEPARTMENT, *Washington, August* 5, 1867.

SIR: Your note of this day has been received, stating that "public considerations of a high character constrain you" to say "that my resignation as Secretary of War will be accepted."

In reply I have the honor to say that public considerations of a high character, which alone have induced me to continue at the head of this department, constrain me not to resign the office of Secretary of War before the next meeting of Congress.

Very respectfully, yours,

EDWIN M. STANTON.

This respondent, as President of the United States, was thereon of opinion that, having regard to the necessary official relations and duties of the Secretary for the Department of War to the President of the United States, according to the Constitution and laws of the United States, and having regard to the responsibility of the President for the conduct of the said Secretary, and having regard to the permanent executive authority of the office which the respondent holds under the Constitution and laws of the United States, it was impossible, consistently with the public interests, to allow the said Stanton to continue to hold the said office of Secretary for the Department of War; and it then became the official duty of the respondent, as President of the United States, to consider and decide what act or acts should and might lawfully be done by him, as President of the United States, to cause the said Stanton to surrender the said office.

This respondent was informed and verily believed that it was practically settled by the first Congress of the United States, and had been so considered and uniformly and in great numbers of instances acted on by each Congress and President of the United States, in succession, from President Washington

to, and including, President Lincoln, and from the first Congress to the thirty-ninth Congress, that the Constitution of the United States conferred on the President, as part of the executive power and as one of the necessary means and instruments of performing the executive duty expressly imposed on him by the Constitution of taking care that the laws be faithfully executed, the power at any and all times of removing from office all executive officers for cause to be judged of by the President alone. This respondent had, in pursuance of the Constitution, required the opinion of each principal officer of the executive departments upon this question of constitutional executive power and duty, and had been advised by each of them, including the said Stanton, Secretary for the Department of War, that under the Constitution of the United States this power was lodged by the Constitution in the President of the United States, and that, consequently, it could be lawfully exercised by him, and the Congress could not deprive him thereof; and this respondent, in his capacity of President of the United States, and because in that capacity he was both enabled and bound to use his best judgment upon this question, did, in good faith and with an earnest desire to arrive at the truth, come to the conclusion and opinion, and did make the same known to the honorable the Senate of the United States by a message dated on the 2d day of March, 1867, (a true copy whereof is hereunto annexed and marked A,) that the power last mentioned was conferred and the duty of exercising it, in fit cases, was imposed on the President by the Constitution of the United States, and that the President could not be deprived of this power or relieved of this duty, nor could the same be vested by law in the President and the Senate jointly, either in part or whole; and this has ever since remained and was the opinion of this respondent at the time when he was forced as aforesaid to consider and decide what act or acts should and might lawfully be done by this respondent, as President of the United States, to cause the said Stanton to surrender the said office.

This respondent was also then aware that by the first section of "An act regulating the tenure of certain civil offices," passed March 2, 1867, by a constitutional majority of both houses of Congress, it was enacted as follows:

> That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided: *Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General and the Attorney General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and one month thereafter, subject to removal by and with the advice and consent of the Senate.

This respondent was also aware that this act was understood and intended to be an expression of the opinion of the Congress by which that act was passed, that the power to remove executive officers for cause might, by law, be taken from the President and vested in him and the Senate jointly; and although this respondent had arrived at and still retained the opinion above expressed, and verily believed, as he still believes, that the said first section of the last-mentioned act was and is wholly inoperative and void by reason of its conflict with the Constitution of the United States, yet, inasmuch as the same had been enacted by the constitutional majority in each of the two houses of that Congress, this respondent considered it to be proper to examine and decide whether the particular case of the said Stanton, on which it was this respondent's duty to act, was within or without the terms of that first section of the act; or, if within it, whether the President had not the power, according to the terms of the act, to remove the said Stanton from the office of Secretary for the Department of War, and having, in his capacity of President of the United States, so examined and considered, did form the opinion that the case of the said Stan-

ton and his tenure of office were not affected by the first section of the last-named act.

And this respondent, further answering, says, that although a case thus existed which, in his judgment as President of the United States, called for the exercise of the executive power to remove the said Stanton from the office of Secretary for the Department of War, and although this respondent was of opinion, as is above shown, that under the Constitution of the United States the power to remove the said Stanton from the said office was vested in the President of the United States; and although this respondent was also of the opinion, as is above shown, that the case of the said Stanton was not affected by the first section of the last-named act, and although each of the said opinions had been formed by this respondent upon an actual case, requiring him, in his capacity of President of the United States, to come to some judgment and determination thereon, yet this respondent, as President of the United States, desired and determined to avoid, if possible, any question of the construction and effect of the said first section of the last-named act, and also the broader question of the executive power conferred on the President of the United States, by the Constitution of the United States, to remove one of the principal officers of one of the executive departments for cause seeming to him sufficient; and this respondent also desired and determined that if, from causes over which he could exert no control, it should become absolutely necessary to raise and have, in some way, determined either or both of the said last-named questions, it was in accordance with the Constitution of the United States, and was required of the President thereby, that questions of so much gravity and importance, upon which the legislative and executive departments of the government had disagreed, which involved powers considered by all branches of the government, during its entire history down to the year 1867, to have been confided by the Constitution of the United States to the President, and to be necessary for the complete and proper execution of his constitutional duties, should be in some proper way submitted to that judicial department of the government intrusted by the Constitution with the power, and subjected by it to the duty, not only of determining finally the construction of and effect of all acts of Congress, but of comparing them with the Constitution of the United States and pronouncing them inoperative when found in conflict with that fundamental law which the people have enacted for the government of all their servants. And to these ends, first, that, through the action of the Senate of the United States, the absolute duty of the President to substitute some fit person in place of Mr. Stanton as one of his advisers, and as a principal subordinate officer whose official conduct he was responsible for and had lawful right to control, might, if possible, be accomplished without the necessity of raising any one of the questions aforesaid; and, second, if this duty could not be so performed, then that these questions, or such of them as might necessarily arise, should be judicially determined in manner aforesaid, and for no other end or purpose, this respondent, as President of the United States, on the 12th day of August, 1867, seven days after the reception of the letter of the said Stanton of the 5th of August, hereinbefore stated, did issue to the said Stanton the order following, namely:

EXECUTIVE MANSION,
Washington, August 12, 1867.

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same.

You will at once transfer to General Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

The Hon. EDWIN M. STANTON, *Secretary of War.*

To which said order the said Stanton made the following reply:

WAR DEPARTMENT,
Washington City, August 12, 1867.

SIR: Your note of this date has been received, informing me that, by virtue of the powers vested in you as President by the Constitution and laws of the United States, I am suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same, and also directing me at once to transfer to General Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in my custody and charge. Under a sense of public duty I am compelled to deny your right, under the Constitution and laws of the United States, without the advice and consent of the Senate, and without legal cause, to suspend me from office as Secretary of War, or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and public property in my custody as Secretary. But inasmuch as the General commanding the armies of the United States has been appointed *ad interim*, and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force.

To the PRESIDENT.

And this respondent, further answering, says, that it is provided in and by the second section of "An act to regulate the tenure of certain civil offices," that the President may suspend an officer from the performance of the duties of the office held by him, for certain causes therein designated, until the next meeting of the Senate, and until the case shall be acted on by the Senate; that this respondent, as President of the United States, was advised, and he verily believed and still believes, that the executive power of removal from office confided to him by the Constitution as aforesaid includes the power of suspension from office at the pleasure of the President, and this respondent, by the order aforesaid, did suspend the said Stanton from office, not until the next meeting of the Senate, or until the Senate should have acted upon the case, but by force of the power and authority vested in him by the Constitution and laws of the United States, indefinitely and at the pleasure of the President, and the order, in form aforesaid, was made known to the Senate of the United States on the 12th day of December, A. D. 1867, as will be more fully hereinafter stated.

And this respondent, further answering, says, that in and by the act of February 13, 1795, it was, among other things, provided and enacted that, in case of vacancy in the office of Secretary for the Department of War, it shall be lawful for the President, in case he shall think it necessary, to authorize any person to perform the duties of that office until a successor be appointed or such vacancy filled, but not exceeding the term of six months; and this respondent, being advised and believing that such law was in full force and not repealed, by an order dated August 12, 1867, did authorize and empower Ulysses S. Grant, General of the armies of the United States, to act as Secretary for the Department of War *ad interim*, in the form in which similar authority had theretofore been given, not until the next meeting of the Senate and until the Senate should act on the case, but at the pleasure of the President, subject only to the limitation of six months in the said last-mentioned act contained; and a copy of the last-named order was made known to the Senate of the United States on the 12th day of December, A. D. 1867, as will be hereinafter more fully stated; and in pursuance of the design and intention aforesaid, if it should become necessary to submit the said questions to a judicial determination, this respondent, at or near the date of the last-mentioned order, did make known such his purpose to obtain a judicial decision of the said questions, or such of them as might be necessary.

And this respondent, further answering, says, that in further pursuance of his intention and design, if possible, to perform what he judged to be his imperative duty, to prevent the said Stanton from longer holding the office of Secretary for the Department of War, and at the same time avoiding, if possible, any question respecting the extent of the power of removal from executive office confided

to the President by the Constitution of the United States, and any question respecting the construction and effect of the first section of the said "act regulating the tenure of certain civil offices," while he should not, by any act of his, abandon and relinquish, either a power which he believed the Constitution had conferred on the President of the United States, to enable him to perform the duties of his office, or a power designedly left to him by the first section of the act of Congress last aforesaid, this respondent did, on the 12th day of December, 1867, transmit to the Senate of the United States a message a copy whereof is hereunto annexed and marked B, wherein he made known the orders aforesaid and the reasons which had induced the same, so far as this respondent then considered it material and necessary that the same should be set forth, and reiterated his views concerning the constitutional power of removal vested in the President, and also expressed his views concerning the construction of the said first section of the last-mentioned act, as respected the power of the President to remove the said Stanton from the said office of Secretary for the Department of War, well hoping that this respondent could thus perform what he then believed, and still believes, to be his imperative duty in reference to the said Stanton, without derogating from the powers which this respondent believed were confided to the President, by the Constitution and laws, and without the necessity of raising, judicially, any questions respecting the same.

And this respondent, further answering, says, that this hope not having been realized, the President was compelled either to allow the said Stanton to resume the said office and remain therein contrary to the settled convictions of the President, formed as aforesaid respecting the powers confided to him and the duties required of him by the Constitution of the United States, and contrary to the opinion formed as aforesaid, that the first section of the last-mentioned act did not affect the case of the said Stanton, and contrary to the fixed belief of the President that he could no longer advise with or trust or be responsible for the said Stanton, for the said office of Secretary for the Department of War, or else he was compelled to take such steps as might, in the judgment of the President, be lawful and necessary to raise, for a judicial decision, the questions affecting the lawful right of the said Stanton to resume the said office, or the power of the said Stanton to persist in refusing to quit the said office if he should persist in actually refusing to quit the same; and to this end, and to this end only, this respondent did, on on the 21st day of February, 1868, issue the order for the removal of the said Stanton, in the said first article mentioned and set forth, and the order authorizing the said Lorenzo F. Thomas to act as Secretary of War *ad interim*, in the said second article set forth.

And this respondent, proceeding to answer specifically each substantial allegation in the said first article, says: He denies that the said Stanton, on the 21st day of February, 1868, was lawfully in possession of the said office of Secretary for the Department of War. He denies that the said Stanton, on the day last mentioned, was lawfully entitled to hold the said office against the will of the President of the United States. He denies that the said order for the removal of the said Stanton was unlawfully issued. He denies that the said order was issued with intent to violate the act entitled "An act to regulate the tenure of certain civil offices." He denies that the said order was a violation of the last-mentioned act. He denies that the said order was a violation of the Constitution of the United States, or of any law thereof, or of his oath of office. He denies that the said order was issued with an intent to violate the Constitution of the United States or any law thereof, or this respondent's oath of office; and he respectfully, but earnestly, insists that not only was it issued by him in the performance of what he believed to be an imperative official duty, but in the peformance of what this honorable court will consider was, in point of fact, an imperative official duty. And he denies that any and all substantive matters, in the said first article contained, in manner and form as the same are therein

stated and set forth, do, by law, constitute a high misdemeanor in office, within the true intent and meaning of the Constitution of the United States.

ANSWER TO ARTICLE II.

And for answer to the second article, this respondent says that he admits he did issue and deliver to said Lorenzo Thomas the said writing set forth in said second article, bearing date at Washington, District of Columbia, February 21, 1868, addressed to Brevet Major General Lorenzo Thomas, Adjutant General United States army, Washington, District of Columbia, and he further admits that the same was so issued without the advice and consent of the Senate of the United States, then in session; but he denies that he thereby violated the Constitution of the United States, or any law thereof, or that he did thereby intend to violate the Constitution of the United States or the provisions of any act of Congress; and this respondent refers to his answer to said first article for a full statement of the purposes and intentions with which said order was issued, and adopts the same as part of his answer to this article; and he further denies that there was then and there no vacancy in the said office of Secretary for the Department of War, or that he did then and there commit or was guilty of a high misdemeanor in office; and this respondent maintains and will insist:

1. That at the date and delivery of said writing there was a vacancy existing in the office of Secretary for the Department of War.

2 That, notwithstanding the Senate of the United States was then in session, it was lawful and according to long and well-established usage to empower and authorize the said Thomas to act as Secretary of War *ad interim.*

3 That if the said act regulating the tenure of civil offices be held to be a valid law, no provision of the same was violated by the issuing of said order or by the designation of said Thomas to act as Secretary of War *ad interim.*

ANSWER TO ARTICLE III.

And for answer to said third article, this respondent says that he abides by his answer to said first and second articles in so far as the same are responsive to the allegations contained in the said third article, and, without here again repeating the same answer, prays the same be taken as an answer to this third article as fully as if here again set out at length, and as to the new allegation contained in said third article, that this respondent did appoint the said Thomas to be Secretary for the Department of War *ad interim*, this respondent denies that he gave any other authority to said Thomas than such as appears in said written authority set out in said article, by which he authorized and empowered said Thomas to act as Secretary for the Department of War *ad interim;* and he denies that the same amounts to an appointment, and insists that it is only a designation of an officer of that department to act temporarily as Secretary for the Department of War *ad interim*, until an appointment should be made. But, whether the said written authority amounts to an appointment or to a temporary authority or designation, this respondent denies that in any sense he did thereby intend to violate the Constitution of the United States, or that he thereby intended to give the said order the character or effect of an appointment in the constitutional or legal sense of that term. He further denies that there was no vacancy in said office of Secretary for the Department of War existing at the date of said written authority.

ANSWER TO ARTICLE IV.

And for answer to said fourth article this respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time or place, he did unlawfully conspire with the said Lorenzo Thomas, or with the said Thomas and any other person or persons, with intent, by intimidations and

threats, unlawfully to hinder and prevent the said Stanton from holding said office of Secretary for the Department of War, in violation of the Constitution of the United States or of the provisions of the said act of Congress in said article mentioned, or that he did then and there commit or was guilty of a high crime in office. On the contrary thereof, protesting that the said Stanton was not then and there lawfully the Secretary for the Department of War, this respondent states that his sole purpose in authorizing the said Thomas to act as Secretary for the Department of War *ad interim* was, as is fully stated in his answer to the said first article, to bring the question of the right of the said Stanton to hold said office, notwithstanding his said suspension, and notwithstanding the said order of removal, and notwithstanding the said authority of the said Thomas to act as Secretary of War *ad interim*, to the test of a final decision by the Supreme Court of the United States in the earliest practicable mode by which the question could be brought before that tribunal.

This respondent did not conspire or agree with the said Thomas, or any other person or persons, to use intimidation or threats to hinder or prevent the said Stanton from holding the said office of Secretary for the Department of War, nor did this respondent at any time command or advise the said Thomas or any other person or persons to resort to or use either threats or intimidations for that purpose. The only means in the contemplation or purpose of respondent to be used are set forth fully in the said orders of February 21, the first addressed to Mr. Stanton and the second to the said Thomas.

By the first order the respondent notified Mr. Stanton that he was removed from the said office, and that his functions as Secretary for the Department of War were to terminate upon the receipt of that order; and he also thereby notified the said Stanton that the said Thomas had been authorized to act as Secretary for the Department of War *ad interim*, and ordered the said Stanton to transfer to him all the records, books, papers, and other public property in his custody and charge; and by the second order this respondent notified the said Thomas of the removal from office of the said Stanton, and authorized him to act as Secretary for the Department of War *ad interim*, and directed him to immediately enter upon the discharge of the duties pertaining to that office, and to receive the transfer of all the records, books, papers, and other public property from Mr. Stanton then in his custody and charge.

Respondent gave no instructions to the said Thomas to use intimidation or threats to enforce obedience to these orders. He gave him no authority to call in the aid of the military or any other force to enable him to obtain possession of the office, or of the books, papers, records, or property thereof. The only agency resorted to or intended to be resorted to was by means of the said executive orders requiring obedience. But the Secretary of the Department of War refused to obey these orders, and still holds undisturbed possession and custody of that department, and of the records, books, papers, and other public property therein. Respondent further states that, in execution of the orders so by this respondent given to the said Thomas, he, the said Thomas, proceeded in a peaceful manner to demand of the said Stanton a surrender to him of the public property in the said department, and to vacate the possession of the same, and to allow him, the said Thomas, peaceably to exercise the duties devolved upon him by authority of the President. That, as this respondent has been informed and believes, the said Stanton peremptorily refused obedience to the orders so issued. Upon such refusal no force or threat of force was used by the said Thomas, by authority of the President or otherwise, to enforce obedience, either then or at any subsequent time.

This respondent doth here except to the sufficiency of the allegations contained in said fourth article, and states for ground of exception that it is not stated that there was any agreement between this respondent and the said Thomas, or any other person or persons, to use intimidation and threats, nor is

there any allegation as to the nature of said intimidation and threats, or that there was any agreement to carry them into execution, or that any step was taken or agreed to be taken to carry them into execution, and that the allegation in said article that the intent of said conspiracy was to use intimidation and threats is wholly insufficient, inasmuch as it is not alleged that the said intent formed the basis or become a part of any agreement between the said alleged conspirators, and, furthermore, that there is no allegation of any conspiracy or agreement to use intimidation or threats.

ANSWER TO ARTICLE V.

And for answer to the said fifth article this respondent denies that on the said 21st day of February, 1868, or at any other time or times in the same year before the said 2d day of March, 1868, or at any prior or subsequent time, at Washington aforesaid, or at any other place, this respondent did unlawfully conspire with the said Thomas, or with any other person or persons, to prevent or hinder the execution of the said act entitled "An act regulating the tenure of certain civil offices," or that, in pursuance of said alleged conspiracy, he did unlawfully attempt to prevent the said Edwin M. Stanton from holding said office of Secretary for the Department of War, or that he did thereby commit, or that he was thereby guilty of, a high misdemeanor in office. Respondent, protesting that said Stanton was not then and there Secretary for the Department of War, begs leave to refer to his answer given to the fourth article and to his answer given to the first article, as to his intent and purpose in issuing the orders for the removal of Mr. Stanton and the authority given to the said Thomas, and prays equal benefit therefrom as if the same were here again repeated and fully set forth.

And this respondent excepts to the sufficiency of the said fifth article, and states his ground for such exception, that it is not alleged by what means or by what agreement the said alleged conspiracy was formed or agreed to be carried out, or in what way the same was attempted to be carried out, or what were the acts done in pursuance thereof.

ANSWER TO ARTICLE VI.

And for answer to the said sixth article, this respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time or place, he did unlawfully conspire with the said Thomas by force to seize, take, or possess, the property of the United States in the Department of War, contrary to the provisions of the said acts referred to in the said article, or either of them, or with intent to violate either of them. Respondent, protesting that said Stanton was not then and there Secretary for the Department of War, not only denies the said conspiracy as charged, but also denies any unlawful intent in reference to the custody and charge of the property of the United States in the said Department of War, and again refers to his former answers for a full statement of his intent and purpose in the premises.

ANSWER TO ARTICLE VII.

And for answer to the said seventh article, respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time and place, he did unlawfully conspire with the said Thomas with intent unlawfully to seize, take, or possess the property of the United States in the Department of War with intent to violate or disregard the said act in the said seventh article referred to, or that he did then and there commit a high misdemeanor in office. Respondent, protesting that the said Stanton was not then and there

Secretary for the Department of War, again refers to his former answers, in so far as they are applicable, to show the intent with which he proceeded in the premises, and prays equal benefit therefrom, as if the same were here again fully repeated. Respondent further takes exception to the sufficiency of the allegations of this article as to the conspiracy alleged upon the same grounds as stated in the exception set forth in his answer to said article fourth.

ANSWER TO ARTICLE VIII.

And for answer to the said eighth article this respondent denies that on the 21st day of February, 1868, at Washington aforesaid, or at any other time and place, he did issue and deliver to the said Thomas the said letter of authority set forth in the said eighth article, with the intent unlawfully to control the disbursements of the money appropriated for the military service and for the Department of War. This respondent, protesting that there was a vacancy in the office of Secretary for the Department of War, admits that he did issue the said letter of authority, and he denies that the same was with any unlawful intent whatever, either to violate the Constitution of the United States or any act of Congress. On the contrary, this respondent again affirms that his sole intent was to vindicate his authority as President of the United States, and by peaceful means to bring the question of the right of the said Stanton to continue to hold the said office of Secretary of War to a final decision before the Supreme Court of the United States, as has been hereinbefore set forth; and he prays the same benefit from his answer in the premises as if the same were here again repeated at length.

ANSWER TO ARTICLE IX.

And for answer to the said ninth article the respondent states that on the said 22d day of February, 1868, the following note was addressed to the said Emory by the private secretary of respondent:

EXECUTIVE MANSION,
Washington, D. C., February 22, 1868.

GENERAL: The President directs me to say that he will be pleased to have you call upon him as early as practicable.

Respectfully and truly yours,

WILLIAM G. MOORE,
United States Army.

General Emory called at the Executive Mansion according to this request. The object of respondent was to be advised by General Emory, as commander of the department of Washington, what changes had been made in the military affairs of the department. Respondent had been informed that various changes had been made, which in nowise had been brought to his notice or reported to him from the Department of War, or from any other quarter, and desired to ascertain the facts. After the said Emory had explained in detail the changes which had taken place, said Emory called the attention of respondent to a general order which he referred to and which this respondent then sent for, when it was produced. It is as follows:

[General Orders No. 17.]

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, March 14, 1867.

The following acts of Congress are published for the information and government of all concerned:

* * * * * * * * *

II—PUBLIC—No. 85.

AN ACT making appropriations for the support of the army for the year ending June 30, 1868, and for other purposes.

* * * * * *

SEC. 2. *And be it further enacted*, That the headquarters of the General of the army of the United States shall be at the city of Washington, and all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the army, and in case of his inability, through the next in rank. The General of the army shall not be removed, suspended, or relieved from command or assigned to duty elsewhere than at said headquarters, except at his own request, without the previous approval of the Senate; and any orders or instructions relating to military operations issued contrary to the requirements of this section shall be null and void; and any officer who shall issue orders or instructions contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office; and any officer of the army who shall transmit, convey, or obey any orders or instructions so issued contrary to the provisions of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction.

* * * * * *

Approved March 2, 1867.

* * * * * *

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant General.

Official:

_____,
Assistant Adjutant General.

General Emory not only called the attention of respondent to this order, but to the fact that it was in conformity with a section contained in an appropriation act passed by Congress. Respondent, after reading the order, observed: "This is not in accordance with the Constitution of the United States, which makes me commander-in-chief of the army and navy, or with the language of the commission which you hold." General Emory then stated that this order had met respondent's approval. Respondent then said in reply, in substance, "Am I to understand that the President of the United States cannot give an order but through the General-in-chief, or General Grant?" General Emory again reiterated the statement that it had met respondent's approval, and that it was the opinion of some of the leading lawyers of the country that this order was constitutional. With some further consideration, respondent then inquired the names of the lawyers who had given the opinion, and he mentioned the names of two. Respondent then said that the object of the law was very evident, referring to the clause in the appropriation act upon which the order purported to be based. This, according to respondent's recollection, was the substance of the conversation had with General Emory.

Respondent denies that any allegations in the said article of any instructions or declarations given to the said Emory, then or at any other time, contrary to or in addition to what is hereinbefore set forth, are true. Respondent denies that, in said conversation with said Emory, he had any other intent than to express the opinions then given to the said Emory; nor did he then, or at any time, request or order the said Emory to disobey any law or any order issued in conformity with any law, or intend to offer any inducement to the said Emory to violate any law. What this respondent then said to General Emory was simply the expression of an opinion which he then fully believed to be sound, and which he yet believes to be so—and that is, that by the express provisions of the Constitution, this respondent, as President, is made the commander-in-chief of the armies of the United States, and as such he is to be respected; and that his orders, whether issued through the War Department or through the General-in-chief, or by any other channel of communication, are entitled to respect and obedience; and that such constitutional power cannot be taken from him by virtue of any act of Congress. Respondent doth therefore deny that by the

expression of such opinion he did commit or was guilty of a high misdemeanor in office. And this respondent doth further say that the said article nine lays no foundation whatever for the conclusion stated in the said article, that the respondent, by reason of the allegations therein contained, was guilty of a high misdemeanor in office.

In reference to the statement made by General Emory that this respondent had approved of said act of Congress containing the section referred to, the respondent admits that his formal approval was given to said act, but accompanied the same by the following message, addressed and sent with the act to the House of Representatives, in which house the said act originated, and from which it came to respondent:

To the House of Representatives:

The act entitled "An act making appropriations for the support of the army for the year ending June 30, 1868, and for other purposes," contains provisions to which I must call attention. These provisions are contained in the 2d section, which, in certain cases, virtually deprives the President of his constitutional functions as commander-in-chief of the army, and in the sixth section, which denies to ten States of the Union their constitutional right to protect themselves, in any emergency, by means of their own militia. These provisions are out of place in an appropriation act, but I am compelled to defeat these necessary appropriations if I withhold my signature from the act. Pressed by these considerations, I feel constrained to return the bill with my signature, but to accompany it with my earnest protest against the sections which I have indicated.

WASHINGTON, D. C., *March* 2, 1867.

Respondent, therefore, did no more than to express to said Emory the same opinion which he had expressed to the House of Representatives.

ANSWER TO ARTICLE X.

And in answer to the tenth article and specifications thereof the respondent says that on the 14th and 15th days of August, in the year 1866, a political convention of delegates from all or most of the States and Territories of the Union was held in the city of Philadelphia, under the name and style of the National Union Convention, for the purpose of maintaining and advancing certain political views and opinions before the people of the United States, and for their support and adoption in the exercise of the constitutional suffrage, in the elections of representatives and delegates in Congress, which were soon to occur in many of the States and Territories of the Union; which said convention, in the course of its proceedings, and in furtherance of the objects of the same, adopted a "declaration of principles" and "an address to the people of the United States," and appointed a committee of two of its members from each State and of one from each Territory and one from the District of Columbia to wait upon the President of the United States and present to him a copy of the proceedings of the convention; that on the 18th day of said month of August this committee waited upon the President of the United States at the Executive Mansion, and was received by him in one of the rooms thereof, and by their chairman, Hon. Reverdy Johnson, then and now a senator of the United States, acting and speaking in their behalf, presented a copy of the proceedings of the convention, and addressed the President of the United States in a speech, of which a copy (according to a published report of the same, and, as the respondent believes, substantially a correct report) is hereto annexed as a part of this answer, and marked Exhibit C.

That thereupon, and in reply to the address of said committee by their chairman, this respondent addressed the said committee so waiting upon him in one of the rooms of the Executive Mansion; and this respondent believes that this his address to said committee is the occasion referred to in the first specification of the tenth article; but this respondent does not admit that the passages therein set forth, as if extracts from a speech or address of this respondent upon said occasion, correctly or justly present his speech or address upon said occasion,

but, on the contrary, this respondent demands and insists that if this honorable court shall deem the said article and the said specification thereof to contain allegation of matter cognizable by this honorable court as a high misdemeanor in office, within the intent and meaning of the Constitution of the United States, and shall receive or allow proof in support of the same, that proof shall be required to be made of the actual speech and address of this respondent on said occasion, which this respondent denies that said article and specification contain or correctly or justly represent.

And this respondent, further answering the tenth article and the specifications thereof, says that at Cleveland, in the State of Ohio, and on the 3d day of September, in the year 1866, he was attended by a large assemblage of his fellow-citizens, and in deference and obedience to their call and demand he addressed them upon matters of public and political consideration; and this respondent believes that said occasion and address are referred to in the second specification of the tenth article; but this respondent does not admit that the passages therein set forth, as if extracts from a speech of this respondent on said occasion, correctly or justly present his speech or address upon said occasion; but, on the contrary, this respondent demands and insists that if this honorable court shall deem the said article and the second specification thereof to contain allegation of matter cognizable by this honorable court as a high misdemeanor in office, within the intent an meaning of the Constitution of the United States, and shall receive or allow proof in support of the same, that proof shall be required to be made of the actual speech and address of this respondent on said occasion, which this respondent denies that said article and specification contain or correctly or justly represent.

And this respondent, further answering the tenth article and the specifications thereof, says that at St. Louis, in the State of Missouri, and on the 8th day of September, in the year 1866, he was attended by a numerous assemblage of his fellow-citizens, and in deference and obedience to their call and demand he addressed them upon matters of public and political consideration; and this respondent believes that said occasion and address are referred to in the third specification of the tenth article; but this respondent does not admit that the passages therein set forth, as if extracts from a speech of this respondent on said occasion, correctly or justly present his speech or address upon said occasion; but, on the contrary, this respondent demands and insists that if this honorable court shall deem the said article and the said third specification thereof to contain allegation of matter cognizable by this honorable court as a high misdemeanor in office, within the intent and meaning of the Constitution of the United States, and shall receive or allow proof in support of the same, that proof shall be required to be made of the actual speech and address of this respondent on said occasion, which this respondent denies that the said article and specification contain or correctly or justly represent.

And this respondent, further answering the tenth article, protesting that he has not been unmindful of the high duties of his office, or of the harmony or courtesies which ought to exist and be maintained between the executive and legislative branches of the government of the United States, denies that he has ever intended or designed to set aside the rightful authority or powers of Congress, or attempted to bring into disgrace, ridicule, hatred, contempt, or reproach the Congress of the United States or either branch thereof, or to impair or destroy the regard or respect of all or any of the good people of the United States for the Congress or the rightful legislative power thereof, or to excite the odium or resentment of all or any of the good people of the United States against Congress and the laws by it duly and constitutionally enacted. This respondent further says, that at all times he has, in his official acts as President, recognized the authority of the several Congresses of the United States as constituted

and organized during his administration of the office of President of the United States.

And this respondent, further answering, says that he has from time to time, under his constitutional right and duty as President of the United States, communicated to Congress his views and opinions in regard to such acts or resolutions thereof as, being submitted to him as President of the United States in pursuance of the Constitution, seemed to this respondent to require such communications; and he has from time to time, in the exercise of that freedom of speech which belongs to him as a citizen of the United States, and, in his political relations as President of the United States to the people of the United States, is upon fit occasions a duty of the highest obligation, expressed to his fellow-citizens his views and opinions respecting the measures and proceedings of Congress; and that in such addresses to his fellow-citizens and in such his communications to Congress he has expressed his views, opinions, and judgment of and concerning the actual constitution of the two houses of Congress without representation therein of certain States of the Union, and of the effect that in wisdom and justice, in the opinion and judgment of this respondent, Congress, in its legislation and proceedings, should give to this political circumstance; and whatsoever he has thus communicated to Congress or addressed to his fellow-citizens or any assemblage thereof, this respondent says was and is within and according to his right and privilege as an American citizen and his right and duty as President of the United States.

And this respondent, not waiving or at all disparaging his right of freedom of opinion and of freedom of speech, as hereinbefore or hereinafter more particularly set forth, but claiming and insisting upon the same, further answering the said tenth article, says that the views and opinions expressed by this respondent in his said addresses to the assemblages of his fellow-citizens, as in said article or in this answer thereto mentioned, are not and were not intended to be other or different from those expressed by him in his communications to Congress—that the eleven States lately in insurrection never had ceased to be States of the Union, and that they were then entitled to representation in Congress by loyal representatives and senators as fully as the other States of the Union, and that, consequently, the Congress, as then constituted, was not, in fact, a Congress of all the States, but a Congress of only a part of the States. This respondent, always protesting against the unauthorized exclusion therefrom of the said eleven States, nevertheless gave his assent to all laws passed by said Congress which did not, in his opinion and judgment, violate the Constitution, exercising his constitutional authority of returning bills to said Congress with his objections when they appeared to him to be unconstitutional or inexpedient.

And, further, this respondent has also expressed the opinion, both in his communications to Congress and in his addresses to the people, that the policy adopted by Congress in reference to the States lately in insurrection did not tend to peace, harmony, and union, but, on the contrary, did tend to disunion and the permanent disruption of the States; and that in following its said policy, laws had been passed by Congress in violation of the fundamental principles of the government, and which tended to consolidation and despotism; and, such being his deliberate opinions, he would have felt himself unmindful of the high duties of his office if he had failed to express them in his communications to Congress, or in his addresses to the people when called upon by them to express his opinions on matters of public and political consideration.

And this respondent, further answering the tenth article, says that he has always claimed and insisted, and now claims and insists, that both in his personal and private capacity of a citizen of the United States, and in the political relations of the President of the United States to the people of the United States, whose servant, under the duties and responsibilities of the Constitution of the United States, the President of the United States is, and should always

remain, this respondent had and has the full right, and in his office of President of the United States is held to the high duty of forming, and, on fit occasions, expressing, opinions of and concerning the legislation of Congress, proposed or completed, in respect of its wisdom, expediency, justice, worthiness, objects, purposes, and public and political motives and tendencies; and within and as a part of such right and duty to form, and on fit occasions to express, opinions of and concerning the public character and conduct, views, purposes, objects, motives, and tendencies of all men engaged in the public service, as well in Congress as otherwise, and under no other rules or limits upon this right of freedom of opinion and of freedom of speech, or of responsibility and amenability for the actual exercise of such freedom of opinion and freedom of speech, than attend upon such rights and their exercise on the part of all other citizens of the United States, and on the part of all their public servants.

And this respondent, further answering said tenth article, says that the several occasions on which, as is alleged in the several specifications of said article, this respondent addressed his fellow-citizens on subjects of public and political consideration, were not, nor was any one of them, sought or planned by this respondent; but, on the contrary, each of said occasions arose upon the exercise of a lawful and accustomed right of the people of the United States to call upon their public servants and express to them their opinions, wishes, and feelings upon matters of public and political consideration, and to invite from such, their public servants, an expression of their opinions, views, and feelings on matters of public and political consideration; and this respondent claims and insists before this honorable court, and before all the people of the United States, that of or concerning this his right of freedom of opinion and of freedom of speech, and this his exercise of such rights on all matters of public and political consideration, and in respect of all public servants or persons whatsoever engaged in or connected therewith, this respondent, as a citizen or as President of the United States, is not subject to question, inquisition, impeachment, or inculpation in any form or manner whatsoever.

And this respondent says that neither the said tenth article nor any specification thereof, nor any allegation therein contained, touches or relates to any official act or doing of this respondent in the office of President of the United States or in the discharge of any of its constitutional or legal duties or responsibilities; but said article and the specifications and allegations thereof, wholly and in every part thereof, question only the discretion or propriety of freedom of opinion or freedom of speech as exercised by this respondent as a citizen of the United States in his personal right and capacity, and without allegation or imputation against this respondent of the violation of any law of the United States touching or relating to freedon of speech or its exercise by the citizens of the United States or by this respondent as one of the said citizens or otherwise; and he denies that, by reason of any matter in said article or its specifications alleged, he has said or done anything indecent or unbecoming in the Chief Magistrate of the United States, or that he has brought the high office of the President of the United States into contempt, ridicule, or disgrace, or that he has committed or has been guilty of a high misdemeanor in office.

ANSWER TO ARTICLE XI.

And in answer to the eleventh article, this respondent denies that on the 18th day of August, in the year 1866, at the city of Washington, in the District of Columbia, he did, by public speech or otherwise, declare or affirm, in substance or at all, that the thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, or that he did then and there declare or affirm that the said thirty-ninth Congress was a Congress of only part of the States in any

sense or meaning other than that ten States of the Union were denied representation therein; or that he made any or either of the declarations or affirmations in this behalf, in the said article alleged, as denying or intending to deny that the legislation of said thirty-ninth Congress was valid or obligatory upon this respondent, except so far as this respondent saw fit to approve the same; and as to the allegation in said article, that he did thereby intend or mean to be understood that the said Congress had not power to propose amendments to the Constitution, this respondent says that in said address he said nothing in reference to the subject of amendments of the Constitution, nor was the question of the competency of the said Congress to propose such amendments, without the participation of said excluded States, at the time of said address, in any way mentioned or considered or referred to by this respondent, nor in what he did say had he any intent regarding the same, and he denies the allegation so made to the contrary thereof. But this respondent, in further answer to, and in respect of, the said allegations of the said eleventh article hereinbefore traversed and denied, claims and insists upon his personal and official right of freedom of opinion and freedom of speech, and his duty in his political relations as President of the United States to the people of the United States in the exercise of such freedom of opinion and freedon of speech, in the same manner, form, and effect as he has in this behalf stated the same in his answer to the said tenth article, and with the same effect as if he here repeated the same; and he further claims and insists, as in said answer to said tenth article he has claimed and insisted, that he is not subject to question, inquisition, impeachment, or inculpation, in any form or manner, of or concerning such rights of freedom of opinion or freedom speech or his said alleged exercise thereof.

And this respondent further denies that on the 21st day of February, in the year 1868, or at any other time, at the city of Washington, in the District of Columbia, in pursuance of any such declaration as is in that behalf in said eleventh article alleged, or otherwise, he did unlawfully, and in disregard of the requirement of the Constitution that he should take care that the laws should be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, by unlawfully devising or contriving, or attempting to devise or contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of Secretary for the Department of War; or by lawfully devising or contriving, or attempting to devise or contrive, means to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867, or to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867.

And this respondent, further answering the said eleventh article, says that he has, in his answer to the first article, set forth in detail the acts, steps, and proceedings done and taken by this respondent to and toward or in the matter of the suspension or removal of the said Edwin M. Stanton in or from the office of Secretary for the Department of War, with the times, modes, circumstances, intents, views, purposes, and opinions of official obligation and duty under and with which such acts, steps, and proceedings were done and taken; and he makes answer to this eleventh article of the matters in his answer to the first article, pertaining to the suspension or removal of said Edwin M. Stanton, to the same intent and effect as if they were here repeated and set forth.

And this deponent, further answering the said eleventh article, denies that by means or reason of anything in said article alleged, this respondent, as President of the United States, did, on the 21st day of February, 1868, or at any other day or time, commit, or that he was guilty of, a high misdemeanor in office.

And this respondent, further answering the said eleventh article, says that the same and the matters therein contained do not charge or allege the commission of any act whatever by this respondent, in his office of President of the United States, nor the omission by this respondent of any act of official obligation or duty in his office of President of the United States; nor does the said article nor the matters therein contained name, designate, describe, or define any act or mode or form of attempt, device, contrivance, or means, or of attempt at device, contrivance or means, whereby this respondent can know or understand what act or mode or form of attempt, device, contrivance or means, or of attempt at device, contrivance or means, are imputed to or charged against this respondent, in his office of President of the United States, or intended so to be, whereby this respondent can more fully or definitely make answer unto the said article than he hereby does.

And this respondent, in submitting to this honorable court this his answer to the articles of impeachment exhibited against him, respectfully reserves leave to amend and add to the same from time to time, as may become necessary or proper, and when and as such necessity and propriety shall appear.

ANDREW JOHNSON.

HENRY STANBERY,
B. R. CURTIS,
THOMAS A. R. NELSON,
WILLIAM M. EVARTS,
W. S. GROESBECK,
Of Counsel.

EXHIBIT A.

Message, March 2, 1867.

To the Senate of the United States:

I have carefully examined the bill to regulate the tenure of certain civil offices. The material portion of the bill is contained in the first section, and is of the effect following, namely:

That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been appointed by the President, with the advice and consent of the Senate, and duly qualified; and that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate.

These provisions are qualified by a reservation in the fourth section, "that nothing contained in the bill shall be construed to extend the term of any office the duration of which is limited by law." In effect the bill provides that the President shall not remove from their places any of the civil officers whose terms of service are not limited by law without the advice and consent of the Senate of the United States. The bill, in this respect, conflicts, in my judgment, with the Constitution of the United States. The question, as Congress is well aware, is by no means a new one. That the power of removal is constitutionally vested in the President of the United States is a principle which has been not more distinctly declared by judicial authority and judicial commentators than it has been uniformly practiced upon by the legislative and executive departments of the government. The question arose in the House of Representatives so early as the 16th day of June, 1789, on the bill for establishing an executive department, denominated "The Department of Foreign Affairs." The first clause of

the bill, after recapitulating the functions of that officer, and defining his duties, had these words : " To be removable from office by the President of the United States." It was moved to strike out these words, and the motion was sustained with great ability and vigor. It was insisted that the President could not constitutionally exercise the power of removal exclusive of the Senate ; that the Federalist so interpreted the Constitution when arguing for its adoption by the several States ; that the Constitution had nowhere given the President power of removal, either expressly or by strong implication ; but, on the contrary, had distinctly provided for removals from office by impeachment only. A construction which denied the power of removal by the President was further maintained by arguments drawn from the danger of the abuse of the power ; from the supposed tendency of an exposure of public officers to capricious removal, to impair the efficiency of the civil service ; from the alleged injustice and hardship of displacing incumbents, dependent upon their official stations, without sufficient consideration ; from a supposed want of responsibility on the part of the President, and from an imagined defect of guarantees against a vicious President, who might incline to abuse the power.

On the other hand, an exclusive power of removal by the President was defended as a true exposition of the text of the Constitution. It was maintained that there are certain causes for which persons ought to be removed from office without being guilty of treason, bribery, or malfeasance, and that the nature of things demands that it should be so. " Suppose," it was said, " a man becomes insane by the visitation of God, and is likely to ruin our affairs, are the hands of government to be confined from warding off the evil ? Suppose a person in office not possessing the talents he was judged to have at the time of the appointment, is the error not to be corrected ? Suppose he acquires vicious habits and incurable indolence, or totally neglect the duties of his office, which shall work mischief to the public welfare, is there no way to arrest the threatened danger ? Suppose he become odious and unpopular by reason of the measures he pursues—and this he may do without committing any positive offence against the law—must he preserve his office in despite of the popular will ? Suppose him grasping for his own aggrandizement and the elevation of his connections by every means short of the treason defined by the Constitution, hurrying your affairs to the precipice of destruction, endangering your domestic tranquillity, plundering you of the means of defence, alienating the affections of your allies, and promoting the spirit of discord ; must the tardy, tedious, desultory road by way of impeachment be travelled to overtake the man who, barely confining himself within the letter of the law, is employed in " drawing off the vital principle of the government ?" The nature of things, the great objects of society, the express objects of the Constitution itself, require that this thing should be otherwise. To unite the Senate with the President " in the exercise of the power," it was said, " would involve us " in the most serious difficulty. " Suppose a discovery of any of these events should take place when the Senate is not in session, how is the remedy to be applied ? The evil could be avoided in no other way than by the Senate sitting always." In regard to the danger of the power being abused if exercised by one man, it was said " that the danger is as great with respect to the Senate, who are assembled from various parts of the continent, with different impressions and opinions ;" that such a body is more likely to misuse the power of removal than the man whom the united voice of America calls to the presidential chair. As the nature of government requires the power of removal, it was maintained " that it should be exercised in this way by the hand capable of exerting itself with effect, and the power must be conferred on the President by the Constitution as the executive officer of the government." Mr. Madison, whose adverse opinion in the Federalist had been relied upon by those who denied the exclusive power, now participated in the

debate. He declared that he had reviewed his former opinions, and he summed up the whole case as follows:

> The Constitution affirms that the executive power is vested in the President. Are there exceptions to this proposition? Yes, there are. The Constitution says that in appointing to office the Senate shall be associated with the President, unless in the case of inferior officers, when the law shall otherwise direct. Have we (that is, Congress) a right to extend this exception? I believe not. If the Constitution has invested all executive power in the President, I return to assert that the legislature has no right to diminish or modify his executive authority. The question now resolves itself into this: is there power of displacing an executive power? I conceive that if any power whatever is in the Executive it is the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office by associating the Senate with him in that business, would it not be clear that he would have the right by virtue of his executive power to make such appointment? Should we be authorized, in defiance of that clause in the Constitution—"the executive power shall be vested in the President"—to unite the Senate with the President in the appointment to office? I conceive not. It is admitted that we should not be authorized to do this. I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an executive nature as the other; and the first is authorized by being excepted out of the general rule established by the Constitution in these words: "The executive power shall be vested in the President."

The question thus ably and exhaustively argued was decided by the House of Representatives, by a vote of thirty-four to twenty, in favor of the principle that the executive power of removal is vested by the Constitution in the Executive, and in the Senate by the casting vote of the Vice-President. The question has often been raised in subsequent times of high excitement, and the practice of the government has nevertheless conformed in all cases to the decision thus early made.

The question was revived during the administration of President Jackson, who made, as is well recollected, a very large number of removals, which were made an occasion of close and rigorous scrutiny and remonstrance. The subject was long and earnestly debated in the Senate, and the early construction of the Constitution was nevertheless freely accepted as binding and conclusive upon Congress.

The question came before the Supreme Court of the United States in January, 1839, *ex parte* Heenan. It was declared by the court on that occasion that the power of removal from office was a subject much disputed, and upon which a great diversity of opinion was entertained in the early history of the government. This related, however, to the power of the President to remove officers appointed with the concurrence of the Senate, and the great question was whether the removal was to be by the President alone or with the concurrence of the Senate, both constituting the appointing power. No one denied the power of the President and Senate jointly to remove where the tenure of the office was not fixed by the Constitution, which was a full recognition of the principle that the power of removal was incident to the power of appointment; but it was very early adopted as a practical construction of the Constitution that this power was vested in the President alone, and such would appear to have been the legislative construction of the Constitution, for in the organization of the three great Departments of State, War, and Treasury, in 1789, provision was made for the appointment of a subordinate officer by the head of the department, who should have charge of the records, books, and papers appertaining to the office when the head of the department should be removed from office by the President of the United States. When the Navy Department was established, in the year 1798, provision was made for the charge and custody of the books, records, and documents of the department in case of vacancy in the office of Secretary, by removal or otherwise. It is not here said "by removal of the President," as is done with respect to the heads of the other departments; yet there can be no doubt that he holds his office with the same tenure as the other Secretaries, and is removable by the President. The change of

phraseology arose probably from its having become the settled and well-understood construction of the Constitution that the power of removal was vested in the President alone in such cases, although the appointment of the officer is by the President and Senate. (13 Peters, page 139.)

Our most distinguished and accepted commentators upon the Constitution concur in the construction thus early given by Congress, and thus sanctioned by the Supreme Court. After a full analysis of the congressional debate to which I have referred, Mr. Justice Story comes to this conclusion:

> After a most animated discussion, the vote finally taken in the House of Representatives was affirmative of the power of removal in the President without any co-operation of the Senate by the vote of 34 members against 20. In the Senate the clause in the bill affirming the power was carried by the casting vote of the Vice-President. That the final decision of this question so made was greatly influenced by the exalted character of the President then in office was asserted at the time, and has always been believed; yet the doctrine was opposed as well as supported by the highest talent and patriotism of the country. The public have acquiesced in this decision, and it constitutes perhaps the most extraordinary case in the history of the government of a power conferred by implication on the Executive by the assent of a bare majority of Congress which has not been questioned on many other occasions.

The commentator adds:

> Nor is this general acquiescence and silence without a satisfactory explanation.

Chancellor Kent's remarks on the subject are as follows: "On the first organization of the government it was made a question whether the power of removal in case of officers appointed to hold at pleasure resided nowhere but in the body which appointed," and, of course, whether the consent of the Senate was not requisite to remove. This was the construction given to the Constitution while it was pending for ratification before the State conventions by the author of the Federalist. But the construction which was given to the Constitution by Congress after great consideration and discussion was different. The words of the act (establishing the Treasury Department) are, "and whenever the same shall be removed from office by the President of the United States, or in any case of vacancy in the office, the assistant shall act." This amounted to a legislative construction of the Constitution, and it has ever since been acquiesced in and acted upon as a decisive authority in the case.

It applies equally to every other officer of the government appointed by the President whose term of duration is not specially declared. It is supported by the weighty reason that the subordinate officers in the executive department ought to hold at the pleasure of the head of the department, because he is invested generally with the executive authority, and the participation in that authority by the Senate was an exception to a general principle, and ought to be taken strictly. The President is the great responsible officer for the execution of the law, and the power of removal was incidental to that duty, and might often be requisite to fulfil it. Thus has the important question presented by this bill been settled, in the language of the late Daniel Webster, (who, while dissenting from it, admitted that it was settled,) by construction, settled by the practice of the government, and settled by statute. The events of the last war furnished a practical confirmation of the wisdom of the Constitution as it has hitherto been maintained in many of its parts, including that which is now the subject of consideration. When the war broke out, rebel enemies, traitors, abettors, and sympathizers were found in every department of the government, as well in the civil service as in the land and naval military service. They were found in Congress and among the keepers of the Capitol, in foreign missions, in each and all of the executive departments, in the judicial service, in the Post Office, and among the agents for conducting Indian affairs, and upon probable suspicion they were promptly displaced by my predecessor, so far as they held their offices under executive authority, and their duties were confided to new and loyal successors. No complaints against that power or doubts of its wisdom

were entertained in any quarter. I sincerely trust and believe that no such civil war is likely to occur again. I cannot doubt, however, that in whatever form and on whatever occasion sedition can rise, an effort to hinder or embarrass or defeat the legitimate action of this government, whether by preventing the collection of revenue or disturbing the public peace, or separating the States, or betraying the country to a foreign enemy, the power of removal from office by the Executive, as it has heretofore existed and been practiced, will be found indispensable. Under these circumstances, as a depositary of the executive authority of the nation, I do not feel at liberty to unite with Congress in reversing it by giving my approval of the bill.

At the early day when the question was settled, and, indeed, at the several periods when it has subsequently been agitated, the success of the Constitution of the United States, as a new and peculiar system of a free representative government, was held doubtful in other countries, and was even a subject of patriotic apprehension among the American people themselves. A trial of nearly eighty years, through the vicissitudes of foreign conflicts and of civil war, is confidently regarded as having extinguished all such doubts and apprehensions for the future. During that eighty years the people of the United States have enjoyed a measure of security, peace, prosperity, and happiness never surpassed by any nation. It cannot be doubted that the triumphant success of the Constitution is due to the wonderful wisdom with which the functions of government were distributed among the three principal departments—the legislative, the executive, and the judicial—and to the fidelity with which each has confined itself or been confined by the general voice of the nation within its peculiar and proper sphere.

While a just, proper, and watchful jealousy of executive power constantly prevails, as it ought ever to prevail, yet it is equally true that an efficient Executive, capable, in the language of the oath prescribed to the President, of executing the laws within the sphere of executive action, of preserving, protecting, and defending the Constitution of the United States, is an indispensable security for tranquillity at home, and peace, honor, and safety abroad. Governments have been erected in many countries upon our model. If one or many of them have thus far failed in fully securing to their people the benefits which we have derived from our system, it may be confidently asserted that their misfortune has resulted from their unfortunate failure to maintain the integrity of each of the three great departments while preserving harmony among them all.

Having at an early period accepted the Constitution in regard to the executive office in the sense to which it was interpreted with the concurrence of its founders, I have found no sufficient grounds in the arguments now opposed to that construction, or in any assumed necessity of the times, for changing those opinions. For these reasons I return the bill to the Senate, in which house it originated, for the further consideration of Congress, which the Constitution prescribes. Insomuch as the several parts of the bill which I have not considered are matters chiefly of detail, and are based altogether upon the theory of the Constitution from which I am obliged to dissent, I have not thought it necessary to examine them with a view to make them an occasion of distinct and special objections. Experience, I think, has shown that it is the easiest, as it is also the most attractive, of studies to frame constitutions for the self-government of free States and nations.

But I think experience has equally shown that it is the most difficult of all political labors to preserve and maintain such free constitutions of self-government when once happily established. I know no other way in which they can be preserved and maintained, except by a constant adherence to them through the various vicissitudes of national existence, with such adaptations as may become necessary, always to be effected, however, through the agencies and in the forms prescribed in the original constitutions themselves. Whenever adminis-

tration fails, or seems to fail, in securing any of the great ends for which republican government is established, the proper course seems to be to renew the original spirit and forms of the Constitution itself.

ANDREW JOHNSON.

WASHINGTON, *March* 2, 1867.

EXHIBIT B.

Message to the Senate, December 12, 1867.

To the Senate of the United States:

On the 12th of August last I suspended Mr. Stanton from the exercise of the office of Secretary of War, and on the same day designated General Grant to act as Secretary of War *ad interim*.

The following are copies of the executive orders:

EXECUTIVE MANSION,
Washington, August 12, 1867.

SIR: By virtue of the power and authority vested in me, as President, by the Constitution and the laws of the United States, you are hereby suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same.

You will at once transfer to General Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

Hon. EDWIN M. STANTON, *Secretary of War.*

EXECUTIVE MANSION,
Washington, D. C., August 12, 1867.

SIR: Hon. Edwin M. Stanton having been this day suspended as Secretary of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will at once enter upon the discharge of the duties of the office.

The Secretary of War has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

General ULYSSES S. GRANT, *Washington, D. C.*

The following communication was received from Mr. Stanton:

WAR DEPARTMENT,
Washington City, August 12, 1867.

SIR: Your note of this day has been received, informing me that by virtue of the powers and authority vested in you as President, by the Constitution and laws of the United States, I am suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same: and also directing me at once to transfer to General Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in my custody and charge.

Under a sense of public duty I am compelled to deny your right, under the Constitution and laws of the United States, without the advice and consent of the Senate, and without legal cause, to suspend me from the office of Secretary of War, or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and public property in my custody as Secretary.

But, inasmuch as the General commanding the armies of the United States has been appointed *ad interim*, and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force.

To the PRESIDENT.

The suspension has not been revoked, and the business of the War Department is conducted by the Secretary *ad interim*. Prior to the date of this suspension I had come to the conclusion that the time had arrived when it was

proper Mr. Stanton should retire from my cabinet. The mutual confidence and accord which should exist in such a relation had ceased. I suppose that Mr. Stanton was well advised that his continuance in the cabinet was contrary to my wishes, for I had repeatedly given him so to understand by every mode short of an express request that he should resign. Having waited full time for the voluntary action of Mr. Stanton, and seeing no manifestation on his part of an intention to resign, I addressed him the following note on the 5th of August:

SIR: Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted.

To this note I received the following reply:

WAR DEPARTMENT,
Washington, August 5, 1867.

SIR: Your note of this day has been received, stating that public considerations of a high character constrain you to say that my resignation as Secretary of War will be accepted.

In reply, I have the honor to say that public considerations of a high character, which alone have induced me to continue at the head of this department, constrain me not to resign the office of Secretary of War before the next meeting of Congress.

EDWIN M. STANTON,
Secretary of War.

This reply of Mr. Stanton was not merely a declination of compliance with the request for his resignation; it was a defiance, and something more. Mr. Stanton does not content himself with assuming that public considerations bearing upon his continuance in office form as fully a rule of action for himself as for the President, and that upon so delicate a question as the fitness of an officer for continuance in his office, the officer is as competent and impartial to decide as his superior, who is responsible for his conduct; but he goes further, and plainly intimates what he means by "public considerations of a high character;" and this is nothing less than his loss of confidence in his superior. He says that these public considerations have "alone induced me to continue at the head of this department," and that they "constrain me not to resign the office of Secretary of War before the next meeting of Congress."

This language is very significant. Mr. Stanton holds the position unwillingly. He continues in office only under a sense of high public duty. He is ready to leave when it is safe to leave, and as the danger he apprehends from his removal then will not exist when Congress is here, he is constrained to remain during the *interim*. What, then, is that danger which can only be averted by the presence of Mr. Stanton or of Congress? Mr. Stanton does not say that "public considerations of a high character" constrain him to hold on to the office indefinitely. He does not say that no one other than himself can at any time be found to take his place and perform its duties. On the contrary, he expresses a desire to leave the office at the earliest moment consistent with these high public considerations. He says in effect that while Congress is away he must remain, but that when Congress is here he can go. In other words, he has lost confidence in the President. He is unwilling to leave the War Department in his hands, or in the hands of any one the President may appoint or designate to perform its duties. If he resigns, the President may appoint a Secretary of War that Mr. Stanton does not approve. Therefore, he will not resign. But when Congress is in session the President cannot appoint a Secretary of War which the Senate does not approve. Consequently, when Congress meets Mr. Stanton is ready to resign.

Whatever cogency these "considerations" may have had upon Mr. Stanton. whatever right he may have had to entertain such considerations, whatever propriety there might be in the expression of them to others, one thing is certain: it was official misconduct, to say the least of it, to parade them before his superior officer. Upon the receipt of this extraordinary note I only delayed the

order of suspension long enough to make the necessary arrangements to fill the office. If this were the only cause for his suspension, it would be ample. Necessarily it must end our most important official relations, for I cannot imagine a degree of effrontery which would embolden the head of a department to take his seat at the council table in the Executive Mansion after such an act. Nor can I imagine a President so forgetful of the proper respect and dignity which belong to his office as to submit to such intrusion. I will not do Mr. Stanton the wrong to suppose that he entertained any idea of offering to act as one of my constitutional advisers after that note was written. There was an interval of a week between that date and the order of suspension, during which two cabinet meetings were held. Mr. Stanton did not present himself at either, nor was he expected. On the 12th of August Mr. Stanton was notified of his suspension, and that General Grant had been authorized to take charge of the department. In his answer to this notification, of the same date, Mr. Stanton expresses himself as follows:

> Under a sense of public duty I am compelled to deny your right, under the Constitution and laws of the United States, without the advice and consent of the Senate, to suspend me from office as Secretary of War, or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and public property in my custody as Secretary. But inasmuch as the General commanding the armies of the United States has been appointed *ad interim*, and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force.

It will not escape attention that in his note of August 5 Mr. Stanton stated that he had been constrained to continue in the office, even before he was requested to resign, by considerations of a high public character. In this note of August 12 a new and different sense of public duty compels him to deny the President's right to suspend him from office without the consent of the Senate. This last is the public duty of resisting an act contrary to law, and he charges the President with violation of the law in ordering his suspension.

Mr. Stanton refers generally to the "Constitution and laws of the United States," and says that a sense of public duty "under" these compels him to deny the right of the President to suspend him from office. As to his sense of duty under the Constitution, that will be considered in the sequel. As to his sense of duty under "the laws of the United States," he certainly cannot refer to the law which creates the War Department, for that expressly confers upon the President the unlimited right to remove the head of the department. The only other law bearing upon the question is the tenure-of-office act, passed by Congress over the presidential veto March 2, 1867. This is the law which, under a sense of public duty, Mr. Stanton volunteered to defend. There is no provision in this law which compels any officer coming within its provisions to remain in office. It forbids removals, but not resignations. Mr. Stanton was perfectly free to resign at any moment, either upon his own motion or in compliance with a request or an order. It was a matter of choice or of taste. There was nothing compulsory in the nature of legal obligation. Nor does he put his action upon that imperative ground. He says he acts under a "sense of public duty," not of legal obligation, compelling him to hold on, and leaving him no choice. The public duty which is upon him arises from the respect which he owes to the Constitution and the laws, violated in his own case. He is, therefore, compelled by this sense of public duty to vindicate violated law and to stand as its champion.

This was not the first occasion in which Mr. Stanton, in discharge of a public duty, was called upon to consider the provisions of that law. That tenure-of-office law did not pass without notice. Like other acts, it was sent to the President for approval. As is my custom, I submitted its consideration to my cabinet for their advice upon the question, whether I should approve it or not. It was a grave question of constitutional law, in which I would of course rely most

upon the opinion of the Attorney General and of Mr. Stanton, who had once been Attorney General. Every member of my cabinet advised me that the proposed law was unconstitutional. All spoke without doubt or reservation, but Mr. Stanton's condemnation of the law was the most elaborate and emphatic. He referred to the constitutional provisions, the debates in Congress—especially to the speech of Mr. Buchanan, when a senator—to the decisions of the Supreme Court, and to the usage from the beginning of the government through every successive administration, all concurring to establish the right of removal as vested by the Constitution in the President. To all these he added the weight of his own deliberate judgment, and advised me that it was my duty to defend the power of the President from usurpation and to veto the law.

I do not know when a sense of public duty is more imperative upon a head of department than upon such an occasion as this. He acts then under the gravest obligations of law; for when he is called upon by the President for advice it is the Constitution that speaks to him. All his other duties are left by the Constitution to be regulated by statute; but this duty was deemed so momentous that it is imposed by the Constitution itself. After all this I was not prepared for the ground taken by Mr. Stanton in his note of August 12. I was not prepared to find him compelled, by a new and indefinite sense of public duty under "the Constitution," to assume the vindication of a law which, under the solemn obligations of public duty, imposed by the Constitution itself, he advised me was a violation of that Constitution. I make great allowance for a change of opinion, but such a change as this hardly falls within the limits of greatest indulgence. Where our opinions take the shape of advice and influence the action of others, the utmost stretch of charity will scarcely justify us in repudiating them when they come to be applied to ourselves.

But to proceed with the narrative. I was so much struck with the full mastery of the question manifested by Mr. Stanton, and was at the time so fully occupied with the preparation of another veto upon the pending reconstruction act, that I requested him to prepare the veto upon this tenure-of-office bill. This he declined on the ground of physical disability to undergo, at the time, the labor of writing, but stated his readiness to furnish what aid might be required in the preparation of materials for the paper. At the time this subject was before the cabinet it seemed to be taken for granted that as to those members of the cabinet who had been appointed by Mr. Lincoln their tenure of office was not fixed by the provisions of the act. I do not remember that the point was distinctly decided; but I well recollect that it was suggested by one member of the cabinet who was appointed by Mr. Lincoln, and that no dissent was expressed.

Whether the point was well taken or not did not seem to me of any consequence, for the unanimous expression of opinion against the constitutionality and policy of the act was so decided that I felt no concern, so far as the act had reference to the gentlemen then present, that I would be embarrassed in the future. The bill had not then become a law. The limitation upon the power of removal was not yet imposed, and there was yet time to make any changes. If any one of these gentlemen had then said to me that he would avail himself of the provisions of that bill in case it became a law, I should not have hesitated a moment as to his removal. No pledge was then expressly given or required. But there are circumstances when to give an express pledge is not necessary, and when to require it is an imputation of possible bad faith. I felt that if these gentlemen came within the purview of the bill, it was, as to them, a dead letter, and that none of them would ever take refuge under its provisions. I now pass to another subject. When, on the 15th of April, 1865, the duties of the presidential office devolved upon me, I found a full cabinet of seven members, all of them selected by Mr. Lincoln. I made no change. On the contrary, I shortly afterward ratified a change determined upon by Mr. Lin-

coln, but not perfected at his death, and admitted his appointee, Mr. Harlan, in the place of Mr. Usher, who was in office at the time.

The great duty of the time was to re-establish government, law, and order in the insurrectionary States. Congress was then in recess, and the sudden overthrow of the rebellion required speedy action. This grave subject had engaged the attention of Mr Lincoln in the last days of his life, and the plan according to which it was to be managed had been prepared and was ready for adoption. A leading feature of that plan was that it should be carried out by the executive authority, for, so far as I have been informed, neither Mr. Lincoln nor any member of his cabinet doubted his authority to act or proposed to call an extra session of Congress to do the work. The first business transacted in cabinet after I became President was this unfinished business of my predecessor. A plan or scheme of reconstruction was produced which had been prepared for Mr. Lincoln by Mr. Stanton, his Secretary of War. It was approved, and, at the earliest moment practicable, was applied in the form of a proclamation to the State of North Carolina, and afterward became the basis of action in turn for the other States.

Upon the examination of Mr. Stanton before the impeachment committee he was asked the following question :

Did any one of the cabinet express a doubt of the power of the executive branch of the government to reorganize State governments which had been in rebellion without the aid of Congress?

He answered :

None whatever. I had myself entertained no doubt of the authority of the President to take measures for the organization of the rebel States on the plan proposed during the vacation of Congress, and agreed in the plan specified in the proclamation in the case of North Carolina.

There is, perhaps, no act of my administration for which I have been more denounced than this. It was not originated by me; but I shrink from no responsibility on that account, for the plan approved itself to my own judgment, and I did not hesitate to carry it into execution. Thus far, and upon this vital policy, there was perfect accord between the cabinet and myself, and I saw no necessity for a change. As time passed on there was developed an unfortunate difference of opinion and of policy between Congress and the President upon this same subject and upon the ultimate basis upon which the reconstruction of these States should proceed, especially upon the question of negro suffrage. Upon this point three members of the cabinet found themselves to be in sympathy with Congress. They remained only long enough to see that the difference of policy could not be reconciled. They felt that they should remain no longer, and a high sense of duty and propriety constrained them to resign their positions. We parted with mutual respect for the sincerity of each other in opposite opinions, and mutual regret that the difference was on points so vital as to require a severance of official relations. This was in the summer of 1866. The subsequent sessions of Congress developed new complications when the suffrage bill for the District of Columbia and the reconstruction acts of March 2 and March 23, 1867, all passed over the veto. It was in cabinet consultations upon these bills that a difference of opinion upon the most vital points was developed. Upon these questions there was perfect accord between all the members of the cabinet and myself, except Mr. Stanton. He stood alone, and the difference of opinion could not be reconciled. That unity of opinion which upon great questions of public policy or administration is so essential to the Executive was gone.

I do not claim that the head of a department should have no other opinions than those of the President. He has the same right, in the conscientious discharge of duty, to entertain and express his own opinions as has the President. What I do claim is that the President is the responsible head of the adminis-

tration, and when the opinions of a head of department are irreconcilably opposed to those of the President in grave matters of policy and administration there is but one result which can solve the difficulty, and that is a severance of the official relation. This, in the past history of the government, has always been the rule; and it is a wise one; for such differences of opinion among its members must impair the efficiency of any administration.

I have now referred to the general grounds upon which the withdrawal of Mr. Stanton from my administration seemed to me to be proper and necessary; but I cannot omit to state a special ground which, if it stood alone, would vindicate my action.

The sanguinary riot which occurred in the city of New Orleans on the 30th of August, 1866, justly aroused public indignation and public inquiry, not only as to those who were engaged in it, but as to those who, more or less remotely, might be held to responsibility for its occurrence. I need not remind the Senate of the effort made to fix that responsibility on the President The charge was openly made, and again and again reiterated through all the land, that the President was warned in time but refused to interfere.

By telegrams from the lieutenant governor and attorney general of Louisiana, dated the 27th and 28th of August, I was advised that a body of delegates, claiming to be a constitutional convention, were about to assemble in New Orleans; that the matter was before the grand jury, but that it would be impossible to execute civil process without a riot, and this question was asked: "Is the military to interfere to prevent process of court?" This question was asked at a time when the civil courts were in the full exercise of their authority, and the answer sent by telegraph, on the same 28th of August, was this:

The military will be expected to sustain, not to interfere with the proceedings of the courts.

On the same 28th of August the following telegram was sent to Mr. Stanton by Major General Baird, then (owing to the absence of General Sheridan) in command of the military at New Orleans:

Hon. EDWIN M. STANTON, *Secretary of War:*

A convention has been called, with the sanction of Governor Wells, to meet here on Monday. The lieutenant governor and city authorities think it unlawful, and propose to break it up by arresting the delegates. I have given no orders on the subject, but have warned the parties that I could not countenance or permit such action without instructions to that effect from the President. Please instruct me at once by telegraph.

The 28th of August was on Saturday. The next morning, the 29th, this despatch was received by Mr. Stanton, at his residence in this city. He took no action upon it, and neither sent instructions to General Baird himself nor presented it to me for such instructions. On the next day (Monday) the riot occurred. I never saw this despatch from General Baird until some ten days or two weeks after the riot, when, upon my call for all the despatches, with a view to their publication, Mr. Stanton sent it to me. These facts all appear in the testimony of Mr. Stanton before the Judiciary Committee in the impeachment investigation. On the 30th, the day of the riot, and after it was suppressed, General Baird wrote to Mr. Stanton a long letter, from which I make the following extracts:

SIR: I have the honor to inform you that a very serious riot occurred here to-day. I had not been applied to by the convention for protection, but the lieutenant governor and the mayor had freely consulted with me, and I was so fully convinced that it was so strongly the intent of the city authorities to preserve the peace, in order to prevent military interference, that I did not regard an outbreak as a thing to be apprehended. The lieutenant governor had assured me that even if a writ of arrest was issued by the court, the sheriff would not attempt to serve it without my permission, and for to-day they designed to suspend it. I enclose herewith copies of my correspondence with the mayor, and of a despatch which the lieutenant governor claims to have received from the President. I regret that no reply to my despatch to you of Saturday has yet reached me. General Sheridan is still absent in Texas.

The despatch of General Baird of the 28th asks for immediate instructions, and his letter of the 30th, after detailing the terrible riot which had just happened, ends with the expression of regret that the instructions which he asked for were not sent. It is not the fault or the error or the omission of the President that this military commander was left without instructions; but for all omissions, for all errors, for all failures to instruct, when instruction might have averted this calamity, the President was openly and persistently held responsible. Instantly, without waiting for proof, the delinquency of the President was heralded in every form of utterance. Mr. Stanton knew then that the President was not responsible for this delinquency. The exculpation was in his power, but it was not given by him to the public, and only to the President in obedience to a requisition for all the despatches.

No one regrets more than myself that General Baird's request was not brought to my notice. It is clear, from his despatch and letter, that if the Secretary of War had given him proper instructions the riot which arose on the assembling of the convention would have been averted. There may be those ready to say that I would have given no instructions, even if the despatch had reached me in time; but all must admit that I ought to have had the opportunity.

The following is the testimony given by Mr. Stanton before the impeachment investigation committee as to the despatch:

Q. Referring to the despatch of the 28th of July by General Baird, I ask you whether that despatch, on its receipt, was communicated?

A. I received that despatch on Sunday forenoon; I examined it carefully and considered the question presented; I did not see that I could give any instructions different from the line of action which General Baird proposed, and made no answer to the despatch.

Q. I see it stated that this was received at ten o'clock and twenty minutes p. m. Was that the hour at which it was received by you?

A. That is the date of its reception in the telegraph office Saturday night. I received it on Sunday forenoon, at my residence; a copy of the despatch was furnished to the President several days afterwards, along with all the other despatches and communications on that subject, but it was not furnished by me before that time; I suppose it may have been ten or fifteen days afterwards.

Q. The President himself being in correspondence with those parties upon the same subject, would it not have been proper to have advised him of the reception of that despatch?

A. I know nothing about his correspondence, and know nothing about any correspondence except this one despatch. We had intelligence of the riot on Thursday morning. The riot had taken place on Monday.

It is a difficult matter to define all the relations which exists between the heads of department and the President. The legal relations are well enough defined. The Constitution places these officers in the relation of his advisers when he calls upon them for advice. The acts of Congress go further. Take, for example, the act of 1789, creating the War Department. It provides that—

"There shall be a principal officer therein, to be called the Secretary for the Department of War, who shall perform and execute such duties as shall from time to time be enjoined on or entrusted to him by the President of the United States;" and furthermore, "the said principal officer shall conduct the business of the said department in such manner as the President of the United States shall from time to time order and instruct."

Provision is also made for the appointment of an inferior officer by the head of the department, to be called the chief clerk, "who, whenever said principal officer shall be removed from office by the President of the United States," shall have the charge and custody of the books, records, and papers of the department.

The legal relation is analogous to that of principal agent. It is the President upon whom the Constitution devolves, as head of the executive department, the duty to see that the laws are faithfully executed; but as he cannot execute them in person he is allowed to select his agents, and is made responsible for their acts within just limits. So complete is this presumed delegation of authority in the relation of a head of department to the President that the Supreme Court of the United States have decided that an order made by a head of department is presumed to be made by the President himself.

The principal, upon whom such responsibility is placed for the acts of a subordinate, ought to be left as free as possible in the matter of selection and of dismissal. To hold him to responsibility for an officer beyond his control; to leave the question of the fitness of such an agent to be decided for him and not by him; to allow such a subordinate, when the President, moved by "public considerations of a high character," requests his resignation to assume for himself an equal right to act upon his own views of "public considerations," and to make his own conclusions paramount to those of the President—to allow all this is to reverse the just order of administration, and to place the subordinate above the superior.

There are, however, other relations between the President and a head of department beyond these defined legal relations which necessarily attend them, though not expressed. Chief among these is mutual confidence. This relation is so delicate that it is sometimes hard to say when or how it ceases. A single flagrant act may end it at once, and then there is no difficulty. But confidence may be just as effectually destroyed by a series of causes too subtle for demonstration. As it is a plant of slow growth, so, too, it may be slow in decay. Such has been the process here. I will not pretend to say what acts or omissions have broken up this relation. They are hardly susceptible of statement, and still less of formal proof. Nevertheless, no one can read the correspondence of the 5th of August without being convinced that this relation was effectually gone on both sides, and that, while the President was unwilling to allow Mr. Stanton to remain in his administration, Mr. Stanton was equally unwilling to allow the President to carry on his administration without his presence. In the great debate which took place in the House of Representatives in 1789, on the first organization of the principal departments, Mr. Madison spoke as follows:

> It is evidently the intention of the Constitution that the First Magistrate should be responsible for the executive department. So far, therefore, as we do not make the officers who are to aid him in the duties of that department responsible to him, he is not responsible to the country. Again, is there no danger that an officer, when he is appointed by the concurrence of the Senate, and his friends in that body, may choose rather to risk his establishment on the favor of that branch than rest it upon the discharge of his duties to the satisfaction of the executive branch, which is constitutionally authorized to inspect and control his conduct? And if it should happen that the officers connect themselves with the Senate, they may mutually support each other, and for want of efficacy reduce the power of the President to a mere vapor, in which case his responsibility would be annihilated, and the expectation of it is unjust. The high executive officers joined in cabal with the Senate would lay the foundation of discord, and end in an assumption of the executive power, only to be removed by a revolution of the government.

Mr. Sedgwick, in the same debate, referring to the proposition that a head of department should only be removed or suspended by the concurrence of the Senate, uses this language:

> But if proof be necessary, what is then the consequence? Why, in nine cases out of ten, where the case is very clear to the mind of the President that the man ought to be removed, the effect cannot be produced because it is absolutely impossible to produce the necessary evidence. Are the Senate to proceed without evidence? Some gentlemen contend not. Then the object will be lost. Shall a man, under these circumstances, be saddled upon the President, who has been appointed for no other purpose but to aid the President in performing certain duties? Shall he be continued, I ask again, against the will of the President? If he is, where is the responsibility? Are you to look for it in the President, who has no control over the officer, no power to remove him if he acts unfeelingly or unfaithfully? Without you make him responsible you weaken and destroy the strength and beauty of your system. What is to be done in cases which can only be known from a long acquaintance with the conduct of an officer?

I had indulged the hope that upon the assembling of Congress Mr. Stanton would have ended this unpleasant complication according to the intimation given in his note of August 12. The duty which I have felt myself called upon to perform was by no means agreeable; but I feel that I am not responsible for the controversy, or for the consequences.

Unpleasant as this necessary change in my cabinet has been to me, upon personal considerations, I have the consolation to be assured that, so far as the public interests are involved, there is no cause for regret. Salutary reforms have been introduced by the Secretary *ad interim*, and great reductions of expenses have been effected under his administration of its War Department, to the saving of millions to the treasury.

ANDREW JOHNSON.

WASHINGTON, *December* 12, 1867.

EXHIBIT C.

Address to the President by Hon. Reverdy Johnson, August 18, 1866.

Mr. PRESIDENT: We are before you as a committee of the National Union Convention, which met in Philadelphia, on Tuesday, the 14th instant, charged with the duty of presenting you with an authentic copy of its proceedings.

Before placing it in your hands, you will permit us to congratulate you that in the object for which the convention was called, in the enthusiasm with which in every State and Territory the call was responded to, in the unbroken harmony of its deliberations, in the unanimity with which the principles it has declared were adopted, and more especially in the patriotic and constitutional character of the principles themselves, we are confident that you and the country will find gratifying and cheering evidence that there exists among the people a public sentiment which renders an early and complete restoration of the Union as established by the Constitution certain and inevitable. Party faction, seeking the continuance of its misrule, may momentarily delay it, but the principles of political liberty, for which our fathers successfully contended, and to secure which they adopted the Constitution, are so glaringly inconsistent with the condition in which the country has been placed by such misrule, that it will not be permitted a much longer duration.

We wish, Mr. President, you could have witnessed the spirit of concord and brotherly affection which animated every member of the convention. Great as your confidence has ever been in the intelligence and patriotism of your fellow-citizens, in their deep devotion to the Union, and their present determination to reinstate and maintain it, that confidence would have become a positive conviction could you have seen and heard all that was done and said upon the occasion. Every heart was evidently full of joy, every eye beamed with patriotic animation; despondency gave place to the assurance that, our late dreadful civil strife ended, the blissful reign of peace, under the protection not of arms, but of the Constitution and laws, would have sway, and be in every part of our land cheerfully acknowledged and in perfect good faith obeyed. You would not have doubted that the recurrence of dangerous domestic insurrections in the future is not to be apprehended.

If you could have seen the men of Massachusetts and South Carolina coming into the convention the first day of its meeting, hand in hand, amid the rapturous applause of the whole body, awakened by heartfelt gratification at the event, filling the eyes of thousands with tears of joy, which they neither could nor desired to repress, you would have felt as every person present felt, that the time had arrived when all sectional or other perilous dissensions had ceased, and that nothing should be heard in the future but the voice of harmony proclaiming devotion to a common country, of pride in being bound together by a common Union, existing and protected by forms of government proved by experience to be eminently fitted for the exigencies of either war or peace.

In the principles announced by the convention and in the feeling there

manifested, we have every assurance that harmony throughout our entire land will soon prevail. We know that, as in former days, as was eloquently declared by Webster, the nation's most gifted statesman, Massachusetts and South Carolina went "shoulder to shoulder through the Revolution," and stood hand in hand "around the administration of Washington, and felt his own great arm lean on them for support," so will they again, with like magnanimity, devotion, and power, stand round your administration, and cause you to feel that you may also lean on them for support.

In the proceedings, Mr. President, which we are to place in your hands, you will find that the convention performed the grateful duty imposed upon them by their knowledge of your "devotion to the Constitution and laws and interests of your country," as illustrated by your entire presidential career, of declaring that in you they "recognize a Chief Magistrate worthy of the nation and equal to the great crisis upon which your lot is cast;" and in this declaration it gives us marked pleasure to add, we are confident that the convention has but spoken the intelligent and patriotic sentiment of the country. Ever inaccessible to the low influences which often control the mere partisan, governed alone by an honest opinion of constitutional obligations and rights, and of the duty of looking solely to the true interests, safety, and honor of the nation, such a class is incapable of resorting to any bait for popularity at the expense of the public good.

In the measures which you have adopted for the restoration of the Union the convention saw only a continuance of the policy which for the same purpose was inaugurated by your immediate predecessor. In his re-election by the people, after that policy had been fully indicated and had been made one of the issues of the contest, those of his political friends who are now assailing you for sternly pursuing it are forgetful or regardless of the opinions which their support of his re-election necessarily involved. Being upon the same ticket with that much-lamented public servant, whose foul assassination touched the heart of the civilized world with grief and horror, you would have been false to obvious duty if you had not endeavored to carry out the same policy; and, judging now by the opposite one which Congress has pursued, its wisdom and patriotism are indicated by the fact that that of Congress has but continued a broken Union by keeping ten of the States in which at one time the insurrection existed (as far as they could accomplish it) in the condition of subjugated provinces, denying to them the right to be represented, while subjecting their people to every species of legislation, including that of taxation. That such a state of things is at war with the very genius of our government, inconsistent with every idea of political freedom, and most perilous to the peace and safety of the country, no reflecting man can fail to believe.

We hope, sir, that the proceedings of the convention will cause you to adhere, if possible, with even greater firmness to the course which you are pursuing, by satisfying you that the people are with you, and that the wish which lies nearest to their heart is that a perfect restoration of our Union at the earliest moment be attained, and a conviction that the result can only be accomplished by the measures which you are pursuing. And in the discharge of the duties which these impose upon you, we, as did every member of the convention, again for ourselves individually tender to you our profound respect and assurance of our cordial and sincere support.

With a reunited Union, with no foot but that of a freeman treading or permitted to tread our soil, with a nation's faith pledged forever to a strict observance of all its obligations, with kindness and fraternal love everywhere prevailing, the desolations of war will soon be removed; its sacrifices of life, sad as they have been, will, with Christian resignation, be referred to a providential purpose of fixing our beloved country on a firm and enduring basis, which will forever place our liberty and happiness beyond the reach of human peril.

Then, too, and forever, will our government challenge the admiration and receive the respect of the nations of the world, and be in no danger of any efforts to impeach our honor.

And permit me, sir, in conclusion, to add, that, great as your solicitude for the restoration of our domestic peace and your labors to that end, you have also a watchful eye to the rights of the nation, and that any attempt by an assumed or actual foreign power to enforce an illegal blockade against the government or citizens of the United States, to use your own mild but expressive words, "will be disallowed." In this determination I am sure you will receive the unanimous approval of your fellow-citizens.

Now, sir, as the chairman of this committee, and in behalf of the convention, I have the honor to present you with an authentic copy of its proceedings.

The CHIEF JUSTICE. Senators, you have heard the answer submitted by the counsel for the President of the United States. Those of you who are in favor of receiving and ordering this answer to be filed will say "ay," and those who are of the contrary opinion will say "no." [Having put the question.] It is so ordered; the answer is received and will be filed.

Mr. Manager BOUTWELL. Mr. President and gentlemen of the Senate, in behalf of the House of Representatives, and as directed by the managers, I have the honor to request of the honorable Senate a copy of the answer filed by Andrew Johnson, President of the United States, to the articles of impeachment presented against him by the House of Representatives, and to say that it is the expectation of the managers that they will be able at 1 o'clock tomorrow afternoon, after consultation with the House, to present a fit replication to the answer filed.

Mr. EVARTS. Mr. Chief Justice and Senators, the counsel for the President think it proper, unless some objection should now be made, to bring to the attention of the honorable court the matter of provision for the allowance of the time for preparation for the trial which shall be accorded to the President and his counsel after the replication of the House of Representatives to the answer of the President shall have been submitted to this court. In the application which was made on the 13th instant for time for the preparation and submission of the answer, as then presented to the court, we had included in our consideration of that time for which we so asked, the expectation and intention of carrying on with all due diligence and at one and the same time the preparation of the answer and the preparation for the trial. The action of the court and its determination of the time within which the answer should properly be presented has obliged us, as may be well understood by this court, to devote our whole time and thought in this brief interval to the preparation of the answer; and we have had no time to consider the various questions of law and of fact and of evidence, and the forms and means of the production of the same, which rest upon the responsibility and lie within the duty of counsel in all matters of forensic and judicial consideration. We, therefore, if the honorable court please, submit now a request that the President and his counsel may be allowed the period of thirty days after the filing of the replication on the part of the House of Representatives to the answer of the President for preparation for the trial and before it shall actually proceed; and I beg leave to send to the Chief Justice a written minute of that proposition signed by the counsel.

The CHIEF JUSTICE. It is not for the present in order. The question before the Senate is the motion submitted on the part of the managers of the impeachment that the House of Representatives have time to file a replication.

The motion of the managers on the part of the House was agreed to.

The CHIEF JUSTICE. The chair will now receive an application on the part of the counsel for the President.

Mr. EVARTS. I now beg to ask for the action of this honorable court upon

the presentation in writing of a request for thirty days after the filing of the replication for the defence to prepare for the trial.

The CHIEF JUSTICE. The Secretary will report the order asked on the part of the counsel for the President.

The Secretary read as follows:

To the Senate of the United States, sitting as a Court of Impeachment:

And now, on this 23d day of March, in the year 1868, the counsel for the President of the United States, upon reading and filing his answer to the articles of impeachment exhibited against him, respectfully represent to this honorable court that after the replication shall have been filed to the said answer, the due and proper preparation of and for the trial of the cause will require, in the opinion and judgment of such counsel, that a period of not less than thirty days should be allowed to the President of the United States and his counsel for such preparation, and before the said trial should proceed.

HENRY STANBERY,
B. R. CURTIS,
THOMAS A. R. NELSON,
WILLIAM M. EVARTS,
W. S. GROESBECK,
Of Counsel.

Mr. HOWARD. Mr. President, if it be in order I will now move that that application lie upon the table until the replication of the House of Representatives shall come in.

Mr. Manager BINGHAM. Mr. President, before the vote is taken I ask leave to state that, if it be the pleasure of the Senate, the managers on the part of the House are ready to consider this application now.

The CHIEF JUSTICE. Senators, it is moved by the senator from Michigan that the application on the part of the counsel for the President lie upon the table until the replication shall be filed.

Mr. HOWARD. I withdraw that motion for the moment if the managers wish to be heard.

The CHIEF JUSTICE. The senator from Michigan withdraws his motion. Do the managers wish to be heard?

Mr. Manager LOGAN. Mr. President and senators, I am instructed by the managers on the part of the House of Representatives to resist the granting of this application, not on account of the time at which it is presented, but for the reason that it does not contain such matter as in our opinion will justify the Senate in giving further time for preparation on the part of the respondent's counsel for the trial of this cause. We do not desire to force this trial any more rapidly than the necessities of the case demand, but desire that such rules as have heretofore been observed, or as would be observed in a court at law, may be adhered to in the testing of the sufficiency of this application. What reasons are given in the application here presented for the time to be extended? None more than that counsel shall have an opportunity to prepare themselves for oratorical displays before this august body. They have had the same opportunities that the managers on the part of the House of Representatives have had for preparation. They can and will have the same during the whole progress of this trial. It is not stated that any witness who will prove any material fact is not present, or whose presence cannot any day be procured. It is not stated that delay is necessary for the procurement of records, documents, persons, or papers, material or immaterial in this case. Why, then, Mr. President, grant further time when no good cause under the rule is shown? The answer herein filed admits the order of removal of the Secretary of War and the order appointing a Secretary *ad interim*. The President knew what

the law was when these orders were made, and knowing it, violated it, for which violation we charge him with high misdemeanors in office. In the many trials we have reported in this and other countries this application has no precedent.

In the case of Judge Chase his application stated, in substance, that it was not in his power to obtain information respecting facts alleged against him to have taken place in Philadelphia and Richmond, in time to prepare and put in his answer and proceed to trial before the 5th day of March then next following; and further, that he could not get his witnesses or counsel nor prepare his answer, at the same time disclaiming that this was done for delay. This application was sworn to by the respondent; he was given time, and the facts show that his answer was filed and his trial had, and he acquitted in five days' less time than he swore it would take him to prepare for trial.

In Judge Peck's case his application stated his difficulties in obtaining witnesses, the distance they lived from Washington, the time it would require them to travel from St. Louis to Washington, the necessity for copying and obtaining records; that four years had elapsed since the transpiring of the acts complained of against him. This application was also sworn to. If the learned counsel remember the trial of Queen Caroline before the Parliament of Great Britain, when time was granted for the procurement of evidence the learned attorney general then and there protested against the granting of time becoming a precedent for any future trial, this application being granted merely through courtesy to the Queen, when witnesses were deemed absolutely necessary to protect, if possible, her reputation. This application differs in form and substance from any that our attention has been directed to, made by the counsel, signed by themselves, and sworn to by no one.

Mr. President, the rule in courts of law, in applications for a continuance of the cause or the extension of time, is, that reasons good and sufficient must be stated; if for want of a witness or witnesses, you must give the name or names, the residence, and what you expect to prove by said witness or witnesses, and that you know of no other witnesses present by whom you can prove the same facts, and also that you have used due diligence to procure the evidence. This application certainly does not come under that rule. No evidence is stated that is expected to be produced. The name of no witness is given that is expected to be subpœnaed. No distance is mentioned that must be travelled. No residence is mentioned. It is not stated that any attempt has been made to obtain any evidence or to even have witnesses subpœnaed. But, sir, for what is this application made, and upon what is it based? It is based upon no urgent necessity for time, that justice may be done in the premises, but merely indicates to the Senate that time is desired to examine authorities, to prepare arguments, and for nought else can we discover that it is made.

Sirs, we insist, as managers on the part of the House of Representatives and the people, that no more time shall be given in this case than is absolutely necessary to try it; there is no necessity for the extension for counsel to prepare on either side; none for the procurement of witnesses, as none has been asked on that ground. If time be given on this application, perhaps when issue is joined and the time now extended elapses, we may be met by an affidavit asking more time for the procurement of witnesses in some distant part of the country. In my judgment time should not be granted for the trial of the President of the United States on any different application from that required to give time for the trial of the poorest and humblest citizen in the land; he should be tried by the same rules and held amenable to the same laws that apply to any other citizen. Let it not be said that no harm may come to the country by postponement of this cause. If we are correct in our charges against him, harm may come by a postponement.

We have charged him with intentionally violating the law; we have charged him with obstructing the law. Our charges are of such a character as show

him to be a dangerous person to remain the Chief Magistrate of the nation, inasmuch as he, instead of administering, obstructs the law. It is said that time would be given to an ordinary criminal to prepare his defence. I may be pardoned for saying that we, as the managers on the part of the House and the country, consider the President a criminal, but not an ordinary one. We charge him as a criminal, and are bound to so consider him until, by the verdict of his triers, he shall be acquitted of all the articles herein presented. The learned counsel for the respondent do not agree with us in this; nor do we ask the Senate to so adjudge until our charges are made good by competent testimony. The course of the case of ordinary criminals who commit crimes or misdemeanors is, or may be, different from the course in this case. But, sir, ordinary criminals are either arrested and put under bonds or imprisoned, that no further violations of law may be committed by them during the pendency of their trial. But, sir, in this case the President, who is charged with violating the law, has the same power to act to-day and still trample the laws and the Constitution under foot that he had the day we charged him with having committed these high crimes and misdemeanors; hence the reasons for not granting time in this case are stronger than could be urged in the case of an ordinary criminal.

In the one case you would give time where no danger might arise from doing so; but in this case danger to the people might arise, and hence the same reasoning does not operate in this that does in the case of an ordinary criminal; and we here enter our protest against any extension of the time whatever in this case. What we desire is that the replication of the managers may be filed to-morrow at one o'clock, and then we may be permitted to state our case to the Senate acting as a court of impeachment, and that we may follow it up with the evidence, and that the counsel for the respondent may then state their defence and produce their evidence, and that on the issue thus made the court may decide as to the guilt or innocence of the party accused.

This is what we ask, and this is what we have a right to expect. I presume no man will doubt that if an application of this kind were made to a court at law, the inquiry would be: "Have you issued your subpœnas; have you attempted to get your witnesses; have you attempted to make any preparation to try the cause?" And if the counsel would answer that they had made no preparation whatever; that they had issued no subpœnas; had made no attempt to procure witnesses or get ready for the trial of the cause, but merely desired time for thought and reflection, the application would certainly be denied. And against the granting of this, not made upon the oath of any person, not signed by the President, and merely intended for the benefit of counsel, we, the managers, in the name of the House of Representatives and the whole people of this republic, do most solemnly protest.

Mr. EVARTS. Mr. President, I may be allowed very briefly to call the attention of this honorable court to the attitude of the cause before them, as we conceive it to be. Other courts, except such as are called for a special trial upon a special and limited authority, have established regulations guarding the rights of defendants, either in civil or in criminal prosecutions, with established terms of court and well recognized and understood habits of the conduct of judicial business. In our estimate of the course of this proceeding before this honorable court we have not yet arrived at a time when it was the duty of counsel or was at the charge of the accused to know or consider what the issues were upon which he was to prepare on his side or expect on the other the production of proof. Beyond that, we feel no occasion to present by affidavit to this honorable court a matter so completely within its cognizance that our time to plead was fixed so as to offer us but eight working days for that duty of counsel.

Obedient to the orders of the court, observant, as we propose at all times to be, of that public necessity and duty which require on the part of the President

of the United States and his counsel, not less than on the part of the House of Representatives and its managers, that diligence should be used, and that we his counsel should be withdrawn from all other professional or personal avocations, we yet cannot recognize in the presence of this court that that is an answer to an application for reasonable time to consider and prepare, to subpœna and produce, in all things to arrange and in all things to be ready, for the actual procedure of the trial. Nor, with great respect to the honorable managers in this great procedure, do we esteem it a sufficient answer to our desire to be relieved from undue pressure of haste upon our part that equal pressure of haste may have been used on the other. We do not so understand the question of the just and orderly protection of public interests as that this compensation for haste required from the defendant may be demanded by equal haste being necessary on the part of the prosecution.

But, beyond this, the honorable managers give us more professional credit than we are entitled to when they assume to say that our standard of our duty and our means and our needs for properly performing it are necessarily to be measured by theirs. Nor do they sufficiently attend, as I say with great respect, to the position of the accused and his counsel in reference to the preparation of a defence with that which is occupied by the managers and by the House of Representatives in reference to the explorations and the provision and the preparation of the accusation and of its evidence; for during a very considerable period, with the coercive power of summoning witnesses and calling for papers which rightfully belongs to the House of Representatives, all this matter upon the one side and the other, to a certain extent, may have been actually explored by them, and, as is known, to a very great extent, certainly has been.

Now if this honorable court will give the counsel for the President of the United States due respect in regard to the position in which we present ourselves, due respect to our statement, it will understand that up to this time the consideration of the degree and measure, of the means and occasions, for proof has not yet possibly received our practical and responsible attention, and that within the limits of this accusation, unless it shall be narrowed more than we expect by the replication to be filed, there may be, there must be, a very considerable range of subjects and a very considerable variety of practical considerations that will need to come under the responsible judgment and for the responsible action of counsel.

It would seem to me that we are placed thus far in the attitude of a defendant in a civil or in a public prosecution who upon the issue joined desires time to prepare for trial. The ordinary course in such a case is that as matter of right, as matter of absolute and universal custom, one is not required or expected to give any cause of actual obstruction and difficulty in reference to a continuance to what is the term of the court, doubtless in most cases to occur within a brief period after the issue is joined. This court having no such arrangement, and no such possible arrangement of its affairs in advance, we are obliged at each stage of regular proceeding to ask your attention as to what you will provide and consider in the particular case is, according to the general nature of the procedure and the understood attitude of both parties to it, a just and reasonable proposition to be made by us as to the time that should be allowed for the preparation in all respects for this trial after the issue shall have been joined. We do not ask any more time than in the interest of justice and duty under the actual circumstances of this case should be given to the poorest man in the country. The measure of justice and of duty has no respect whatever to poverty or station. The actual nature of the proceeding, the actual circumstances of the case are to furnish the rule for the exercise of whatever falls within the discretion of the court. If during the trial, on the part of the managers, it should appear that, by accident or by any other just excuse, the attendance of a proper

witness on their part was required, it would be the duty of this court, in the administration of justice, to allow proper time and delay for the production of the witness. And so, upon our part, if, foreseen or unforeseen, such an occasion should arise, it would be a necessary duty of the court to take it into consideration and provide for it as the occasion arose. The proposition that we now make to the court, and, unless there is to be a departure from the general habit of all courts in such a predictment of a procedure, what we expect their action according to and upon is this: that after issue joined we should have a reasonable time before we should be considered as bound to be in the condition of preparation for the proceedings in the cause.

Mr. Manager WILSON. Mr. President and Senators, the managers on the part of the House of Representatives have determined, so far as may lie in their power, that this case shall not be taken out of the line of the precedents; therefore it is that we will resist all applications for unreasonable delay. The counsel for the respondent who has just taken his seat might well, in view of the remarks which he submitted, have waited until issue joined before presenting this motion; but it is here, and we are prepared here and now to take the motion as we find it, and deal with it as its form and merit of substance require.

It will be remembered that the first step taken by the counsel for the respondent on the 13th instant was in violation of the precedent established by the cases which have been tried by the Senate of the United States. Looking into the case of Judge Chase, we find that on the return day of the summons he appeared and made application for time to answer; but he did not stop at this; he coupled with his motion for time to answer a request for time to prepare for his trial. He supported his application by his solemn affidavit, stating that he could not possibly prepare his case for trial before the 5th day of the succeeding March, and therefore he asked an allowance of time for preparation for trial until the commencement of the next session of Congress, as the then session would expire on the 4th day of that month.

In his application he discloses the necessities inducing his request, among which were the distances lying between the capital and the places where he was to ascertain the facts and circumstances necessary for his defence, and to find the witnesses to support it. After due consideration the Senate overruled his application, and required him to answer on the 4th day of the succeeding February, thus allowing him, both for answer and preparation, thirty days instead of eleven months, as prayed for in his motion. And what was the result in that case? Why, that on the 1st day of March succeeding, four days before the time which he stated in his affidavit would be required for him to prepare for trial, the cause had been tried on such perfect preparation that it resulted in the acquittal of the respondent. The Senate judged better than he of the difficulties of his case and of the time required to overcome them. So in the case of Judge Peck, when he appeared on the return day of the writ, it having been served on him but three days prior to the return, he made his joint application for time to answer and time to prepare for trial, and supported it by his solemn affidavit. He was granted the time he desired to prepare his answer, when, by an adjournment of Congress, his case went over for trial until the next session.

But we have had no such course pursued in this case. On the return day of the summons, notwithstanding the rule of the Senate required on that day and at that time the filing of the answer, we were met first with an application for forty days' leave in which to prepare an answer. The honorable Senate allowed ten days; and now, at the expiration of that time, we find a most elaborate answer presented by the counsel for the respondent; and in it is embodied the strongest argument against any delay in this case that has come from any source or is known to any person; and that is, that the respondent, by his answer, affirms as lying within his rightful powers under the Constitution the right to do the

very acts which we have charged against him at the bar of this Senate as criminal acts, and persists in his defiance of the laws and in the wickedness of the course which the representatives of the people have challenged. This might not be a weighty consideration in an ordinary case. It might not weigh much if, instead of the present respondent, we had some other officer of the government charged at the bar of the Senate with the offences enumerated in the articles to which he has this day answered.

But in this case it is of weight, and should have due consideration. Why is it of weight? Because the respondent has devolved on him not only the duty which rests upon the citizen to obey the law, but also the higher duty to execute the law, and is clothed by the Constitution of the country with the whole executive power of the nation, that he may be enabled to discharge faithfully the duty thus imposed. He has not, in the judgment of the House of Representatives, discharged this duty as his oath of office requires, but has disregarded the law and defied its authority. For his failure to discharge it, for his acts of positive transgression of the laws of the land, he is arraigned at the bar of the Senate, and presenting answer, justifies the acts which make up his grave offences, claims the right to repeat and extend them, and now asks for time that he may further imperil the nation while he endeavors to make good his unlawful assumptions of power, in the mean time holding in his hands under and by virtue of the Constitution the executive power of the republic. No provision having been made for its temporary surrender, he retains that power, disturbing the repose of the country and interfering with every interest of business and trade and commerce, by prolonging this unfortunate conflict between the two departments of the government.

Mr. President and Senators, we feel it to be our most solemn duty to urge upon you in the name of the representatives of the people, and of the people themselves, that speedy progress toward a conclusion of this case which shall guard the rights and the interests of the people, their laws and their government, and at the same time observe with reasonable care the rights belonging to the respondent. The present application for delay is without precedent in the cases heretofore tried by the Senate, and were it not for the order adopted by this body on the 13th instant, which now must be regarded as a rule, this application could not be made, as that rule is the only thing which takes this case out of the line of precedents to which I have referred. It should have been coupled with the other motion made before the adoption of the rule, and the whole case so far as respects causes of delay in this proceeding disclosed at the threshold. The following order constitutes the rule to which I refer:

Ordered, That unless otherwise ordered by the Senate for cause shown, the trial of the pending impeachment shall proceed immediately after replication shall be filed.

Now, I submit that the "cause shown" in this application is not such cause as will justify the Senate in the exercise of a sound discretion in granting the time which has been asked for by the respondent to enable him to prepare for trial. It does not show cause of substance, and presents mere questions of convenience.

Mr. HOWARD. Will the manager please read that order again?

Mr. Manager WILSON. "*Ordered*, That unless otherwise ordered by the Senate for cause shown, the trial of the pending impeachment shall proceed immediately after replication shall be filed."

It will be observed—the interruption suggests it to my mind—that in view of this rule the Senate cannot, with due regard to its own action, grant this extension of time, because a sound discretion cannot be exercised under the rule and upon this application until issue be joined between the people and their representatives and the respondent, though we waive this objection in the interest of the economy of time. But, as I have said, this application, considered now or at any other time, must be addressed to the sound discretion of the

Senate, and it is for us to remember that a sound discretion acts not without rule to guide it. The discretion to which such motions are addressed must be directed by law—"it must be governed by rule, not by humor; it must not be arbitrary, vague, and fanciful, but legal and regular."

And I therefore deny that the application and the statements therein contained do or can convey to the mind of this Senate that view of this case which must be presented by the respondent in order to justify you in saying, in the exercise of a sound discretion, that one hour's delay should be granted; for there is nothing of a substantive character affecting the merits of the case disclosed upon which it can act.

What is the application? It is substantially that counsel have not had time to prepare and become familiar with the case, therefore they must be allowed opportunity to educate themselves in the particular matter committed to their charge. I apprehend that that is not good cause upon which this Senate may act and grant the prayer of this present application. More than that, it will be observed that the respondent has been carefully kept out of this case on these motions. In all other cases in this country of which I have any knowledge, the respondent has asked in his own name, supporting his request by his affidavit, for delay of proceedings; judges summoned from the bench and brought to this bar have presented their petitions in person, supported by their solemn affidavits, and asked upon the facts stated by them, covering and disclosing all of the features of their cases, and unfolding their line of defence, a reasonable time in which to prepare answer and to prepare for trial. But it is not so here; and we have to ask that while this case is thus kept out of the ordinary rule and uniform practice of former cases, the Senate will regard in some degree the voice of the representatives as presented by the managers, and put this respondent upon his speedy trial, to the end that peace may be restored to the country by the healing efficacy of a determination of this prosecution—the restoration of harmony between the two contending departments of the government, and to the further end that all things may again move on in this land as they were accustomed in the times before this unfortunate conflict and its disturbing results occurred. Therefore, Senators, in the name of the House of Representatives, and of the people in whose names they have acted in this behalf, we ask that this application, as it is now presented and considered, may be denied by the Senate.

Mr. STANBERY. Mr. Chief Justice, on the 13th instant, when we entered our appearance, and when we supposed we had nothing to do but to enter our appearance and ask for time to answer, the honorable court made an order that we should have until the 23d, this day, to file our answer. They gave to the managers leave to file replication, without limiting them at all as to time, but provided that upon the filing of the replication the case should proceed to trial unless reasonable cause should be shown for further delay. Then the honorable court meant us to have time to prepare for trial if we reasonably showed that it was necessary.

Now, what has happened, Mr. Chief Justice? What has been stated to this honorable court, composed in a great measure of members of the bar, by members of the bar that I hope have sufficient standing with this court to have some credit, at least, for professional statements made upon their honor? What have we stated? That since we had this leave every hour and every moment has been occupied with the pleadings; not an instant lost, not a counsel absent. We have refused all other occupation; we have devoted ourselves exclusively to this day and night, and I am sorry to be obliged to say two days sacred to other duty. There has been not a moment's delay. And how has this time been occupied, Mr. Chief Justice? Occupied, every instant of it, in the preparation of this answer. Allow me to say to the honorable court that it was not until fifteen minutes before we came here that our document was ready.

Certainly, it was intended on the 13th to give us time not merely to prepare our answer, but to prepare for that still more material thing, the trial. And now I hope I shall obtain credit with the honorable court when I say that we have been so pressed with this duty of making up the issue and preparing the answer that we have not had an opportunity of asking the President "What witnesses will you have?" Nay, we have been so pressed that to the communications which we have received from the honorable managers in regard to admissions and to facilitate proof, we have been obliged to say, in reply, "We have not, gentlemen, as yet, a moment's time to consider your communications." All we know of this case is that it refers to transactions not only here, but at Cleveland and St. Louis, at distant points. They have sent us a list of witnesses who are to come from these various places as to matters in regard to which they expect to make proof against us as to what was said and done at those places, and as yet I do not know a single witness whom the President wants to call in his defence. I know that he wants to call witnesses, but I have not yet had an opportunity of knowing who those witnesses are. We have not subpœnaed one. We do not know the name of any one except those who happen to live here whom we shall want, nor which of them.

Now, mark all this time the advantage that the honorable managers have had over us. As I understand it, and I suppose it will not be denied, almost every day since they have been engaged in the preparation for the trial. Their articles were framed long ago. While we were engaged in preparing our answer they have been, as I understand, most industriously engaged in preparing the witnesses. Day after day witnesses have been called before them and testimony taken. We have had no such power; we have had no such opportunity—not the slightest. We are here without any preparation in the way of witnesses, without having had a moment to consult with our client or among ourselves.

The gentlemen say that our anxiety is to prepare ourselves, whereas they are already prepared, completely prepared, so far as counsel need prepare themselves. I am very happy to hear that they are. I should be very far from saying that I am equally prepared. I have had no time to look to anything else except this necessary and all-absorbing duty which we have just completed. Now, if the Senate say we shall go on when this replication comes in, which, I am told, is to come in to-morrow, they will put me in a position that I have never been in before in all my practice anywhere, with a client and a case and a formidable array against me, and yet not a witness summoned, not a document prepared—all unarmed and defenceless.

I beg this honorable court to treat us with some leniency, to give us time. If you cannot give us all we ask, give us, at least, some time within which, by the utmost diligence, we can make that preparation we deem to be useful, and without which we are unsafe and unprepared.

The gentlemen complain that we ought to have been ready on the 13th. They read against us a rule that that was the day fixed for not only the appearance, but the filing of the answer. What! They read out of a rule that old formula that has come down to us for five hundred years, the order to "appear and answer"—the same language which was adopted at that early time when pleadings were *ore tenus* and by parol, when the defendant was called and answered immediately. But even our old independent and sturdy ancestors would not answer on that day, although they were to answer by word of mouth; and we know that always they demanded time and always had time, "leave to imparl" a day to answer.

We have preserved the same phraseology in our subsequent proceedings. The summons is still to a defendant, "You are hereby summoned to appear on such a day and answer;" but who ever supposed he was then to file his answer? What lawyer that ever wrote a declaration does not recollect the beginning of it, "The defendant was summoned to appear and answer;" and yet every law-

yer knows that the time for the defendant's answer has not yet come. Well, our answer has been presented. No day has yet peremptorily been fixed for trial. The Senate said to us, "You shall go to trial when the replication is filed, provided you do not show good cause." The cause we show is, may it please the honorable court, that we have not had one moment's time to prepare for trial.

Mr. Howard and Mr. Manager Bingham rose.

The CHIEF JUSTICE. The senator from Michigan.

Mr. Manager BINGHAM. On the part of the managers I beg to respond to what has just been said.

Mr. HOWARD. I beg to call the attention of the President to the rules that govern the body.

Mr. Manager BINGHAM. I will only say that we have used but thirty-five of the minutes of the time allowed us under the rule.

The CHIEF JUSTICE. The Chair announced at the last sitting that he would not undertake to restrict counsel as to number without the further order of the Senate, the rule not being very intelligible to him. He will state further that when counsel make a motion to the court the counsel who makes the motion has invariably the right to close the argument upon it.

Several SENATORS. Certainly.

Mr. Manager BINGHAM. Mr. President, with all respect touching the suggestion just made by the presiding officer of the Senate, I beg leave to remind the Senate, and I am instructed to do so by my associate managers, that from time immemorial in proceedings of this kind the right of the Commons in England, and of the representatives of the people in the United States, to close the debate has not been, by any rule, settled against them. On the contrary, in Lord Melville's case, if I may be allowed and pardoned for making reference to it, the last case, I believe, reported in England, Lord Erskine presiding, when the very question was made which has now been submitted by the presiding officer to the Senate, one of the managers of the House of Commons arose in his place and said that he owed it to the Commons to protest against the immemorial usage being denied to the Commons of England to be heard in reply to whatever might be said on behalf of the accused at the bar of the peers.

In that case the language of the manager, Mr. Giles, was:

> My lords, it was not my intention to trouble your lordships with any observations upon the arguments you have heard; and if I now do so, it is only for the sake of insisting upon and maintaining that right which the Commons contend is their acknowledged and undoubted privilege, the right of being heard after the counsel for the defendant has made his observations in reply. It has been invariably admitted when required. (State Trials, vol. 29, p. 769; 44 to 46 George III.)

Lord Erskine "responded the right of the Commons to reply was never doubted or disputed."

Following the suggestion of the learned gentlemen who has just taken his seat, I believe that when that utterance was made it had been the continued rule in England for nearly five hundred years.

In this tribunal, in the first case of impeachment that ever was tried before the Senate of the United States, (I refer to the case of Blount,) the Senate will see by a reference to it that although the accused had the affirmative of the issue, although he interposed a plea to the jurisdiction, the argument was closed in the case by the manager of the House, Mr. Harper. (Wharton's State Trials of the United States, pp. 314, 315.)

When I rose, however, at the time the honorable senator spoke, I rose for the purpose of making some response to the remarks last made for the accused; but as the presiding officer has interposed the suggestion to the Senate whether the managers can further reply, I do not deem it proper for me to proceed further until the Senate shall pass upon this question.

Mr. HOWARD. Mr. President, if the discussion is closed on the part of the managers, and the counsel——

Mr. Manager BINGHAM. I desire to have the question submitted.

Mr. HOWARD. I was about to move that this motion be laid on the table.

Mr. Manager BINGHAM. I desire, if the senator from Michigan will excuse me, to be heard in response to what has just fallen from the lips of the counsel for the accused, but deem it my duty not to proceed without the consent of the Senate, inasmuch as the presiding officer has already suggested to the Senate that the managers could not be further heard; in other words, could not be permitted to make a final reply.

The CHIEF JUSTICE. The motion of the senator from Michigan is that——

Mr. Manager BOUTWELL. Mr. President, will the Chair pardon me?

The CHIEF JUSTICE. Certainly.

Mr. Manager BOUTWELL. This seems to the managers, and to myself especially, a matter of so much moment as to whether the managers are to be heard finally——

Mr. HOWARD. Excuse me a moment. It was not my intention to cut off debate or discussion on the part of the managers or the counsel for the accused; and so I announced. If there is any desire on the part of either to proceed with the discussion, I withdraw my motion to lay the order on the table.

Mr. Manager BINGHAM. Now, Mr. President, if it be the pleasure of the Senate——

Mr. JOHNSON. I ask for the reading of the twentieth rule.

The CHIEF JUSTICE. The rule will be read.

The Secretary read rule twenty, as follows:

20. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall by order extend the time.

Mr. Manager BINGHAM. We have used but thirty-five minutes of our time.

Mr. GRIMES. What is the question?

The CHIEF JUSTICE. Do the managers desire to proceed?

Mr. Manager BINGHAM. Yes, sir; with the President's leave.

Mr. President and Senators, I deeply regret that the counsel for the accused have made any intimation here that the question is made or intended to be made by the managers touching the entire sincerity with which they act before this tribunal. I am sure that it was furthest from the purpose of my associates, as I know it was entirely foreign to any purpose of mine, to question for a moment their sincerity. The gentleman who took his seat spoke of their having presented this application upon their honor. No man questions their honor; no man who knows them will question their honor; but we may be pardoned for saying that it is unusual, altogether unusual, on questions of this sort, to allow continuances to be obtained upon a mere point of honor! The rule of the Senate, which was adopted on the 13th instant, is a rule well understood, and is in the language of the ordinary rule which obtains in courts of law; that is to say, the trial shall proceed upon replication filed, except, for cause shown, further time be allowed.

I submit that a question of this magnitude has never been decided upon a mere presentation of a statement of counsel, in this country or in any country. To speak more plainly, a motion for continuance arising on a question of this sort, I venture to say, has never been decided affirmatively upon such an issue on a mere statement of counsel. If Andrew Johnson, the accused at this bar, has witnesses that were not within the process of this court up to this day, but whose attendance he can hope to procure if time be allowed him, he can make affidavit before this tribunal that they are material, and set forth in his affidavit what he expects to prove by them. I concede that upon such a showing there would be something upon which the Senate might properly act.

But, sir, instead of that, he throws himself back upon his counsel, and they

make their statement here that they will require thirty days of time in which to prepare for trial. He sent these gentlemen to the bar of this tribunal on the 13th instant, upon their honor, to notify the Senate that it would require him forty days to prepare an answer. Now, he sends them back upon their honor to notify the Senate that it will require him thirty days to prepare for trial. I take it that the counsel for the accused have quite as much time for preparation, if this trial shall proceed to-morrow, as have the managers on behalf of the House of Representatives, who are charged by the people with duties from day to day in the other end of the Capitol which they are not permitted to lay aside.

But, sir, I think upon the answer made here this day by the President of the United States, unless very good cause be shown, and that, too, under the obligation of his own oath at the bar of this Senate, not another hour's continuance should be allowed him after the case shall have been put at issue. We ask leave to suggest to the Senate that we hoped on to-morrow, by leave of the people's representatives, to put this case at issue by filing replication. That is all the delay we desire. The accused has had the opportunity for process ever since the 13th instant, at least. He is guilty of grave negligence in this behalf—I do not speak of the counsel; I speak of the accused. If he had witnesses to subpœna, why was he not about it? And yet, sir, not a single summons has been required by him under the rule and order of the Senate to bring to its bar a single witness to testify in his behalf. He totally neglects the whole issue, and comes here with an attempt at a confession and avoidance of the matter presented by the House of Representatives, and tells this Senate and tells the country that he defies their power, trifling—I repeat it in the hearing of the Senate—trifling with the great power which the people, for wise purposes, have placed in the hands of their representatives and their senators in Congress assembled.

Why, sir, what is this power of impeachment worth if the President of the United States, holding the whole executive power of the nation, is permitted, when arraigned at the bar of the Senate in the name of all the people and charged with high crimes and misdemeanors, in that he has violated his oath, in that he has violated the Constitution of the country, in that he has violated the peoples's laws, and attempted by his violation of the laws to lay hands upon the people's treasury; what is this great defensive power reposed by the people in their representatives worth if the President, upon a mere statement of his counsel, is permitted to postpone the further inquiry for thirty days, until he prepares to do—what? Until he prepares to make good his elaborate statement set forth in his answer, that the Constitution is but a cobweb in his hands, and that he defies your power to restrain him.

I remember very well, sir—it suggested itself to me when I heard this discussion going on— the weighty words of that great man (Chancellor Kent) whose luminous intellect shed lustre upon the jurisprudence of his country in the State of New York for more than a third of a century, which he wrote down in his Commentaries upon the laws, and which will live as long as our language lives, that to prevent the abuse of the executive trust—

> The Constitution has rendered the President directly amenable, by law, for maladministration. The inviolability of any officer of government is incompatible with the republican theory, as well as with the principles of retributive justice. * * * *
>
> If, then, neither the sense of duty, the force of public opinion, nor the transitory nature of the seat are sufficient to secure a faithful discharge of the executive trust, but the President will use the authority of his station to violate the Constitution or law of the land, the House of Representatives can arrest him in his career by resorting to the power of impeachment. (1 Kent, p. 313, sec. 289.)

Faithful to the duty imposed upon us by our oaths as the representatives of the people, we have interposed that remedy to arrest this man. and he comes to-day to answer, saying: "I defy your impeachment; by the executive power reposed in me under the Constitution"—and I believe I quote almost the words

of the answer laid before us—"by the executive power reposed in me by the Constitution I claim in the presence of the Senate, I claim in the presence of the country, the power, without challenge, let, or hindrance, to suspend every executive officer of this government at my pleasure." I venture to say before the enlightened bar of public opinion in America, by these words incorporated in his answer, the President is as guilty of malfeasance and misdemeanor in office as ever man was guilty of malfeasance or misdemeanor in office since nations began to be upon the earth. What! That he will suspend all executive officers of this government at his pleasure, not by force of the tenure-of-office act, to which he himself refers, and which he says is void and of no effect, but by force of the Constitution of the United States; and that, too, he adds, while the Senate of the United States is in session! What does he mean by it? Let the Senate answer when they come to vote on this proposition for the extension of time. Does he mean by it that he will vacate the executive offices and not fill them? Does he mean by it that your money appropriated by your laws for carrying on and administering the government shall remain locked in the vaults of your treasury, and shall not be applied as your law directs? Or does he mean by it that he will repeat what he has already done in the presence of the Senate, and in violation of the laws, that he will remove without the consent of the Senate, and he will appoint while the Senate is in session without its advice or consent, just such persons as will answer his own purposes? Is that what he means? If he does it is a very easy method of repealing the Constitution of the United States.

The appointing power is "by and with the advice and consent of the Senate." The power to fill vacancies under the Constitution is in the President only as to such vacancies as may happen during the recess of the Senate, and so the Constitution reads. But, according to the logic set out in this elaborate answer, to support which the President wishes thirty days of time for preparation, he is to vacate every executive office of the United States at his own pleasure, in the presence of the Senate, without its consent while they are in session, and fill it at his pleasure *ad interim* even while they are trying him. If this be permitted, and if his successors should follow his bad example, I ask the Senate to deliberate, to consider whether the time would not soon come, if that example were persisted in and followed, that not a single executive office in America would be filled by any man "by and with the advice and consent of the Senate;" but, on the contrary, every such office would be filled without the advice or consent of the Senate.

I admit, sir, it is a time-honored rule of the common law, the growth of centuries, the gathered wisdom of a thousand years, that the accused has the right to a speedy and impartial trial. I claim that the people also have a right to a speedy and impartial trial, and that the question pending here touches in some sort the right of the people. In their name we demand here a speedy and impartial trial. If the President is not guilty, we ask in behalf of the country that he shall be declared not guilty of the offences with which he stands charged. If it be the judgment of the Senate that he has power thus to lay hands upon the Constitution of the country and rend it in tatters in the presence of its custodians, the sooner that the judgment is pronounced the better.

In every view of this case, in the light of the answer to which we have listened, I feel myself justified in saying that the public interests demand that this trial shall proceed until, upon the solemn oath of the accused made at this bar, it shall appear that he cannot proceed on account of the absence of witnesses material to him, nor until he states what he expects to prove by them; because I venture to say that he can make no showing of that sort which we are not ready upon the spot to meet by saying we will admit that the witnesses will swear to his statement, and let him have the benefit of it. Nearly all the testimony involved in this issue is documentary. Much of it is official. Enough

of it, I might say, is official in its character to justify the trial to proceed without further inquiry into the facts.

But be that as it may, although they did not request us to do so, although they had no right to demand it of us, we have taken pains to notify the counsel for the accused of the witnesses that we propose to call, the witnesses we have subpœnaed, so that they might prepare to meet them; and it will occur to the Senate as this trial progresses that they have as much time for preparation by the end of that day when the case on the part of the government of the United States shall be closed as we have. We make no boast of any superior preparation in this matter. We desire simply to discharge our duty as best we can. We assume no superiority to the counsel, as was intimated by the gentleman who last spoke, [Mr. Stanbery,] but we desire simply to discharge our duty here, and to discharge it promptly, and to discharge it faithfully, and we appeal to the Senate to grant us the opportunity of doing so, so that justice may be done between the people of the United States and the President, that the Constitution of the United States, which he has violated, may be vindicated, and that the wrongs which he has committed against an outraged and betrayed people may be redressed.

Mr. HENDERSON. Mr. President, I propose an order, which I send to the Chair.

The CHIEF JUSTICE. The Secretary will read the order.

The chief clerk read as follows:

Ordered, That the application of the counsel for the President to be allowed thirty days to prepare for the trial of the impeachment be postponed until after replication filed.

Mr. Manager BUTLER. Mr. President, I should like to call the attention of yourself and the Senate to the position in which that would place the managers, and I beg to express the desire on the part of the managers that this question of time shall be settled now. If a replication is needed at all, I think I can say for my associates that it will be the common and formal replication, the *sic similiter* of the profession, the simple joining issue upon this answer, and therefore for this purpose it may be considered as filed.

We shall have to be ready at all hazards to-morrow to go on with this case with the uncertainty of having the court—I beg pardon for the word "court," the Senate—give thirty or more days' time in which the counsel for the accused may be prepared. In other words, we shall be obliged, under the high sense of duty which is pressing upon us, to get ready by day or by night, as the case may be, with entire uncertainty as to whether the Senate may or may not grant further time. I think I can say that upon this question we agree with the counsel for the defence, that it is better for all that it be settled now. I know I speak for the managers. I speak for the House of Representatives when I say it is better to have this point settled now. Our subpœnas are out; our witnesses are being summoned; we want to know when to bring them here; fix a day; tell us when we can come here certain, and we will be here. That is all we desire, sir, and therefore I trust gentlemen will fix at this time the hour and the day when this trial shall certainly proceed, the act of Providence only preventing.

The CHIEF JUSTICE. The question is on the order moved by the senator from Missouri, (Mr. Henderson.)

Mr. TRUMBULL. I ask for the yeas and nays.

The yeas and nays were ordered, and being taken, resulted—yeas 25, nays 28—as follows:

YEAS—Messrs. Anthony, Buckalew, Cattell, Cole, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Norton, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, and Vickers—25.

NAYS—Messrs. Bayard, Cameron, Chandler, Conkling, Conness, Corbett, Cragin, Davis,

Drake, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Sumner, Thayer, Tipton, Wiley, Williams, Wilson and Yates—28.

NOT VOTING—Mr. Wade—1.

So the order proposed by Mr. Henderson was not agreed to.

Mr. HOWARD. Mr. President, I now move that the motion of the counsel for the accused do lie on the table.

Mr. DRAKE. Mr. President, I rise to a question of order.

The CHIEF JUSTICE. The senator will state his question of order.

Mr. DRAKE. That no motion to lay a proposition by the counsel for the defence, or one made by the managers on the part of the prosecution, upon the table, can, under the rules of the Senate, be entertained, but that the Senate must come to a direct vote upon the proposition.

The CHIEF JUSTICE. The Chair is of opinion that the point of order is well taken, and that the motion of the senator from Michigan, that the proposition of the counsel for the accused lie on the table, is not in order.

Several SENATORS. Question, question.

Mr. JOHNSON. Mr. Chief Justice, what is the question?

The CHIEF JUSTICE. The question is on the motion of the counsel for the accused to be allowed thirty days for preparation.

Mr. DRAKE. On that question I ask for the yeas and nays.

The yeas and nays were ordered, and being taken, resulted—yeas 12, nays 41; as follows:

YEAS—Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Saulsbury, and Vickers—12.

NAYS—Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Henderson, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Willey, Williams, Wilson, and Yates—41.

NOT VOTING—Mr. Wade—1.

The CHIEF JUSTICE. On this question the yeas are twelve and the nays forty-one. So the application for thirty days for preparation is denied.

Mr. SHERMAN. I move that the Senate sitting for this purpose adjourn until to-morrow at one o'clock.

Mr. EVARTS. Mr. President——

Mr. SHERMAN. Certainly. I withdraw the motion.

Mr. EVARTS. I now, Mr. Chief Justice and senators, move, in behalf of the President and in the name of his counsel, that he be allowed (upon the application which we have made, and in which we have named thirty days as a reasonable time) a reasonable time after the replication shall have been filed, to be now fixed by the Senate in their judgment.

Mr. JOHNSON. What time is that?

Mr. STANBERY. Such time as the Senate shall fix.

The CHIEF JUSTICE. The counsel will reduce his motion to writing.

Mr. EVARTS. I will state it. I move that on the application we have made, in which we have named thirty days as a reasonable time, there now be allowed to the President of the United States and his counsel such reasonable time for trial, after the replication shall have been filed, as shall now be fixed by the Senate.

The CHIEF JUSTICE. The counsel will reduce his motion to writing. Does the senator from Ohio withdraw his motion to adjourn?

Mr. SHERMAN. Yes, sir; but after the motion is reduced to writing I will renew it.

Mr. JOHNSON. Mr. Chief Justice, is the motion proposed to be submitted by one of the counsel for the President of the United States before the Senate now?

The CHIEF JUSTICE. It is not before the Senate until it has been reduced to writing.

Mr. JOHNSON. I thought it had been so reduced.

The CHIEF JUSTICE. No, sir.

Mr. EVARTS. It is now.

The CHIEF JUSTICE. The clerk will report the order.

The chief clerk read as follows:

The counsel for the President now move that there be allowed for the preparation of the President of the United States for the trial, after the replication shall be filed and before the trial shall be required to proceed, such reasonable time as shall now be fixed by the Senate.

Mr. JOHNSON. Mr. Chief Justice, is it in order to amend that motion?

Several SENATORS. No, no.

The CHIEF JUSTICE. It is in order to propose a substitute for it; not to amend it.

Mr. JOHNSON. I move, then, Mr. President, that ten days be allowed after filing the replication.

Mr. SHERMAN. I move that the Senate sitting as a Court of Impeachment adjourn until one o'clock to-morrow.

The motion was agreed to; and the Chief Justice declared the Senate sitting for the trial of the impeachment of Andrew Johnson adjourned until to-morrow at 1 o'clock.

TUESDAY, *March* 24, 1868.

The Chief Justice of the United States entered the Senate chamber at 1 o'clock p. m., escorted by Mr. Pomeroy, chairman of the committee heretofore appointed for the purpose, took the chair, and directed the Sergeant-at-arms to open the court by proclamation.

The SERGEANT-AT-ARMS. Hear ye! hear ye! All persons are commanded to keep silence while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Andrew Johnson, President of the United States.

The CHIEF JUSTICE. The Secretary will read the minutes.

The Secretary commenced to read the journal of yesterday's proceedings.

Mr. JOHNSON. Mr. Chief Justice, I submit to the Chair whether it is not advisable to postpone the reading of the journal until the managers and the counsel for the accused are present.

The CHIEF JUSTICE. The Sergeant-at-arms informs the Chief Justice that the managers are ready; and he has directed the Secretary to suspend the reading of the minutes.

The counsel for the respondent, Messrs. Stanbery, Curtis, Evarts, Nelson, and Groesbeck, entered the chamber and took the seats assigned them.

At five minutes past one o'clock the presence of the managers on the part of the House of Representatives was announced at the door of the Senate chamber by the Sergeant-at-arms.

The CHIEF JUSTICE. The managers will please to take their seats within the bar.

The managers were conducted to the seats provided for them.

The members of the House of Representatives appeared at the door, headed by Mr. E. B. Washburne, chairman of the Committee of the Whole House, and accompanied by the Speaker and Clerk.

The CHIEF JUSTICE. The Secretary will now read the minutes.

The Secretary read the journal of the proceedings of Monday, March 23, of the Senate sitting for the trial of the articles of impeachment exhibited by the

House of Representatives against Andrew Johnson, President of the United States.

The CHIEF JUSTICE. The Chair will lay before the Senate a resolution which has been received from the House of Representatives.

The Secretary read as follows :

IN THE HOUSE OF REPRESENTATIVES,
March 24, 1868.

Resolved, That a message be sent to the Senate by the Clerk of the House, informing the Senate that the House of Representatives has adopted a replication to the answer of the President of the United States to the articles of impeachment exhibited against him, and that the same will be presented to the Senate by the managers on the part of the House.

Attest: EDWARD McPHERSON,
Clerk of the House of Representatives.

The CHIEF JUSTICE. The Senate will receive the replication of the managers.

Mr. Manager BOUTWELL. Mr. President and Senators, I am charged by the managers with presenting the replication which has been adopted by the House of Representatives :

IN THE HOUSE OF REPRESENTATIVES UNITED STATES,
March 24, 1868.

Replication by the House of Representatives of the United States to the answer of Andrew Johnson, President of the United States, to the articles of impeachment exhibited against him by the House of Representatives.

The House of Representatives of the United States have considered the several answers of Andrew Johnson, President of the United States, to the several articles of impeachment against him by them exhibited in the name of themselves and of all the people of the United States, and reserving to themselves all advantage of exception to the insufficiency of his answer to each and all of the several articles of impeachment exhibited against said Andrew Johnson, President of the United States, do deny each and every averment in said several answers, or either of them, which denies or traverses the acts, intents, crimes, or misdemeanors charged against said Andrew Johnson in the said articles of impeachment, or either of them ; and for replication to said answer do say that said Andrew Johnson, President of the United States, is guilty of the high crimes and misdemeanors mentioned in said articles, and that the House of Representatives are ready to prove the same.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

EDWARD McPHERSON,
Clerk of the House of Representatives.

The CHIEF JUSTICE. The replication will be received by the Secretary and filed.

Mr. JOHNSON. Mr. Chief Justice, I move that an authenticated copy of the replication be furnished to the counsel of the President.

The motion was agreed to.

The CHIEF JUSTICE. When the Senate sitting as a court of impeachment adjourned yesterday evening, a motion was pending on the part of the counsel for the President that such time should be allowed for preparation as the Senate might please to determine, and thereupon the senator from Maryland [Mr. Johnson] submitted an order which will be read by the Secretary.

The Secretary read as follows :

Ordered, That the Senate proceed to the trial of the President under the articles of impeachment exhibited against him at the expiration of ten days from this day, unless for causes shown to the contrary.

The CHIEF JUSTICE. The question is on agreeing to the order.

Mr. SUMNER. Mr. President, I send to the Chair an amendment, to come in immediately after the word "Ordered," being in the nature of a substitute.

The CHIEF JUSTICE. The senator from Massachusetts moves to strike out all after the word "Ordered," and to substitute what will be read by the Secretary.

The Secretary read as follows:

Now that replication has been filed, the Senate, adhering to its rule already adopted, will proceed with the trial from day to day (Sundays excepted) unless otherwise ordered on reason shown.

The CHIEF JUSTICE. The question is on the amendment by way of substitute.

Mr. EDMUNDS. Mr. President, I move that the Senate retire to consider the pending question.

Mr. SUMNER and others. No, no.

The CHIEF JUSTICE. It is moved by the senator from Vermont that the Senate retire to consider the question arising upon the order moved by the senator from Maryland and the substitute proposed by the senator from Massachusetts. [Having put the question.] The ayes appear to have it.

Mr. CONKLING and Mr. SUMNER called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 29, nays 23; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Saulsbury, Sprague, Van Winkle, Vickers, Willey, and Williams—29.

NAYS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Cragin, Drake, Ferry, Harlan, Howard, Morgan, Nye, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Trumbull, and Wilson—23.

NOT VOTING—Messrs. Wade and Yates.

The CHIEF JUSTICE. On this question the yeas are 29 and the nays are 23. So the motion is agreed to, and the Senate will retire for consultation.

The Senate accordingly, at twenty-five minutes past one o'clock, retired, with the Chief Justice, to the reception room for consultation.

The Senate having retired to the reception room,

The CHIEF JUSTICE stated the question to be on the amendment proposed by Mr. Sumner to the order submitted by Mr. Johnson.

Mr. JOHNSON modified the order submitted by him so as to read:

Ordered, That the Senate will commence the trial of the President upon the articles of impeachment exhibited against him on Thursday, the 2d of April.

Mr. WILLIAMS submitted the following order:

Ordered, That the further consideration of the respondent's application for time be postponed until the managers have opened their case and submitted their evidence.

Mr. CONKLING moved to amend the order proposed by Mr. Johnson, by striking out "Thursday, the 2d of April," and inserting "Monday, the 30th of March instant."

Mr. SUMNER called for the yeas and nays on this amendment, and they were ordered; and being taken, resulted—yeas 28, nays 26, as follows:

YEAS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Cragin, Drake, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Stewart, Sumner, Thayer, Tipton, Willey, Williams, and Wilson—28.

NAYS—Messrs. Anthony, Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, and Vickers—24.

NOT VOTING—Messrs. Wade and Yates—2.

So the amendment was agreed to.

The CHIEF JUSTICE stated the next question to be upon the adoption of the order proposed by Mr. Williams.

Mr. WILLIAMS called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 9, nays 42, as follows:

YEAS—Messrs. Anthony, Chandler, Dixon, Grimes, Harlan, Howard, Morgan, Patterson of Tennessee, and Williams—9.

NAYS—Messrs. Bayard, Buckalew, Cameron, Cattell, Cole, Conkling, Conness, Cragin, Davis, Doolittle, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Saulsbury, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Vickers, Willey, and Wilson—42.

NOT VOTING—Messrs. Corbett, Wade, and Yates—3.

So the order proposed by Mr. Williams was not agreed to.

The question recurring on the amendment proposed in the Senate chamber by Mr. Sumner to the order submitted by Mr. Johnson,

Mr. SUMNER withdrew his amendment.

The CHIEF JUSTICE stated the question to be on the order proposed by Mr. Johnson, as amended, as follows:

Ordered, That the Senate will commence the trial of the President upon the articles of impeachment exhibited against him, on Monday, the 30th day of March instant.

Mr. HENDRICKS moved to amend the order by adding thereto the words, "and proceed therein with all convenient despatch, under the rules of the Senate sitting upon the trial of an impeachment."

The amendment was adopted; and the order, as amended, was agreed to.

On motion of Mr. MORTON, the Senate agreed to return to the Senate chamber.

The Senate returned to the chamber, and the Chief Justice resumed the chair at twenty-three minutes past three o'clock p. m.

The CHIEF JUSTICE. The Chief Justice is directed to inform the counsel for the respondent that the Senate has agreed upon an order in response to their application, which will now be read.

The chief clerk read as follows:

Ordered, That the Senate will commence the trial of the President upon the articles of impeachment exhibited against him, on Monday, the 30th of March instant, and proceed therein with all convenient despatch, under the rules of the Senate sitting upon the trial of an impeachment.

The CHIEF JUSTICE. Have the managers on the part of the House anything further to propose?

Mr. Manager BINGHAM. Mr. President, we have nothing further to propose.

The CHIEF JUSTICE. Have the counsel for the respondent anything to propose?

[No response.]

Mr. Manager BUTLER. Will the President allow me to give notice to the witnesses on the part of the House of Representatives who are in attendance, that they must appear here at one o'clock on Monday, the 30th?

Mr. EDMUNDS. Half-past twelve o'clock. The rules provide for half-past twelve.

Mr. Manager BUTLER. Half-past twelve o'clock on Monday, the 30th.

Mr. WILSON. I move that the Senate sitting for the trial of this impeachment adjourn until Monday next at half-past twelve o'clock.

The motion was agreed to.

The CHIEF JUSTICE. The Senate sitting as a court of impeachment stands adjourned until half-past twelve o'clock on Monday next, 30th instant.

MONDAY, *March* 30, 1868.

At half past twelve o'clock p. m. the Chief Justice of the United States entered the Senate chamber, escorted by Mr. Pomeroy, chairman of the committee heretofore appointed for that purpose.

The CHIEF JUSTICE. The Sergeant-at-arms will open the court by proclamation.

The SERGEANT-AT-ARMS. Hear ye! hear ye! hear ye! All persons are commanded to keep silence while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Andrew Johnson, President of the United States.

The President's counsel, Messrs. Stanbery, Curtis, Evarts, Nelson, and Groesbeck, entered the chamber and took the seats assigned to them.

At twelve o'clock and thirty-five minutes p. m. the Sergeant-at-arms announced the presence of the managers of the impeachment on the part of the House of Representatives, and they were conducted to the seats assigned to them.

Immediately afterward the presence of the members of the House of Representatives was announced, and the members of the Committee of the Whole House, headed by Mr. E. B. Washburne, of Illinois, the chairman of that committee, and accompanied by the Speaker and Clerk of the House of Representatives, entered the Senate chamber and took the seats prepared for them.

The CHIEF JUSTICE. The minutes of the last day's proceedings will now be read by the Secretary.

The Secretary read the proceedings of the Senate sitting on Tuesday, March 24, 1868, for the trial of Andrew Johnson, President of the United States.

The CHIEF JUSTICE. Gentlemen managers of the House of Representatives, you will now proceed in support of the articles of impeachment. Senators will please give their attention.

OPENING ARGUMENT OF MR. BUTLER, OF MASSACHUSETTS, ONE OF THE MANAGERS ON THE IMPEACHMENT OF THE PRESIDENT.

Mr. President and Gentlemen of the Senate:

The onerous duty has fallen to my fortune to present to you, imperfectly as I must, the several propositions of fact and law upon which the House of Representatives will endeavor to sustain the cause of the people against the President of the United States, now pending at your bar.

The high station of the accused, the novelty of the proceeding, the gravity of the business, the importance of the questions to be presented to your adjudication, the possible momentous result of the issues, each and all must plead for me to claim your attention for as long a time as your patience may endure.

Now, for the first time in the history of the world, has a nation brought before the highest tribunal its chief executive magistrate for trial and possible deposition from office, upon charges of maladministration of the powers and duties of that office. In other times, and in other lands, it has been found that despotisms could only be tempered by assassination, and nations living under constitutional governments even, have found no mode by which to rid themselves of a tyrannical, imbecile, or faithless ruler, save by overturning the very foundation and frame-work of the government itself. And, but recently, in one of the most civilized and powerful governments of the world, from which our own institutions have been largely modelled, we have seen a nation submit for years to the rule of an insane king, because its constitution contained no method for his removal.

Our fathers, more wisely, founding our government, have provided for such and all similar exigencies a conservative, effectual, and practical remedy by the constitutional provision that the "President, Vice-President, and all civil officers

of the United States *shall* be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." The Constitution leaves nothing to implication, either as to the persons upon whom, or the body by whom, or the tribunal before which, or the offences for which, or the manner in which, this high power should be exercised; each and all are provided for by express words of imperative command.

The House of Representatives shall solely impeach; the Senate only shall try; and in case of conviction the judgment shall alone be removal from office and disqualification for office, one or both. These mandatory provisions became necessary to adapt a well known procedure of the mother country to the institutions of the then infant republic. But a single incident only of the business was left to construction, and that concerns the offences or incapacities which are the groundwork of impeachment. This was wisely done, because human foresight is inadequate, and human intelligence fails in the task of anticipating and providing for, by positive enactment, all the infinite gradations of human wrong and sin, by which the liberties of a people and the safety of a nation may be endangered from the imbecility, corruption and unhallowed ambition of its rulers.

It may not be uninstructive to observe that the framers of the Constitution, while engaged in their glorious and, I trust, ever-enduring work, had their attention aroused and their minds quickened most signally upon this very topic. In the previous year only Mr. Burke, from his place in the House of Commons in England, had preferred charges for impeachment against Warren Hastings, and three days before our convention sat he was impeached at the bar of the House of Lords for misbehavior in office as the ruler of a people whose numbers were counted by millions. The mails were then bringing across the Atlantic, week by week, the eloquent accusations of Burke, the gorgeous and burning denunciations of Sheridan, in behalf of the oppressed people of India, against one who had wielded over them more than regal power. May it not have been, that the trial then in progress was the determining cause why the framers of the Constitution left the description of offences, because of which the conduct of an officer might be inquired of, to be defined by the laws and usages of Parliament as found in the precedents of the mother country, with which our fathers were as familiar as we are with our own?

In the light, therefore, of these precedents, the question arises, *What are impeachable offences* under the provisions of our Constitution?

To analyze, to compare, to reconcile these precedents, is a work rather for the closet than the forum. In order, therefore, to spare your attention, I have preferred to state the result to which I have arrived, and that you may see the authorities and discussions, both in this country and in England, from which we deduce our propositions, so far as applicable to this case, I pray leave to lay before you, at the close of my argument, a brief of all the precedents and authorities upon this subject, in both countries, for which I am indebted to the exhaustive and learned labors of my friend, the honorable William Lawrence, of Ohio, member of the Judiciary Committee of the House of Representatives, in which I fully concur and which I adopt.

We define, therefore, an impeachable high crime or misdemeanor to be *one in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives, or for any improper purpose.*

The first criticism which will strike the mind on a cursory examination of this definition is, that some of the enumerated acts are not within the common-law definition of crimes. It is but common learning that in the English precedents the words "high crimes and misdemeanors" are universally used; but any mal-

versation in office, highly prejudicial to the public interest, or subversive of some fundamental principle of government by which the safety of a people may be in danger, is a high crime against the nation, as the term is used in parliamentary law.

Hallam, in his Constitutional History of England, certainly deduces this doctrine from the precedents, and especially Lord Danby case, 11 State Trials, 600, of which he says:

> The Commons, in impeaching Lord Danby, went a great way towards establishing the principle that no minister can shelter himself behind the throne by pleading obedience to the orders of his sovereign. He is answerable for the *justice, the honesty, the utility of all measures emanating* from the Crown, as well as for their *legality*; and thus the executive administration is, or ought to be, subordinate in all great matters of policy to the superintendence and virtual control of the two houses of Parliament.

Mr. Christian, in his notes to the Commentaries of Blackstone, explains the collocation and use of the words "high crimes and misdemeanors" by saying:

> When the words "high crimes and misdemeanors" are used in prosecutions by impeachment, the words "high crimes" have no definite signification, but are used merely to give greater solemnity to the charge.

A like interpretation must have been given by the framers of the Constitution, because a like definition to ours was in the mind of Mr. Madison, to whom more than to any other we are indebted for the phraseology of our Constitution, for, in the first Congress, when *discussing* the power to remove an officer by the President, which is one of the very material questions before the Senate at this moment, he uses the following words:

> The danger consists mainly in this: that the President can displace from office a man whose merits require he should be continued in it. In the first place, he will be impeachable by the House for such an act of maladministration, for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust.

Strengthening this view, we find that within ten years afterwards impeachment was applied by the very men who framed the Constitution to the acts of public officers, which under no common-law definition could be justly called crimes or misdemeanors, either high or low. Leaving, however, the correctness of our proposition to be sustained by the authorities we furnish, we are naturally brought to the consideration of the method of the procedure, and the nature of the proceedings in cases of impeachment, and the character and powers of the tribunal by which high crimes and misdemeanors are to be adjudged or determined.

One of the important questions which meets us at the outset is: Is this proceeding a trial, as that term is understood, so far as relates to the rights and duties of a court and jury upon an indictment for crime? Is it not rather more in the nature of an inquest of office?

The Constitution seems to have determined it to be the latter, because, under its provisions the right to retain and hold office is the only subject that can be finally adjudicated; all preliminary inquiry being carried on solely to determine that question and that alone.

All investigations of fact are in some sense trials, but not in the sense in which the word is used by courts.

Again, as a correlative question:

Is this body, now sitting to determine the accusation of the House of Representatives against the President of the United States, the Senate of the United States, or a Court?

I trust, Mr. President and Senators, I may be pardoned for making some suggestions upon these topics, because to us it seems these are questions not of forms, but of substance. If this body here is a Court in any manner as contradistinguished from the Senate, then we agree that many if not all the analogies of the procedures of courts must obtain; that the common-law incidents of a trial in court must have place; that you may be bound in your proceedings and

adjudication by the rules and precedents of the common or statute law; that the interest, bias, or preconceived opinions or affinities to the party, of the judges, may be open to inquiry, and even the rules of order and precedents in courts should have effect; that the managers of the House of Representatives must conform to those rules as they would be applicable to public or private prosecutors of crime in courts, and that the accused may claim the benefit of the rule in criminal cases, that he may only be convicted when the evidence makes the fact clear beyond reasonable doubt, instead of by a preponderance of the evidence.

We claim and respectfully insist that this Tribunal has none of the attributes of a judicial Court as they are commonly received and understood. Of course, this question must be largely determined by the express provisions of the Constitution, and in it there is no word, as is well known to you, Senators, which gives the slightest coloring to the idea that this is a Court, save that in the trial of this particular respondent the Chief Justice of the Supreme Court must preside. But even this provision can have no determining effect upon the question, because, is not this the same Tribunal in all its powers, incidents, and duties, when other civil officers are brought to its bar for trial, when the Vice-President (not a judicial officer) must preside? Can it be contended for a moment that this is the Senate of the United States when sitting on the trial of all other officers, and a Court only when the President is at the bar? solely because in this case the Constitution has designated the Chief Justice as the presiding officer?

The fact that Senators are sitting for this purpose on oath or affirmation does not influence the argument, because it is well understood that that was but a substitute for the obligation of honor under which, by the theory of the British constitution, the peers of England were supposed to sit in like cases.

A peer of England makes answer in a court of chancery upon honor, when a common person must answer upon oath. But our fathers, sweeping away all distinctions of caste, required every man alike, acting in a solemn proceeding like this, to take an oath. Our Constitution holds all good men alike honorable, and entitled to honor.

The idea that this tribunal was a Court seems to have crept in because of the analogy to similar proceedings in trials before the House of Lords.

Analogies have ever been found deceptive and illusory. Before such analogy is invoked we must not forget that the Houses of Parliament at first, and latterly the House of Lords, claimed and exercised jurisdiction over all crimes, even where the punishment extended to life and limb. By express provision of our Constitution all such jurisdiction is taken from the Senate and "the judicial power of the United States is vested in one Supreme Court and such inferior courts as from time to time Congress may ordain and establish."

We suggest, therefore, that we are in the presence of the Senate of the United States convened as a constitutional tribunal, to inquire into and determine whether Andrew Johnson, because of malversation in office, is longer fit to retain the office of President of the United States, or hereafter to hold any office of honor or profit.

I respectfully submit that thus far your mode of proceeding has no analogy to that of a court. You issue a summons to give the respondent notice of the case pending against him. You do not sequester his person—you do not require his personal appearance even; you proceed against him and will *go on* to determine his cause in his absence, and make the final order therein. How different is each step from those of ordinary criminal procedure.

A constitutional tribunal solely, you are bound by no law, either statute or common, which may limit your constitutional prerogative. You consult no precedents save those of the law and custom of parliamentary bodies. You are a law unto yourselves, bound only by the natural principles of equity and justice, and that *salus populi suprema est lex.*

Upon these principles and parlimentary law no judges can aid you, and indeed in late years the judges of England in the trial of impeachment declined to speak to a question of parliamentary law, even at the request of the House of Peers, although they attended on them in their robes of office.

Nearly five hundred years ago, in 1388, the House of Lords resolved, in the case of Belknap and the other judges, "That these matters, when brought before them, shall be discussed and adjudged by the course of Parliament, and not by the civil law, nor by the common law of the land used in other inferior courts."

And that resolution, which was in contravention of the opinion of all the judges of England, and against the remonstrance of Richard II, remains the unquestioned law of England to this day.

Another determining quality of this tribunal, distinguishing it from a court and the analogies of ordinary legal proceedings, and showing that it is a Senate only, is, that there can be no right of challenge by either party to any of its members for favor, or malice, affinity, or interest.

This has been held from the earliest times in Parliament even when that was the high court of judicature of the realm sitting to punish all crimes against the peace.

In the case of The Duke of Somerset, (1 Howell's State Trials, p. 521,) as early as 1551, it was held that the Duke of Northumberland and the Marquis of Northampton and the Earl of Pembroke, for an attempt upon whose lives Somerset was on trial, should sit in judgment upon him against the objection of the accused because "a peer of the realm might not be challenged."

Again, the Duke of Northumberland, (ibid., 1st State Trials, p. 765,) Marquis of Northampton, and Earl of Warwick, *being* on trial for their lives, A. D. 1553, before the Court of the Lord High Steward of England, one of the prisoners inquired whether any such persons as were equally culpable in that crime, and those by whose letters and commandments he was directed in all his doings, might be his judges, or pass upon his trial at his death. It was answered that, "If any were as deeply to be touched as himself in that case, yet as long as no attainder of record were against them, they were nevertheless persons able in the law to pass upon any trial, and not to be challenged therefor, but at the prince's pleasure."

Again, on the trial of Earls of Essex and Southampton, (ibid., 1 State Trials, p. 1335,) for high treason, before all the justices of England, A. D. 1600, the Earl of Essex desired to know of my Lord Chief Justice whether he might challenge any of the peers or no. Whereunto the Lord Chief Justice answered "No."

Again, in Lord Audley's case, (ibid., 3 State Trials, page 402, A. D. 1631,) it was questioned whether a peer might challenge his peers, as in the case of common jurats. It was answered by all the judges, after consultation, "he might not." [This case is of more value because it was an indictment for being accessory to rape upon his own wife, and had no political influence in it whatever.] The same point was ruled in the Countess of Essex's case on trial for treason. (Moore's Reports, 621.)

In the Earl of Portland's case, A. D. 1701, (ibid., State trials, page 288,) the Commons objected that Lord Sommers, the Earl of Oxford, and Lord Halifax, who had been impeached by the Commons before the House of Lords for being concerned in the same acts for which Portland was being brought to trial, voted and acted with the House of Lords in the preliminary proceedings of said trial, and were upon a committee of conference in relation thereto. But the lords after discussion solemnly resolved "that no lord of Parliament, impeached of high crimes and misdemeanors, can be precluded from voting on any occasion, except on his own trial."

In the trial of Lord Viscount Melville, A. D. 1806, (ibid., 29 State Trials, p. 1398,) some observations having been made as to the possible bias of some portion of

the peers, (by the counsel for defendant,) Mr. Whitebread, one of the managers on the part of the Commons, answered as follows:

My lords, as to your own court, something has been thrown out about the possibility of a challenge. Upon such a subject it will not be necessary to say more than this, which has been admitted: that an order was given by the House of Commons to prosecute Lord Melville in a court of law where he would have the *right* to challenge his jurors. * * * What did the noble Viscount then do by the means of one of his friends? * * * From the mouth of that learned gentleman came at last the successful motion: "that Henry, Viscount of Melville, be impeached of high crimes and misdemeanors." I am justified, then, in saying that he is here by his own option. * * * But, my lords, a challenge to your lordships! Is not every individual peer the guardian of his own honor?

In the trial of Warren Hastings the same point was ruled, or, more properly speaking, taken for granted, for of the more than 170 peers who commenced the trial, but 29 sat and pronounced the verdict at the close, and some of those were peers created since the trial began, and had not heard either the opening or much of the evidence; and during the trial there had been by death, succession, and creation more than 180 changes in the House of Peers, who were his judges.

We have abundant authority also on this point in our own country.

In the case of Judge Pickering, who was tried in March, 1804, for drunkenness in office, although undefended in form, yet he had all his rights preserved.

This trial being postponed a session, three senators—Samuel Smith, of Maryland, Israel Smith, of Vermont, and John Smith, of New York—who had all been members of the House of Representatives, and there voted in favor of impeaching Judge Pickering, were senators when his trial came off.

Mr. Smith, of New York, raised the question, by asking to be excused from voting. Mr. Smith, of Maryland, declared "he would not be influenced from his duty by any false delicacy; that he, for his part, felt no delicacy upon the subject; the vote he had given in the other house to impeach Judge Pickering would have no influence upon him in the court; his constituents had a right to his vote, and he would not by any act of his deprive, or consent to deprive, them of that right, but would claim and exercise it upon this as upon every other question that might be submitted to the Senate whilst he had the honor of a seat."

A vote being had upon the question, it was determined that these gentlemen should sit and vote on the trial. This passed in the affirmative by a vote of 19 to 7, and all the gentlemen sat and voted on every question during the trial.

On the trial of Samuel Chase before the Senate of the United States, no challenge was attempted, although the case was decided by an almost strict party vote in high party times, and doubtless many of the senators had formed and expressed opinions upon his conduct.

That arbitrary judge, but learned lawyer, knew too much to attempt any such futile movement as a challenge to a senator. Certain it is that the proprieties of the occasion were not marred by the worse than anomalous proceeding of the challenge of one senator to another, especially before the defendant had appeared.

Nor did the Managers exercise the right of challenge, although Senators Smith and Mitchell, of New York, were members of the Senate on the trial and voted *not guilty* on every article, who had been members of the House when the articles were found, and had there voted steadily against the whole proceeding.

Judge Peck's case, which was tried in 1831, affords another instance in point.

The conduct of Judge Peck had been the subject of much animadversion and comment by the public, and had been for four years pending before the Congress of the United States before it finally came to trial. It was not possible but that many of the Senate had both formed and expressed opinions upon Peck's proceedings, and yet it never occurred to that good lawyer to make objection to his triers. Nor did the Managers challenge, although Webster of Massachusetts

was a member of the committee of the House of Representatives to whom the petition for impeachment was referred, and which, after examination, reported thereon "leave to withdraw," and Sprague, of Maine, voted against the proceedings in the House, while Livingston, of Louisiana, voted for them. All of these gentlemen sat upon the trial, and voted as they did in the House.

A very remarkable and instructive case was that of Judge Addison, of Pennsylvania, in 1804. There, after the articles of impeachment were framed, the trial was postponed to another session of the legislature. Meanwhile, three members of the House of Representatives, who had voted for the articles of impeachment, were elected to the Senate and became the triers of the articles of impeachment of which they had solemnly voted the respondent to be guilty. To their sitting on the trial Judge Addison objected, but after an exhaustive argument his objection was overruled, 17 to 6. Two of the minority were the gentlemen who had voted him guilty, and who themselves objected to sitting on the trial.

Thus stands the case upon authority. How does it stand upon principle?

In a conference held in 1691, between the lords and commons, on a proposition to limit the number of judges, the lords made answer:

> That in the case of impeachments, which are the groans of the people, and for the highest crimes, and carry with them a greater supposition of guilt than any other accusation, there all the lords must judge.

There have been many instances in England where this necessity, that no peer be excused from sitting on such trials, has produced curious results. Brothers have sat upon the trials of brothers, fathers upon the trials of sons and daughters, uncles upon the trials of nephews and nieces; no excuse being admitted.

One, and a most peculiar and painful instance, will suffice upon this point to illustrate the strength of the rule. In the trial of Anne Bullen, the wife of one sovereign of England, and the mother of another, her father, Lord Rochefort, and her uncle, the Duke of Norfolk, sat as judges and voted guilty, although one of the charges against the daughter and niece was a criminal intimacy with her brother, the son and nephew of the judges.

It would seem impossible that in a proceeding before such a tribunal so constituted there could be a challenge, because as the number of triers is limited by law, and as there are not now, and never have been, any provisions, either in England or in this country, for substituting another for the challenged party, as a talesman is substituted in a jury, the accused might escape punishment altogether by challenging a sufficient number to prevent a quorum, or the accuser might oppress the respondent by challenging all persons favorable to him until the necessary unanimity for conviction was secured.

This proceeding being but an inquest of office, and, except in a few rare instances, always partaking, more or less, of political considerations, and required to be discussed, before presentation to the triers, by the co-ordinate branch of the legislature, it is impossible that senators should not have opinions and convictions upon the subject-matter more or less decidedly formed before the case reaches them. If, therefore, challenges could be allowed because of such opinions, as in the case of jurors, no trial could go forward, because every intelligent senator could be objected to upon one side or the other.

I should have hardly dared to trouble the Senate with such minuteness of citation and argument upon this point, were it not that certain persons and papers outside of this body, by sophistries drawn from the analogies of the proceedings in courts before juries, have endeavored, in advance, to prejudice the public mind, but little instructed in this topic, because of the infrequency of impeachments, against the legal validity and propriety of the proceedings upon this trial.

I may be permitted, without offence, further to state that these and similar

reasons have prevented the Managers from objecting by challenge or otherwise to the competency of one of the triers of near affinity to the accused.

We believe it is his right, nay, his duty to the State he represents, to sit upon the trial as he would upon any other matter which should come before the Senate. His seat and vote belong to his constituents, and not to himself, to be used according to his best judgment upon every grave matter that comes before the Senate.

Again, as political considerations are involved in this trial raising questions of interest to the constituents of every senator, it is his right and duty to express himself as fully and freely upon such questions as upon any other, even to express a belief in the guilt or innocence of the accused or to say "he will sustain him in the course he is taking," although he so says after accusation brought. Let me illustrate. Suppose that after this impeachment had been voted by the House of Representatives the constituents of any senator had called a public meeting to sustain the President against what they were pleased to term the "tyrannical acts of Congress towards him in impeaching him," and should call upon their senator to attend and take part in such meeting, I do not conceive that it would, or ought to be legally objected against him as a disqualification to sit upon this trial, upon the principles I have stated, if he should attend the meeting, or favor the object, or, if his engagements in the Senate prevented his leaving, I have not been able to find any legal objection in the books to his writing a letter to such meeting, containing, among other things, statements like the following:

SENATE CHAMBER, *February* 24, 1868.

GENTLEMEN: My public and professional engagements will be such on the 4th of March that I am reluctantly compelled to decline your invitation to be present and address the meeting to be held in our city on that day.

* * * * * * * * *

That the President of the United States has sincerely endeavored to preserve these (our free institutions) from violation I have no doubt, and I have, therefore, throughout the unfortunate difference of opinion between him and Congress, sustained him. And this I shall continue to do as long as he shall prove faithful to duty. With my best thanks for the honor you have done me by your invitation, and regretting that it is not in my power to accept it,

I remain, with regard, your obedient servant,

REVERDY JOHNSON.

We should have as much right to expect his vote on a clearly-proven case of guilty as had King Henry the Eighth to hope for the vote of her father against his wife. He got it.

King Henry knew the strength of his case, and we know the strength of ours against this respondent.

If it be said that this is an infelicity, it is a sufficient and decisive answer that it is the infelicity of a precise constitutional provision, which provides that the Senate shall have the sole power to try impeachments, and the only security against bias or prejudice on the part of any senator is that *two-thirds* of the senators present are necessary for conviction.

To this rule there is but one possible exception, founded on both reason and authority, that a senator may not be a judge in his own case.

I have thought it necessary to determine the nature and attributes of the Tribunal, before we attend to the scope and meaning of the accusation before it.

The first eight articles set out in several distinct forms the acts of the respondent in removing Mr. Stanton from office, and appointing Mr. Thomas, *ad interim*, differing in legal effect in the purposes for which and the intent with which, either or both of the acts were done, and the legal duties and rights infringed, and the acts of Congress violated in so doing.

All the articles allege these acts to be in contravention of his oath of office, and in disregard of the duties thereof.

If they are so, however, the President might have the *power* to do them under

the law; still, being so done, they are acts of official misconduct, and, as we have seen, impeachable.

The President has the legal power to do many acts which, if done in disregard of his duty, or for improper purposes, then the exercise of that power is an official misdemeanor.

Ex. gr: he has the power of pardon; if exercised in a given case for a corrupt motive, as for the payment of money, or wantonly pardoning all criminals, it would be a misdemeanor. Examples might be multiplied indefinitely.

Article first, stripped of legal verbiage, alleges that, having suspended Mr. Stanton and reported the same to the Senate, which refused to concur in the suspension, and Stanton having rightfully resumed the duties of his office, the respondent, with knowledge of the facts, issued an order which is recited for Stanton's removal, with intent to violate the act of March 2, 1867, to regulate the tenure of certain civil offices, and with the further intent to remove Stanton from the office of Secretary of War, then in the lawful discharge of its duties, in contravention of said act without the advice and consent of the Senate, and against the Constitution of the United States.

Article 2 charges that the President, without authority of law, on the 21st of February, 1868, issued letter of authority to Lorenzo Thomas to act as Secretary of War *ad interim*, the Senate being in session, in violation of the tenure-of-office act, and with intent to violate it and the Constitution, there being no vacancy in the office of Secretary of War.

Article 3 alleges the same act as done without authority of law, and alleges an intent to violate the Constitution.

Article 4 charges that the President conspired with Lorenzo Thomas and divers other persons, with intent, by *intimidation and threats*, to prevent Mr. Stanton from holding the office of Secretary of War, in violation of the Constitution and of the act of July 31, 1861.

Article 5 charges the same conspiracy with Thomas to prevent Mr. Stanton's holding his office, and thereby to prevent the execution of the civil tenure act.

Article 6 charges that the President conspired with Thomas to seize and possess the property under the control of the War Department by *force*, in contravention of the act of July 31, 1861, and with intent to disregard the civil tenure-of-office act.

Article 7 charges the same conspiracy, with intent only to violate the civil tenure-of-office act.

Articles 3d, 4th, 5th, 6th, and 7th may all be considered together, as to the proof to support them.

It will be shown that having removed Stanton and appointed Thomas, the President sent Thomas to the War Office to obtain possession; that having been met by Stanton with a denial of his rights, Thomas retired, and after consultation with the President, Thomas asserted his purpose to take possession of the War Office by force, making his boast in several public places of his intentions so to do, but was prevented by being promptly arrested by process from the court.

This will be shown by the evidence of Hon. Mr. Van Horn, a member of the House, who was present when the demand for possession of the War Office was made by General Thomas, already made public.

By the testimony of the Hon. Mr. Burleigh, who, after that, in the evening of the twenty-first of February, was told by Thomas that he intended to take possession of the War Office by force the following morning, and invited him up to see the performance. Mr. Burleigh attended, but the act did not come off, for Thomas had been arrested and held to bail.

By Thomas boasting at Willards' hotel on the same evening that he should call on General Grant for military force to put him in possession of the office, and he did not see how Grant could refuse it.

Article 8 charges that the appointment of Thomas was made for the purpose

of getting control of the disbursement of the moneys appropriated for the military service and Department of War.

In addition to the proof already adduced, it will be shown that, after the appointment of Thomas, which must have been known to the members of his cabinet, the President caused a formal notice to be served on the Secretary of the Treasury, to the end that the Secretary might answer the requisitions for money of Thomas, and this was only prevented by the firmness with which Stanton retained possession of the books and papers of the War Office.

It will be seen that every fact charged in Article 1 is admitted by the answer of the respondent; the intent is also admitted as charged; that is to say, to set aside the civil tenure-of-office act, and to remove Mr. Stanton from the office of the Secretary for the Department of War without the advice and consent of the Senate, and, if not justified, contrary to the provisions of the Constitution itself.

The only question remaining is, does the respondent justify himself by the Constitution and laws?

On this he avers, that by the Constitution, there is "conferred on the President, as a part of the executive power, the power at any and all times of removing from office all executive officers for cause, to be judged of by the President alone, and that he verily believes that the executive power of removal from office, confided to him by the Constitution, as aforesaid, includes the power of suspension from office indefinitely."

Now, these offices, so vacated, must be filled, temporarily at least, by his appointment, because government must go on; there can be no interregnum in the execution of the laws in an organized government; he claims, therefore, of necessity, the right to fill their places with appointments of his choice, and that this power cannot be restrained or limited in any degree by any law of Congress, because, he avers, "that the power was conferred, and the duty of exercising it in fit cases was imposed on the President by the Constitution of the United States, and that the President could not be deprived of this power, or relieved of this duty, nor could the same be vested by law in the President and the Senate jointly, either in part or whole."

This, then, is the plain and inevitable issue before the Senate and the American people:

Has the President, under the Constitution, the more than kingly prerogative at will to remove from office and suspend from office indefinitely, all executive officers of the United States, either civil, military, or naval, at any and all times, and fill the vacancies with creatures of his own appointment, for his own purposes, without any restraint whatever, or possibility of restraint by the Senate or by Congress through laws duly enacted?

The House of Representatives, in behalf of the people, join this issue by affirming that the exercise of such powers is a high misdemeanor in office.

If the affirmative is maintained by the respondent, then, so far as the first eight articles are concerned—unless such corrupt purposes are shown as will of themselves make the exercise of a legal power a crime—the respondent must go, and ought to go quit and free.

Therefore, by these articles and the answers thereto, the momentous question, here and now, is raised whether the *presidential office itself (if it has the prerogatives and power claimed for it) ought, in fact, to exist as a part of the constitutional government of a free people*, while by the last three articles the simpler and less important inquiry is to be determined, whether Andrew Johnson has so conducted himself that he ought longer to hold any constitutional office whatever. The latter sinks to merited insignificance compared with the grandeur of the former.

If that is sustained, then a right and power hitherto unclaimed and unknown to the people of the country is engrafted on the Constitution, most alarming in

its extent, most corrupting in its influence, most dangerous in its tendencies, and most tyrannical in its exercise.

Whoever, therefore, votes "not guilty" on these articles votes to enchain our free institutions, and to prostrate them at the feet of any man who, being President, may choose to control them.

For this most stupendous and unlimited prerogative the respondent cites no line and adduces no word of constitutional enactment—indeed he could not, for the only mention of removal from office in the Constitution is as a part of the judgment in case of impeachment, and the only power of appointment is by nomination to the Senate of officers to be appointed by their advice and consent, save a qualified and limited power of appointment by the President when the Senate is not in session. Whence then does the respondent by his answer claim to have derived this power? I give him the benefit of his own words, "that it was practically settled by the first Congress of the United States." Again, I give him the benefit of his own phrases as set forth in his message to the Senate of 2d of March, 1867, made a part of his answer: "the question was decided by the House of Representatives by a vote of 34 to 20, (in this, however, he is mistaken,) and in the Senate by the casting vote of the Vice-President." In the same answer he admits that before he undertook the exercise of this most dangerous and stupendous power, after 75 years of study and examination of the Constitution by the people living under it, another Congress has decided that there was no such unlimited power. So that he admits that this tremendous power which he claims from the legislative construction of one Congress by a vote of 34 to 20 in the House, and a tie vote in the Senate, has been denied by another House of more than three times the number of members by a vote of 133 to 37; and by a Senate of more than double the number of senators by a vote of 38 to 10, and this too after he had presented to them all the arguments in its favor that he could find to sustain his claim of power.

If he derives this power from the practical settlement of one Congress of a legislative construction of the constitutional provisions, why may not such construction be as practically settled more authoritatively by the greater unanimity of another Congress—yea, as we shall see, of many other Congresses?

The great question, however, still returns upon us—whence comes this power?—how derived or conferred? Is it unlimited and unrestrained? illimitable and unrestrainable, as the President claims it to be?

In presenting this topic it will be my duty, and I shall attempt to do nothing more, than to state the propositions of law and the authorities to support them so far as they may come to my knowledge, leaving the argument and illustrations of the question to be extended in the close by abler and better hands.

If a power of removal in the Executive is found at all in the Constitution, it is admitted to be an implied one, either from the power of appointment, or because "the executive power is vested in the President."

Has the executive power granted by the Constitution by these words any limitations? Does the Constitution invest the President with all executive power, prerogatives, privileges, and immunities enjoyed by executive officers of other countries—kings and emperors—without limitation? If so, then the Constitution has been much more liberal in granting powers to the Executive than to the legislative branch of the government, as that has only "all legislative powers herein granted [which] shall be vested in the Congress of the United States;" not all uncontrollable legislative powers, as there are many limitations upon that power as exercised by the Parliament of England for example. So there are many executive powers expressly limited in the Constitution, such as declaring war, making rules and regulations for the government of the army and navy, and coining money.

As some executive powers are limited by the Constitution itself, is it not clear that the words "the executive power is vested in the President" do not confer

on him all executive powers, but must be construed with reference to other constitutional provisions granting or regulating specific powers? The executive power of appointment is clearly limited by the words "he shall nominate and by and with the advice and consent of the Senate shall appoint embassadors, * * * and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law."

Is it not, therefore, more in accordance with the theory of the Constitution to imply the power of removal from the power of appointment, restrained by like limitations, than to imply it solely as a prerogative of executive power and therefore illimitable and uncontrollable? Have the people anywhere else in the Constitution granted illimitable and uncontrollable powers either to the executive or any other branch of the government? Is not the whole frame of government one of checks, balances, and limitations? Is it to be believed that our fathers, just escaping from the oppressions of monarchical power, and so dreading it that they feared the very name of king, gave this more than kingly power to the Executive, illimitable and uncontrollable, and that too by implication merely?

Upon this point our proposition is, that the Senate being in session, and an office, not an inferior one, within the terms of the Constitution being filled, the President has the implied power of inaugurating the removal *only* by nomination of a successor to the Senate, which, when consented to, works the full removal and supersedeas of the incumbent. Such has been, it is believed, the practice of the government from the beginning down to the act about which we are inquiring. Certain it is that Mr. Webster, in the Senate in 1835, so asserted without contradiction, using the following language:

> If one man be Secretary of State, and another be appointed, the first goes out by the mere force of the appointment of the other, without any previous act of removal whatever. And this is the practice of the government, and has been from the first. In all the removals which have been made they have generally been effected simply by making other appointments. I cannot find a case to the contrary. There is no such thing as any distinct official act of removal. I have looked into the practice, and caused inquiries to be made in the departments, and I do not learn that any such proceeding is known as an entry or record of the removal of an officer from office, and the President would only act in such cases by causing some proper record or entry to be made as proof of the fact of removal. I am aware that there have been some cases in which notice has been sent to persons in office that their services are or will be, after a given day, dispensed with. These are usually cases in which the object is, not to inform the incumbent that he is removed, but to tell him that a successor either is or by a day named will be appointed. If there be any instances in which such notice is given, without express reference to the appointment of a successor, they are few; and even in these such reference must be implied, because in no case is there any distinct official act of removal, as I can find, unconnected with the act of appointment.

This would seem to reconcile all the provisions of the Constitution, the right of removal being in the President, to be executed *sub modo*, as is the power of appointment, the appointment, when consummated, making the removal.

This power was elaborately debated in the first Congress upon the bills establishing a Department of Foreign Affairs and the War Department. The debate arose on the motion, in Committee of the Whole, to strike out, after the title of the officer, the words, "to be removable from office by the President of the United States." It was four days discussed in Committee of the Whole in the House, and the clause retained by a vote of 20 yeas to 34 nays, which seemed to establish the power of removal as either by a legislative grant, or construction of the Constitution. But the triumph of its friends was short-lived, for when the bill came up in the House, Mr. Benson moved to amend it by altering the second section of the bill, so as to *imply* only the power of removal to be in the President, by inserting, that "whenever the principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, the chief clerk shall, during such vacancy, have charge and custody of all records, books, and papers appertaining to the department."

Mr. Benson "declared he would move to strike out the words in the first clause, to be removable by the President, which appeared somewhat like a

grant. Now the mode he took would evade that point and establish a legislative construction of the Constitution. He also hoped his amendment would succeed in reconciling both sides of the House to the decision and quieting the minds of the gentlemen."

After debate the amendment was carried, 30 to 18. Mr. Benson then moved to strike out the words "to be removable by the President of the United States," which was carried, 31 to 19; and so the bill was engrossed and sent to the Senate.

The debates of that body being in secret session, we have no record of the discussion which arose on the motion of Mr. Benson establishing the implied power of removal; but after very elaborate consideration, on several successive days, the words implying this power in the President were retained by the casting vote of the elder Adams, the Vice-President. So, if this claimed "legislative settlement" was only established by the vote of the second executive officer of the government. Alas! most of our woes in this government have come from Vice-Presidents. When the bill establishing the War Department came up, the same words, "to be removable by the President," were struck out, on the motion of one of the opponents of the recognition of this power, by a vote of 24 to 22, a like amendment to that of the second section of the act establishing the Department of State being inserted. When, six years afterwards, the Department of the Navy was established, no such recognition of the power of the President to remove was inserted; and as the measure passed by a strict party vote, 47 yeas to 41 nays, it may well be conceived that its advocates did not care to load it with this constitutional question, when the executive power was about passing into other hands, for one cannot read the debates upon this question without being impressed with the belief that reverence for the character of Washington largely determined the argument in the first Congress. Neither party did or could have looked forward to such an executive administration as we have this day.

It has generally been conceded in subsequent discussions that here was a legislative determination of this question, but I humbly submit that taking the whole action of Congress together it is very far from being determined. I should hardly have dared, in view of the eminent names of Holmes, Clay, Webster, and Calhoun that have heretofore made the admission, to have ventured the assertion, were it not that in every case they, as does the President and his counsel, rely on the first vote in the Committee of the Whole, sustaining the words "to be removable by the President," and in no instance take any notice of the subsequent proceedings in the House by which those words were taken out of the bill. This may have happened because Eliot's Debates, which is the authority most frequently cited in these discussions, stops with the vote in Committee and takes no notice of the further discussion. But whatever may be the effect of this legislative construction the contemporaneous and subsequent practice of the government shows that the President made no removals except by nominations to the Senate when in session, and superseding officers by a new commission to the confirmed nominee. Mr. Adams, in that remarkable letter to Mr. Pickering, in which he desires his resignation, requests him to send it early in order that he may nominate to the Senate, then about to sit, and he in fact removes Mr. Pickering by a nomination. Certainly no such unlimited power has ever been claimed by any of the earlier Presidents as has now been set up for the President by his most remarkable, aye, criminal answer.

It will not have escaped attention that no determination was made by that legislative construction as to *how* the removal, if in the President's power, should be made, which is now the question in dispute. *That* has been determined by the universal practice of the government, with exceptions, if any, so rare as not to be worthy of consideration; so that we now claim the law to be what the practice has ever been. If, however, we concede the power of removal to be in the

President as an implied power, yet we believe it cannot be successfully contended upon any authorities or constant practice of the government that the execution of that power may not be regulated by the Congress of the United States under the clause in the Constitution which "vests in Congress the power to make all laws which shall be necessary and proper for carrying into execution * * * all powers vested by this Constitution in the government of the United States or in any department or officer thereof."

This power of regulation of the tenure of office, and the manner of removal, has always been exercised by Congress unquestioned until now.

On the 15th of May, 1820, (vol. 3 Stat. at Large, p. 582,) Congress provided for the term of office of certain officers therein named to be four years, but made them removable at pleasure. By the second section of the same act Congress removed from office all the officers therein commissioned, in providing a date when each commission should expire. Congress has thus asserted a legislative power of removal from office; sometimes by passing acts which appear to concede the power to the President to remove at pleasure, sometimes restricting that power in their acts by the most stringent provisions; sometimes conferring the power of removal, and sometimes that of appointment—the acts establishing the territorial officers being most conspicuous in this regard.

Upon the whole, no claim of exclusive right over removals or appointments seems to have been made either by the Executive or by Congress. No bill was ever vetoed on this account until now.

In 1818, Mr. Wirt, then Attorney General, giving the earliest official opinion on this question coming from that office, said that only where Congress had not undertaken to restrict the tenure of office, by the act creating it, would a commission issue to run during the pleasure of the President; but if the tenure was fixed by law, then commission must conform to the law. No constitutional scruples as to the power of Congress to limit the tenure of office seem to have disturbed the mind of that great lawyer. But this was before any attempt had been made by any President to arrogate to himself the official patronage for the purpose of party or personal aggrandisement, which gives the only value to this opinion as an authority. Since the Attorney General's office has become a political one I shall not trouble the Senate with citing or examining the opinions of its occupants.

In 1826 a committee of the Senate, consisting of Mr. Benton of Missouri, chairman, Mr. Macon of North Carolina, Mr. Van Buren of New York, Mr. Dickerson of New Jersey, Mr. Johnson of Kentucky, Mr. White of Tennessee, Mr. Holmes of Maine, Mr. Hayne of South Carolina, and Mr. Findlay of Pennsylvania, was appointed to take into consideration the question of restraining the power of the President over removals from office, who made a report through their chairman, Mr. Benton, setting forth the extent of the evils arising from the power of appointment to and removal from office by the President, declaring that the Constitution had been changed in this regard, and that "construction and legislation have accomplished this change," and submitted two amendments to the Constitution, one providing a direct election of the President by the people, and another "that no senator or representative should be appointed to any place until the expiration of the presidential term in which such person shall have served as senator or representative," as remedies for some of the evils complained of; but the committee say, that "not being able to reform the Constitution, in the election of President they must go to work upon his powers, and trim down these by *statutory enactments* whenever it can be done by law and with a just regard to the proper efficiency of government, and for this purpose reported six bills—one, to regulate the publication of the laws and public advertisements; another, *to secure in office* faithful collectors and disbursers of the revenues, and to displace defaulters—the first section of which vacated the commissions of "all officers, after a given date, charged with the collection and disbursement of the public moneys who had failed to account

for such moneys on or before the 30th day of September preceding;" and the second section enacted that "at the same time a nomination is made to fill a vacancy occasioned by the exercise of the President's power to remove from office, the fact of the removal shall be stated to the Senate with a report of the reasons for which such officers may have been removed; also a bill to regulate the appointment of postmasters; and a bill to prevent military and naval officers from being dismissed the service at the pleasure of the President, by inserting a clause in the commission of such officers that "it is to continue in force during good behavior," and "that no officer shall ever hereafter be dismissed the service except in pursuance of the sentence of a court-martial, or upon address to the President from the two houses of Congress."

Is it not remarkable that exactly correlative measures to these have been passed by the 39th Congress, and are now the subject of controversy at this bar?

It does not seem to have occurred to this able committee that Congress had not the power to curb the Executive in this regard, because they asserted the practice of dismissing from office "to be a dangerous violation of the Constitution."

In 1830 Mr. Holmes introduced and discussed in the Senate a series of resolutions which contained, among other things, "the right of the Senate to inquire, and the duty of the President to inform them, when and for what causes any officer has been removed in the *recess*." In 1835 Mr. Calhoun, Mr. Southard, Mr. Bibb, Mr. Webster, Mr. Benton, and Mr. King, of Georgia, of the Senate, were elected a committee to consider the subject of Executive patronage, and the means of limiting it. That committee, with but one dissenting voice, (Mr. Benton,) reported a bill which provided in its third section "that in all nominations made by the President to the Senate, to fill vacancies occasioned by removal from office, the fact of the removal shall be stated to the Senate at the same time that the nomination is made, with a statement of the reasons for such removal."

It will be observed that this is the precise section reported by Mr. Benton in 1826, and passed to a second reading in the Senate. After much discussion, the bill passed the Senate, 31 yeas, 16 nays—an almost two-thirds vote. Thus it would seem that the ablest men of that day, of both political parties, subscribed to the power of Congress to limit and control the President in his removal from office.

One of the most marked instances of the assertion of this power in Congress will be found in the act of February 25, 1863, providing for a national currency and the office of Comptroller. (Statutes at Large, vol. 12, p. 665.) This controls both the appointment and the removal of that officer, enacting that he shall be appointed on the nomination of the Secretary of the Treasury, by and with the advice and consent of the Senate, and shall hold his office for the term of five years, unless sooner removed by the President, by and with the advice and consent of the Senate. This was substantially re-enacted June 3, 1864, with the addition that "he shall be removed upon reasons to be communicated to the Senate."

Where were the vigilant gentlemen then, in both houses, who now so denounce the power of Congress to regulate the appointment and removal of officers by the President as unconstitutional?

It will be observed that the Constitution makes no distinction between the officers of the army and navy and officers in the civil service, so far as their appointments and commissions, removals and dismissals, are concerned. Their commissions have ever run, "to hold office during the pleasure of the President;" yet Congress, by the act of 17th July, 1862, (Statutes at Large, volume 12, page 596,) enacted "that the President of the United States be, and hereby is, authorized and requested to dismiss and discharge from the military service, either in the army, navy, marine corps, or volunteer force, in the

United States service, any officer for any cause which, in his judgment, either renders such officer unsuitable for or whose dismission would promote the public service."

Why was it necessary to authorize the President so to do, if he had the Constitutional power to dismiss a military officer at pleasure? and his powers, whatever they are, as is not doubted, are the same as in a civil office. The answer to this suggestion may be that this act was simply one of supererogation, only authorizing him to do what he was empowered already to do, and therefore not specially pertinent to this discussion.

But on the 13th of July, 1866, Congress enacted "that no officer in the military or naval service *shall*, in time of peace, *be dismissed* from service except upon, and in pursuance of, the sentence of a court-martial to that effect." What becomes, then, of the respondent's objection that Congress cannot regulate his power of removal from office? In the snow-storm of his vetoes why did no flake light down on this provision? It concludes the whole question here at issue. It is approved; approval signed Andrew Johnson.

It will not be claimed, however, if the tenure-of-office act is constitutional, (and that question I shall not argue, except as has been done incidentally, for reasons hereafter to be stated,) that he could remove Mr. Stanton provided the office of Secretary of War comes within its provisions, and one claim made here before you, by the answer, is that that office is excepted by the terms of the law. Of course I shall not argue to the Senate, composed mostly of those who passed the bill, what their wishes and intentions were. Upon that point I cannot aid them, but the construction of the act furnishes a few suggestions. First let us determine the exact status of Mr. Stanton at the moment of its passage. The answer admits Mr. Stanton was appointed and commissioned and duly qualified as Secretary of War under Mr. Lincoln in pursuance of the act of 1789. In the absence of any other legislation or action of the President, he legally held his office during the term of his natural life. This consideration is an answer to every suggestion as to the Secretary holding over from one presidential term to another.

On the 2d of March, 1867, the tenure-of-office act provided, in substance, that all civil officers duly qualified to act by appointment, with the advice and consent of the Senate, shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided, to wit: "provided that the Secretaries shall hold their office during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

By whom was Mr. Stanton appointed? By Mr. Lincoln. Whose presidential term was he holding under when the bullet of Booth became a proximate cause of this trial? Was not his appointment in full force at that hour? Had any act of the respondent up to the 12th day of August last vitiated or interfered with that appointment? Whose presidential term is the respondent now serving out? His own, or Mr. Lincoln's? If his own, he is entitled to four years up to the anniversary of the murder, because each presidential term is four years by the Constitution, and the regular recurrence of those terms is fixed by the act of May 8, 1792. If he is serving out the remainder of Mr. Lincoln's term, then his term of office expires on the 4th of March, 1869, if it does not before.

Is not the statement of these propositions their sufficient argument? If Mr. Stanton's commission was vacated in any way by the "tenure-of-office act," then it must have ceased one month after the 4th of March, 1865, to wit: April 4, 1865. Or, if the "tenure-of-office act" had no retroactive effect, then his commission must have ceased if it had the effect to vacate his commission at all on the passage of the act, to wit, 2d March, 1867; and, in that case, from that

date to the present he must have been exercising his office in contravention of the second section of the act, because he was not commissioned in accordance with its provisions. And the President, by "employing" him in so doing from 2d March to 12th August, became guilty of a high misdemeanor under the provision of the sixth section of said act; so that if the President shall succeed in convincing the Senate that Mr. Stanton has been acting as Secretary of War against the provisions of the "tenure-of-office act," which *he will* do if he convince them that that act vacated in any way Mr. Stanton's commission, or that he himself was not serving out the remainder of Mr. Lincoln's presidential term, then the House of Representatives have but to report another article for this misdemeanor to remove the President upon his own confession.

It has been said, however, that in the discussion at the time of the passage of this law, observations were made by senators tending to show that it did not apply to Mr. Stanton, because it was asserted that no member of the cabinet of the President would wish to hold his place against the wishes of his chief, by whom he had been called into council; and these arguments have been made the groundwork of attack upon a meritorious officer, which may have so influenced the minds of senators that it is my duty to observe upon them to meet arguments to the prejudice of my cause.

Without stopping to deny the correctness of the general proposition, there seems to be at least two patent answers to it.

The respondent *did not* call Mr. Stanton into his council. The blow of the assassin *did* call the respondent to preside over a cabinet of which Mr. Stanton was then an honored member, beloved of its Chief; and if the respondent deserted the principles under which he was elected, betrayed his trust, and sought to return rebels, whom the valor of our armies had subdued, again into power, are not those reasons, not only why Mr. Stanton should not desert his post, but, as a true patriot, maintain it all the more firmly against this unlooked-for treachery?

Is it not known to you, Senators, and to the country, that Mr. Stanton retains this unpleasant and distasteful position, *not* of his own will alone, but at the behest of a majority of those who represent the people of this country in both houses of its legislature, and after the solemn decision of the senate that any attempt to remove him without their concurrence is unconstitutional and unlawful?

To desert it now, therefore, would be to imitate the treachery of his accidental Chief. But whatever may be the construction of the "tenure of civil office act" by others, or as regards others, Andrew Johnson, the respondent, is concluded upon it.

He permitted Mr. Stanton to exercise the duties of his office in spite of it, if that office were affected by it. He suspended him under its provisions; he reported that suspension to the Senate, with his reasons therefor in accordance with its provisions; and the Senate, acting under it, declined to concur with him, whereby Mr. Stanton was reinstated. In the well-known language of the law, is not the respondent *estopped* by his solemn official acts from denying the legality and constitutional propriety of Mr. Stanton's position?

Before proceeding further, I desire most earnestly to bring to the attention of the Senate the averments of the President in his answer, by which he justifies his action in attempting to remove Mr. Stanton, and the reasons which controlled him in so doing. He claims that on the 12th day of August last he had become fully of the opinion that he had the power to remove Mr. Stanton or any other executive officer, or suspend him from office and to appoint any other person to act instead "indefinitely and at his pleasure;" that he was fully advised and believed, as he still believes, that the tenure of civil office act was unconstitutional, inoperative, and void in all its provisions; and that he had then determined at all hazards, if Stanton could not be otherwise got rid of, to remove him from office in spite of the provisions of that act and the action of the Senate

under it, if for no other purpose, in order to raise for a judicial decision the question affecting the lawful right of said Stanton to persist in refusing to quit the office.

Thus it appears that with full intent to resist the power of the Senate, to hold the tenure of office act void, and to exercise this illimitable power claimed by him, he did suspend Mr. Stanton, apparently in accordance with the provisions of the act; he did send the message to the Senate within the time prescribed by the act; he did give his reasons for the suspension to the Senate, and argued them at length, accompanied by what he claimed to be the evidence of the official misconduct of Mr. Stanton, and thus invoked the action of the Senate to assist him in displacing a high officer of the government under the provisions of an act which he at that very moment believed to be unconstitutional, inoperative and void, thereby showing that he was willing to make use of a void act and the Senate of the United States as his tools, to do that which he believed neither had any constitutional power to do. Did not every member of the Senate, when that message came in announcing the suspension of Mr. Stanton, understand and believe that the President was acting in this case as he had done in every other case under the provisions of this act? Did not both sides discuss the question under its provisions? Would any Senator upon this floor, on either side, so demean himself as to consider the question one moment if he had known it was then within the intent and purpose of the President of the United States to treat the deliberations and action of the Senate as void and of non-effect if its decision did not comport with his views and purposes; and yet, while acknowledging the intent was in his mind to hold as naught the judgment of the Senate if it did not concur with his own, and remove Mr. Stanton at all hazards, and as I charge it upon him here, as a fact no man can doubt, with the full knowledge also that the Senate understood that he was acting under the provisions of the tenure-of-office act, still thus deceiving them, when called to answer for a violation of that act in his solemn answer he makes the shameless avowal that he did transmit to the Senate of the United States a "message wherein he made known the orders aforesaid and the reasons which induced the same, so far as the respondent then considered it material and necessary that the same should be set forth." True it is, there is not one word, one letter, one implication in that message that the President was not acting in good faith under the tenure-of-office act and desiring the Senate to do the same. So the President of the United States, with a determination to assert at all hazards the tremendous power of removal of every officer, without the consent of the Senate, did not deem it "material or necessary" that the Senate should know that he had suspended Mr. Stanton indefinitely against the provisions of the tenure-of-office act, with full intent at all hazards to remove him, and that the solemn deliberations of the Senate, which the President of the United States was then calling upon them to make in a matter of the highest governmental concern, were only to be of use in case they suited his purposes; that it was not "material or necessary" for the Senate to know that its high decision was futile and useless; that the President was playing fast and loose with this branch of the government, which was never before done save by himself.

If Andrew Johnson never committed any other offence—if we knew nothing of him save from this avowal—we should have a full picture of his mind and heart, painted in colors of living light, so that no man will ever mistake his mental and moral lineaments hereafter.

Instead of open and frank dealing, as becomes the head of a great government in every relation of life, and especially needful from the highest executive officer of the government to the highest legislative branch thereof; instead of a manly, straightforward bearing, claiming openly and distinctly the rights which he believed pertained to his high office, and yielding to the other branches,

fairly and justly, those which belong to them, we find him, upon his own written confession, keeping back his claims of power, concealing his motives, covering his purposes, attempting by indirection and subterfuge to do that as the ruler of a great nation which, if it be done at all, should have been done boldly, in the face of day; and upon this position he must stand before the Senate and the country if they believe his answer, which I do not, that he had at that time these intents and purposes in his mind, and they are not the subterfuge and evasion and after-thought which a criminal brought to bay makes to escape the consequences of his acts.

Senators! he asked you for time in which to make his answer. You gave him ten days, and this is the answer he makes! If he could do this in ten days, what should we have had if you had given him forty? You shew him a mercy in not extending the time for answer.

Passing from further consideration of the legality of the action of the respondent in removing Mr. Stanton from office in the manner and form and with the intent and purpose with which it has been done, let us now examine the appointment of Brevet Major General Lorenzo Thomas, of the United States army, as Secretary of War *ad interim*.

I assume that it is not denied in any quarter that this *ad interim* appointment to this office is the mere creature of law, and if justified at all, is to be so under some act of Congress. Indeed, the respondent in his answer says that in the appointment of General Grant *ad interim* he acted under the act of February 13, 1795, and subject to its limitations. By the act of August 7, 1789, creating the Department of War, (1st Statutes at Large, page 49,) "in case of any vacancy" no provision is made for any appointment of an acting or *ad interim* Secretary. In that case the records and papers are to be turned over for safe keeping to the custody of the chief clerk. This apparent omission to provide for an executive emergency was attempted to be remedied by Congress by the act of May 8, 1792, (1st Statutes, 281,) which provides "that in case of the death, absence from the seat of government, or sickness of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments whose appointment is not in the head thereof, *whereby they cannot perform the duties of their respective offices*, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease."

It will be observed that this act provides for vacancies by death, absence, or sickness only, *whereby the head of a department or any officer in it cannot perform his duty*, but makes no provision for vacancy by removal.

Two difficulties were found in that provision of law: first, that it provided only for certain enumerated vacancies; and also, it authorized the President to make an acting appointment of *any* person for *any length* of time. To meet these difficulties the act of 13th February, 1795, was passed, (1st Stat. at Large, 415,) which provides "in case of vacancy, *whereby the Secretaries or any officer in any of the departments cannot perform the duties of his office*, the President may appoint any person to perform the duties for a period *not exceeding six months*."

Thus the law stood as to acting appointments in all of the departments, (except the Navy and Interior, which had no provision for any person to act in place of the Secretary,) until the 19th of February, 1863, when, by the second section of an act approved at that date, (12th Stat., 646,) it was "provided that no person acting or assuming to act as a civil, military, or naval officer shall have any money paid to him as salary in any office which is not authorized by some previously existing law." The state of the law upon this subject at that point of time is thus: In case of death, absence, or sickness, or of any vacancy *whereby*

a Secretary or other officer of the State, War, or Treasury Department *could not perform the duties of the office*, any person could be authorized by the President to perform those duties for the space of six months.

For the Departments of the Interior and the Navy provision had been made for the appointment of an Assistant Secretary, but *no* provision in case of vacancy in his office, and a restriction put upon any officers acting when not authorized by law, from receiving any salary whatever.

To meet those omissions and to meet the case of *resignation* of any officer of an executive department, and also to meet what was found to be a defect in allowing the President to appoint *any* person to those high offices for the space of six months, whether such person had any acquaintance with the duties of the department or not, an act was passed February 20, 1863, (12 Stat., p. 656,) which provides, that in case of the death, *resignation*, absence from the seat of government, or sickness of the head of an executive department of the government, or of any officer of either of the said departments whose appointment is not in the head thereof, *whereby they cannot perform the duties of their respective offices*, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize the head of any other executive department or other officer in either of said departments whose appointment is vested in the President, at his discretion to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability shall cease. Therefore, in case of the death, resignation, sickness, or absence of a head of an Executive department, whereby the incumbent could not perform the duties of his office, the President might authorize the head of another Executive department to perform the duties of the vacant office, and in case of like disability of any officer of an Executive department other than the head, the President might authorize an officer of the same department to perform his duties for the space of six months.

It is remarkable that in all these statutes, from 1789 down, no provision is made for the case of a removal, or that anybody is empowered to act for the removed officer, the chief clerk being empowered to take charge of the books and papers only.

Does not this series of acts conclusively demonstrate a legislative construction of the Constitution that there could be *no* removal of the chief of an executive department by the act of the President save by the nomination and appointment of his successor, if the Senate were in session, or a qualified appointment till the end of the next session if the vacancy happened or was made in recess?

Let us now apply this state of the law to the appointment of Major General Thomas Secretary of War *ad interim* by Executive order. Mr. Stanton had neither died nor resigned, was not sick nor absent. If he had been, under the act of March 3, 1863, which repeals all inconsistent acts, the President was authorized only to appoint the head of another Executive department to fill his place *ad interim*. Such was not General Thomas. He was simply an officer of the army, the head of a bureau or department of the War Department, and not eligible under the law to be appointed. So that his appointment was an *illegal and void act*.

There have been two cases of *ad interim* appointments which illustrate and confirm this position; the one was the appointment of Lieutenant General Scott Secretary of War *ad interim*, and the other the appointment of General Grant *ad interim* upon the suspension of Mr. Stanton, in August last.

The appointment of General Scott was legal because that was done before the restraining act of March 2, 1863, which requires the detail of the head of another department to act *ad interim*.

The appointment of General Grant to take the place of Mr. Stanton during his suspension would have been illegal under the acts I have cited, he being

an officer of the army and not the head of a department, if it had not been authorized by the 2d section of the "tenure-of civil-office act," which provides that in case of suspension, and no other, the President may designate "some suitable person to perform temporarily the duties of such office until the next meeting of the Senate." Now, General Grant was such "suitable person," and was properly enough appointed under that provision.

This answers one ground of the defence which is taken by the President that he did *not* suspend Mr. Stanton under the "tenure-of-office act," but by his general power of suspension and removal of an officer. If the President did *not* suspend Stanton under the tenure-of-office act, because he deemed it unconstitutional and void, *then* there was no law authorizing him to appoint General Grant, and that appointment was unauthorized by law and a violation of his oath of office.

But the tenure-of-civil-office bill by its express terms forbids any employment, authorization, or appointment of any person in civil office where the appointment is by and with the advice and consent of the Senate, while the Senate is in session. If this act is constitutional, *i. e.*, if it is not so far in conflict with the paramount law of the land as to be inoperative and void, then the removal of Mr. Stanton and the appointment of General Thomas are both in direct violation of it, and are declared by it to be high misdemeanors.

The intent with which the President has done this is not doubtful, nor are we obliged to rely upon the principle of law that a man must be held to intend the legal consequences of all his acts.

The President admits that he intended to set aside the tenure-of-office act, and thus contravene the Constitution, if that law was unconstitutional.

Having shown that the President wilfully violated an act of Congress, without justification, both in the removal of Stanton and the appointment of Thomas, for the purpose of obtaining wrongfully the possession of the War Office by force, if need be, and certainly by threats and intimidations, for the purpose of controlling its appropriations through its *ad interim* chief, who shall say that Andrew Johnson is not guilty of the high crime and misdemeanors charged against him in the first eight articles?

The respondent makes answer to this view, that the President, believing this civil tenure law to be unconstitutional, *had a right to violate it*, for the purpose of bringing the matter before the Supreme Court for its adjudication.

We are obliged, *in limine*, to ask the attention of the Senate to this consideration, that they may take it with them as our case goes forward.

We claim that the question of the constitutionality of any law of Congress is, upon this trial, a totally irrelevant one; because all the power or right in the President to judge upon any supposed conflict of an act of Congress with the paramount law of the Constitution is exhausted when he has examined a bill sent him and returned it with his objections. If then passed over his veto it becomes as valid as if in fact signed by him.

The Constitution has provided three methods, all equally potent, by which a bill brought into either house may become a law:

1st. By passage by vote of both houses, in due form, with the President's signature;

2d. By passage by vote of both houses, in due form, and the President's neglect to return it within ten days with his objections;

3d. By passage by vote of both houses, in due form, a veto by the President, a reconsideration by both houses, and a passage by two-thirds votes.

The Constitution substitutes this reconsideration and passage as an equivalent to the President's signature. After that, he and all other officers must execute the law, whether in fact constitutional or not.

For the President to refuse to execute a law duly passed, because he thought

it unconstitutional, after he had vetoed it for that reason, would, in effect, be for him to execute his veto and leave the law unexecuted.

It may be said he may *do this at his peril.* True; but *that* peril is, to be impeached for violating his oath of office, as is now being done.

If, indeed, laws duly passed by Congress affecting generally the welfare of any considerable portion of the people had been commonly, or as a usage declared by the Supreme Court unconstitutional, and therefore inoperative, there might seem to be some palliation if not justification to the Executive to refuse to execute a law in order to have its constitutionality tested by the court.

It is possible to conceive of so flagrant a case of unconstitutionality as to be such shadow of justification to the Executive, provided one at the same time conceives an equally flagrant case of stupidity, ignorance, and imbecility, or worse, in the representatives of the people and in the Senate of the United States; but both conceptions are so rarely possible and absurd as not to furnish a ground of governmental action.

How stands the fact? Has the Supreme Court so frequently declared the laws of Congress in conflict with the Constitution as to afford the President just ground for belief, or hope even, that the court will do so in a given instance? I think I may safely assert as a legal fact, that since the first decision of the Supreme Court till the day of this arraignment no law passed by Congress affecting the general welfare has ever, by the judgment of that court, been set aside or held for naught because of unconstitutionality as the ground-work of its decision.

In three cases only has the judgment of that court been influenced by the supposed conflict between the law and the Constitution, and they were cases affecting the court itself and its own duties, and where the law seemed to interfere with its own prerogatives.

Touching privileges and prerogatives have been the shipwreck of many a wholesome law. It is the sore spot, the sensitive nerve of all tribunals, parliamentary or judicial.

The first case questioning the validity of a law of Congress is Hayburn's, (2 Dallas, 409,) where the court decided upon the unconstitutionality of the act of March 23, 1792, Statutes at Large, vol. 1, p. 244, which conferred upon the court the power to decide upon and grant certificates of invalid pensions. The court held that such power could not be conferred upon the court as an original jurisdiction, the court receiving all its original jurisdiction from the provisions of the Constitution. This decision would be nearly unintelligible were it not explained in a note to the case in United States *vs.* Ferreira, (13 Howard, p. 52,) reporting United States *vs.* Todd, decided February 17, 1794.

We learn, however, from both cases the cause of this unintelligibility of the decision in Hayburn's case. When the same question came up at the circuit court in New York, the judges being of opinion that the law could not be executed by them as judges, because it was unconstitutional, yet determined to obey it until the case could be adjudicated by the whole court. They therefore, not to violate the law, *did execute it as commissioners* until it was repealed, which was done the next year.

The judges on the circuit in Pennsylvania all united in a letter to the Executive, most humbly apologizing, with great regret, that their convictions of duty did not permit them to execute the law according to its terms, and took special care that this letter should accompany their decision, so that they might not be misunderstood.

Both examples it would have been well for this respondent to have followed before he undertook to set himself to violate an act of Congress.

The next case where the court decided upon any conflict between the Constitution and the law is Gordon *vs.* United States, tried in April, 1865, seventy-

one years afterwards, two justices dissenting, without any opinion being delivered by the court.

The court here dismissed an appeal from the Court of Claims, alleging that, under the Constitution, no appellate jurisdiction could be exercised over the Court of Claims under an act of Congress which gave revisory power to the Secretary of the Treasury over a decision of the Court of Claims. This decision is little satisfactory, as it is wholly without argument or authority cited.

The next case is *ex parte* Garland, (4 Wallace, 333,) known as the Attorney's Oath case—where the court decided that an attorney was not an officer of the United States, and therefore might practice before that court without taking the test oath.

The reasoning of the court in that case would throw doubt on the constitutionality of the law of Congress, but the decision of the invalidity of the law was not necessary to the decision of the case, which did not command a unanimity in the court, as it certainly did not the assent of the bar.

Yet in this case it will be observed that the court made a rule requiring the oath to be administered to the attorneys in obedience of the law until it came before them in a cause duly brought up for decision. *The Supreme Court obeyed the law up to the time* it was set aside. They did not violate it to make a test case.

Here is another example to this respondent, as to his duty in the case, which he will wish he had followed, I may venture to say, when he hears the judgment of the Senate upon the impeachment now pending.

There are several other cases wherein the validity of acts of Congress have been discussed before the Supreme Court, but none where the decision had turned on that point.

In Marbury *vs.* Madison, (1 Cranch, 137,) Chief Justice Marshall dismissed the case for want of jurisdiction, but took opportunity to deliver a chiding opinion against the administration of Jefferson before he did so.

In the Dred Scott case, so familiar to the public, the court decided it had no jurisdiction, but gave the government and the people a lecture upon their political duties.

In the case of Fisher *vs.* Blight, (2 Cranch, 358,) the constitutionality of a law was very much discussed, but was held valid by the decision of the court.

In United States *vs.* Coombs, (12 Peters, 72,) although the power to declare a law of Congress in conflict with the Constitution was claimed in the opinion of the court *arguendo*, yet the law itself was sustained.

The case of Pollard *vs.* Hagan, (3 Howard, 212,) and the two cases, Goodtitle *vs.* Kibbe, (9 Howard, 271;) Hallett *vs.* Beebe, (13 Howard, 25,) growing out of the same controversy, have been thought to impugn the validity of two private acts of Congress, but a careful examination will show that it was the *operation* and not the *validity* of the acts which came in question and made the basis of the decision.

Thus it will be seen that the Supreme Court, in three instances only, has apparently by its decision impugned the validity of an act of Congress because of a conflict with the Constitution, and in each case a question of the rights and prerogatives of the court or its officers has been in controversy.

The cases where the constitutionality of an act of Congress has been doubted in the *obiter dicta* of the court, but were not the basis of decision, are open to other criticisms.

In Marbury *vs.* Madison, Chief Justice Marshall had just been serving as Secretary of State in an opposing administration to the one whose acts he was trying to overturn as Chief Justice.

In the Dred Scott case, Chief Justice Taney—selected by General Jackson to remove the deposits, because his bitter partisanship would carry him through where Duane halted and was removed—delivered the opinion of the court, whose

obiter dicta fanned the flame of dissension which led to the civil war through which the people have just passed, and against that opinion the judgment of the country has long been recorded.

When *ex parte* Garland was decided, the country was just emerging from a conflict of arms, the passions and excitement of which had found their way upon the bench, and some of the judges, just coming from other service of the government and from the bar, brought with them opinions—but I forbear. I am treading on dangerous ground. Time has not yet laid its softening and correcting hand long enough upon this decision to allow me further to comment upon it in this presence.

Mr. President and Senators, can it be said that the possible doubts thrown on three or four acts of Congress, as to their constitutionality, during a judicial experience of seventy-five years—hardly one to a generation—is a sufficient warrant to the President of the United States to set aside and violate any act of Congress whatever, upon the plea that he believed the Supreme Court would hold it unconstitutional when a case involving the question should come before it, and especially one much discussed on its passage, to which the whole mind of the country was turned during the progress of the discussion, upon which he had argued with all his power his constitutional objections, and which, after careful reconsideration, had been passed over his veto?

Indeed, will you hear an argument as a Senate of the United States, a majority of whom voted for that very bill, upon its constitutionality in the trial of an executive officer for wilfully violating it before it had been doubted by any court?

Bearing upon this question, however, it may be said that the President removed Mr. Stanton for the very purpose of testing the constitutionality of this law before the courts, and the question is asked, Will you condemn him as for a crime for so doing? If this plea were a true one it ought not to avail; but it is a subterfuge. We shall show you that he has taken no step to submit the question to any court, although more than a year has elapsed since the passage of the act.

On the contrary, the President has recognized its validity and acted upon it in every department of the government, save in the War Department, and there except in regard to the head thereof solely. We shall show you he long ago caused all the forms of commissions and official bonds of all the civil officers of the government to be altered to conform to its requirement. Indeed, the fact will not be denied—nay, in the very case of Mr. Stanton, he suspended him under its provisions, and asked this very Senate, before whom he is now being tried for its violation, to pass upon the sufficiency of his reasons for acting under it in so doing according to its terms; yet, rendered reckless and mad by the patience of Congress under his usurpation of other powers, and his disregard of other laws, he boldly avows in his letter to the general of the army that he intends to disregard its provisions, and summons the commander of the troops of this department to seduce him from his duty so as to be able to command, in violation of another act of Congress, sufficient military power to enforce his unwarranted decrees.

The President knew, or ought to have known; his official adviser, who now appears as his counsel, could, and did tell him, doubtless, that he alone, as Attorney General, could file an information in the nature of a *quo warranto* to determine this question of the validity of the law.

Mr. Stanton, if ejected from office, was without remedy, because a series of decisions has settled the law to be that an ejected officer can not reinstate himself either by *quo warranto*, *mandamus*, or other appropriate remedy in the courts.

If the President had really desired solely to test the constitutionality of the law or his legal right to remove Mr. Stanton, instead of his defiant message to

the Senate of the 21st of February, informing them of the removal, but not suggesting this purpose which is thus shown to be an afterthought, he would have said, in substance: "Gentlemen of the Senate, in order to test the constitutionality of the law entitled 'An act regulating the tenure of certain civil offices,' which I verily believe to be unconstitutional and void, I have issued an order of removal of E. M. Stanton from the office of Secretary of the Department of War. I felt myself constrained to make this removal lest Mr. Stanton should answer the information in the nature of a *quo warranto*, which I intend the Attorney General shall file at an early day, by saying that he holds the office of Secretary of War by the appointment and authority of Mr. Lincoln, which has never been revoked. Anxious that there shall be no collision or disagreement between the several departments of the government and the Executive, I lay before the Senate this message, that the reasons for my action, as well as the action itself, for the purpose indicated, may meet your concurrence." Had the Senate received such a message, the representatives of the people might never have deemed it necessary to impeach the President for such an act to insure the safety of the country, even if they had denied the accuracy of his legal positions.

On the contrary, he issued a letter of removal, peremptory in form, intended to be so in effect, ordered an officer of the army, Lorenzo Thomas, to take possession of the office and eject the incumbent, which he claimed he would do by force, even at the risk of inaugurating insurrection, civil commotion and war.

Whatever may be the decision of the legal question involved when the case comes before the final judicial tribunal, who shall say that such conduct of the Executive under the circumstances, and in the light of the history of current events and his concomitant action, is not in Andrew Johnson a high crime and misdemeanor? Imagine, if it were possible, the consequence of a decision by the Senate in the negative—a verdict of not guilty upon this proposition.

A law is deliberately passed with all the form of legislative procedure, is presented to the President for his signature, is returned by him to Congress with his objections, is thereupon reconsidered, and by a yea and nay vote of three-quarters of the representatives of the people in the popular branch, and three-fourths of the senators representing the States in the higher branch, is passed again, notwithstanding the veto; is acquiesced in by the President, by all departments of the government conforming thereto for quite a year, no court having doubted its validity. Now its provisions are wilfully and designedly violated by the President with intent to usurp to himself the very powers which the law was designed to limit, for the purpose of displacing a meritorious officer whom the Senate just before had determined ought not and should not be removed; for which high-handed act the President is impeached in the name of all the people of the United States, by three-fourths of the House of Representatives, and presented at the bar of the Senate, and by the same Senate that passed the law, nay, more, by the very senators who, when the proceeding came to their knowledge, after a redeliberation of many hours, solemnly declared the act unlawful and in violation of the Constitution; that act of usurpation is declared *not* to be a high misdemeanor in office by their solemn verdict of not guilty upon their oaths.

Would not such a judgment be a conscious self-abnegation of the intelligent capacity of the representatives of the people in Congress assembled to frame laws for their guidance in accordance with the principles and terms of their Constitution and frame of their government?

Would it not be a notification—an invitation rather—standing to all time to any bold, bad, aspiring man to seize the liberties of the people which they had shown themselves incapable of maintaining or defending, and playing the *role* of a Cæsar or Napoleon here to establish a despotism, while this the last and greatest experiment of freedom and equality of right in the people, following

the long line of buried republics, sinks to its tomb under the blows of usurped power from which free representative government shall arise to the light of a morn of resurrection *never more, never more forever!*

Article ninth charges that Major General Emory being in command of the military department of Washington, the President called him before him and instructed him that the act of March 2, 1867, which provides that all orders from the President shall be issued through the General of the army, was unconstitutional and inconsistent with his commission, with intent to induce Emory to take orders directly from himself, and thus hinder the execution of the civil tenure act and to prevent Mr. Stanton from holding his office of Secretary of War.

If the transaction set forth in this article stood alone we might well admit that doubts might arise as to the sufficiency of the proof. But the surroundings are so pointed and significant as to leave no doubt on the mind of an impartial man as to the intents and purposes of the President. No one would say that the President might not properly send to the commander of this department to make inquiry as to the disposition of his forces, but the question is with what intent and purpose did the President send for General Emory at the time he did? Time, here, is an important element of the act.

Congress had passed an act in March, 1867, restraining the President from issuing military orders save through the General of the army. The President had protested against that act. On the 12th of August, he had attempted to get possession of the War Office by the removal of the incumbent, but could only do so by appointing the General of the army thereto. Failing in his attempt to get full possession of the office through the Senate, he had determined, as he admits, to remove Stanton at all hazards, and endeavored to prevail on the General to aid him in so doing. He declines. For that, the respondent quarrels with him, denounces him in the newspapers, and accuses him of bad faith and untruthfulness. Thereupon, asserting his prerogatives as Commander-in-chief, he creates a new military department of the Atlantic. He attempts to bribe Lieutenant General Sherman to take command of it, by promotion to the rank of general by brevet, trusting that his military services would compel the Senate to confirm him.

If the respondent can get a general by brevet appointed, he can then by simple order put him on duty according to his brevet rank and thus have a General of the army in command at Washington, through whom he can transmit his orders and comply with the act which he did not dare transgress, as he had approved it, and get rid of the hated General Grant. Sherman spurned the bribe. The respondent, not discouraged, appointed Major General George H. Thomas to the same brevet rank, but Thomas declined.

What stimulated the ardor of the President just at that time, almost three years after the war closed, but just after the Senate had reinstated Stanton, to reward military service by the appointment of generals by brevet? Why did his zeal of promotion take that form and no other? There were many other meritorious officers of lower rank desirous of promotion. The purpose is evident to every thinking mind. He had determined to set aside Grant, with whom he had quarrelled, either by force or fraud, either in conformity with or in spite of the act of Congress, and control the military power of the country. On the 21st of February (for all these events cluster nearly about the same point of time) he appoints Lorenzo Thomas Secretary of War and orders Stanton out of the office; Stanton refuses to go; Thomas is about the streets declaring that he will put him out by force, "kick him out"—he has caught his master's word.

On the evening of the 21st a resolution looking to impeachment is offered in the House.

The President, on the morning of the 22d, "as early as practicable," is seized with a sudden desire to know how many troops there were in Washington.

What for, just then? Was that all he wanted to know? If so, his Adjutant General could have given him the official morning report, which would have shown the condition and station of every man. But that was not all. He directs the commander of the department to come as early as practicable. Why this haste to learn the number of troops? Observe, the order does not go through General Grant, as by law it ought to have done. General Emory not knowing what is wanted, of course obeyed the order as soon as possible. The President asked him if he remembered the conversation which he had with him when he first took command of the department as to the strength of the garrison of Washington, and the general disposition of troops in the department. Emory replied that "he did distinctly;" that was last September. Then, after explaining to him fully as to all the changes, the President asked for recent changes of troops. Emory denied they could have been made without the order going through him, and then, with soldierly frankness, (as he evidently suspected what the President was after,) said by law no order could come to him save through the General of the army, and that had been approved by the President and promulgated in a General Order, No. 17. The President wished to seeit. It was produced. General Emory says, "Mr. President, I will take it as a great favor if you will permit me to call your attention to this order or act." Why a favor to Emory? Because he feared that he was to be called upon by the President to do something in contravention of that law. The President read it and said, "This is not in accordance with the Constitution of the United States, which makes me Commander-in-chief of the army and navy, or with the language of your commission." Emory then said, "That is not a matter for the officers to determine. There was the order sent to us approved by him, and we were all governed by that order."

He said, "Am I to understand, then, that the President of the United States cannot give an order but through General Grant?" General Emory then made the President a short speech, telling him that the officers of the army had been consulting lawyers on the subject, Reverdy Johnson and Robert J. Walker, and were advised they were bound to obey that order. Said he, "I think it right to tell you the army are a unit on this subject." After a short pause, "seeing there was nothing more to say," General Emory left. What made all the officers consult lawyers about obeying a law of the United States? What influence had been at work with them? The course of the President. In his message to Congress in December he had declared that the time might come when he would resist a law of Congress by force. How could General Emory tell that in the judgment of the President that time had not come, and hence was anxious to assure the President that he could not oppose the law?

In his answer to the first article he asserts that he had fully come to the conclusion to remove Mr. Stanton at all events, notwithstanding the law and the action of the Senate; in other words, he intended to make, and did make, executive resistance to the law duly enacted. The consequences of such resistance he has told us in his message:

* * * * * * *

Where an act has been passed according to the forms of the Constitution by the supreme legislative authority, and is regularly enrolled among the public statutes of the country, executive resistance to it, especially in times of high party excitement, would be likely to produce violent collision between the respective adherents of the two branches of the government. This would be simply civil war, and civil war must be resorted to only as the last remedy for the worst evils.

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It is true that cases may occur in which the Executive would be compelled to stand on its rights, and maintain them, regardless of all consequences.

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He admits, in substance, that he told Emory that the law was wholly unconstitutional, and, in effect, took away all his power as Commander-in-chief. Was

it not just such a law as he had declared he would resist? Do you not believe that if General Emory had yielded in the least to his suggestions the President would have offered him promotion to bind him to his purposes, as he did Sherman and Thomas?

Pray remember that this is not the case of one gentleman conversing with another on moot questions of law; but it is the President, the Commander-in-chief, "the fountain of all honor and source of all power!" in the eye of a military officer, teaching that officer to disobey a law which he himself has determined is void, with the power to promote the officer if he finds him an apt pupil.

Is it not a high misdemeanor for the President to assume to instruct the officers of the army that the laws of Congress are not to be obeyed?

Article ten alleges that, intending to set aside the rightful authority and powers of Congress, and to bring into disgrace and contempt the Congress of the United States, and to destroy confidence in and to excite odium against Congress and its laws, he, Andrew Johnson, President of the United States, made divers speeches set out therein, whereby he brought the office of President into contempt, ridicule, and disgrace.

To sustain these charges, there will be put in evidence the short-hand notes of reporters in each instance, who took these speeches, or examined the sworn copies thereof, and one instance where the speech was examined and corrected by the private secretary of the President himself.

To the charges of this article the respondent answers that a convention of delegates, of whom he does not say, sat in Philadelphia for certain political purposes mentioned, and appointed a committee to wait upon the respondent as President of the United States; that they were received, and by their chairman, the Hon. Reverdy Johnson, then and now a senator of the United States, addressed the respondent in a speech, a copy of which the respondent believes from a substantially correct report, is made a part of the answer; that the respondent made a reply to the address of the committee. While, however, he gives us in his answer a copy of the speech made to him by Mr. Reverdy Johnson, taken from a newspaper, he wholly omits to give us an authorized version of his own speech, about which he may be supposed to know quite as much, and thus saved us some testimony. He does not admit that the extracts from his speech in the article are correct, nor does he deny that they are so.

In regard to the speech at Cleveland, he, again, does not admit that the extracts correctly or justly present his speech; but, again, he does not deny that it does so far as the same is set out.

As to the speech at St. Louis, he does not deny that he made it—says only that he does not admit it, and requires, in each case, that the whole speech shall be proved. In that, I beg leave to assure him and the Senate, his wishes shall be gratified to their fullest fruition. The Senate shall see the performance, so far as is in our power to photograph the scene by evidence, on each of these occasions, and shall hear every material word that he said. His defence, however, to the article is that "he felt himself in duty bound to express opinions of and concerning the public character, conduct, views, purposes, motives, and tendencies of all men engaged in the public service, as well in Congress as otherwise," "and that for anything he may have said on either of these occasions he is justified under the constitutional right of freedom of opinion and freedom of speech, and is not subject to question, inquisition, impeachment, or inculpation in any manner or form whatsoever;" he denies, however, that by reason of any matter in said article or its specifications alleged he has said or done anything indecent or unbecoming in the Chief Magistrate of the United States, or tending to bring his high office into contempt, ridicule, or disgrace.

The issue, then, finally, is this: that those utterances of his, in the manner and from in which they are alleged to have been made, and under the circumstances and at the time they were made, are decent and becoming the President

of the United States, and do not tend to bring the office into ridicule and disgrace.

We accept the issues. They are two:

First. That he has the right to say what he did of Congress in the exercise of freedom of speech; and, second, that what he did say in those speeches was a highly gentlemanlike and proper performance in a citizen, and still more becoming in a President of the United States.

Let us first consider the graver matter of the assertion of the right to cast contumely upon Congress; to denounce it as a "body hanging on the verge of the government;" "pretending to be a Congress when in fact it was not a Congress;" "a Congress pretending to be for the Union when its every step and act tended to perpetuate disunion," "and make a disruption of the States inevitable;" "a Congress in a minority assuming to exercise power which, if allowed to be consummated, would result in despotism and monarchy itself;" "a Congress which had done everything to prevent the union of the States;" "a Congress factious and domineering;" "a radical Congress, which gave origin to another rebellion;" "a Congress upon whose skirts was every drop of blood that was shed in the New Orleans riots."

You will find these denunciations had a deeper meaning than mere expressions of opinion. It may be taken as an axiom in the affairs of nations that no usurper has ever seized upon the legislature of his country until he has familiarized the people with the possibility of so doing by vituperating and decrying it. Denunciatory attacks upon the legislature have always preceded, slanderous abuse of the individuals composing it have always accompanied a seizure by a despot of the legislative power of a country.

Two memorable examples in modern history will spring to the recollection of every man. Before Cromwell drove out by the bayonet the Parliament of England, he and his partisans had denounced it, derided it, decried it, and defamed it, and thus brought it into ridicule and contempt. He vilified it with the same name which it is a significant fact the partisans of Johnson, by a concerted cry, applied to the Congress of the United States when he commenced his memorable pilgrimage and crusade against it. It is a still more significant fact that the justification made by Cromwell and by Johnson for setting aside the authority of Parliament and Congress respectively was precisely the same, to wit: that they were elected by part of the people only. When Cromwell, by his soldiers, finally entered the hall of Parliament to disperse its members, he attempted to cover the enormity of his usurpation by denouncing this man personally as a libertine, that as a drunkard, another as the betrayer of the liberties of the people. Johnson started out on precisely the same course, but forgetting the parallel, too early he proclaims this patriot an assassin, that statesman a traitor; threatens to hang that man whom the people delight to honor, and breathes out "threatenings and slaughter" against this man whose services in the cause of human freedom has made his name a household word wherever the language is spoken. There is, however, an appreciable difference between Cromwell and Johnson, and there is a like difference in the results accomplished by each.

When Bonaparte extinguished the legislature of France, he waited until through his press and his partisans, and by his own denunciations, he brought its authority into disgrace and contempt; and when, finally, he drove the council of the nation from their chamber, like Cromwell, he justified himself by personal abuse of the individuals themselves as they passed by him.

That the attempt of Andrew Johnson to overthrow Congress has failed, is because of the want of ability and power, not of malignity and will.

We are too apt to overlook the danger which may come from words: "We are inclined to say that is only *talk*—wait till some *act* is done, and then it will

be time to move. But words may be, and sometimes are, things—living, burning things that set a world on fire."

As a most notable instance of the power of words, look at the inception of the rebellion through which we have just passed. For a quarter of a century the nation took no notice of the talk of disunion and secession which was heard in Congress and on the "stump" until in the South a generation was taught them by word, and the word suddenly burst forth into terrible, awful war. Does any one doubt that if Jackson had hanged Calhoun in 1832 for talking nullification and secession, which was embryo treason, the cannon of South Carolina against Fort Sumter would ever have been heard with all their fearful and deadly consequences? Nay, more; if the United States officers, senators and representatives had been impeached or disqualified from office in 1832 for advocating secession on the "stump," as was done in 1862 by Congress, then our sons and brothers, now dead in battle, or starved in prison, had been alive and happy, and a peaceful solution of the question of slavery had been found.

Does any one doubt that if the intentions of the respondent could have been carried out, and his denunciations had weakened the Congress in the affections of the people, so that those who had in the North sympathized with the rebellion could have elected such a minority even, of the representatives to Congress as, together with those sent up from the governments organized by Johnson in the rebellious States, they should have formed a majority of both or either house of Congress, that the President would have recognized such body as the legitimate Congress, and attempted to carry out its decrees by the aid of the army and navy and the treasury of the United States, over which he now claims such unheard-of and illimitable powers, and thus lighted the torch of civil war?

In all earnestness, Senators, I call each one of you upon his conscience to say whether he does not believe by a preponderance of evidence drawn from the acts of the respondent since he has been in office, that if the people had not been, as they ever have been, true and loyal to their Congress and themselves, such would not have been the result of these usurpations of power in the Executive?

Is it, indeed, to be seriously argued here that there is a constitutional right in the President of the United States, who, during his official life, can never lay aside his official character, to denounce, malign, abuse, ridicule, and contemn, openly and publicly, the Congress of the United States—a co-ordinate branch of the government?

It cannot fail to be observed that the President (shall I dare to say his counsel, or are they compelled by the exigencies of their defence,) have deceived themselves as to the *gravamen* of the charge in this article? It does not raise the question of freedom of speech, but of propriety and decency of speech and conduct in a high officer of the government.

Andrew Johnson, the private citizen, as I may reverently hope and trust he soon will be, has the full constitutional right to think and speak what he pleases, in the manner he pleases, and where he pleases, provided always he does not bring himself within the purview of the common law offences of being a common railer and brawler, or a common scold, which he may do, (if a male person is ever liable to commit that crime;) but the dignity of station, the proprieties of position, the courtesies of office, all of which are a part of the common law of the land, require the President of the United States to observe that gravity of deportment, that fitness of conduct, that appropriateness of demeanor, and those amenities of behavior which are a part of his high official functions. He stands before the youth of the country the exemplar of all that is of worth in ambition, and all that is to be sought in aspiration; he stands before the men of the country as the grave magistrate who occupies, if he does not fill, the place once honored by Washington; nay, far higher and of greater consequence, he stands before the world as the representative of free institutions, as the type of man whom the suffrages of a free people have chosen as their chief. He should be the living evidence of how

much better, higher, nobler, and more in the image of God, is the elected ruler of a free people than a hereditary monarch, coming into power by the accident of birth; and when he disappoints all these hopes and all these expectations, and becomes the ribald, scurrilous blasphemer, bandying epithets and taunts with a jeering mob, shall he be heard to say that such conduct is not a high misdemeanor in office? Nay, disappointing the hopes, causing the cheek to burn with shame, exposing to the taunts and ridicule of every nation the good name and fame of the chosen institutions of thirty millions of people, is it not the highest possible crime and misdemeanor in office? and under the circumstances is the *gravamen* of these charges. The words are not alleged to be either false or defamatory, because it is not within the power of any man, however high his official position, in effect to slander the Congress of the United States, in the ordinary sense of that word, so as to call on Congress to answer as to the truth of the accusation. We do not go in, therefore, to any question of truth or falsity. We rest upon the scandal of the scene. We would as soon think, in the trial of an indictment against a termagant as a common scold, of summoning witnesses to prove that what she said was not true. It is the noise and disturbance in the neighborhood that is the offence, and not a question of the provocation or irritation which causes the outbreak.

At the risk of being almost offensive, but protesting that if so it is not my fault but that of the person whose acts I am describing, let me but faintly picture to you the scene at Cleveland and St. Louis.

It is evening; the President of the United States on a journey to do homage at the tomb of an illustrious statesman, accompanied by the head of the army and navy and Secretary of State, has arrived in the great central city of the continent. He has been welcomed by the civic authorities. He has been escorted by a procession of the benevolent charitable societies and citizens and soldiers to his hotel. He has returned thanks in answer to address of the mayor to the citizens who has received him. The hospitality of the city has provided a banquet for him and his suite, when he is again expected to address the chosen guests of the city where all things may be conducted in decency and in order. While he was resting, as one would have supposed he would have wished to do from the fatigue of the day, a noisy crowd of men and boys, washed and unwashed, drunk and sober, black and white, assemble in the street, who make night hideous by their bawling; quitting the drawing room without the advice of his friends, the President of the United States rushes forth on to the balcony of the hotel to address what proves to have been a mob, and this he calls in his answer a 'fit occasion on which he is held to the high duty of expressing opinions of and concerning the legislation of Congress, proposed or completed, in respect of its wisdom, expediency, justice, worthiness, objects, purposes, and public and political motives and tendencies."

Observe now, upon this "fit occasion," like in all respects to that at Cleveland, when the President is called upon by the constitutional requirements of his office to expound "the wisdom, expediency, justice, worthiness, objects, purposes, and tendencies of the acts of Congress," what he says, and the manner in which he says it. Does he speak with the gravity of a Marshall when expounding constitutional law? Does he use the polished sentences of a Wirt? Or, failing in these, which may be his misfortune, does he, in plain, homely words of truth and soberness, endeavor to instruct the men and youth before him in their duty to obey the laws and to reverence their rulers, and to prize their institutions of government? Although he may have been mistaken in the aptness of the occasion for such didactic instruction, still good teaching is never thrown away. He shows, however, by his language, as he had shown at Cleveland, that he meant to adapt himself to the occasion. He has hardly opened his mouth, as we shall show you, when some one in the crowd cries, "How about our British subjects?"

The Chief Executive, supported by his Secretary of State, so that all the foreign relations and diplomatic service were fully represented, with a dignity that not even his counsel can appreciate, and with an amenity which must have delighted Downing street, answers: "We will attend to John Bull after awhile, so far as that is concerned." The mob, ungrateful, receive this bit of "expression of opinion upon the justice, worthiness, objects, purposes, and public and political motives and tendencies" of our relations with the kingdom of Great Britain, as they fell from the honored lips of the President of the United States with *laughter*, and the more unthinking *with cheers*.

Having thus disposed of our diplomatic relations with the first naval and commercial nation on earth, the President next proceeds to "express his opinion in manner aforesaid and for the purposes aforesaid" to this noisy mob on the subject of the riots upon which his answer says, "it is the constitutional duty of the President to express opinions for the purposes aforesaid." A voice calls out "New Orleans! go on!" After a graceful exordium the President expresses his high opinion that a massacre, wherein his pardoned and unpardoned rebel associates and friends deliberately shot down and murdered unarmed Union men without provocation, even Horton, the minister of the living God, as his hands were raised to the Prince of Peace, praying in the language of the great martyr, "Father forgive them for they know not what they do," was the result of the laws passed by the legislative department of your government in the words following, that is to say:

"If you will take up the riot at New Orleans and trace it back to its source, or to its immediate cause, you will find out who was responsible for the blood that was shed there."

"If you take up the riot at New Orleans and trace it back to the radical Congress"—

This, as we might expect, was received by the mob, composed, doubtless, in large part of unrepentant rebels, with great cheering and cries of "bully." It was "bully," if that means encouraging for them to learn on the authority of the President of the United States that they might shoot down Union men and patriots, and lay the sin of murder upon the Congress of the United States; and this was another bit of "opinion" which the counsel say it was the high duty of the President to express upon the justice, the worthiness, objects, "purposes and public and political motives, and tendencies of the legislation of your Congress."

After some further debate with the mob some one, it seems, had called out "traitor!" The President of the United States, on this fitting, constitutional occasion, immediately took this as personal, and replies to it, "Now, my countrymen, it is very easy to indulge in epithets, it is very easy to call a man Judas, and cry out traitor, but when he is called upon to give arguments and facts he is very often found wanting."

What were the "facts that were found wanting," which in the mind of the President prevented him from being a Judas Iscariot? He shall state the "wanting facts in his own language on this occasion when he is exercising his high constitutional prerogative."

"Judas Iscariot! Judas! There was a Judas once, one of the twelve apostles. Oh! yes, the twelve apostles had a Christ. [A voice, 'and a Moses, too;' great laughter.] The twelve apostles had a Christ, and he never could have had a Judas unless he had had the twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner?"

If it were not that the blasphemy shocks us we should gather from all this that it dwelt in the mind of the President of the United States that the only reason why he was not a Judas was that he had not been able to find a Christ toward whom to play the Judas.

It will appear that this bit of "opinion," given in pursuance of his constitutional obligation, was received with cheers and hisses. Whether the cheers

were that certain patriotic persons named by him might be hanged, or the hissing was because of the inability of the President to play the part of Judas, for the reason before stated, I am sorry to say the evidence will not inform us.

His answer makes the President say that it is his "duty to express opinions concerning the public characters, and the conduct, views, purposes, objects, motives, and tendencies of all men engaged in the public service."

Now, as "the character, motives, tendencies, purposes, objects, and views" of Judas alone had "opinions expressed" about them on this "fit occasion," (although he seemed to desire to have some others, whose names he mentioned, hanged,) I shall leave his counsel to inform you what were the "public services" of Judas Iscariot, to say nothing of Moses, which it was the constitutional duty and right of the President of the United States to discuss on this particularly "fit occasion."

But I will not pursue this revolting exhibition any further.

I will only show you at Cleveland the crowd and the President of the United States, in the darkness of night, bandying epithets with each other, crying, "Mind your dignity, Andy;" "Don't get mad, Andy;" "Bully for you, Andy." I hardly dare shock, as I must, every sense of propriety by calling your attention to the President's allusion to the death of the sainted martyr, Lincoln, as the means by which he attained his office, and if it can be justified in any man, public or private, I am entirely mistaken in the commonest proprieties of life. The President shall tell his own story:

"There was, two years ago, a ticket before you for the presidency. I was placed upon that ticket with a distinguished citizen now no more. [Voices, 'Its a pity;' 'Too bad;' 'Unfortunate.'] Yes, I know there are some who say 'unfortunate.' Yes, unfortunate for some that God rules on high and deals in justice. [Cheers.] Yes, unfortunate. The ways of Providence are mysterious and incomprehensible, controlling all who exclaim 'unfortunate.'"

Is it wonderful at all that such a speech, which seems to have been unprovoked and coolly uttered, should have elicited the single response from the crowd, "Bully for you?"

I go no further. I might follow this *ad nauseam*. I grant the President of the United States further upon this disgraceful scene the mercy of my silence. Tell me now, who can read the accounts of this exhibition, and reflect that the result of our institutions of government has been to place such a man, so lost to decency and propriety of conduct, so unfit, in the high office of ruler of this nation, without blushing and hanging his head in shame as the finger of scorn and contempt for republican democracy is pointed at him by some advocate of monarchy in the old world. What answer have you when an intelligent foreigner says, Look! see! this is the culmination of the ballot unrestrained in the hands of a free people, in a country where any man may aspire to the office of President. Is not our government of a hereditary king or emperor a better one, where at least our sovereign is born a gentleman, than to have such a *thing* as this for a ruler?

Yes, we have an answer. We can say *this man* was not the choice of the people for the President of the United States. He was thrown to the surface by the whirlpool of civil war, and carelessly, we grant, elected to the second place in the government, without thought that he might ever fill the first.

By murder most foul he succeeded to the Presidency, and is the elect of an assassin to that high office, and not of the people. "It was a grievous fault, and grievously have we answered it;" but let me tell you, oh, advocate of monarchy! that our frame of government gives us a remedy for such a misfortune, which yours, with its divine right of kings, does not. We can remove him—as we are about to do—from the office he has disgraced by the sure, safe, and constitutional method of impeachment; while your king, if he becomes a

buffoon, or a jester, or a tyrant, can only be displaced through revolution, bloodshed, and civil war.

This—this, oh, monarchist!—is the crowning glory of our institutions, because of which, if for no other reason, our form of government claims precedence over all other governments of the earth.

Article 11 charges that the President, having denied in a public speech on the 18th of August, 1866, at Washington, that the 39th Congress was authorized to exercise legislative power, and denying that the legislation of said Congress was valid or obligatory upon him, or that it had power to propose certain amendments to the Constitution, did attempt to prevent the execution of the act entitled "An act regulating the tenure of certain civil offices," by unlawfully attempting to devise means by which to prevent Mr. Stanton from resuming the functions of the office of Secretary of the Department of War, notwithstanding the refusal of the Senate to concur in his suspension, and that he also contrived means to prevent the execution of an act of March 2, 1867, which provides that all military orders shall be issued through the General of the army of the United States, and also another act of the same 2d of March, commonly known as the reconstruction act.

To sustain this charge, proof will be given of his denial of the authority of Congress as charged; also his letter to the General of the army, in which he admits that he endeavored to prevail on him by promises of pardon and indemnity to disobey the requirements of the tenure-of-office act, and to hold the office of Secretary of War against Mr. Stanton after he had been reinstated by the Senate; that he chided the General for not acceding to his request, and declared that had he known that he (Grant) would not have acceded to his wishes he would have taken other means to prevent Mr. Stanton from resuming his office; his admission in his answer that his purpose was from the first suspension of Mr. Stanton, August 12, 1867, to oust him from his office notwithstanding the decision of the Senate under the act; his order to General Grant to refuse to recognize any order of Mr. Stanton purporting to come from himself after he was so reinstated, and his order to General Thomas as an officer of the army of the United States to take possession of the War Office, not transmitted as it should have been through the General of the army, and the declarations of General Thomas that, as an officer of the army of the United States, he felt bound to obey the orders of the Commander-in-chief.

To prove further the purpose and intent with which his declarations were made, and his denial of the power of Congress to propose amendments to the Constitution, and as one of the means employed by him to prevent the execution of the acts of Congress, we shall show he has opposed and hindered the pacification of the country and the return of the insurrectionary States to the Union, and has advised the legislature of the State of Alabama not to adopt the constitutional amendment known as the 14th article, when appealed to to know if it was best for the legislature so to do; and this, too, after that amendment had been adopted by a majority of the loyal State legislatures, and after, in the election of 1866, it had been sustained by an overwhelming majority of the loyal people of the United States. I do not propose to comment further on this article, because, if the Senate shall have decided that all the acts charged in the preceding articles are justified by law, then so large a part of the intent and purposes with which the respondent is charged in this article would fail of proof, that it would be difficult to say whether he might not, with equal impunity, violate the laws known as the reconstruction acts, which, in his message, he declares "as plainly unconstitutional as any that can be imagined." If that be so, why should he not violate them? If, therefore, the judgment of the Senate shall sustain us upon the other articles, we shall take judgment upon this by confession, as the respondent declares in the same message that he does not intend to execute them.

To the bar of this High Tribunal, invested with all its great power and duties, the House of Representatives has brought the President of the United States by the most solemn form of accusation, charging him with high crimes and misdemeanors in office, as set forth in the several articles which I have thus feebly presented to your attention. Now, it seems necessary that I should briefly touch upon and bring freshly to your remembrance the history of some of the events of his administration of affairs in his high office, in order that the intents with which and the purposes for which the respondent committed the acts alleged against him may be fully understood.

Upon the first reading of the articles of impeachment, the question might have arisen in the mind of some Senator, why are these acts of the President only presented by the House when history informs us that others equally dangerous to the liberties of the people, if not more so, and others of equal usurpation of powers, if not greater, are passed by in silence?

To such possible inquiry we reply: That the acts set out in the first eight articles are but the culmination of a series of wrongs, malfeasances and usurpations committed by the respondent, and therefore need to be examined in the light of his precedent and concomitant acts to grasp their scope and design. The last three articles presented show the perversity and malignity with which he acted, so that the man as he is known to us may be clearly spread upon record to be seen and known of all men hereafter.

What has been the respondent's course of administration? For the evidence we rely upon common fame and current history as sufficient proof. By the common law, common fame, "*si oriatur apud bonos et graves*," was ground of indictment even; more than 240 years ago it was determined in Parliament "that common fame is a good ground for the proceeding of this house, either to inquire of here or to transmit the complaint, if the house find cause, to the King or Lords."

Now, is it not well known to all good and grave men ("*bonos et graves*") that Andrew Johnson entered the office of President of the United States at the close of the armed rebellion, making loud denunciation, frequently and everywhere, that traitors ought to be punished, and treason should be made odious; that the loyal and true men of the South should be fostered and encouraged; and, if there were but few of them, to such only should be given in charge the reconstruction of the disorganized States?

Do not all men know that soon afterwards he changed his course, and only made treason odious, so far as he was concerned, by appointing traitors to office and by an indiscriminate pardon of all who "came in unto him?" Who does not know that Andrew Johnson initiated, of his own will, a course of reconstruction of the rebel States, which at the time he claimed was provisional only, and until the meeting of Congress and its action thereon? Who does not know that when Congress met and undertook to legislate upon the very subject of reconstruction, of which he had advised them in his message, which they alone had the constitutional power to do, Andrew Johnson last aforesaid again changed his course, and declared that Congress had no power to legislate upon that subject; that the two houses had only the power *separately* to judge of the qualifications of the members who might be sent to each by rebellious constituencies, acting under State organizations which Andrew Johnson had called into existence by his late *fiat*, the electors of which were voting by his permission and under his limitations? Who does not know that when Congress, assuming its rightful power to propose amendments to the Constitution, had passed such an amendment, and had submitted it to the States as a measure of pacification, Andrew Johnson advised and counselled the legislatures of the States lately in rebellion, as well as others, to reject the amendment, so that it might not operate as a law, and thus establish equality of suffrage in all the States, and equality of

right in the members of the electoral college, and in the number of the representatives to the Congress of the United States?

Lest any one should doubt the correctness of this piece of history or the truth of this common fame, we shall show you that while the legislature of Alabama was deliberating upon the reconsideration of the vote whereby it had rejected the constitutional amendment, the fact being brought to the knowledge of Andrew Johnson and his advice asked, he, by a telegraphic message under his own hand, *here to be produced*, to show his intent and purposes, advised the legislature against passing the amendment, and to remain firm in their opposition to Congress. We shall show like advice of Andrew Johnson upon the same subject to the legislature of South Carolina, and this, too, in the winter of 1867, after the action of Congress in proposing the constitutional amendment had been sustained in the previous election by an overwhelming majority. Thus we charge that Andrew Johnson, President of the United States, not only endeavors to thwart the constitutional action of Congress and bring it to naught, but also to hinder and oppose the execution of the will of the loyal people of the United States expressed in the only mode by which it can be done, through the ballot-box, in the election of their representatives. Who does not know that from the hour he began these, his usurpations of power, he everywhere denounced Congress, the legality and constitutionality of its action, and defied its legitimate powers, and, for that purpose, announced his intentions and carried out his purpose, as far as he was able, of removing every true man from office who sustained the Congress of the United States? And it is to carry out this plan of action that he claims the unlimited power of removal, for the illegal exercise of which he stands before you this day. Who does not know that, in pursuance of the same plan, he used his veto power indiscriminately to prevent the passage of wholesome laws, enacted for the pacification of the country? and, when laws were passed by the constitutional majority over his vetoes, he made the most determined opposition, both open and covert, to them, and, for the purpose of making that opposition effectual, he endeavored to array and did array all the people lately in rebellion to set themselves against Congress and against the true and loyal men, their neighbors, so that murders, assassinations, and massacres were rife all over the southern States, which he encouraged by his refusal to consent that a single murderer be punished, though thousands of good men have been slain; and further, that he attempted by military orders to prevent the execution of acts of Congress by the military commanders who were charged therewith. These and his concurrent acts show conclusively that his attempt to get the control of the military force of the government, by the seizing of the Department of War, was done in pursuance of his general design, if it were possible, to overthrow the Congress of the United States; and he now claims by his answer the right to control at his own will, for the execution of this very design, every officer of the army, navy, civil, and diplomatic service of the United States. He asks you here, Senators, by your solemn adjudication to confirm him in that right, to invest him with that power, to be used with the intents and for the purposes which he has already shown.

The responsibility is with you; the safeguards of the Constitution against usurpation are in your hands; the interests and hopes of free institutions wait upon your verdict. The House of Representatives has done its duty. We have presented the facts in the constitutional manner; we have brought the criminal to your bar, and demand judgment at your hands for his so great crimes.

Never again, if Andrew Johnson go quit and free this day, can the people of this or any other country by constitutional checks or guards stay the usurpations of executive power.

I speak, therefore, not the language of exaggeration, but the words of truth

and soberness, that the future political welfare and liberties of all men hang trembling on the decision of the hour.

The following is the brief referred to by Mr. Butler in the course of his argument:

A brief of the authorities upon the law of impeachable crimes and misdemeanors, prepared by Hon. William Lawrence, M. C., of Ohio; revised and presented by B. F. Butler, of Massachusetts, one of the managers, as a part of his opening argument on the impeachment of the President.

In order to ascertain the impeachable character of an act done or omitted, reference must be had to the Constitution, expounded as it is by history, by parliamentary and common law.

The provisions of the Constitution which relate to or illustrate the law of impeachment are these:

"The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment." Art. 1, § 2.

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

"Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law." Art. 1, § 3.

"In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected." Art. 2, § 1.

"The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." Art. 2, § 2.*

"The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Art. 2, § 4.

"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." Art. 3, § 2.

The convention which framed the Constitution on the subject of impeachment "proceeded in the same manner it is manifest they did in many other cases; they considered the *object* of their legislation as a *known thing*, having a previous definite existence. Thus existing, their work was solely to mould it into

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* The clauses of the Constitution which declare that a party impeached shall be "liable to indictment;" that "the trial of all crimes, except in cases of impeachment, shall be by jury;" that the President shall have power to grant "pardons for offences against the United States, except in cases of impeachment," are all either parts of or modifications of the British constitution; they recognize statutory and common law crimes as a portion, but not all, of the impeachable offences here as they were and are in England.

a suitable shape. They have given it to us, not as a thing of their *creation*, but merely of their *modification*." *

In England, a majority of the lords impeach, though, by common law, twelve peers must be present and concur. † Here, the concurrence of two-thirds of the members [of the Senate] present is requisite.

In England, the character and extent of the punishment is in the discretion of the lords. Here, it cannot extend further than to removal from and disqualification to hold office.

In England, "all the King's subjects are impeachable in Parliament." ‡ Here, according to the received construction, "none are liable to impeachment except *officers* of the government." §

In England, the lords are not sworn in trying an impeachment, but give their decision upon their honor. Here, senators act under the solemn sanction of an oath or affirmation. In England, the Crown is not impeachable. Here, the President is.

In England, impeachment may, to some extent, be regarded as a mode of trial designed, *inter alia*, to punish crime, though not entirely so, since a judgment on an impeachment is no answer to an indictment in the King's bench. ‖ Here, impeachment is only designed to remove unfit persons from office; and the party convicted is subject to indictment, trial, and punishment in the proper courts.

It is absurd to say that impeachment is here a mode of procedure for *the punishment of crime*, ¶ when the Constitution declares its object to be *removal from and disqualification to hold office*, and that "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law," for his "*crimes*."

Subject to these modifications, and adopting the recognized rule, that the Constitution should be construed so as to be equal to every occasion which might call for its exercise, and adequate to accomplish the purposes of its framers, impeachment remains here as it was recognized in England at and prior to the adoption of the Constitution.

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* Bayard on Blount's Trial, 264; and he added: "And therefore I shall insist that it remains as at common law, [parliamentary,] with the variance only of the positive provisions of the Constitution." (Wharton's State Trials, 264; Rawle on Const., 200.)

"The Constitution * * refers to * * impeachment without defining it. It assumes the existence * * and silently points us to English precedents for knowledge of details. We are reminded of the statement * * that 'the Constitution is an instrument of enumeration, and not of definition.'" (Prof. Dwight, 6 Am. Law Reg., N. S., 257.)

† 5 Comyn's Digest, 308, *Parliament* L.

‡ 2 Wooddeson's Lectures, 602.

§ In Chase's Trial Mr. Rodney "utterly disclaimed the idea that" any but *officers* were liable to impeachment.

Wharton says in reference to Blount's Trial: "In a legal point of view all that this case decides is that a senator of the United States who has been expelled from his seat is not, after such expulsion, subject to impeachment, and perhaps from this the broader proposition may be drawn that none are liable to impeachment except officers of the government, in the technical sense, excluding thereby members of the national legislature. Afterwards, from the expulsion of Mr. Smith, a senator from Ohio, for connection with Burr's conspiracy, instead of his impeachment, the same implication arises." (Wharton's State Trials, 317, note.)

In this case Mr. Bayard maintained "that *all persons* * * are liable to impeachment;" that the Constitution does not define the cases or describe the persons designed as the objects of impeachment. "We are designedly left to the regulations of the common [parliamentary] law." This view is confirmed by the fact that Art. 2, § 4, *imperatively* requires "removal from office" in case of the President, Vice-President, and officers, while Art. 1, § 3, seems to admit of less punishment than this, and which must, therefore, apply to persons other than officers.—See Wickliffe's argument, Peck's Trial, 309. The constitution of New York of 1777 is said to have been the model from which the impeachment clauses of the Constitution of the United States were copied.—6 Am. Law Reg., N. S., 277. That of New York limits impeachments to officers in terms; that of the United States does not. There may be agents and others for whom impeachments would be salutary.

In England, military and naval officers are impeachable. If a military or naval officer here should conspire with the President to overthrow Congress the impeachment of both would be a necessary protection, which it may be doubted if the Constitution intended to surrender. In such case a court-martial could not, against the President's will, remove from office; impeachment alone would be effectual. (Wharton's State Trials, 290.)

‖ *Fitzharris's Case*, 6 Am. Law Reg., N. S., 262.

¶ "Impeachment is a proceeding purely of a political nature. It is not so much designed to punish the offender as to secure the state. It touches neither his person nor his property, but simply divests him of his political capacity." (Bayard's Speech on Blount's Trial; Wharton's State Trials, 263.)

These limitations were imposed in view of the abuses of the power of impeachment in English history.*

These abuses were not guarded against in our Constitution by *limiting*, *defining*, or *reducing* impeachable *crimes*, since the same necessity existed here as in England for the remedy of impeachment, but by *other safeguards* thrown around it in that instrument. It will be observed that the "*sole power of impeachment*" is conferred on the House, and the sole power of *trial* on the Senate by Art. 1, §§ 2 and 3. These are the only *jurisdictional* clauses, and they do not limit impeachment to crimes or misdemeanors. Nor is it elsewhere so limited. Sec. 4 of Art. 2 only makes it imperative when "the President, Vice-President, and all civil officers" are convicted "of treason, bribery, or other high † crimes and misdemeanors," that they *shall* be removed from office."‡

But so far as the questions now before the country are concerned, it is not material whether the words "treason, bribery, or other high crimes and misdemeanors" confer, or limit, jurisdiction, or only prescribe an *imperative punishment* as to officers or a class of cases, since every act which by parliamentary usage is impeachable is defined a "high crime or misdemeanor;" and these are the words of the British constitution which describe impeachable conduct.§ There may be cases appropriate for the exercise of the power of impeachment where no crime or misdemeanor has been committed.

As these words are copied by our Constitution from the British constitutional and parliamentary law, they are, so far as applicable to our institutions and condition, to be interpreted, not by English municipal law, but by the *lex parliamentaria*.‖

When, therefore, Blackstone¶ says that "an impeachment before the lords by

* "The earliest recorded instance of impeachment by the Commons at the bar of the House of Lords was in the reign of Edward III, (1376.) Before that time the lords appear to have tried both peers and commoners for great public offences, but not upon complaints addressed to them by the Commons. During the next four reigns cases of regular impeachment were frequent; but no instances occurred in the reigns of Edward IV, Henry VII, Henry VIII, Edward VI, Queen Mary, and Queen Elizabeth.

"The institution had fallen into disuse," (says Mr. Hallam, 1 Const. Hist., 357,) "partly from the loss of that control which the Commons had obtained under Richard II and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of Parliament against an obnoxious subject."

"Prosecutions also in the Star Chamber, during that time, were perpetually resorted to by the Crown for the punishment of State offenders. In the reign of James I the practice of impeachment was revived, and was used with great energy by the Commons, both as an instrument of popular power and for the furtherance of public justice.

"Between the year 1620, when Sir Giles Mompesson and Lord Bacon were impeached, and the revolution in 1688, there were about 40 cases of impeachment. In the reigns of William III, Queen Anne, and George I, there were 15; and in the reign of George II none but that of Lord Lovat, in 1746, for high treason. The last memorable cases are those of Warren Hastings in 1788, and Lord Melville in 1805." (May on Parliament, 49–50; Ingersoll's speech on Blount's trial, Wharton's State Trials, 285; 4 Hatsell. *passim.*)

† The word "high" applies as well to "misdemeanors" as to "crimes." 2 Chase's Trial, 383.

‡ On Chase's Trial Mr. Rodney so argued; and so Wickliffe on Peck's Trial, 309. In Blount's trial Mr. Ingersoll insisted that Art. 2. sec. 4, designates "the extent of the power of impeachment both as to the offences and the persons liable." (Wharton's State Trials, 289; see p. 99 per Harper.)

§ 4 Hatsell's Precedents, 73–76.

By the constitution of the State of Massachusetts the senate is "to hear and determine all impeachments made by the house of representatives against any officer or officers of the commonwealth for misconduct and maladministration in office."

On the trial of Judge Prescott in 1821, Mr. Blake in defence, referring to the words *misconduct* and *maladministration*, said: "What then are the legal import and signification of these terms? We answer precisely the same as of *crimes and misdemeanors;* that they are in every respect equivalent to the more familiar terms that are employed by the constitution of Great Britain in its description of impeachable offences, subject only to the wholesome limitation which in this commonwealth confines this extraordinary method of trial to the official misdemeanors of public functionaries." (Prescott's Trial, 117, 118.)

‖ *Pennock* v. *Dialogue*, 2 Peters, 2–18. When foreign statutes are "adopted into our legislation the known and settled construction of those statutes by courts of law has been considered as silently incorporated into the acts:" *United States* v. *Jones*, 3 Wash. C. C. R., 209; *Ex parte Hall*, 1 Pick., 261; Sedgwick on Stat. p. 262, 426; Story on Const., § 797; Rawle on Const., 200. This author says in reference to impeachments, "We must have recourse to the common law of England for the definition of them;" that is, to the common parliamentary law. 3 Wheaton, 610; 1 Wood. and Minot, 448.

The Constitution contains inherent evidence of this. By it "treason, bribery, and other high crimes and misdemeanors" are impeachable "Treason" is defined in the Constitution; "bribery" is not; and it therefore means what the common law has defined it. As the Constitution thus itself resorts to the common and parliamentary law for the definition of its terms, the words "high crimes and misdemeanors" are to be interpretated by the same codes. They are as completely included as though every crime had been specifically named. Whatever by the common law was treason and which is not covered by the definition in the Constitution which defined it for the ordinary courts, is still impeachable crime so far as applicable to our institutions.

¶ 4 Blackstone's Com., 260, read in Oxford 1759. He says, also, "It may happen that a subject intrusted with the administration of public affairs may infringe the rights of the people and be guilty of such crimes as the ordinary magistrate either dares not *or cannot punish*," that is, cannot punish because not falling within his jurisdiction.

the commons of Great Britain in Parliament is a prosecution of the already-known and established law, and has been frequently put in practice," he must be understood to refer to the "established" *parliamentary*, not common municipal law, as administered in the ordinary courts, for it was the former that had been frequently put in practice.

Whatever "crimes and misdemeanors" were the subjects of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are therefore subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution.

The framers of our Constitution, looking to the impeachment trials of England, and to the writers on parliamentary and common law, and to the constitutions and usages of our own States, saw that no act of Parliament or of any State legislature ever undertook to define an impeachable crime. They saw that the whole system of crimes, as defined in acts of Parliament and as recognized at common law, was prescribed for and adapted to the ordinary courts. (2 Hale, Pl. Crown., ch. 20, p. 150; 6 Howell St. Trials, 313, note.)

They saw that the high court of impeachment took jurisdiction of cases where no indictable crime had been committed, in many instances, and there were then, as there yet are, "two parallel modes of reaching" some, but not all, offenders: one by impeachment, the other by indictment.

In such cases, a party first indicted "may be impeached afterwards, and the latter trial may proceed notwithstanding the indictment."* On the other hand, the King's Bench held in *Fitzharris's case* that an impeachment was no answer to an indictment in that court.†

The two systems are in no way connected, though each may adopt principles applicable to the other, and each may shine by the other's borrowed light.

With these landmarks to guide them, our fathers adopted a Constituton under which official malfeasance and nonfeasance, and, in some cases, misfeasance, may be the subject of impeachment, although not made criminal by act of Congress, or so recognized by the common law of England or of any State of the Union. They adopted impeachment as a means of removing men from office whose misconduct imperils the public safety and renders them unfit to occupy official position.

All this is supported by the elementary writers, both English and American, on parliamentary and common law; by the English and American usage in cases of impeachment; by the opinions of the framers of the Constitution; by contemporaneous construction, all uncontradicted by any author, authority, case, or jurist, for more than three-quarters of a century after the adoption of the Constitution.

The authorities are abundant to show that the phrase "high crimes and misdemeanors," as used in the British and our Constitution, are not limited to crimes defined by statute or as recognized at common law.‡

Christian, who may be supposed to have understood the British constitution when he wrote, says: "When the words high crimes and misdemeanors are used in prosecutions by impeachment, the words high crimes have no definite signification, but are used merely to give greater solemnity to the charge.§

Wooddeson,‖ whose lectures were read at Oxford in 1777, declared that impeachments extended to cases of which the ordinary courts had no jurisdiction. He says: "Magistrates and officers * * * may abuse their delegated powers to the extensive detriment of the community, and at the same time in a manner not *properly cognizable before the ordinary tribunals.*" And he proceeds to say the remedy is by impeachment.

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* *Stafford's Trial*, 7 Howard's State Trials, 1297.

† 6 Am. Law. Reg., N. S., 262.

‡ If an act to be impeachable must be indictable, then it might be urged that every act which is indictable must be impeachable. But this has never been pretended. As the Senate must, therefore, decide what acts are impeachable, it cannot be governed by their indictable character.

§ Note to 4 Blackstone, 5.

‖ 2 Wooddeson's Lectures, 596

English history presents many examples of this kind.*

* See Comyn's Digest, tit. *Parliament.* "In 1388 there are several proceedings before the lords against the Archbishop of York and other great officers and against several of the judges, for having given extrajudicial opinions and misinterpreting the law:" 4 Hatsel, 76; and in a note it is said the lords determined that such cases "*cannot be tried elsewhere than in Parliament*, nor by any other law than the law and course of Parliament." * *

It is elsewhere said, "such kind of misdeeds as peculiarly injure the commonwealth by the abuse of high offices of trust are the most proper * * grounds for this kind of prosecutions. Thus * * if the judges mislead their sovereign by unconstitutional opinions, if any other magistrate attempt to subvert the fundamental laws or introduce arbitrary power. * * So when a lord chancellor has been thought to put the seal to an ignominious treaty; a lord admiral to neglect the safeguard of the sea; an ambassador to betray his trust; a privy counsellor to propound or support pernicious and dishonorable measures, &c., &c." (2 Wooddeson's Lectures, 602; 1 Blackstone, 257.)

In the Virginia convention, Madison said "if the President got up a treaty by surprise he would be impeached." (3 Elliott's Debates, 660, 516, 514, 496.)

In Ohio, before it was settled that the courts had power to declare legislative acts unconstitutional, one judge of the supreme court and one president judge of the common pleas were tried on impeachments for the exercise of this power, and each escaped conviction by only one vote. (20 Ohio Rep., Appendix, p. 3.)

"The Duke of Suffolk was impeached for neglect of duty as an ambassador; the Earl of Bristol that he gave counsel against a war with Spain, whose king had affronted the English nation; the Duke of Buckingham that he, being admiral, neglected the safeguard of the sea; Michael de la Pole that he, being chancellor, acted contrary to his duty; the Duke of Buckingham for having a plurality of office; and he whom the poet calls the 'greatest, wisest, meanest of mankind,' for bribery in his office of lord chancellor; the Lord Finch for unlawful methods of enlarging the forest, in his office of assistant to the justices on Eyre; the Earl of Oxford for selling goods to his own use captured by him as admiral without accounting for a tenth to others." (Ingersoll's Speech on Blount's Trial, Wharton's State Trials, 291.)

Dr. Sacheverel was impeached for preaching an improper sermon. (Harper's Speech, Blount's Trial, Wharton, 301.)

"Andrew Horne, in his Mirrour of Justice, mentions many judges punished by King Alfred before the conquest for corrupt judgments. * * Our stories mention many punished in the time of Edward I; our Parliament rolls of Edward III's time; of Richard II's time *for the pernicious resolutions* given at Nottingham Castle, afford examples of this kind. In later times, the Parliament journals of 18 and 21 Jac., the judgment of the ship-money in the time of Charles I questioned, and the particular judges impeached." (Vaugh., 139; cited in Appendix to Addison's (Pa.) Trial.)

Cases decided in England *since* the adoption of our Constitution cannot limit the powers it confers. But no case can be found in England which limits impeachment to crimes indictable by common law or act of Parliament. The power of impeachment for offences against the State has been distinctly and continuously maintained.

The case of the *Earl of Clarendon* sustains this position. On the 10th July, 1663, the Earl of Bristol, without any action of the Commons, presented to the House of Lords "articles of high treason and other misdemeanors" against the Lord Chancellor. One was—

"That being in places of high trust, &c., he hath traitorously and maliciously endeavored to alienate the hearts of his Majesty's subjects from him by words of his own." * * * * "that his Majesty was inclined to popery, and had a design to alter the religion established in this kingdom."

The statute 13th, Charles II, chapter 1, provides that if any person shall maliciously affirm the King to be a heretic, a papist, or that he endeavors to introduce popery, every person shall be disabled to hold office, &c.

The Lords ordered the Chief Justice and judges to—

"Consider whether the said charge hath been brought in regularly and legally, and whether it may be proceeded in, and how, whether there be any treason in it or no."

The judges reported that they did not consider the question whether the impeachment could be proceeded in or not *if it came from the Commons*, but as the statute of 1 Henry IV, chapter fourteen, provides that "all appeals of things within the realm shall be tried and determined by the laws in the court," articles of impeachment could not be preferred "by the said earl or any private person," that appeals meant "accusation by single persons." The judges then say:

"That there was *no treason* in the charge, though the matters in it are alleged to be *traitorously* done. The great charge" * * * * "was that he did traitorously and maliciously to bring the King into contempt, and with an intent to alien the people's affections from him say," &c. * * * * "And in like manner was most of the articles upon which the character of treason seemed to be fixed. I said that it is a *transcendent misprision or offence* to endeavor to bring the King into contempt, or to endeavor to alienate the people's affections from him, but yet it was *not treason.*" * * * * * "We did not meddle with anything concerning accuring him of *misdemeanor.*"

And so the Lords resolved, concurring in all these opinions. (6 Howard's State Trials, 318, 346.)

The Commons afterwards presented articles of impeachment.

November 16, 1867, Sir R. Howard, in discussing the heads of charges in the Commons, said:

"Though common law has its proper sphere, it is not in this place—we are in a higher sphere."

November 11. The Commons resolved to impeach, and notified the Lords, and demanded that Clarendon be sequestered from Parliament, and committed. (6 Howell, 395.)

The Lords refused until the articles should be presented; and before the question was settled Clarendon escaped to the continent, and the statute 19 Charles II, chapter 10, of December 12, banished him.

The Lords, therefore, decided nothing.

Among the articles agreed on in the House were these:

IX. That he introduced an arbitrary government in his Majesty's plantations, and hath caused such as complained thereof before his Majesty and counsel to be long imprisoned for so doing.

XI. That he advised and effected the sale of Dunkirk to the French king, being part of his Majesty's dominions, together with the ammunition, artillery, and all sorts of stores there, and for no greater value than the said ammunition, artillery, and stores were worth.

XVII. That he was a principal author of the fatal counsel of dividing the fleet about June, 1666.

The case of the Earl of Orrery proves nothing as to the law.

November 25, 1669, a petition was presented in the House of Commons charging the Earl with—

"Raising moneys by his own authority upon his Majesty's subjects, derauding the King's subjects of their estates. The money raised was for bribing hungry courtiers to come to his ends, and if the King would not, he had fifty thousand swords to compel them."

The Earl answered in person and denied the charges. Then—

"The question being propounded, that a day be appointed for the accusers to produce witnesses to make good the charge." * * * * "It was negatived 121 to 118."

It was then resolved—

"That the accusation against the Earl of Orrery be left to be prosecuted at law."

Indeed, the word "misdemeanor" has a *common-law*, a *parliamentary*, and a *popular* sense. In the parliamentary sense, as applied to officers, it means

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It never was prosecuted. (6 Howell, State Trials, 915.)

Sir Adam Blair was impeached in 1690 by the Commons—

"For dispersing [distributing] a seditious and treasonable paper, printed and entitled 'A declaration of King James II.'"

On the question whether articles of impeachment should be preferred, Mr. Hawles said:

"I do not think this to be a plain case of treason by statute 25 Edward III. I do say no court can judge this offence to be treason; and *that statute did plainly not bind the superior court of Parliament* but the inferior only. The proper way is to judge this high treason; and therefore I am for proceeding by impeachment."

And it was resolved to impeach of high treason.

April 7, 1690, he was admitted to bail, and at the next session of Parliament he was discharged from bail.

Here was a case in which there was clearly no treason under the statute, and yet the Commons resolved that he should be impeached and so far decided that he was guilty of an *impeachable*, though not an *indictable* crime, and which they called treason; adopting the idea prevailing at the time as to constructive treason, but which might as well have been simply called an impeachable misdemeanor. (12 Howell, State Trials, 1213.)

Thomas, Earl of Macclesfield, lord high chancellor of England, was tried in May, 1725, before the House of Lords, on articles of impeachment charging that he—

"In the office of chancellor did illegally and corruptly insist upon and take of divers persons great sums of money in order to and before their admission into their offices of master in chancery," to which he appointed them.

The answer was that the sums of money received were presents—

"Reckoned among the ancient and known perquisites" * * * * * * * * * "and never before looked upon to be criminal" * * * * * * * * "that the giving or receiving a present on such occasion is not *criminal in itself*, or by the *common law* of the realm, and that there is not any *act of Parliament* whatsoever by which the same is made criminal or subject to any punishment or judgment."

Replication that "the charge of high crimes and misdemeanors is true."

In the argument it was insisted by the managers that the acts complained of violated the statutes of 5 and 6 Edward VI, chapter 16, against selling offices, and violated the oath prescribed by statute 12 Richard II. (Moor, 781, Stockwith & Worth.)

But as a question of parliamentary law it was asserted, and not controverted, that acts may be *impeachable* which are not indictable by common law or act of parliament.

Mr. Sergent Pengelly, May 21, 1725, said:

"Your lordships are now exercising a power of judication reserved in the original frame of the English constitution for the punishment of offences of a public nature which may affect the nation, as well in instances where the inferior courts *have no power to punish the crimes* committed by the ordinary rules of justice, as in cases within the jurisdiction of the courts of Westminster Hall, where the person offending is by his degree raised above the apprehension of danger from a prosecution carried on in the more usual course of justice, and whose exalted station requires the united accusation of all the commons of Great Britain by their representatives in Parliament.

"This high jurisdiction may be exercised for the preservation of the rights of the Lords and Commons against the attempts of powerful evil ministers who depend upon the favor of the Crown; or it may be put in execution for the ease and relief of a good prince whose honor has been betrayed by a corrupt servant, and yet whose clemency makes him unwilling to punish; so that it becomes necessary for his faithful commons to take into their care the protection of such an offender.

"Former reigns have supplied your journals with many examples of the first kind. The present reign produces an instance of the latter sort, wherein the Commons bring before your lordships in judgment a peer offending with the greatest ingratitude against a most just and most merciful sovereign."—6 *State Trials*, (Hargrave,) 733.

And again it was said:

"My lords, if the *misdemeanors* of which the Earl impeached stands accused were not *crimes* by the *ordinary rules of law* in *inferior courts* as they have been made out to be, yet they would be *offences* of a *public nature* against the *welfare* of the *subject* and the *common good* of the kingdom, committed by the highest officer of justice and attended with so great and immediate loss to a multitude of sufferers, and as such they would demand the exercise of the extraordinary jurisdiction vested in your *judication* for the *public safety* by virtue whereof your lordships can inflict that degree and kind of punishment which no other court can impose." Page 746; 6 State Trials, (Hargrave,) 477, London, 1777. Same case, 16 Howell's State Trials, 823; and see 4 Campbell's Lord Chancellors, 536; 15 (sixth N. S.) American Law Register, 266.

He was convicted.

Lord Melville was impeached before the Lords in 1806 for that, as treasurer of the navy, he had used the public money for purposes of private gain, prior to and since the statute of June, 1785. (25 George III, chapter 31.) It was conceded that he had properly accounted for all money; that he had properly paid all demands upon him as treasurer; that it had even been down to a certain period—

"Irreproachable to those who exercised that office to make use of the public money which passed through their hands."—*Asperne's Report*, 6.

There was no complaint of any public act "against the welfare of the subject or the common good," or subversive of any fundamental principle of government.

He could not, therefore, be impeached unless he was indictable at common law, or had violated a statute, to do which is by the common law indictable. The managers insisted that his conduct was an offence at common law, and since the statute of June, 1785, a violation of that act. (Asperne's Report, 138.)

He denied the charges. After hearing evidence, questions were put to the judges:

1. Whether moneys issued from the exchequer to the credit of the treasurer of the navy in the Bank of England may be lawfully drawn therefrom by him for the purpose of paying bills actually drawn upon the treasurer, but not yet actually presented; and whether money so drawn may be deposited with a banker until the payment of such bills, and for the purpose of paying them; or whether such acts are in law a crime or offence.

Answer. The judges answered that such drawing and deposit of money were lawful and no crime.

2. Whether moneys issued from the exchequer to the credit of the treasurer of the navy in the Bank of England may be lawfully drawn therefrom by him to be ultimately applied to navy services, but in the mean time, and until required for the purpose of being deposited with a private banker in the name and under the control of his (Melville's) private clerk.

Answer. The judges answered that if the object of drawing the money from the Bank of England was to deposit it with a private banker, it was not lawful, although intended to be and in fact ultimately applied to naval service: but if so deposited *bona fide* as the means or supposed means of more conveniently applying the money to naval services, the money may be lawfully drawn.

3. Whether it was lawful for the treasurer, before the statute 25, George III, chapter 31, (and especially as

"maladministration" or "misconduct," not necessarily indictable,* not only in England, but in the United States.† Demeanor is conduct, and he is guilty of misdemeanor who misdemeans or misconducts. The power of impeachment, so far as the President is concerned, was inserted in the Constitution to secure "good behavior," to punish "misconduct," to defend "the community against the incapacity, negligence, or perfidy of the chief magistrate," to punish "abuse of power," "treachery," "corrupting his electors;" or, as Madison declared, "for any act which might be called a misdemeanor."‡ And Mr. Madison after-

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his salary had been augmented by the king's warrant in full satisfaction of all wages, fees, and profits,) to apply money impressed to him for naval services to any other use whatever, public or private, and whether such application would have been a misdemeanor punishable by information or indictment. The judges answered it was not unlawful, so as to constitute a misdemeanor punishable by information or indictment.

The form of these questions implies that Melville had not used the public money for private purposes *since* the statute of 25, George III, chapter 31, and it was not at common law a misdemeanor to do so *prior* to the statute.

The case was one not calling for any decision of the general question whether an act to be impeachable must be indictable, nor was any such proposition discussed. The Lords decided he was *not guilty*.

The first charge against Judge Humphreys was for advocating secession in a public speech December 29, 1860, which was no crime by common or statute law, and yet he was impeached and removed. There was no rebellion then and no "confederate" government. (4 Cranch, 75; 1 Dallas. 35; 2 Wallace, jr., 139; 2 Bishop, Criminal Law, 1186–1204; 23 Boston Law Reporter, 597, 705; 1 Bishop, 514; Burr's Trial, Coombs' Edition, 322.

* "On the 16th of October, 1667, the House being informed that there have been some *innovations of late in trials of men for their lives and deaths*, and in some particular cases restraints have been put upon juries in the inquiries, this matter is referred to a committee. On the 18th of November this committee are empowered to receive information against the Lord Chief Justice Kelynge, for any other MISDEMEANORS besides those concerning juries; and on the 11th of December, 1667, this committee report several resolutions against the Lord Chief Justice Kelynge, *of illegal and arbitrary proceedings* in his office. The first of these resolutions is, that the proceedings of the Lord Chief Justice in the cases now reported *are innovations in the trial of men for their lives* and liberties; and that he hath used an *arbitrary* and *illegal* power, which is of dangerous consequence to the lives and liberties of the people of England, and tends to the *introducing* of an arbitrary *government*. The Lord Chief Justice hath *undervalued*, villified, and contemned *Magna Charta*, the great preserver of our lives, freedom, and property." (4 Hatsel Prec., 113, cited 2 Chase's Trial, 461.)

One of the resolves against Chief Justice Scroggs was, "That the discharging the graud jury by the Court of King's Bench in Trinity Term last, before they had finished their presentments, was illegal, arbitrary, and an *high misdemeanor*." (4 Hatsel 127; 7 State Trials, 479.)

"Misprisions which are merely positive are generally denominated contempts or high misdemeanors, of which—

"1. The first and principal is the maladministration of such high offices as are in public trust and employment. This is usually punished by the method of parliamentary impeachment." (4 Blackst., 121.)

† In Senate, July 8th, 1797, it was "Resolved, that William Blount, Esq., one of the senators of the United States, having been guilty of a high *misdemeanor*, entirely inconsistent with his public trust and duty as a senator, be and he hereby is expelled from the Senate of the United States." (Wharton's State Trials, 202.)

He was not guilty of an indictable crimes. (Story on Const., § 799, note.)

The offence charged, Judge Story remarks, "was not defined by any statute of the United States. It was an attempt to seduce a United States Indian interpreter from his duty, and to alienate the affections and conduct of the Indians from the public officers residing among them."

Blackstone says: "The fourth species of offence more immediately against the king and government are entitled *misprisions* and *contempts*. Misprisions are in the acceptation of our law generally understood to be all such high offences as are under the degree of capital, but nearly bordering thereon. * * Misprisions which are merely positive are generally denominated contempts or *high misdemeanors*, of which the first and principal is the *maladministration* of such high offices as are in public trust and employment. This is usually punished by the method of *parliamentary impeachment*." (Vol. 4, p. 121.)

(See Prescott's Trial, Massachusetts, 1821, pp. 79–80, 109, 117–20, 172–180, 191.)

On Chase's Trial, the defence conceded that "to misbehave or to misdemean is precisely the same." (2 Chase's Trial, 145.)

‡ From 2 Madison's Papers, 1153, &c.

JULY 20, 1787.

The following clause, relative to the President, being under consideration:

"To be removable on impeachment and conviction for malpractice or neglect of duty."

Mr. Pinckney moved to strike this out, and said, "He ought not to be impeachable while in office."

"Mr. Darce. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the GOOD BEHAVIOR of the Executive."

"Mr. Wilson concurred.

"Mr. Gouverneur Morris. He can do no criminal act without coadjutors, who may be punished. In case he should be re-elected, that will be a sufficient proof of his innocence. Besides, who is to impeach? Is he impeachment to suspend his functions? If it is not, the mischief will go on.

"Colonel Mason. No point is of more importance than that the right of impeachment should be continued. Shall any man be above justice? Above all, shall that man be above it who can commit the most extensive injustice?

"Dr. Franklin was for retaining the clause as favorable to the Executive. History furnishes one example only of a first magistrate being formally brought to public justice. Everybody cried out against this as unconstitutional. What was the practice before this in cases where the Chief Magistrate rendered himself obnoxious? Why, recourse was had to assassination, in which he was not only deprived of his life, but of the opportunity of vindicating his character. It would be the best way, therefore, to provide in the Constitution for the regular punishment of the Executive where his MISCONDUCT should deserve it, and for his honorable acquittal where he should be unjustly accused.

"G. Morris admits corruption and some few other offences to be such as ought to be impeachable, but thought the cases ought to be enumerated and defined.

"Mr. Madison thought it indispensable that some provision should be made for defending the community against the *incapacity*, *negligence*, or *perfidy* of the Chief Magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his

wards maintained that "the wanton removal of meritorious officers would subject him [the President] to impeachment and removal from his own high trust."*

The Constitution declares that "the judges, both of the Supreme and inferior courts, shall hold their commissions during *good behavior*."†

By a *public law* every judge is required to take an oath as follows:

I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge, &c., according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States: so help me God.‡

By another public law—the Constitution—the President is required to take an oath that he will "faithfully execute the office of President of the United States, and will to the best of his ability preserve, protect, and defend the Constitution of the United States."

These oaths are *public laws* defining duties, and a violation of them is an impeachable *misdemeanor*, for Judge Blackstone says: "A crime or misdemeanor

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administration into a scheme of peculation or oppression. He might betray his trust to foreign powers. * * * In the case of the executive magistrate, which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the republic.

"Mr. Gerry urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the Chief Magistrate could do no wrong.

* * * * * * *

"Mr. Randolph. The propriety of impeachments was a favorite principle with him. Guilt wherever found ought to be punished. The Executive will have great opportunities of abusing his power, particularly in time of war.

"G. Morris. * * * * * *

"The Executive ought to be impeachable for treachery. Corrupting his electors and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office.

"The proposition was agreed to by a vote of eight States to two."

SEPTEMBER 8, 1767.

(From 3 Madison's Papers, 1528.)

"The clause referring to the Senate the trial of impeachment against the President for treason and bribery was taken up.

"Colonel Mason. Why is the provision restrained to treason and bribery? Treason, as defined in the Constitution, will not reach many great and dangerous offences. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined. As bills of attainder, which have saved the British constitution, are forbidden it is the more necessary to extend the power of impeachments.

"He moved to add after 'bribery,' or 'maladministration.'

"Mr. Madison. So vague a term will be equivalent to a tenure during the pleasure of the Senate.

"Colonel Mason withdrew 'maladministration,' and substituted 'other high crimes and misdemeanors against the state.'

"Agreed to, eight States to three.

"Mr. Madison objected to the trial of the President by the Senate, especially as he was to be impeached by the other branch of the legislature; and for any act which might be called a misdemeanor. The President, under these circumstances, was made improperly dependent. He would prefer the Supreme Court for the trial of impeachments.

* * * * * * *

"Mr. Williamson thought there was more danger of too much lenity than of too much rigor."

The subject of impeachment will also be found referred to under the following dates in 1787, to wit: May 28, June 2, June 18, July 18, August 6, August 20, August 22, September 4, and September 17. The propositions submitted declared officers impeachable "for mal and corrupt conduct," "for treason, bribery, or corruption," "for treason or bribery." But the Constitution finally rejected all these limitations, and gave the largest power of impeachment known to parliamentary law so far as it relates to misdemeanors.

*On the 16th June, 1789, on the bill to establish a department of foreign affairs, Mr. Madison said in Congress: "Perhaps the great danger * * of abuse in the executive power lies in the improper continuance of bad men in office. But the power we contend for will not enable him to do this; for if an unworthy man be continued in office by an unworthy President, the House of Representatives can at any time impeach him, and the Senate can remove him whether the President chooses or not. The danger then consists merely in this—the President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power and the restraints that operate to prevent it? In the first place, he will be impeachable by the House before the Senate for such an act of *maladministration*; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust."—(4 Elliott's Debates, 380.)

†A statute of Henry VIII, providing for the appointment of a *custos rotulorum* and clerk of the peace for the several counties of England, provides that the *custos* shall hold his office until removed, and the clerk of the peace *durante se bene gesserit*. It recites that ignorant persons had got in by unfair means. And so is the tenure of judges in England by the Declaration of Right. The tenure *durante*, &c., was introduced to enable a removal to be made for misbehavior—(2 Chase's Trial, 337.) By act of 13 William 3, c. 2, s. 3, the commission of every judge runs "*quamdiu se bene gesserit*."—(2 Chase's Trial, 255, 336, 342, 386.) See p. 145 Peck's Trial, 427, where Buchanan said: "Judges hold during good behavior—official misbehavior is impeachable. What is misbehavior? We are bound to prove that the respondent has violated the Constitution or some known law of the land. This was the principle deduced from Chase's Trial in opposition to the principle * * * that in order to render an officer impeachable he must be indictable."

‡Act of September 24, 1789, 1 Stat., 76; Chase's Trial, 402

is an act committed or omitted in violation of a *public law*, either forbidding or commanding it."*

The Constitution contains inherent evidence, therefore, that as to judges they should be impeachable when their *behavior* is not *good*—and the Senate are made the exclusive judges of what is bad behavior.

The words "good behavior" are borrowed from the English laws, and have been construed there in a way to enlarge the scope of impeachment to a wide range. They were first introduced into an English statute to procure the removal of officers who, on trial, might prove too *ignorant* to perform their duties.

These general views are sustained by the opinions of the framers of the Constitution, declared by themselves in convention, by Madison,† in the Virginia Convention of 1788, and by Alexander Hamilton,‡ in the Federalist, who says

* "At common law an ordinary violation of a public statute, even by one not in office, though the statute in terms provides no punishment, is an indictable misdemeanor." (Bishop's MS. letter to a member of the Judiciary Committee, citing 1 Bishop Cr. Law, 3d ed., sec. 187, 535.)

The term "*misdemeanor*" covers every act of "*misbehavior*," in the popular sense.

"Misdemeanor in office and misbehavior in office mean the same thing." (7 Dane's Abridgement, 365.)

Misbehavior, therefore, which is mere negation of "good behavior," is an express limitation of the office of a judge. (See North American Review for October, 1862.)

Alexander Hamilton, in discussing the judicial "tenure of good behavior," and the remedy in cases of "judiciary encroachments on the legislative authority" by pronouncing laws unconstitutional, says:

"It may, in the last place, be observed that the supposed danger of judiciary encroachments on the legislative authority, which has been upon many occasions reiterated, is, in reality, a phantom. Particular misconstructions and contraventions of the will of the legislature may now and then happen, but they can never be so extensive as to amount to an inconvenience, or in any sensible degree to affect the order of the political system. This may be inferred with certainty, from the general nature of the judicial power; from the objects to which it relates; from the manner in which it is exercised; from its comparative weakness; and from its total incapacity to support its usurpations by force. And the inference is greatly fortified by the consideration of the important constitutional check which the power of instituting impeachments in one part of the legislative body, and of determining upon them in the other, would give to that body upon the members of the judicial department. This is alone a complete security. There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the power to punish them for their presumption by degrading them from their stations. While this ought to remove all apprehensions on the subject, it affords, at the same time, a cogent argument for constituting the Senate a court for the trial of impeachments." (Federalist, No. 81.)

Impeachment is not merely nor necessarily *punitive* only, but it may, and often must be, *protective*. The safety of the public may demand its exercise in cases where there has been no intentional wrong but only a mistake of judgment. The republic cannot be suffered to perish or its great interests to be put in peril from any tender regard for individual feelings or errors.

And Thomas Jefferson evidently held that judges were impeachable for assumptions of power. (Letter to Mr. Jarvis, September 28, 1820; and see Jackson's veto message on the bank bill.)

† "Were the President to commit anything so atrocious as to summon only a few States (to consider a treaty) *he would be impeached and convicted, as a majority of the States would be affected by his misdemeanor.*"

And again:

"Mr. Madison, adverting to Mr. Mason's objection to the President's power of pardoning, said it would be extremely improper to vest it in the House of Representatives, and not much less so to place it in the Senate; because numerous bodies were actuated more or less by passion, and might, in the moment of vengeance, forget humanity. It was an established practice in Massachusetts for the legislature to determine in such cases.

"It was found, says he, that two different sessions, before each of which the question came, with respect to pardoning the delinquents of the rebellion, were governed precisely by different sentiments—the one would execute with universal vengeance, and the other would extend general mercy.

"There is one security in this case to which gentlemen may not have adverted: If the President be connected in any suspicious manner with any persons, and there be grounds to believe he will shelter himself, the House of Representatives can impeach him; they can remove him if found guilty; they can suspend him when suspected, and the power will devolve on the Vice-President. Should he be suspected also, he may likewise be suspended till he be impeached and removed, and the legislature shall make a temporary appointment. This is a great security." (Debates of the Virginia Convention, printed at the Enquirer Press for Richey, Worsley & Augustine Davis, 1805, pp. 353–4. 11 Howell stat. 7, 735.)

‡ In the Federalist, No. 65, he says:

"The subjects of its juri-diction are those offences which proceed from the *misconduct* of *public* men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may, with peculiar propriety, be denominated political, as they relate chiefly to injuries done immediately to the society itself."

"What," it may be asked, "is the true spirit of the institution itself? Is it not designed as a method of national inquest into the conduct of public men? If this be the design of it who can so properly be the inquisitors for the nation as the representatives of the nation themselves? It is not disputed that the power of originating the inquiry, or, in other words, of preferring the impeachment, ought to be lodged in one branch of the legislative body; will not the reasons which indicate the propriety of this arrangement strongly plead for an admission of the other branch of that body to a share of the inquiry? The model from which the idea of this institution has been borrowed pointed out that course to the convention. In Great Britain it is the province of the House of Commons to prefer the impeachment and of the House of Lords to decide upon it. Several of the State constitutions have followed the example. As well the latter as the former seem to have regarded the practice of impeachments as a bridle in the hands of the legislative body upon the executive servants of the government. Is not this the true light in which it is to be regarded?"

To what extent this writer contemplated the exertion of this power is not left in doubt. In the succeeding number of the same commentary he observes:

"The convention might with propriety have meditated the punishment of the executive for a deviation from the instructions of the Senate or a want of integrity in the conduct of the negotiations committed to him," clearly not statutory offences.

that "several of the State constitutions have followed the example" of Great Britain. And up to that time the State constitutions had adopted the British system with only some modifications; but none of them recognizing the idea that impeachment was limited to indictable acts, but all affirming "that the subjects of this jurisdiction were offences of a political nature." * Some of these constitutions limited impeachment to "mal and corrupt conduct in office;" or, as in the New York constitution of 1777, to "venal and corrupt conduct in office;" while the Constitution of the United States discarded all these limitations, and gave the power in the broadest terms. It is said this provision in the Constitution of the United States was copied from that of New York. † If so, the change in phraseology is significant.

These general views are supported by the elementary writers, without exception, up to the last year.

Curtis, in his History of the Constitution, ‡ says: "Although an impeachment may involve an inquiry, whether a crime against any positive law has been committed, *yet it is not necessarily a trial for crime*, nor is there any necessity, in the case of crimes committed by public officers, for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice, in respect of offences against positive law. *The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office.* Such a cause may be found in the fact, that either in the discharge of his office, or aside from its functions, he has violated a law, or committed what is technically denominated a crime. But a cause for removal from office may exist where no offence against positive law has been committed, as where the individual has from *immorality, or imbecility, or maladministration become unfit to exercise the office.* The rules by which an impeachment is to be determined are therefore peculiar, and are not fully embraced by those principles or provisions of law which courts of ordinary jurisdiction are required to administer."

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* Thus, in that of Virginia, established in 1776, is seen this provision: "The governor, when he is out of office, and others offending against the State, either by maladministration, corruption, or other means, shall be impeachable by the house of delegates." In the same year, in the succeeding month, Delaware provided in her constitution that "the President when he is out of office and eighteen months thereafter, and all others offending against the State, either by maladministration, corruption, or other means, by which the safety of the commonwealth may be endangered, shall be impeachable by the house of assembly." So, North Carolina, two months later, provided in her constitution: "The governor and other officers offending against the State by violating any part of this constitution, maladministration or corruption, may be prosecuted on the impeachment of the general assembly, or presentment of the grand jury of any court of supreme jurisdiction in this State."

The constitution of Connecticut is stated to contain a provision "to call to account for any misdemeanor and maladministration." That of New York provides: "The power of impeaching all officers of the State for mal and corrupt conduct in their respective offices is vested in the representatives of the people in assembly," and the trial is declared to be for "crimes and misdemeanors." So, in the elaborate constitution of Massachusetts, the eighth article declares: "The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives against any officer or officers of the commonwealth for misconduct and maladministration in their offices." Hence, it will be remarked, that in all of the State constitutions to which we have had access, formed prior to that of the United States, the impeachable offences are of a nature which may with peculiar propriety be denominated "political." In neither of them are the subjects of impeachment mere "statutory offences." This minute recurrence to the constitutions of several States will not be deemed inappropriate when it is remembered that they are not only the most authentic evidence of the public sense of our country at an early period, but because, in the formation of the federal constitution, their provisions should have a controlling influence on the minds of their delegates to the general convention, seeking to commend it to their adoption by engrafting into it parts of their own systems, and thus imparting to it the well-ascertained spirit and prudence of those who, if adopted, were to be its constituents." (From an able article by John C. Hamilton, esq.)

† Vol. 6 Am. Law Reg. N. S. 277; Wharton's State Trials, 287.

‡ Curtis's Hist. of Const., 260–1; 5 Elliot, 507–529.

Selden says: "Upon complaints and accusations of the Commons the Lords may proceed in judgment against the delinquent of what degree soever and what nature soever the offence be. For where the Commons complain the Lords do not assume to themselves *trial at common law.* Neither do the Lords, at the trial of a Common impeachment by the Commons, *decedere de jure suo*, (depart from *their own law.*) For the Commons are there instead of a jury, and the parties answer, and examination of witnesses are to be in their presence, or they to have copies thereof; and judgment is not to be given but upon their demand, which is instead of a verdict, so the Lords do only judge, not try the delinquent." (Selden's Judicature in Parliaments, London, 1681, page 6.)

Story says:* "Congress have unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct. * * * In the few cases of impeachment which have hitherto been tried, no one of the charges has rested upon any statutable misdemeanors. * *

The reasoning by which the power of the House of Representatives to punish for contempts (which are breaches of privilege and offences not defined by any positive laws) has been upheld by the Supreme Court, stands upon similar grounds; for if the House had no jurisdiction to punish for contempts until the acts had been previously defined and ascertained by positive law, it is clear that the process of arrest would be illegal:" *Denn* v. *Anderson*, 6 Wheat., 204.

"In examining the parliamentary history of impeachments, it will be found that many offences not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy." †

"There are many offences, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is, in the slightest manner, alluded to in our statute books. And, indeed, political offences are of so various and complex a character, so utterly incapable of being defined or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it. What, for instance, could positive legislation do in cases of impeachment like the charges against Warren Hastings in 1788? Resort then must be had either to parliamentary practice, and the common law, in order to ascertain what are high crimes and misdemeanors; or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time or in one person, which would be deemed innocent at another time or in another person. The only safe guide in such cases must be the common law. * * And however much it may fall in with the political theories of certain statesmen and jurists to deny the existence of a common law belonging to and applicable to the nation in ordinary cases, *no one has as yet been bold enough to assert* that the power of impeachment is limited to offences positively defined in the statute book of the Union, as impeachable high crimes and misdemeanors." ‡

Rawle, in his work on the Constitution, says: "The delegation of important trusts affecting the higher interests of society is always from various causes liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign states, or the baser appetite for illegitimate emoluments, are sometimes productions of what are not inaptly termed political offences, (Federalist, No. 65,) which it would be difficult to take cognizance of in the ordinary course of judicial proceeding.

"The involutions and varieties of vice are too many and too artful to be anticipated by positive law." (Rawle on Const., 200.)

"In general, those offences which may be committed equally by a private person as by a public officer are not the subjects of impeachment." (Id., 204.)

"We may perceive in this scheme one useful mode of removing from office him who is unworthy to fill it, in cases where the people and sometimes the President himself would be unable to accomplish that object." (Id, 208.)

Chancellor Kent, in discussing the subject of impeachment, says: "The Constitution has rendered him [the President] directly amenable by law for maladministration. The inviolability of any officer of the government is incom-

* 1 Story on Const., § 799. In a note he says: "It may be supposed that the first charge in the articles of impeachment against William Blount was a statutable offence; but on an accurate examination of the act of Congress of 1796, it will be found not to have been so."

† 1 Story on Const., § 800. He proceeds to cite numerous cases.

‡ 1 Story on Const., § 797.

patible with the republican theory as well as with the principles of retributive justice.

"If the President will use the authority of his station to violate the Constitution or law of the land, the House of Representatives can arrest him in his career by resorting to the power of impeachment." (1 Kent's Com., 289.)

Neither in Congress nor in any State has any statute been proposed to define impeachable crimes: so uniform has been the opinion that none was necessary, even in those states, few in number, where common-law crimes do not exist.

The assertion, "that* unless the crime is specifically named in the Constitution, impeachments, like indictments, can only be instituted for crimes committed against the statutory law of the United States," is a view not yet a year old, which has not been held at any prior time, either in England or America.

It would certainly seem clear that impeachments are not necessarily limited to acts indictable by statute or common law, and that it would be impossible for human prescience or foresight to define in advance by statute the necessary subjects of impeachment. The Constitution contemplated no such absurd impossibility. It may be said there is danger in leaving to the Senate a power so undefined. It was because of this danger that the power has been limited as it is by the Constitution, and experience has shown that the limitations are more than sufficient.

The whole system of common-law crimes, as it exists in England, and in almost every State of the Union, is the result of a judicial power equally undefined.

The system of impeachment is to be governed by great general principles of right, and it is less probable that the Senate will depart from these, than that the whole legislature would in the enactment of a law, or than courts in establishing the common law.†

The Constitution contains *inherent evidence* that the *indictable* character of an act does not define its *impeachable* quality. It enumerates the classes of cases in which legislative power may be exercised, and it defines the class of

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* Vol. 6 Am. ,Law Reg., N. S., 269.

† The Constitution has made the Senate, like the House of Lords, sole judge of what the law is, assuming their wisdom to be equal to that of the common law courts. (2 Hale's P. C., 275; Barclay's Digest, 140; Constitution, article one, section three.) This is necessarily so; for though some statutory and common law crimes are impeachable, yet not all of them are, and the Senate decides which are and are not. It is said if the impeachable crimes are not defined by law the power of impeachment will be undefined and dangerous. The power to determine impeachable crimes by the Senate is no more undefined than the power of the common law courts to determine common law crimes. Impeachment is regulated by principles as well defined and permanently settled as the fundamental and eternal doctrines of right, reason, and justice pervading the parliamentary jurisprudence of civilized nations, and like the common law, it has emerged from primeval errors, and adapted itself to an advanced civilization. The danger of imperilling the safety of nations in measuring parliamentary law by the rule which defines wrongs to individuals is infinitely greater than the evils which can flow from recognizing the law of impeachment as a parliamentary system resting upon its own solid foundations.

The rule which allows impeachments for indictable acts enables the legislative department or the Senate alone to declare trivial offences impeachable while the parliamentary law limiting impeachable offences to misdemeanors affecting the nation is less latitudinarian and attended with less danger of abuse. When impeachment is employed to remove officers for wilful violations of the Constitution or laws, for exercising the powers of Congress or the judiciary for performing acts affecting the nation unauthorized by law, for refusing to execute laws requiring that duty, for a perversion of lawful powers to accomplish unconstitutional objects—these are—

"Offences as tangible and as capable of being measured by fixed rules as any felony defined in criminal laws."

And this is as definite and no less latitudinarian than the common law itself, which is "the perfection of reason" as determined by courts. For even in England not all common law offences are impeachable, but only such of them (along with others not indictable) as by parliamentary usage or popular sense rise to the dignity of "high" misdemeanors, and of this the House of Lords are the sole judges. (Peck's Trial, 10 Selden, Judicature in Parliaments, 6; 2 Hale P. C., 275; Barclay's Digest, 140.)

On the trial of Judge Prescott, in Massachusetts, in 1821, Mr. Shaw said: "The security of our rights depends rather upon the general tenor and character than upon particular provisions of our Constitution. The love of freedom and justice, so deeply engraven upon the hearts of the people, and interwoven in the whole texture of our social institutions, a thorough and intelligent acquaintance with their rights, and a firm determination to maintain them, in short, those moral and intellectual qualities without which social liberty cannot exist, and over which despotism can obtain no control, these stamp the character and give security to the rights of the free people of this Commonwealth. * * * But it has not been, and it cannot be, contended that, in its decisions and adjudications, this court is not governed by established laws. These may be positive and express, or they may depend upon reasoning and analogy. It would be idle to expect a rule applicable to every case in the text of the statute book. Laws are founded on certain general principles and the relations of men in society. It is the province of this court, as of all other judicial tribunals, to search out and apply these principles to the particular cases in judgment before them." And see 4 Howard's St. Trials, 47, per Selden, 6 Am. Law Reg., N. S., 264.

persons and cases to which the judicial power extends; but there is no *such* enumeration of impeachable *cases*, though there is of *persons*.

In England and some of the states the power of removal of officers by the executive on the address or request of the legislature* exists, but the Constitution made no provision for this as to any officer, manifestly because the power of impeachment extended to *every proper case for removal*.

As to the President and Vice-President, there is this provision, that "Congress may by law provide for the case of *removal*, death, resignation, or *inability*, * * declaring what officer shall then act * * until the disability be removed or a President shall be elected." (Article 2, section 1.)

It has already been shown that the framers of the Constitution regarded the power of impeachment as a means of defending "the community against the *incapacity*" of officers. This clause of the Constitution recognized the same view, article 2, section 1: "Congress may by law provide for the case of * * *inability*, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected."

This and the power of impeachment are the only modes of getting rid of officers whose *inability* from *insanity* or otherwise renders them unfit to hold office, and whose every official act will necessarily be *misdemeanor*. As to the President and Vice-President, it was necessary to give Congress the power to designate a successor, and so to determine the disability. As to all other officers, the Constitution or laws define the mode of designating a successor, and it is left to the impeaching power to remove in cases of insanity or misdemeanor arising from that or other cause. It cannot be supposed the whole nation must suffer without remedy, if the whole Supreme Court or other officers should become utterly disabled from the performance of their duties. Such an occurrence is within the range of possibility, if not probability.

In our system it is utterly imposible to apply any test of common law or statutory criminality. The Supreme Court, without much consideration, has determined that the national courts have never been clothed with jurisdiction of common-law crimes.†

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* Removal on the address of *both* houses of Parliament is provided for in the Act of Settlement, 3 Hallam, 262. In the convention which framed our national Constitution, June 2, 1787, Mr. John Dickinson, of Delaware, moved "that the Executive be made removable by the national legislature on the request of a majority of the legislatures of individual States." Delaware, alone, voted for this, and it was rejected. Impeachment was deemed sufficiently comprehensive to cover every proper case for removal.

† *The reason which denies jurisdiction of common-law crimes to the courts of the United States does not apply to impeachments.*

By the Constitution the trial for crimes must be had in the State and district where committed. (Article 6, Amendments.) By the judiciary act of September 24, 1789, the Supreme Court is restricted to holding sessions at Washington. (1 Statutes at Large, 73.) By the Constitution the judicial power of the United States is vested in the Supreme Court and such *inferior courts* as Congress may establish. (Article 3, section 1; article 1, section 10.

It was held as early as 1812 that the circuit and district courts of the United States, being the "*inferior courts*" established by Congress, could exercise no common-law criminal jurisdiction. This doctrine was reaffirmed in 1816 by a divided court, and has never been authoritatively decided since. (United States *vs.* Hudson, 7 Cranch, 32; United States *vs.* Coolidge, 1 Wheaton, 415; 1 Gallis, Reports, 488; United States *vs.* Lancaster, 2 McLean's Reports, 431; Washington Circuit Court Reports, 84; United States *vs.* Ravara, 2 Dallas 297; United States *vs.* Worrall, 2 Dallas, 384; United States *vs.* Maurice, 2 Brock., 96; United States *vs.* New Bedford Bridge, 1 Woodbridge & Minot, 401; United States *vs.* Babcock, 4 McLean, 113–115.)

This ruling has been disapproved by the ablest commentators on constitutional and criminal law—by Story, and Rawle, and Bishop, and Wharton. (1 Bishop's Criminal Law, third edition, 163, [20;] act of Congress of September 24, 1789, sections 9–11; Statutes 1842, chapter 188, section 3; Du Ponceau on Jurisdiction.)

The denial of common law criminal jurisdiction in these inferior courts rests solely on the reasons that such tribunals being created *not by the Constitution*, but by *act of Congress*, they—

"Possess no jurisdiction but what is given them by the power that creates them;" and that—

"There exists no definite criterion of distribution [of jurisdiction] between the district and circuit courts of the same district."

And that common law—

"Jurisdiction has not been conferred by any legislative act."

And it is said that the Supreme Court alone—

"Possesses jurisdiction derived immediately from the Constitution, and of which the legislative power cannot deprive it." (7 Cranch, 33.)

Where, therefore, a common law jurisdiction is conferred by the Constitution on a court created by that instrument, it is one "of which the legislative power cannot deprive it." (7 Cranch, 33.)

And this is precisely what the Constitution has done as to impeachments; it has created the tribunal for their trial—the Senate: it has given that body jurisdiction of *all* "crimes and misdemeanors" impeachable by

When the Constitution was adopted all the States recognized common-law crimes, and those added since do so with few exceptions. But there is something peculiar to each and different from all others in its common-law crimes, growing out of the rulings of judges or its condition, and in all statutes have made changes, so that no two States recognize the same crimes.

The Constitution authorizes Congress "to provide for the punishment of counterfeiting the securities and current coin of the United States. * * * To define and punish piracies and felonies committed on the high seas, and offences against the law of nations," but nowhere declares they may define impeachable crimes, for the very good reason that common parliamentary law, subject, like the common law, to be moulded to circumstances and adapted to times, had already sufficiently defined them. Congress cannot by any law abridge the right of the House to impeach or the Senate to try.

When the Constitution confers on the House the "sole power of impeachment," and on the Senate "the sole power of trial," these are independent powers, not to be controlled by the *joint* opinion of the two houses, previously incorporated into a law.* Suppose such a law passed. It cannot be repealed over a veto except by a two-thirds vote in each house. Yet a majority may impeach; and, after the veto of a repealing law, can that majority be denied the constitutional privilege conferred on them?

"Treason, bribery, and other high crimes and misdemeanors" are of course impeachable. Treason and bribery are specifically named. But "other high crimes and misdemeanors" are just as fully comprehended as though each was specified. The Senate is made the *sole judge* of what they are. There is no revising court. The Senate determines in the light of parliamentary law. Congress cannot define or limit by law that which the Constitution defines in two cases by enumeration, and in others by classification, and of which the Senate is sole judge† It has never been pretended that treason and bribery would not be impeachable if not made criminal by statute, or so recognized by national common law. They are impeachable because enumerated. Other high crimes and misdemeanors are equally designated by classification.

Suppose the Constitution had declared "that all persons committing 'treason, bribery, or other high crimes and misdemeanors' shall be punished by indictment in the courts of the United States," can it be doubted that every crime and misdemeanor recognized by the common law would be the subject of indictment? "This would be by force of the Constitution employing the words crimes and misdemeanors; for these are words known to the common law, and it is a universal principle of interpretation, acted on in all the courts, that a common-law term employed in conferring jurisdiction on courts is to bear its common-law meaning."

Now, when the Constitution says that all civil officers shall be removable on impeachment for high crimes and misdemeanors, and the Senate shall have the sole power of trial, the *jurisdiction* is *conferred*, and its scope is defined by common parliamentary law.‡

The national courts do not take jurisdiction of common-law crimes, not because common-law crimes do not exist, but because their jurisdiction is only such as is expressly conferred on them, and no statute has conferred the juris-

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parliamentary usage, and no law can limit it. And this view has been sustained by Story, and Rawle, and Kent, *after* and *in view* of the decisions referred to. (6 American Law Register, 656.)

At the time the Constitution was adopted, and ever since in England and all the original States of the Union, what is known as the "*common law*" and "common-law crimes" existed, and yet exist, in addition to crimes defined by statute; and this is so in all the States except Ohio, and perhaps two or three others.

* "The Parliament cannot by any act restrain the power of a subsequent Parliament." (4 Inst., 42; 5 Com. Dig., 301.)

† "The *peers* are *judges of law* as well as of fact." (2 Hale's, P. C., 275. Barclay's Digest, 140.) They therefore are not governed by the indictable character of an act. In fact, as the highest court they make not only parliamentary law, but the law for the courts. (Regina *v.* O'Connell.)

‡ Impeachable misdemeanors are determined by the Senate just as each house of Congress and the courts having the jurisdiction to punish for contempts determine what acts or neglect constitute them. (7 Cranch, 320.)

diction. But in the District of Columbia, under national jurisdiction, common-law crimes and jurisdiction of them in the courts do exist.*

In addition to this, there are crimes exclusively of national jurisdiction, and others exclusively of State cognizance. The murder of citizens in a State is not and cannot be made criminal by act of Congress where it is not perpetrated in the denial of a national right. The States alone provide for this and many other offences. And, in the States not recognizing common-law crimes, they may omit to make homicide a penal offence as to Indians, negroes, or others, if the legislature so determine, in the absence of a law of Congress similar to the "Civil Rights" act.†

If no act is impeachable which is not made criminal, then its criminality must depend—

1. On an act of Congress defining crimes; or,
2. On acts of State legislatures defining crimes; or,
3. On the definition of common-law crimes in the States; or,
4. On the common-law crimes existing in England when the Constitution was adopted.

It is quite clear that national law in some form must control it, since "the United States have no concern with any but their own laws."‡

The national government is complete in itself, with powers which neither depend on nor can be abridged by State laws.§

If, then, impeachment is limited to acts made criminal by a statute of Congress, an officer of the United States cannot be impeached, though he should go into the "dominion of Canada" or the "republic of Mexico," and there stir up insurrection, or be guilty of violating all the laws of the land; or if he should go into a State and violate all of its laws.‖ If so, a highway robber may be President, and he is exempt from impeachment!

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* "*Common-law crimes do exist, they are indictable, and jurisdiction of them has existed in the courts of the United States for two-thirds of a century in the District of Columbia.*" (1 Bishop on Criminal Law, section 167, [22:] Du Ponceau on Jurisdiction, 62–73; Kendall *vs.* United States, 12 Peters, 524–613; United States *vs.* Watkins, 3 Cranch, 441.)

The highest authority on criminal law in this country says:

"There must in reason and in legal principle be in those localities where State power is unknown common-law crimes against the United States. Especially this exception must in reason extend to all matters which concern our intercourse with foreign as well as to all local transactions beyond the territorial limits of the several States. The law of nations and the law of the admiralty concerning both civil and criminal things would seem therefore to have been made United States common law."

* * * * "And so the United States tribunals would appear to have common law cognizance of offences upon the high seas not defined by statutes, and of all other offences within the proper cognizance of the criminal courts of a nation, committed beyond the jurisdiction of any particular State." 1 Bishop on Criminal Law, section 165, [21.]

The act of Congress of February 27, 1801, extended and continued in force over the District the common and statute law of Maryland where common-law crimes existed, and organized a circuit court with the jurisdiction conferred on circuit courts of the United States by section eleven of the act of February 13, 1801. (2 United States Statutes at Large, 92; 2 Statutes, 103–105, sections 1–3.)

The criminal court organized by act of July 7, 1838, had the same criminal jurisdiction. (5 Statutes, 306.)

The supreme court of the District, organized by act of March 3, 1863, has the same jurisdiction of the prior courts thereby abolished. (12 Statutes, section 3,)

That jurisdiction is conferred in these words:

"That," * * * * "said courts" * * * * "shall have cognizance of all crimes and offences cognizable under the authority of the United States." (2 Statutes, 92, act February 13, 1801.)

† Act of April 9, 1866, 14 Stat., 27.

‡ "It was said by one of the counsel that the offence must be a breach either of the common law, a State law, or a law of the United States, and that no lawyer could speak of a misdemeanor but as an act violating some one of these laws. This doctrine surely is not warranted, for the government of the United States have no concern with any but their own laws. * * * But as a member of the House of Representatives, and acting as a manager of an impeachment before the highest court in the nation, appointed to try the highest officers of the government, when I speak of a misdemeanor I mean an act of official misconduct, a violation of official duty, whether it be a proceeding against a positive law or a proceeding unwarranted by law." (Per Nicholson *arguendo*, 2 Chase's Trial, 340; per Rodney, 387.

§ Weston *vs.* City Council of Charleston, 2 Peters, 449; McCulloch, *vs.* Maryland, 4 Wheat., 316; Osborn *vs.* Bank of the United States, 9 Id., 738.

‖ Mr. Rodney, in the argument of Chase's trial, said: "When gentlemen talk of an indictment being a necessary substratum of an impeachment, I should be glad to be informed in what court it must be supported. In the courts of the United States or in the state courts? If in the state courts, then in which of them; or provided it can be supported in any of them, will the act warrant an impeachment? If an indictment must lie in the courts of the United States, in the long catalogue of crimes there are a very few which an officer might not commit with impunity. He might be guilty of treason against an individual State; of murder, arson, forgery,

It is not possible that a position so monstrous was intended by the framers of the Constitution. Nor can the criminal statutes or common law of the States limit or regulate national impeachable offences. The fact that each State differs from all others in its laws renders this impossible. It never could have been designed to control the national power of impeachment by State laws, ever varying and conflicting as they are.*

If impeachments were limited in England to indictable offences, as they never have been, it is manifest no such rule can be adopted here, for we have no uniform and single standard of the common law as there.

And as the Supreme Court has determined that the common-law crimes do not exist in our national system, it cannot be supposed they are more applicable to the Senate than to our ordinary courts. We can, therefore, safely adopt the remark of "the great Selden" on the impeachment of Ratcliffe:† "It were better‡ to examine this matter according to *the rules and foundations of this house;*" that is, upon the great principles of parliamentary law adapted to our condition and circumstances, as modified by the Constitution, giving it a construction equal to every emergency which may call its powers into exercise, and giving in its interpretation full effect in constitutional forms to the maxim it was designed to make effectual—that the safety of the republic is the supreme law."§

If we adopt the test that an act to be impeachable must be indictable at common law, the Constitution will be practically nullified on this subject.

It is a rule of the common law, "that judges of record are freed from all presentations whatever except in Parliament, where they may be punished for anything done by them in such courts as judges."‖

Bishop declares that at common law, "the doctrine appears to be sufficiently established, that legislators, the judges of our highest courts, and of all courts of record acting judicially, jurors, and probably such of the high officers of each of the governments as are intrusted with responsible discretionary duties, are not liable to an ordinary criminal process, like an indictment, for their official doings, however corrupt:" 1 Bishop's Crim. Law, 915 [362]

"At common law, an ordinary *violation of a public statute* by one not in office, though the statute in terms provides no punishment, is an indictable misdemeanor:" 1 Bishop, 535 [187.]

And a similar violation by *inferior officers* was an indictable misdemeanor.

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and perjury in various forms, without being amenable to the federal jurisdiction, and unless he could be indicted before them he could not be impeached." (2 Chase's Trial, 389.)

The doctrine that nothing is impeachable unless indictable by act of Congress is impracticable.

If only offences indictable by act of Congress are impeachable, the President and all civil officers will escape impeachment for many of the highest crimes. Murder, arson, robbery, and other crimes committed in a State are indictable by State laws, but cannot be made so by act of Congress.

*In the argument of Chase's trial, Mr. Rodney said: "Are we then to resort to the erring *data* of the different States? In New Hampshire drunkenness may be an indictable offence, but not in another State. Shall a United States judge be impeached and removed for getting intoxicated in New Hampshire, when he may drink as he pleases in other States with impunity? In some States witchcraft is a heinous offence, which subjects the unfortunate person to indictment and punishment; in other States it is unknown as a crime. A great variety of cases might be put to expose the fallacy of the principle, and to prove how improper it would be for this court to be governed by the practice of the different States. The variation of such a compass is too great for it to be relied on. This honorable body must have a standard of their own, which will admit of no change or deviation." (2 Chase's Trial, 389.)

† Vol. 6, Am. Law Reg., N. S., 264. 4 Howard's St. Tr., 47.

‡ A minister is answerable for the *justice*, the *honesty*, the *utility* of all measures emanating from the Crown, as well as for their *legality;* and thus the executive administration is, or ought to be, subordinate, in all great matters of policy, to the superintendence and virtual control of the two houses of Parliament. (2 Hallam's Const. History, 550.)

§ "It may be alleged that the power of impeachment belongs to the House of Representatives, and that with a view to the exercise of this power that house have the right to investigate the conduct of all public officers under the government. This is cheerfully admitted. In such a case *the safety of the republic would be the supreme law;* and the power of the House in the pursuit of this object would penetrate into the most secret recesses of the executive department." (President Polk's Message, Jour. Ho. Rep., 29th Cong., 1st sess., 693.)

"*Salus populi suprema lex:*" Broom's Legal Maxims; *Blount's Trial*, Whart. St. Tr., 300, per Blount; Prescott's Trial, 181, per Shaw; *contra*, Blake, 116.

‖ 1 Hawkins 192, ch 73, § 6; 1 Salk. 396; 2 Wooddeson 596, 355; Jacob's Law Dic., tit. *Judges;* 12 Coke 25-6; *Hammond* v. *Howell*, 2 Mod. 218; *Floyd* v. *Barker*, 12 Co. 23-5. "The doctrine which holds a judge exempt from a civil suit, or indictment for any act done or omitted to be done by him sitting as a judge, has a deep root in the common law," per Kent: *Yates* v. *Lansing*, 5 Johns. 291; 9 Id., 395; *Cunningham* v. *Bucklew*, 8 Cow., 178; Peck's Trial, 492; 2 Chase's Trial, 389. But see the ruling of Chief Justice Shippen, referred to in Addison's (Pa.) Trial 70; 1 Bishop on Crim. Law, 915 [362;] 4 Blackst., 121.

"If a public officer intrusted with definite powers, to be exercised for the benefit of the community, wickedly abuses or fraudulently exceeds them, he is punishable by indictment, though no injurious effects result to any individual from his misconduct:" Whart. Crim. Law, § 2514.

"Whatever mischievously affects the person or property of another, or openly outrages decency, or disturbs public order, or is injurious to public morals, or is a breach of official duty, when done corruptly is the subject of indictment:" What. § 3.

It may be said the immunity of a judge from indictment, for his official acts at common law, is placed on grounds of public policy, to secure his independence, and that it is the indictable character of the act, if done by a private individual, which gives jurisdiction by impeachment. But even this proves that personal liability to an indictment is no test of impeachability. And in the nature of things *official acts* cannot be done by private individuals, so that the indictable character of an act is no test of its impeachability; and no such test could have entered into the minds of the framers of the Constitution.

It is a rule of interpretation, that a law or an instrument is not to be construed so as to make its "effects and consequences" absurd, if its language may be fairly understood otherwise.

To permit all acts to escape impeachment unless indictable at common law,* would lead to consequences the most ruinous and absurd.†

If a judge should persistently hear the arguments of one party to causes privately and out of court, the evil would become so intolerable in an officer holding for *good behavior* that he should be removed.

If the President should hold out promises of offices of honor and trust to the friends of senators to influence their votes, the consequences might be so pernicious and corrupting, especially in an hour of national peril, when a single

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*On the trial of Chase Mr. Nicholson said: You, Mr. President, as Vice-President of the United States, together with the Secretary of the Treasury, the Chief Justice, and the Attorney General, as commissioners of the sinking fund, have annually at your disposal $8,000,000, for the purpose of paying the national debt. If instead of applying it to this public use, you should divert it to another channel, or convert it to your own private uses, I ask if there is a man in the world who would hesitate to say that you ought to be impeached for this misconduct. And yet there is no court in this country in which you could be indicted for it. Nay, sir, it would amount to nothing more than a breach of trust, and would not be indictable under the favorite common law.

"If a judge should order a cause to be tried with 11 jurors only, surely he might be impeached for it, and yet I believe there is no court in which he could be indicted." (2 Chase's Trial, 339.)

†On Chase's Trial Mr. Rodney said: "I think I can put * * striking cases of misconduct in a judge for which it must be admitted that an impeachment will lie, though no indictment [at common law] could be maintained." He puts the cases: if a judge, at the time appointed for court, "should appear and open the court, and notwithstanding there was pressing business to be done, he should proceed knowingly and wilfully to adjourn it until the next stated period.' * * "Suppose he proceeded in the despatch of business, and from prejudice against one party, or favor to his antagonist, he ordered on the trial of a cause though legal ground for postponement."

"If when the jury return to the bar to give the verdict, he should knowingly receive the verdict of a majority."

"Were a judge to entertain the suitors with a farce or a comedy instead of hearing their causes, and turn a jester or buffoon on the bench, I presume he would subject himself to an impeachment." (2 Chase's Trial, 390.)

Mr. Harper, for the defence, practically abandoned the idea that an indictable offence was necessary. He said: "There are reasons which appear to me unanswerable in favor of the opinion that no offence is impeachable unless it be also the proper subject of an indictment. * * I can suppose cases where a judge ought to be impeached for acts which I am not prepared to declare indictable [at common law.] Suppose, for instance, that a judge should constantly omit to hold court, or should habitually attend so short a time each day as to render it impossible to despatch the business." (2 Chase's Trial, 255.)

Mr. Randolph said: "The President of the United States has a qualified negative on all bills passed by the two houses of Congress. * * Let us suppose it exercised indiscriminately on every act presented for his acceptance. This surely would be an abuse of his constitutional power richly deserving impeachment; and yet no man will pretend to say it is an indictable offence." (2 Chase's Trial, 452; Wickliffe's argument on Peck's Trial, 311.)

On Peck's trial, Mr. Wickliffe put additional cases: "Suppose a judge under the influence of political feeling shall award to his favorite a new trial * * against known law, would this be an indictable offence?"

"Suppose a judge * * shall labor for two hours in abuse upon an unoffending citizen whom he has dragged before him." (Peck's Trial, 310.)

"If a head of a department should divert his power and patronage for his personal or political aggrandizement." (Id., 310.)

On Peck's trial, Mr. Buchanan said: "The abuse of a power which has been given may be as criminal as the usurpation of a power which has not been granted. Suppose a man to be indicted for an assault and battery. He is tried and found guilty; and the judge, without any circumstances of peculiar aggravation having been shown, fines him $1,000, and commits him to prison for a year. Now, although the judge may possess the power to fine and imprison for this offence at his discretion, would not this punishment be such an abuse of judicial discretion, and afford such evidence of the tyrannical and arbitrary exercise of power as would justify the House of Representatives in voting an impeachment?" (Peck's Trial 427.)

vote might decide the life of the government, that the safety of the republic would demand impeachment. Such a President would violate his oath *faithfully* to execute his duties.

There are many breaches of trust not amounting to felonies, yet so monstrous as to render those guilty of them totally unfit for office.

Nor is it always necessary that an act to be impeachable must violate a positive law. There are many misdemeanors, in violation of official oaths and of duty alike shocking to the moral sense of mankind and repugnant to the pure administration of office, that may violate no positive law.*

The indiscriminate veto of all bills by the President, his retaining in office men subject to his removal, knowing them to be utterly incapable of performing the duties of their office, and other misdemeanors, would manifestly be proper subjects of an impeachment, for otherwise a wicked, corrupt, or incompetent foreign minister might embroil the nation in a war imperilling our existence, to avoid which impeachment might be the only remedy.

The impeachment trials in the United States may be said to have conclusively settled these questions.†

The first case tried—that of William Blount, a senator of the United States from Tennessee—simply decided that none but civil officers can be impeached, and that a senator is not such civil officer. But the articles of impeachment—none of which charged a statutory crime, and some certainly no common law offence—proceeded upon the idea that acts were impeachable‡ which were not indictable, so much so that no objection was suggested on that account.

The next case is that of Judge Pickering,§ who was convicted upon each of

* "There are offences for which an officer may be impeached, and against which there are no known positive laws. It is possible that the day may arrive when a President of the United States, having some great political object in view, may endeavor to influence Congress by holding out threats or inducements to them. A treaty may be made which the President, with some view, may be extremely anxious to have ratified. The hope of office may be held out to a senator; and I think it cannot be doubted that for this the President would be liable to impeachment, although there is no positive law forbidding it. Again, sir, a member of the Senate or of the House of Representatives may have a very dear friend in office, and the President may tell him unless you vote for my measures your friend shall be dismissed. Where is the positive law forbidding this? Yet, where is the man who would be shameless enough to rise in the face of his country and defend such conduct, or be bold enough to contend that the President could not be impeached for it?" (Per Nicholson, 2 Chase's Trial, 339, 341. See Peck's Trial 309.)

"The abuse of a power given may be as criminal as the usurpation of a power not granted." (Per Buchanan on Peck s Trial, 427.)

He supposes the case of a judge having discretionary power to fine and imposing enormous and unnecessary punishment.

† Those before the Senate of the United States are the cases of—

1. William Blount, a senator of the United States, July, 1797, to January, 1798. (Wharton's State Trials, 200.)

2. John Pickering, district judge, New Hampshire, 1803-'04. (Annals of Congress; 2, Hildreth's Hist, 518.)

3. Samuel Chase, associate justice of the Supreme Court United States, 1804-'05. (Trial of Chase, by Smith & Lloyd, 2 vols.)

4. James Peck, district judge Missouri, 1826, 1831. (Peck's Trial, by Stansbury, 1 vol.)

5. West W. Humphreys, district judge of Tennessee, 1862. (Congressional Globe, vols. 47, 48, 49, 2d session 37th Congress. See report No. 44, 2d session 37th Congress, vol. 3 Reports of Committees.)

‡ There were five articles—

1. That in 1797 Spain, owning the Floridas and Louisiana, was at war with England, and Senator Blount "did conspire and contrive to create, promote, and set on foot * * in the United States, and to conduct and carry on from thence a military hostile expedition against * * the Floridas and Louisiana * * * for the purpose of wresting the same from" Spain, and of conquering the same for Great Britain, in violation of the obligations of neutrality of the United States.

2. That by the treaty of October 27, 1795, the United States and Spain agreed to restrain Indian hostilities in the country adjacent to the Floridas, yet Blount, in 1797, "did conspire and contrive to excite the Creek and Cherokee Indians" in the United States "to commence hostilities against the subjects and possessions in the Floridas and Louisiana, for the purpose of reducing the same to the dominion of * * Great Britain," in violation of the treaty, the obligations of neutrality, and his duties as senator.

3. That Blount, in April, 1797, to accomplish his designs aforesaid, did "conspire and contrive to alienate the confidence of said Indian tribes" from the United States Indian agent, "and to diminish, impair, and destroy" his influence "with the said Indian tribes, and their friendly intercourse and understanding with him."

4. That Blount, in April, 1797, "did conspire and contrive to seduce" an Indian interpreter of the United States with the Indians under a treaty between them and the United States, "from his duty, and to engage" him "to assist in the promotion and execution of his said criminal intentions and conspiracies."

5. That Blount, in April, 1797, "did conspire and contrive to diminish and impair the confidence of said Cherokee nation in the government of the United States, and to create and foment discontents and disaffection among the said Indians towards the * * United States in relation to" ascertaining and marking the boundary line between the lands of the Indians and of the United States in pursuance of a treaty between them.

§ The articles charged—

1. That the surveyor of the district of New Hampshire did, in the port of Portsmouth, seize the ship Eliza for unlading foreign goods contrary to law, and the marshal of the district, on the 16th of October, 1802, by order of Judge Pickering, did arrest and detain said ship for trial, and the act of Congress of March 2, 1789, provides

four several articles of impeachment before the Senate, and removed from office in March, 1804.* This case proves that a *violation of law* of a particular character, and drunkenness and profanity on the bench, are each impeachable high crimes and misdemeanors. In this case the defence of insanity was made and supported by evidence. The case does not show the opinion of senators on this evidence. But if the insanity was regarded as proved, this case shows that a criminal intent is not necessary to constitute an impeachable high crime and misdemeanor, but that the power of impeachment may be interposed to protect the public against the misconduct of an insane officer.

The next case is that of Samuel Chase,† an associate justice of the Supreme

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that such ship may, by order of the judge, be delivered to the claimant on giving bond to the United States, and on producing a certificate from the collector of the district that the duties on the goods and tonnage duty on the ship had been paid; yet Judge Pickering, with intent to evade the act of Congress, ordered the ship to be restored to the claimant without producing the certificate of payment of duties and tonnage duty.

2. That at the district court of New Hampshire in November, 1802, the collector having libelled said ship because of said unlawful unlading of goods and prayed her forfeiture to the United States, yet Judge Pickering, with intent to defeat the just claims of the United States, refused to hear the testimony of witnesses produced to sustain the claim of the United States, and without hearing them, did order and decree said ship to be restored to the claimant contrary to law.

3. That the act of 24th September, 1789, authorizes an appeal to the circuit court in such case, and the United States district attorney did claim an appeal from said decree, yet said judge, disregarding the law, intending to injure the revenues, refused to allow an appeal.

4. That Judge Pickering being a man of loose morals and intemperate habits, on 11th and 12th November, 1802, did appear on the bench of his court for the purpose of administering justice in a state of total intoxication produced by inebriating liquors, and did then and there frequently and in a most profane and indecent manner invoke the name of the Supreme Being. (Annals of Congress of 1803–4, p. 319.)

* 1. This case was thus commented on during Peck's trial:

"I admit that if the charge against a judge be merely an illegal decision or a question of *property* in a *civil* cause, his error ought to be gross and palpable indeed to justify the inference of a criminal intention and to convict him upon an impeachment. And yet one case of this character occurred in our history. Judge Pickering was tried and condemned upon all the four articles exhibited against him, although the first three contained no other charge than that of making decisions contrary to law in a cause involving a mere question of property; and then refusing to grant the party injured an appeal from his decision, to which he was entitled." (Per Buchanan, in Peck's Trial, 428.)

Mr. Nicholson *arguendo*, 2 Chase's Trial, 341, in referring to Pickering's case, says, he "was impeached for drunkenness and profane swearing on the bench, although there is no law of the United States forbidding them. Indeed, I do not know that there is any law punishing either in New Hampshire, where the offence was committed. It was said by one of the counsel that these were indictable offences. I, however, do not know where; certainly not in England. Drunkenness is punishable there by the ecclesiastical authority; but the temporal magistrate never had any power over it until it was given by a statute of James I, and even then the power was not to be exercised by the courts, but only by a justice of the peace, as is now the case in Maryland, where a small fine may be imposed."

Mr. Harper had said: "Habitual drunkenness in a judge and profane swearing in any person are indictable offences, [at common law.] And if they were not, still they are violations of the law. I do not mean to say that there is a statute against drunkenness and profane swearing. But they are offences against good morals, and as such are forbidden by the common law. They are offences in the sight of God and man." (2 Chase's Trial, 255, 400.)

† There were eight articles of impeachment:

1. That on the trial of Fries for treason in the circuit court of the United States for Pennsylvania, in April, 1800, he

(1.) Prepared and furnished counsel an opinion in writing on the questions of law in the case before trial or argument.

(2.) Restricted Fries's counsel from recurring to certain English authorities and statutes of the United States illustrative of positions for defence.

(3.) Denied counsel for defence the right to argue the law of the case to the jury, endeavoring to wrest from the jury the right to determine questions of law.

2. At the circuit court at Richmond, in May, 1800, Callender was arraigned for libel on John Adams, then President, and the judge, with intent to procure his conviction, overruled the objection of Basset, one of the jury, who wished to be excused because he had made up his mind, and required him to sit on the jury.

3. That with same intent the judge refused to permit the evidence of a witness to be given, on pretence that the witness could not prove the truth of the whole of one of the charges contained in an indictment embracing more than one fact.

4. Injustice and partiality in said case:

(1.) In compelling prisoner's counsel to reduce to writing all questions proposed to be put to that witness.

(2.) In refusing to postpone the trial on a sufficient affidavit filed.

(3.) Rude and contemptuous expressions to counsel.

(4.) Repeated and vexatious interruptions of counsel, inducing them to abandon their cause and client.

5. That the judge awarded a *capias* for the arrest of said Callender, when the statute of Virginia in such case only authorized a summons requiring the accused to answer.

6. The judge required Callender to submit to trial during the term at which he was indicted, in violation of the statute of Virginia, declaring that the accused shall not answer until the next succeeding term; the United States judiciary act of 24th September, 1789, recognizing the State laws as rules of decision.

7. At the circuit court in Delaware, in June, 1800, the judge refused to discharge the grand jury, although entreated by several of the jury to do so, and after the jury had regularly declared through their foreman that they had found no bills of indictment, nor had any presentment to make, and instructed the jury that it was their duty to look after a certain seditious printer living in Wilmington. And the judge enjoined on the district attorney the necessity of procuring a file of a newspaper printed at Wilmington, to find some passage which might furnish the ground-work of a prosecution—all with intent to procure the prosecution of said printer.

8. That the judge at the circuit court at Baltimore, in May, 1803, perverted his official right and duty to address the grand jury, delivering to them an inflammatory political harangue, with intent to excite the people of Maryland against their State government and against the United States.

[His address was in part against universal suffrage.]

Court of the United States. In this case it was insisted for the accused that "no judge can be impeached and removed from office for any act or offence for which he could not be indicted," either by statute or common law.* But this was denied with convincing argument,† and was practically abandoned by the defence.‡

In 1830, James H. Peck, judge of the United States district court for Missouri, was impeached by the House of Representatives for imprisoning and suspending from practice an attorney of his court.§ The argument for the prosecution alluded to the proposition stated in Chase's trial, "that a judge cannot be impeached for any offence which is not indictable;"‖ but the counsel for the accused repudiated any such doctrine as a ground of defence.¶

Mr. Wirt did not hazard his reputation by any such claim.** Peck was not convicted.

The case of West W. Humphreys, judge of the United States district court for the district of Tennessee, proceeded on the ground that an officer was impeachable without having committed a statutory or common law offence.††

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*1. Chase's Trial, 9–18, per Clark. Per Lee 107, citing 2 Bacon 97. Per Martin 137. Per Harper 254–9.
Judge Chase in his answer declared that he was only liable for a misdemeanor, "consisting in some act done or omitted in violation of law forbidding or commanding it," and that he was not impeachable "except for some offence for which he may be indicted:" (1 Chase's Trial, 47, 48; 1 Story on Const., § 796, note; 4 Elliott's Debates 262.)

† 1 Chase's Trial 353, per Campbell. Per Rodney, 378. 2 Chase's Trial 335, 339–340, per Nicholson. 1 Chase's Trial 335, 352; 2 Chase's 351. "It is sufficient to show that the accused has transgressed the line of his official duty in violation of the laws of his country, and that this conduct can only be accounted for on the ground of impure and corrupt motives:" (1 Chase's Trial, 353, per Campbell.) "Violation of official duty, whether it be a proceeding against a positive law or a proceeding unwarranted by law:" (2 Chase's Trial, 340, per Nicholson.)

‡3 Chase's Trial 255, per Harper.
On Peck's Trial 427, Buchanan said: "The principle fairly to be deduced from all the arguments on the trial of Judge Chase, and from the votes of the Senate on the articles of impeachment against him," was to hold that a violation of the Constitution or law was impeachable, "in opposition to the principle * * that in order to render an offence impeachable it must be indictable."

§ The charge was that, as judge of the district court for Missouri, he on the 21st April, 1826, imprisoned L. E Lawless, an attorney, for twenty-four hours and suspended him for eighteen months from practicing law, for an alleged contempt of court in publishing a newspaper article reviewing a published decision of said judge; that said judge, unmindful of the duties of his station, and that "he held the same by the Constitution *during good behavior* only, with intent wrongfully and unjustly to oppress, imprison, and injure said Lawless, &c." His answer conceded a liability to impeachment on facts which would not be indictable.

‖ Peck's Trial 308, per Wickliffe.

¶ Mr. Meredith's propositions were (Peck's Trial 327,) that the court had the power to punish contempts; that the case of Lawless was a contempt proper for its exercise; that the punishment was proper; and lastly, "that if the court had not the power, or if having it, the case was not a case proper for its application; still the act did not proceed from the evil and malicious intention with which it is charged, and which it is absolutely necessary should have accompanied it to constitute the guilt of an impeachable offence.
Judge Peck, in the answer to his impeachment, said:
"In the digested report of the committee of the House of Commons, which follows the report of the arguments of the managers who conducted that impeachment, (against Warren Hastings,) it will be seen, too, that in the estimation of that committee the proceedings of courts of law furnish no rule whatever for the proceedings in an impeachment, the latter being governed by no other law or custom than the *lex et consuetudo parliamenti*, which left the house at perfect liberty to pursue the great ends of justice untrammelled by any other rules than those which reason and public utility prescribe:" (Peck's Trial, 10; see 2 Hale P. C., chapter 20 page 150; 6 Howell's State Trial, , 313, 316, 346, note; note to Lord Capel's case, 4 Howell's State Trials, 12, 13; Case of Earl of Danby, A. D. 1678; 11, Howell's State Trials, 650; 4 Hatsel's Puc., 71.)

** He cites the opinion of Kent in a case in 5 Johns, Rep. 291, which was a civil action against Chancellor Lansing for punishing a contempt. Kent says: "There must be the *scienter* or *intentional violation of the statute*, and this can never be imputed to the judicial proceedings of a court. It would be an impeachable offence, which can never be averred or shown but under the process of impeachment." He conceded that an *intentional violation of the law was impeachable*, and cited Erskine's Speeches, vol. 1, 374, (New York ed. 1813,) to show that impeachment should be used as an example "to corruption and wilful abuse of authority by extra legal pains."
And, referring to *Hammond* v. *Howell*, 1 Mod. 184, 2 Id. 218, and the remark that complaint should be made to the king to secure the removal of a judge who had unlawfully imprisoned a juror for contempt, said, that course was proper "if the judge had acted *corruptly*, * * that is, with a wicked intention to oppress under color of law." (Peck's Trial, 493, 495.)

†† The charges were:
1. For advocating secession *in a public speech* at Nashville, December 29, 1860.
2. For openly supporting and *advocating* the Tennessee ordinance of secession.
3. For aid in organizing armed rebellion.
4. For conspiring with Jefferson Davis and others to oppose by force the authority of the government of the United States.
5. For neglecting and refusing to hold the district court of the United States.
6. For acting as a confederate judge, and, as such, sentencing men to be banished and imprisoned, and their property to be confiscated, for their loyalty, "and especially of property of one Andrew Johnson."
7. For the arrest and imprisonment of "one William G. Brownlow, exercising authority as judge of the district court of the Confederate States."
He was convicted on all the articles *severally* by a vote on *each*, except that part of art. 6, which charges him with confiscating the property of Andrew Johnson. (49 Globe, 1861–2, pl. 4, p. 2950.)

In fact, the charge of advocating secession was a crime of which half the leading politicians of the south had been guilty for many years. In the seven articles of impeachment against him, two may be said to charge treason; and it may be claimed that one good article will sustain a conviction, by way of analogy to the doctrine that one good count in an indictment, notwithstanding the presence of bad ones, will sustain a sentence. But even this is not law in England.* But there is no analogy. The Senate, by a *separate vote* on *each* article, specifically passed on the sufficiency of each article to constitute an impeachable offence, while a jury passes generally on all the counts of an indictment. And it is to be observed that the report of the Judiciary Committee, recommending impeachment, did not charge treason or other indictable crime, nor was there evidence of any; † and on the trial of the case no doubt was expressed as to the right to convict on each of the articles. The cases tried in the States fully sustain the same view, both before and since the adoption of our national Constitution.‡

Judge Addison § was impeached in Pennsylvania in 1802, and his defence was that he had committed no act indictable at common law; but the senate almost unanimously convicted him, utterly repudiating that as a defence.

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* *Regina* v. *O'Connell*, 11 Clark & Fin. 15; 9 Jurist, 30; Wharton's Crim. Law, § 3047.

† Report No. 44, 2d Session 37th Congress, vol. 3 of House Reports.

‡ On the 12th July, 1788, three of the judges of the Supreme Court of Pennsylvania attached and fined Oswald £10, and imprisoned him one month, for publishing a newspaper article having a tendency to prejudice the public with respect to the merits of a cause depending in court. (1 Dallas, 319.)

On 5th September, 1788, Oswald memorialized the general assembly to determine "whether the judges did not infringe the Constitution in direct terms in the sentence they had pronounced; and whether, of course, they had not made themselves proper objects of impeachment."

The House, in committee of the whole, heard the evidence. Mr. Lewis, a member, maintained that the only grounds of impeachment were bribery, corruption, gross impartiality, or wilful and arbitrary oppression—none of which being proved, the memorial ought to be dismissed.

Mr. Finley, then a member, said: "Though he deemed it his duty to pronounce that the decision of the Supreme Court was a deviation from the spirit and letter of the frame of government, yet he did not mean to assert that any ground has been shown for the impeachment of the judges. But, on the contrary, he agreed that bribery, corruption, or wilful and arbitrary infraction of the law, were the only true causes for instituting a prosecution of that nature." (See 1 Dallas, 335; Addison's Trial, 129.)

The House resolved, by 34 to 23, that the charges of arbitrary and oppressive proceedings in the judges of the Supreme Court are unsupported by the testimony introduced, and consequently that there is no just cause for impeaching the said justices. (See the report of this case in 1 Dallas, 3d ed., Phila. 1830, p. 353 [329].)

On the trial of Chase, Mr. Rodney, referring to this case, said: "Three of the judges of the Supreme Court were accused of fining and imprisoning, without the intervention of a jury, a fellow-citizen for publishing a paper which they considered as a contempt of court. The judges were defended by two most able and eloquent counsel, who contended that the Constitution, the laws and the practice of Pennsylvania, by adopting the common-law doctrines on the subject, justified the proceeding, and that if there was no law to justify it, their conduct flowed from an honest error in judgment. But, sir, they did not attempt to maintain the position contended for on this occasion, that to support an impeachment the conduct of a judge must be such as to subject him to an indictment." (See 2 Chase's Trial, 399.)

§ Impeachment of Alexander Addison, president judge of the courts of common pleas of Westmoreland and other counties, 1802–3, convicted of—1. Directing a jury that the address of an associate judge to them "had nothing to do with the question before them;" and 2. Preventing an associate judge from addressing the grand jury concerning their duties, by denying the right, and by leaving the bench, and thus irregularly adjourning the court." (Addison's Trial, by Thomas Lloyd, 2d ed., Lancaster, 1803.)

Mr. McKean, one of the managers, in opening the trial, said: "Offences under color of office * * have always been considered as the most proper, and of course the usual ground of impeachment. They are such as the ordinary magistrates cannot or dare not punish. * * It often happens that officers may and do abuse their power to the injury of the commonwealth, and at the same time in such a manner as not to render their conduct cognizable before the ordinary tribunals of justice, so as to proceed by indictment or information." (See Addison's Trial, 31.)

In Pennsylvania the courts entertain jurisdiction of common-law crimes. The Attorney General filed a motion for a rule against Addison, to show cause in the Supreme Court why an information should not be filed against him. The court held that it was the right of the associate judge to address the grand jury; but the court, per Chief Justice Shippen, said: "The affidavit does not state malice. It would seem to be a mistake of right. Unless a crime is stated the court cannot take cognizance. There may be another remedy, [by impeachment.] It does not lie with us to say what that is. The proceeding was arbitrary, unbecoming, unhandsome, ungentlemanly, unmannerly, and improper; but there not being an imputation of wilful misbehavior and malice, it is not indictable or the subject of an information." (Trial, 70.)

Judge Addison, in his defence, said: "No impeachment will lie but for a misdemeanor in office, and every misdemeanor in office is indictable; the officer impeached still remains liable to indictment, trial, judgment, and punishment according to law. An impeachment lies only where an indictment lies; no officer can be convicted on an impeachment who ought not to be convicted on an indictment; and the punishment on impeachment is cumulative—not exclusive. The acts for which an officer may be impeached are precisely those for which he may be indicted as an officer; misdemeanors in office, offences or unlawful acts done with an evil intention in his official capacity." (Trial, 104.)

"A mere unlawful act from a mistake or error in judgment cannot be alleged as a [impeachable] crime. Not only wrong, but wilful wrong must be made out, or the offence is not complete." (Page 118.)

"Though a judge acts unlawfully and unconstitutionally, he cannot be convicted on an impeachment unless he has acted wilfully so." (Page, 129; see 1 Dallas, 335.)

But this position was denied, and Addison was found guilty by a vote of 20 to 4. (See this case referred to, 2 Chase's Trial, 396.)

In Massachusetts,* the rule is well settled in conformity with what seems to be the recognized doctrine in the Senate of the United States.

Among the cases tried with great learning and ability there, is that of James Prescott,† who was convicted before the senate.

Mr. BLAKE,‡ for the defence, insisted that impeachment is "a process which can only be resorted to for the punishment of some great offence against a known, settled law of the land." The prosecution maintained "that any wilful violation of law, or any wilful and corrupt act of omission or commission in execution or under color of office * * is such an act of misconduct and maladministration in office as will render him liable to punishment by impeachment."§

Chief Justice CHASE evidently holds that a failure to perform official duty is impeachable, without reference to its indictable character or the motives therefor. And further, that the Senate is so entirely the exclusive judge of what is official delinquency, that the President cannot protect himself against impeachment for a failure to execute a law by the decree of a court enjoining him therefrom.

On the 15th April, 1867, in refusing the application of the so-called State of

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* The Massachusetts cases are—

1. Impeachment of William Greenleaf, sheriff of Worcester county, 1788. Convicted—(1.) Of detaining for his private use public moneys, when the commonwealth has a right thereto; (2.) Of exhibiting dishonest accounts of taxes collected; (3.) Of detaining for two years public moneys from town of Petersham; (4.) Of procuring from the treasurer of commonwealth an execution for money previously collected by him, (5.) Of false returns on executions; (6.) Of procuring a warrant of distress for money previously paid him.

2. Impeachment of William Hunt, a justice of the peace of Watertown, 1794. Convicted of entering on his docket, on the trial day of causes, the personal appearance of plaintiffs, who were absent, though defendants demanded their appearance. The senate found Hunt guilty, but suspended judgment for a year.

3. Impeachment of John Vinal, a justice of the peace of Suffolk county, 1800. Convicted of extortion and bribery.

4. Impeachment of Moses Copeland, a justice of the peace for Lincoln county, 1807-'8. Acquitted on charges: 1st. That he bought a note indorsed in blank, and entertained suit in name of Samuel Kingsbury, and rendered judgment, though in fact the note was Copeland's; 2d. For defaulting a defendant, and entering judgment before the hour set for trial; 3d. Bribery

5. Impeachment of James Prescott, judge of probate for Middlesex, 1821. Convicted of exacting illegal fees, and of inserting by interlineation in a guardian's account, previously sworn to, an item due to and paid to himself, and then of settling the account as judge.

See "Prescott's Trial, by Pickering and Gardner, Boston, 1821." In the appendix is an abstract of the preceding impeachments. On the trial of Prescott, it was said by Mr. Blake, *arguendo*, that "within the compass of forty long years, three or four solitary instances of trial by impeachment have occurred in this commonwealth. Of these, two I believe [three] resulted in a conviction; and I feel myself justified in stating, that in neither of the instances alluded to was there any point of constitutional law involved in the inquiry."

This case was conducted with great ability.

And see Report of the Trial and Acquittal of Edward Shippen, Chief Justice of Pennsylvania, and Others, before the Senate of that State, in 1805, by Wm. Hamilton.

Trial of George W. Smith, County Judge of Oneida county, before the Senate of New York, 1866.

Trial of Impeachment of Levi Hubbell, Judge of the Second Circuit, by the Senate of Wisconsin, June, 1853.

"An Account of the Impeachment and Trial of the late Francis Hopkinson, Esq., Judge of the Court of Admiralty for the Commonwealth of Pennsylvania; Printed by Francis Bailey, Philadelphia, 1794."

He was tried and acquitted in November and December, 1780.

The same volume contains "An Account of the Impeachment, Trial, and Acquittal of John Nicholson, Esq., Comptroller General of Pennsylvania."

He was acquitted April 7, 1794.

† In 1821, Prescott, a judge of probate, was impeached before the senate of Massachusetts. The 12th article charged that Ware was guardian of Birch, a *non compos mentis;* that Grout, one of the overseers of the poor, had some controversy with the guardian as to some property of the ward not involved in the account; that the judge, as attorney, advised the parties, and charged, and was paid five dollars by the guardian therefor; that the judge interlined this item in the account which had been previouly sworn to, and settled the account allowing this item: Prescott's Trial, 189. The law did not prohibit judges from acting as attorneys in matters not coming before their court.

It was objected by the defence that this was not an offence indictable, and so not impeachable: that especially was this so in Massachusetts, since the constitution authorized a removal upon the address of both houses of the legislature for any cause, and left impeachment against "officers for misconduct or maladministration in their offices."

But one of the managers said in substance: "We stand here on no statute, on no particular law of the commonwealth; there is none for such a case. We stand here upon the broad principles of the common law—of common justice * * Such conduct is disgraceful and contrary to the usages of all civilized nations * * We have shown the conduct of the respondent * * to have been grossly improper and mischievous in its tendency; this is quite enough; he has rendered himself unworthy of office, and therefore ought to be impeached and removed." (Prescott's Trial, 149. See Dutton's remarks, 193-4.)

And so the senate decided by a vote of 19 to 6, and convicted Judge Prescott.

‡ Prescott's Trial, 114. He quoted 4 Blackstone 259, that impeachment "is a prosecution of the already known and established law;" and 2 Wooddeson 611; and part 1 of Dolby's Report of the Trial of the Queen, p. 841, on a bill of pains and penalties for adultery, where it was said by the Earl of Liverpool, "he knew not how they could make that a subject of impeachment, which by the law of England was not a crime."

Mr. Webster for the defence said: "An impeachment is a prosecution for the violation of existing laws." (Prescott's Trial, 164.)

§ Prescott's Trial 182, per Shaw. See Dutton's speech 194.

Mississippi for leave to file a bill to enjoin the execution of the "reconstruction acts" of Congress, he said:

> Suppose the bill filed and the injunction prayed for be allowed. If the President refuse obedience, it is needless to observe that the court is without power to enforce its process. If, on the other hand, the President complies with the order of the court, and refuses to execute the act of Congress, is it not clear that a collision may occur between the executive and legislative departments of the government? May not the House of Representatives impeach the President for such refusal? And in that case could this court interpose in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public wonder of an attempt by this court to arrest proceedings in that court?
>
> These questions answer themselves.

The question whether an act is impeachable which is not indictable at common law when committed by officers who are answerable by indictment, is only important to determine how far the remedy by impeachment extends. But almost every conceivable act of official misdemeanor is at common law indictable, though, on grounds of public policy, the higher officers are not liable to prosecution in the ordinary courts for *official* misdemeanors.

But the question, as already shown, is put at rest by the practice in England, by the language of the Constitution, by the opinions of its framers, by contemporaneous exposition, by the uniform usage under it, and by the united opinion of all the elementary writers. The value of these it is unnecessary to discuss, as they are understood by all lawyers.*

It has already been shown that the violation of a public statute, though the statute in terms provides no punishment, is at common law indictable.

But it may be urged that if an officer, charged by the Constitution and his oath with the duty of executing the laws, knowingly and intentionally suspends the operation of a particular statute, refuses to execute another, and violates a third, but does so with a *view to promote the public interest*, his *motives are good*, and he is not impeachable.†

This view, so plausible and insidious, is nevertheless so dangerous that its very monstrous character will show that it cannot be maintained. An example will illustrate it. Let it be supposed that with the initiatory steps of the rebellion the President had declared that the national government had no constitutional power to suppress a rebellion by force of arms.‡

Now, whether such an utterance was extorted by fear, or might have been an honest but perverted political theory, or the result of a treasonable purpose to aid traitors, would have been in its consequences to the nation all the same if it could have controlled the counsels of the nation. This sentiment, believed and acted on, would have witnessed the destruction of the government. And must the nation perish because a President honestly believes in the fatal heresy that the Constitution and Congress are powerless for self-preservation? If so, the nation must die out of tender regard to the political idiosyncrasy of the President? The same fatal error of opinion and conduct will be impeachable

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* They are discussed in Sedgwick on Statutory and Constitutional Construction.

† But if an officer acts *without law*, or even in a mere ministerial capacity, *but having no discretion* under a law, and violates his duty so as to imperil the public safety, he is impeachable.

Bishop says: "When a man serves in a judicial or other capacity in which he is *called* (by law) *to exercise a judgment of his own*, he is not punishable for a mere error therein or for a mistake of the law. Here the act, to be cognizable criminally or even civilly, must be wilful and corrupt." (Criminal Law, 913.)

"When a statute [or the Constitution] forbids a thing affecting the public, but provides no penalty, the doing of it is indictable at common law." (535 [349] 187 [84.]) "Whenever the law, statutory or common, casts on one a duty of a public nature, any neglect of the duty or act done in violation of it is indictable." (Criminal Law, 537 [350,] 913.)

The same rule must exist when no law authorizes it. But it should be remembered that the rules which prevail in ordinary courts have no application in impeachment cases except as the reasons upon which they rest, commend them to the consideration of and adoption by the Senate. The Senate is governed by the "*lex et consuetudo parliamenti.*"

‡ In the message of December 4, 1860, the President said: "The power to make war against a State is at variance with the whole spirit and intent of the Constitution. * * *. Our Union rests upon public opinion. If it cannot live in the affections of the people, it must one day perish. Congress possesses many means of preserving it by conciliation; but the sword was not placed in their hands to preserve it by force."

in one President who knows the right and yet the wrong pursues, while another, who believes in a fallacy because he loves it, will escape unpunished, though the inherent wrong in principle and in effect is the same in both cases.

If the President would undertake to expel Congress as an illegal body, he could scarcely escape impeachment upon a plea of good motives. No tyrant ever yet reigned who did not plead good motives for his usurpations. But even these, if they could be so in fact, never sanctify criminal acts. As well might larceny be justified by a purpose to promote charitable objects, as violations of the Constitution by professions of securing the public interest. In both cases the *motive is illegal*, and no circumstances can justify a criminal act purposely committed. Congress may withhold punishment, or pass acts of indemnity, just as the President may pardon crime; but criminal purposes, studiously persisted in, present no case for clemency.

This subject, so far as it relates to ordinary courts, is well understood. Sedgwick, under the caption ' Good faith no excuse for violation of statutes," says: "We have already had occasion to notice the rule that ignorance of the law cannot be set up in defence. All are bound to know the law, and this holds good as well in regard to common as to statute law, as well in regard to criminal as to civil cases. In regard even to penal laws, it is strictly true that ignorance is no excuse for the violation of a statute * So in regard to frequent attempts which have been made to exonerate individuals charged with disobedience to penal laws on the ground *of good faith or error of judgment*, it has been held that no *excuse of this of this kind will avail against the* peremptory words of a statute imposing a penalty. If the prohibited act has been done, the penalty must be paid." †

And this but reiterates the law of impeachment, as recognized in England and the United States. ‡

Judges have been impeached in England "for misinterpreting the laws," and the Earl of Bristol for advising "against a war with Spain." Yet these were doubtless honest, but were regarded by the impeaching power as mistaken and pernicious opinions.

Even Judge Humphreys, who was impeached before the Senate of the United States for making a secession speech, may have honestly believed what he said,

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* Smith *a.* Brown, 1 *Wend.*, 231; Caswell *v.* Allen, 7 *Johns.*, 63.

† Sedgwick on Stat. & Const. Law, 100; *Calcroft* v. *Gibbs*, 5 Term R., 19; *Morris* v. *People*, 3 Denio, 381—402; *People* v. *Brooks*, 1 Id., 457. On the trial of Warren Hastings, it was argued that he had exerted his "powers for the public good." But the lord chancellor said "*however pure his intentions might have been*, if he violated every principle of morality and justice, he should *not think that any public exigency ought to be pleaded as a justification.*"

March 2. Lord Thurlow said: "The number of articles preferred were twenty, each containing a great number of allegations; of this number the Commons had given no evidence upon fourteen, and upon very inconsiderable parts of three more."

"The impeachment, however, might now be said to rest upon four points—breach of faith, oppression, and injustice, as in the two articles of Cheyt Sing and the Begum; corruption, as in the article of the presents: and a wanton waste of the public money for private purposes, as in the contracts. In considering the first two points, he conceived it would become their lordships to reflect on the situation in which Mr. Hastings was placed. Possessed of absolute power, the question would be, had he exerted that power for the public good, or had he on any occasion been actuated by base or malicious motives? If in the case of Cheyt Sing and the Begums, their lordships should be of opinion that he was neither malicious nor corrupt, the charges naturally fell to the ground."

"The lord chancellor concurred generally in what had fallen from the noble and learned lord, but could not go quite so far as to say that Mr. Hastings would be justified in any gross abuse of the arbitrary power which he possessed, even though it should be made clear that he was actuated neither by corrupt nor by malicious motives. Mr. Hastings had great power lodged in his hands undoubtedly. He was responsible to his country for a proper use of that power; and however *pure his intentions might have been*, if he violated every principle of morality and justice, he should not think that any public exigency ought to be pleaded as a justification.

March 5. The lord chancellor said: "The conduct of the governor general in relation to the transactions with Cheyt Sing in the year 1780, appeared to him to stand in a different point of view, and to call for other considerations. To say the least of that conduct on the part of Mr. Hastings, it merited a certain degree of blame; but how far it might rise up to a high crime and misdemeanor would depend on other and future proceedings of the governor general that yet remained to be discussed."

‡ In the trial of Lord Melville it was insisted that his use of the public money was not impeachable unless the motive was guilty. "The question in the case," said the defence, "as in all cases, is the motive of the heart, *actio non est reus, nisi mens sit rea*—a person is not guilty if his heart is not guilty." (Aspernis Rep., 290.) But in the questions put to and decided by the judges, the *motive* was ignored, and only the *legality* of his conduct decided

and might have supposed his motives good; but this consideration was so unimportant that it was never once mentioned on the trial.

The result is, that *an impeachable high crime or misdemeanor is one in its nature or consequences subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives or for an improper purpose.*

It should be understood, however, that while this is a proper definition, yet it by no means follows that the power of impeachment is limited to technical crimes or misdemeanors only. It may reach officers who, from incapacity or other cause, are absolutely unfit for the performance of their duties, when no other remedy exists, and where the public interests imperatively demand it.

When no other remedy can protect them, the interests of millions of people may not be imperilled from tender regard to official tenure, which can only be held for their ruin.

Mr. BUTLER'S speech occupied three hours in the delivery, with the exception of a recess of ten minutes, which was taken on the motion of Mr. Senator Wilson, when he had spoken about two hours. When he concluded—

Mr. Manager BINGHAM. Mr. President, I am instructed by my associates to say that we are ready to proceed with the evidence to make good the articles of impeachment exhibited by the House of Representatives against the President of the United States. My associate, Mr. Wilson, will present the testimony.

Mr. JOHNSON. We cannot hear, Mr. Chief Justice. I hope the honorable manager will speak a little louder.

Mr. Manager BINGHAM. I repeat, for the information of the Senate, that the managers on the part of the House of Representatives are ready to proceed with testimony to make good the articles of impeachment exhibited by the House of Representatives against the President of the United States, and that my associate, Mr. Wilson, will present the testimony.

The CHIEF JUSTICE. The managers will proceed with the evidence.

Mr. Manager WILSON. I wish to state on behalf of the managers that, notwithstanding many of the documents which we deem important to be presented in evidence have been set out in the exhibits accompanying the answers, and also in some of the answers, we still are of opinion that it is proper for us to introduce the documents originally, by way of guarding against any mishaps that might arise from imperfect copies being set out in the answer and in the exhibits.

I offer first, on behalf of the managers, a certified copy of the oath of the President of the United States, which I will read:

I do solemnly swear that I will faithfully execute the office of the President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.

ANDREW JOHNSON.

To which is attached the following certificate:

I, Salmon P. Chase, Chief Justice of the Supreme Court of the United States, hereby certify that on this 15th day of April, 1865, at the city of Washington, in the District of Columbia, personally appeared Andrew Johnson, Vice-President, upon whom, by the death of Abraham Lincoln, late President, the duties of the office of President of the United States have devolved, and took and subscribed the oath of office above set forth

SALMON P. CHASE,
C. J. S. C. U. S.

The document is certified under the hand of the acting Secretary of State, and attested by the seal of the department, as follows:

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the document hereto annexed is a correct copy of the original filed in this department.

In testimony whereof I, Frederick W. Seward, acting Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 12th day of March, A. D. 1868, and of the independence of the United States of America the ninety-second.

F. W. SEWARD. [SEAL.]

I now offer the nomination of Mr. Stanton as Secretary of War by President Lincoln. It is as follows:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
January 13, 1862.

The following message was received from the President of the United States, by Mr. Nicolay, his secretary:

To the Senate of the United States:

I nominate Edwin M. Stanton, of Pennsylvania, to be Secretary of War, in place of Simon Cameron, nominated to be minister to Russia.

ABRAHAM LINCOLN.

EXECUTIVE MANSION, *January* 13, 1862.

I next offer and will read the action of the Senate, in executive session, upon said nomination:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
January 15, 1862.

Resolved, That the Senate advise and consent to the appointment of Edwin M. Stanton, of Pennsylvania, to be Secretary of War, agreeably to the nomination.

And this is certified by the Secretary of the Senate, as follows:

I, John W. Forney, Secretary of the Senate of the United States, do hereby certify that the foregoing are true extracts from the journal of the Senate. These extracts are made and certified under the authority of the act approved 8th August, 1846, entitled "An act making copies of papers certified by the Secretary of the Senate and the Clerk of the House of Representatives legal evidence."

Given under my hand at Washington, this 11th day of March, 1868.

JOHN W. FORNEY,
Secretary of the Senate.

I next offer a copy of the communication made to the Senate December 12, 1867, by the President. As this document is somewhat lengthy, I will not read it unless desired. It is the message of the President assigning his reasons for the suspension of the Secretary of War.

Mr. STANBERY. Read it, if you please.

Mr. Manager WILSON. It is as follows:

Communication from the President of the United States, relating to the suspension from the office of Secretary of War of Edwin M. Stanton.

To the Senate of the United States:

On the 12th of August last I suspended Mr. Stanton from the exercise of the office of Secretary of War, and on the same day designated General Grant to act as Secretary of War *ad interim*.

The following are copies of the Executive orders:

"EXECUTIVE MANSION,
"*Washington, August* 12, 1867.

"SIR: By virtue of the power and authority vested in me, as President, by the Constitution and the laws of the United States, you are hereby suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same.

"You will at once transfer to General Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

"Hon. EDWIN M. STANTON, *Secretary of War.*"

"EXECUTIVE MANSION,
"*Washington, D. C., August* 12, 1867.

"SIR: Hon. Edwin M. Stanton having been this day suspended as Secretary of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will at once enter upon the discharge of the duties of the office.

"The Secretary of War has been instructed to transfer to you all the records, boks, papers, and other public property now in his custody and charge.

"General ULYSSES S. GRANT, *Washington, D. C.*"

The following communication was received from Mr. Stanton:

"WAR DEPARTMENT,
"*Washington City, August* 12, 1867.

"SIR: Your note of this date has been received, informing me that by virtue of the powers and authority vested in you as President by the Constitution and laws of the United States, I am suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same; and also directing me at once to transfer to General Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in my custody and charge.

"Under a sense of public duty I am compelled to deny your right, under the Constitution and laws of the United States, without the advice and consent of the Senate, and without legal cause to suspend me from the office of Secretary of War, or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and public property in my custody as Secretary.

"But, inasmuch as the General commanding the armies of the United States has been appointed *ad interim*, and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force.

"To the PRESIDENT."

The suspension has not been revoked, and the business of the War Department is conducted by the Secretary *ad interim*. Prior to the date of this suspension I had come to the conclusion that the time had arrived when it was proper Mr. Stanton should retire from my cabinet. The mutual confidence and accord which should exist in such a relation had ceased. I supposed that Mr. Stanton was well advised that his continuance in the cabinet was contrary to my wishes, for I had repeatedly given him so to understand by every mode short of an express request that he should resign. Having waited full time for the voluntary action of Mr. Stanton, and seeing no manifestation on his part of an intention to resign, I addressed him the following note on the 5th of August:

"SIR: Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted."

To this note I received the following reply:

"WAR DEPARTMENT,
"*Washington, August* 5, 1867.

"SIR: Your note of this day has been received, stating that public considerations of a high character constrain you to say that my resignation as Secretary of War will be accepted.

"In reply, I have the honor to say that public considerations of a high character, which alone have induced me to continue at the head of this department, constrain me not to resign the office of Secretary of War before the next meeting of Congress.

"EDWIN M. STANTON.
"*Secretary of War.*"

This reply of Mr. Stanton was not merely a declination of compliance with the request for his resignation; it was a defiance, and something more. Mr. Stanton does not content himself with assuming that public considerations bearing upon his continuance in office form as fully a rule of action for himself as for the President, and that upon so delicate a question as the fitness of an officer for continuance in his office, the officer is as competent and as impartial to decide as his superior, who is responsible for his conduct; but he goes further, and plainly intimates what he means by "public considerations of a high character;" and this is nothing less than his loss of confidence in his superior. He says that these public considerations have "alone induced me to continue at the head of this department," and that they "constrain me not to resign the office of Secretary of War before the next meeting of Congress."

This language is very significant. Mr. Stanton holds the position unwillingly. He continues in office only under a sense of high public duty. He is ready to leave when it is safe to leave, and as the danger he apprehends from his removal then will not exist when Congress is here, he is constrained to remain during the *interim*. What, then, is that danger which can only be averted by the presence of Mr. Stanton or of Congress? Mr. Stanton does not say

that "public considerations of a high character" constrain him to hold on to the office indefinitely. He does not say that no one other than himself can at any time be found to take his place and perform its duties. On the contrary, he expresses a desire to leave the office at the earliest moment consistent with these high public considerations. He says in effect that while Congress is away he must remain, but that when Congress is here he can go. In other words, he has lost confidence in the President. He is unwilling to leave the War Department in his hands, or in the hands of any one the President may appoint or designate to perform its duties. If he resigns, the President may appoint a Secretary of War that Mr. Stanton does not approve. Therefore, he will not resign. But when Congress is in session the President cannot appoint a Secretary of War which the Senate does not approve. Consequently, when Congress meets Mr. Stanton is ready to resign.

Whatever cogency these "considerations" may have had upon Mr. Stanton, whatever right he may have had to entertain such considerations, whatever propriety there might be in the expression of them to others, one thing is certain: it was official misconduct, to say the least of it, to parade them before his superior officer. Upon the receipt of this extraordinary note I only delayed the order of suspension long enough to make the necessary arrangements to fill the office. If this were the only cause for his suspension, it would be ample. Necessarily it must end our most important official relations, for I cannot imagine a degree of effrontery which would embolden the head of a department to take his seat at the council table in the Executive Mansion after such an act. Nor can I imagine a President so forgetful of the proper respect and dignity which belong to his office as to submit to such intrusion. I will not do Mr. Stanton the wrong to suppose that he entertained any idea of offering to act as one of my constitutional advisers after that note was written. There was an interval of a week between that date and the order of suspension, during which two cabinet meetings were held. Mr. Stanton did not present himself at either, nor was he expected. On the 12th of August Mr. Stanton was notified of his suspension, and that General Grant had been authorized to take charge of the department. In his answer to this notification of the same date, Mr. Stanton expresses himself as follows:

"Under a sense of public duty I am compelled to deny your right, under the Constitution and laws of the United States, without the advice and consent of the Senate, to suspend me from office as Secretary of War, or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and public property in my custody as Secretary. But inasmuch as the General commanding the armies of the United States has been appointed *ad interim*, and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force."

It will not escape attention that in his note of August 5 Mr. Stanton stated that he had been constrained to continue in office, even before he was requested to resign, by considerations of a high public character. In this note of August 12 a new and different sense of public duty compels him to deny the President's right to suspend him from office without the consent of the Senate. This last is the public duty of resisting an act contrary to law, and he charges the President with violation of the law in ordering his suspension.

Mr. Stanton refers generally to the "Constitution and laws of the United States," and says that a sense of public duty "under" these compels him to deny the right of the President to suspend him from office. As to his sense of duty under the Constitution, that will be considered in the sequel. As to his sense of duty under "the laws of the United States," he certainly cannot refer to the law which creates the War Department, for that expressly confers upon the President the unlimited right to remove the head of the department. The only other law bearing upon the question is the tenure-of-office act, passed by Congress over the presidential veto March 2, 1867. This is the law which, under a sense of public duty, Mr. Stanton volunteers to defend. There is no provision in this law which compels any officer coming within its provisions to remain in office. It forbids removals, but not resignations. Mr. Stanton was perfectly free to resign at any moment, either upon his own motion or in compliance with a request or an order. It was a matter of choice or of taste. There was nothing compulsory in the nature of legal obligation. Nor does he put his action upon that imperative ground. He says he acts under a "sense of public duty," not of legal obligation, compelling him to hold on, and leaving him no choice. The public duty which is upon him arises from the respect which he owes to the Constitution and the laws, violated in his own case. He is, therefore, compelled by this sense of public duty to vindicate violated law and to stand as its champion.

This was not the first occasion in which Mr. Stanton, in discharge of a public duty, was called upon to consider the provisions of that law. That tenure-of-office law did not pass without notice. Like other acts it was sent to the President for approval. As is my custom. I submitted its consideration to my cabinet for their advice upon the question, whether I should approve it or not. It was a grave question of constitutional law, in which I would of course rely most upon the opinion of the Attorney General and of Mr. Stanton, who had once been Attorney General. Every member of my cabinet advised me that the proposed law was unconstitutional. All spoke without doubt or reservation, but Mr. Stanton's condemnation of the law was the most elaborate and emphatic. He referred to the constitutional provisions, the debates in Congress—especially to the speech of Mr. Buchanan when a sen-

ator—to the decision of the Supreme Court, and to the usage from the beginning of the government through every successive administration, all concurring to establish the right of removal as vested by the Constitution in the President. To all these he added the weight of his own deliberate judgment, and advised me that it was my duty to defend the power of the President from usurpation and to veto the law.

I do not know when a sense of public duty is more imperative upon a head of department than upon such an occasion as this He acts then under the gravest obligations of law; for when he is called upon by the President for advice it is the Constitution that speaks to him. All his other duties are left by the Constitution to be regulated by statute; but this duty was deemed so momentous that it is imposed by the Constitution itself. After all this I was not prepared for the ground taken by Mr. Stanton in his note of August 12. I was not prepared to find him compelled, by a new and indefinite sense of public duty under "the Constitution," to assume the vindication of a law which, under the solemn obligations of public duty, imposed by the Constitution itself, he advised me was a violation of that Constitution. I make great allowance for a change of opinion, but such a change as this hardly falls within the limits of greatest indulgence. Where our opinions take the shape of advice and influence the action of others, the utmost stretch of charity will scarcely justify us in repudiating them when they come to be applied to ourselves.

But to proceed with the narrative. I was so much struck with the full mastery of the question manifested by Mr. Stanton, and was at the time so fully occupied with the preparation of another veto upon the pending reconstruction act, that I requested him to prepare the veto upon this tenure-of-office bill. This he declined on the ground of physical disability to undergo, at the time, the labor of writing, but stated his readiness to furnish what aid might be required in the preparation of materials for the paper. At the time this subject was before the cabinet it seemed to be taken for granted that as to those members of the cabinet who had been appointed by Mr. Lincoln their tenure of office was not fixed by the provisions of the act. I do not remember that the point was distinctly decided; but I well recollect that it was suggested by one member of the cabinet who was appointed by Mr. Lincoln, and that no dissent was expressed.

Whether the point was well taken or not did not seem to me of any consequence, for the unanimous expression of opinion against the constitutionality and policy of the act was so decided that I felt no concern, so far as the act had reference to the gentlemen then present, that I would be embarrassed in the future. The bill had not then become a law. The limitation upon the power of removal was not yet imposed, and there was yet time to make any changes. If any one of these gentlemen had then said to me that he would avail himself of the provisions of that bill in case it became a law, I should not have hesitated a moment as to his removal. No pledge was then expressly given or required. But there are circumstances when to give an express pledge is not necessary, and when to require it is an imputation of possible bad faith. I felt that if these gentlemen came within the purview of the bill it was, as to them, a dead letter, and that none of them would ever take refuge under its provisions. I now pass to another subject. When, on the 15th of April, 1865, the duties of the presidential office devolved upon me, I found a full cabinet of seven members, all of them selected by Mr. Lincoln. I made no change. On the contrary, I shortly afterward ratified a change determined upon by Mr. Lincoln, but not perfected at his death, and admitted his appointee, Mr. Harlan, in the place of Mr. Usher, who was in office at the time.

The great duty of the time was to re-establish government, law, and order in the insurrectionary States. Congress was then in recess, and the sudden overthrow of the rebellion required speedy action. This grave subject had engaged the attention of Mr. Lincoln in the last days of his life, and the plan according to which it was to be managed had been prepared and was ready for adoption. A leading feature of that plan was that it should be carried out by the executive authority, for, so far as I have been informed, neither Mr. Lincoln nor any member of his cabinet doubted his authority to act or proposed to call an extra session of Congress to do the work. The first business transacted in cabinet after I became President was this unfinished business of my predecessor. A plan or scheme of reconstruction was produced which had been prepared for Mr. Lincoln by Mr. Stanton, his Secretary of War. It was approved. and, at the earliest moment practicable, was applied in the form of a proclamation to the State of North Carolina, and afterward became the basis of action in turn for the other States.

Upon the examination of Mr. Stanton before the impeachment committee he was asked the following question:

"Did any one of the cabinet express a doubt of the power of the executive branch of the government to reorganize State governments which had been in rebellion without the aid of Congress?"

He answered:

"None whatever I had myself entertained no doubt of the authority of the President to take measures for the organization of the rebel States on the plan proposed during the vacation of Congress, and agreed in the plan specified in the proclamation in the case of North Carolina."

There is, perhaps, no act of my administration for which I have been more denounced than this. It was not originated by me; but I shrink from no responsibility on that account, for

the plan approved itself to my own judgment, and I did not hesitate to carry it into execution. Thus far, and upon this vital policy, there was a perfect accord between the cabinet and myself, and I saw no necessity for a change. As time passed on there was developed an unfortunate difference of opinion and of policy between Congress and the President upon this same subject and upon the ultimate basis upon which the reconstruction of these States should proceed, especially upon the question of negro suffrage. Upon this point three members of the cabinet found themselves to be in sympathy with Congress. They remained only long enough to see that the difference of policy could not be reconciled. They felt that they should remain no longer, and a high sense of duty and propriety constrained them to resign their positions. We parted with mutual respect for the sincerity of each other in opposite opinions, and mutual regret that the difference was on points so vital as to require a severance of official relations. This was in the summer of 1866. The subsequent sessions of Congress developed new complications when the suffrage bill for the District of Columbia and reconstruction acts of March 2 and March 23, 1867, all passed over the veto. It was in cabinet consultations upon these bills that a difference of opinion upon the most vital points was developed. Upon these questions there was perfect accord between all the members of the cabinet and myself, except Mr. Stanton. He stood alone, and the difference of opinion could not be reconciled. That unity of opinion which upon great questions of public policy or administration is so essential to the Executive was gone.

I do not claim that the head of a department should have no other opinions than those of the President. He has the same right, in the conscientious discharge of duty, to entertain and express his own opinions as has the President. What I do claim is that the President is the responsible head of the administration, and when the opinions of a head of department are irreconcilably opposed to those of the President in grave matters of policy and administration, there is but one result which can solve the difficulty, and that is a severance of the official relation. This, in the past history of the government, has always been the rule; and it is a wise one; for such differences of opinion among its members must impair the efficiency of any administration.

I have now referred to the general grounds upon which the withdrawal of Mr. Stanton from my administration seemed to me to be proper and necessary; but I cannot omit to state a special ground which, if it stood alone, would vindicate my action.

The sanguinary riot which occurred in the city of New Orleans on the 30th of August, 1866, justly aroused public indignation and public inquiry, not only as to those who were engaged in it, but as to those who, more or less remotely, might be held to responsibility for its occurrence. I need not remind the Senate of the effort made to fix that responsibility on the President. The charge was openly made, and again and again reiterated through all the land, that the President was warned in time but refused to interfere.

By telegrams from the lieutenant governor and attorney general of Louisiana, dated the 27th and 28th of August, I was advised that a body of delegates, claiming to be a constitutional convention, were about to assemble in New Orleans; that the matter was before the grand jury, but that it would be impossible to execute civil process without a riot, and this question was asked: "Is the military to interfere to prevent process of court?" This question was asked at a time when the civil courts were in the full exercise of their authority, and the answer sent by telegraph, on the same 28th August, was this:

"The military will be expected to sustain and not to interfere with the proceedings of the courts."

On the same 28th of August the following telegram was sent to Mr. Stanton by Major General Baird, then (owing to the absence of General Sheridan) in command of the military at New Orleans:

"Hon. EDWIN M. STANTON, *Secretary of War:*

"A convention has been called, with the sanction of Governor Wells, to meet here on Monday. The lieutenant governor and city authorities think it unlawful, and propose to break it up by arresting the delegates. I have given no orders on the subject, but have warned the parties that I could not countenance or permit such action without instructions to that effect from the President. Please instruct me at once by telegraph."

The 28th of August was on Saturday. The next morning, the 29th, this despatch was received by Mr. Stanton, at his residence in this city. He took no action upon it, and neither sent instructions to General Baird himself nor presented it to me for such instructions. On the next day (Monday) the riot occurred. I never saw this despatch from General Baird until some ten days or two weeks after the riot, when, upon my call for all the despatches, with a view to their publication, Mr. Stanton sent it to me. These facts all appear in the testimony of Mr. Stanton before the Judiciary Committee in the impeachment investigation. On the 30th, the day of the riot, and after it was suppressed, General Baird wrote to Mr. Stanton a long letter, from which I make the following extracts:

"SIR: I have the honor to inform you that a very serious riot occurred here to-day. I had not been applied to by the convention for protection, but the lieutenant governor and the mayor had freely consulted with me, and I was so fully convinced that it was so strongly the intent of the city authorities to preserve the peace, in order to prevent military interfer-

ence, that I did not regard an outbreak as a thing to be apprehended. The lieutenant governor had assured me that even if a writ of arrest was issued by the court, the sheriff would not attempt to serve it without my permission, and for to-day they designed to suspend it. I enclose herewith copies of my correspondence with the mayor, and of a despatch which the lieutenant governor claims to have received from the President. I regret that no reply to my despatch to you of Saturday has yet reached me. General Sheridan is still absent in Texas."

The despatch of General Baird of the 28th asks for immediate instructions, and his letter of the 30th, after detailing the terrible riot which had just happened, ends with the expression of regret that the instructions which he asked for were not sent It is not the fault or the error or the omission of the President that this military commander was left without instructions; but for all omissions, for all errors, for all failures to instruct, when instruction might have averted this calamity, the President was openly and presistently held responsible. Instantly, without waiting for proof, the delinquency of the President was held in every form of utterance. Mr. Stanton knew then that the President was not responsible for this delinquency. The exculpation was in his power, but it was not given by him to the public, and only to the President in obedience to a requisition for all the despatches.

No one regrets more than myself that General Baird's request was not brought to my notice. It is clear, from his despatch and letter, that if the Secretary of War had given him proper instructions the riot which arose on the assembling of the convention would have been averted. There may be those ready to say that I would have given no instructions, even if the despatch had reached me in time; but all must admit that I ought to have had the opportunity.

The following is the testimony given by Mr. Stanton before the impeachment investigation committee as to the despatch:

"Q. Referring to the despatch of the 28th of July by General Baird, I ask you whether that despatch, on its receipt, was communicated?

"A. I received that despatch on Sunday forenoon; I examined it carefully and considered the question presented; I did not see that I could give any instructions different from the line of action which General Baird proposed, and made no answer to the despatch.

"Q. I see it stated that this was received at ten o'clock and twenty minutes p. m. Was that the hour at which it was received by you?

"A. That is the date of its reception in the telegraph office Saturday night. I received it on Sunday forenoon, at my residence; a copy of the despatch was furnished to the President several days afterward, along with all the other despatches and communications on that subject, but it was not furnished by me before that time; I suppose it may have been ten or fifteen days afterward.

"Q. The President himself being in correspondence with those parties upon the same subject, would it not have been proper to have advised him of the reception of that despatch?

"A. I know nothing about his correspondence, and know nothing about any correspondence except this one despatch. We had intelligence of the riot on Thursday morning. The riot had taken place on Monday."

It is a difficult matter to define all the relations which exist between the heads of departments and the President. The legal relations are well enough defined. The Constitution places these officers in the relation of his advisers when he calls upon them for advice. The acts of Congress go further. Take, for example, the act of 1789, creating the War Department. It provides that—

"There shall be a principal officer therein, to be called the Secretary for the Department of War, who shall perform and execute such duties as shall, from time to time, be enjoined on or trusted to him by the President of the United States;" and furthermore, "the said principal officer shall conduct the business of the said department in such manner as the President of the United States shall, from time to time, order and instruct."

Provision is also made for the appointment of an inferior officer by the head of the department, to be called the chief clerk, "who, whenever said principal officer shall be removed from office by the President of the United States," shall have the charge and custody of the books, records, and papers of the department.

The legal relation is analogous to that of principal agent It is the President upon whom the Constitution devolves, as head of the executive department, the duty to see that the laws are faithfully executed; but as he cannot execute them in person he is allowed to select his agents, and is made responsible for their acts within just limits. So complete is this presumed delegation of authority in the relation of a head of department to the President that the Supreme Court of the United States have decided that an order made by a head of department is presumed to be made by the President himself.

The principal, upon whom such responsibility is placed for the acts of a subordinate, ought to be left as free as possible in the matter of selection and of dismissal. To hold him to responsibility for an officer beyond his control; to leave the question of the fitness of such an agent to be decided for him and not by him; to allow such a subordinate, when the President, moved by "public considerations of a high character," requests his resignation, to assume for himself an equal right to act upon his own views of "public considerations," and to make his own conclusions paramount to those of the President—to allow all this is to reverse the just order of administration, and to place the subordinate above the superior.

There are, however, other relations between the President and a head of department beyond these defined legal relations which necessarily attend them, though not expressed. Chief among these is mutual confidence. This relation is so delicate that it is sometimes hard to say when or how it ceases. A single flagrant act may end it at once, and then there is no difficulty. But confidence may be just as effectually destroyed by a series of causes too subtle for demonstration. As it is a plant of slow growth, so, too, it may be slow in decay. Such has been the process here. I will not pretend to say what acts or omissions have broken up this relation. They are hardly susceptible of statement, and still less of formal proof. Nevertheless, no one can read the correspondence of the 5th of August without being convinced that this relation was effectually gone, on both sides, and that, while the President was unwilling to allow Mr. Stanton to remain in his administration, Mr. Stanton was equally unwilling to allow the President to carry on his administration without his presence. In the great debate which took place in the House of Representatives in 1789, on the first organization of the principal departments, Mr. Madison spoke as follows:

"It is evidently the intention of the Constitution that the First Magistrate should be responsible for the executive department. So far, therefore, as we do not make the officers who are to aid him in the duties of that department responsible to him, he is not responsible to the country. Again, is there no danger that an officer, when he is appointed by the concurrence of the Senate, and his friends in that body, may choose rather to risk his establishment on the favor of that branch than rest it upon the discharge of his duties to the satisfaction of the executive branch, which is constitutionally authorized to inspect and control his conduct? And if it should happen that the officers connect themselves with the Senate, they may mutually support each other, and for want of efficacy reduce the power of the President to a mere vapor, in which case his reponsibility would be annihilated, and the expectation of it is unjust. The high executive officers joined in cabal with the Senate would lay the foundation of discord, and end in an assumption of the executive power, only to be removed by a revolution of the government."

Mr. Sedgwick, in the same debate, referring to the proposition that a head of department should only be removed or suspended by the concurrence of the Senate, uses this language:

"But if proof be necessary, what is then the consequence? Why, in nine cases out of ten, where the case is very clear to the mind of the President that the man ought to be removed, the effect cannot be produced because it is absolutely impossible to produce the necessary evidence. Are the Senate to proceed without evidence? Some gentlemen contend not. Then the object will be lost. Shall a man, under these circumstances, be saddled upon the President who has been appointed for no other purpose but to aid the President in performing certain duties? Shall he be continued, I ask again, against the will of the President? If he is, where is the responsibility? Are you to look for it in the President, who has no control over the office, no power to remove him if he acts unfeelingly or unfaithfully? Without you make him responsible you weaken and destroy the strength and beauty of your system. What is to be done in cases which can only be known from a long acquaintance with the conduct of an officer?"

I had indulged the hope that upon the assembling of Congress Mr. Stanton would have ended this unpleasant complication, according to the intimation given in his note of August 12. The duty which I have felt myself called upon to perform was by no means agreeable; but I feel that I am not responsible for the controversy or for the consequences.

Unpleasant as this necessary change in my cabinet has been to me, upon personal considerations, I have the consolation to be assured that, so far as the public interests are involved, there is no cause for regret. Salutary reforms have been introduced by the Secretary *ad interim*, and great reduction of expenses have been effected under his administration of the War Department, to the saving of millions to the treasury.

ANDREW JOHNSON.

WASHINGTON, *December* 12, 1867.

Before the reading was completed—

Mr. SHERMAN. If the manager will pause now, I desire to submit a motion to adjourn, that the Senate may transact some business of a legislative character.

Mr. SUMNER. I will suggest to my friend that the reading of this document was called for, and it has not yet been finished.

Mr. JOHNSON. We can consider it as read through.

Mr. SHERMAN. I understand that the counsel are willing to waive the further reading.

Mr. STANBERY. As far as we are concerned, we will dispense with its further reading if it is to be considered in evidence.

Mr. Manager WILSON. Then I will simply read the certificate.

Mr. STANBERY. That is unnecessary. We agree to it.

Mr. SHERMAN. I move that the Senate, sitting as a court of impeachment, adjourn until to-morrow at the usual hour.

Mr. SUMNER. I would suggest 10 o'clock.

Mr. SHERMAN. The hour is fixed by the rule.

The CHIEF JUSTICE. The hour of meeting is fixed by the rule, and the motion of the senator from Massachusetts is not in order. The senator from Ohio moves to adjourn until to morrow at half-past 12 o'clock.

Several SENATORS. No; 12 o'clock; the rule fixes 12.

The CHIEF JUSTICE. The senator from Ohio moves an adjournment until to-morrow at 12 o'clock.

The question being put, the motion was agreed to; and the Chief Justice declared the Senate, sitting as a court of impeachment, adjourned until to-morrow at 12 o'clock.

TUESDAY, *March* 31, 1868.

At five minutes past 12 o'clock p. m the Chief Justice of the United States entered the Senate chamber and took the chair.

The CHIEF JUSTICE. The Sergeant-at-arms will open the court by proclamation.

The SERGEANT-AT-ARMS. Hear ye, hear ye, hear ye: All persons are commanded to keep silent while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Andrew Johnson, President of the United States.

The CHIEF JUSTICE. The Secretary will notify the House of Representatives.

The President's counsel, Messrs. Stanbery, Curtis, Evarts, Nelson, and Groesbeck, entered the chamber and took the seats assigned to them.

At 12 o'clock and seven minutes p. m. the Sergeant-at-arms announced the presence of the managers of the impeachment on the part of the House of Representatives, and they were conducted to the seats assigned to them.

Immediately after, the presence of the members of the House of Representatives was announced, and the members of the Committee of the Whole House, headed by Mr. E. B. Washburne, of Illinois, the chairman of that committee, and accompanied by the Speaker and Clerk of the House of Representatives, entered the Senate chamber and took the seats prepared for them.

The CHIEF JUSTICE. Gentlemen managers on the part of the House of Representatives, you will proceed with your evidence in support of the articles of impeachment. Senators will please to give their attention.

Mr. Manager WILSON. Mr. President and senators, in continuation of the documentary evidence, I now offer the resolution passed by the Senate in executive session in response to the message of the President notifying the Senate of the suspension of Hon. Edwin M. Stanton as Secretary of War, as follows:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
January 13, 1868.

Resolved, That having considered the evidence and reasons given by the President in his report of the 12th December, 1867, for the suspension from the office of Secretary of War of Edwin M. Stanton, the Senate do not concur in such suspension.

And following order:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
January 13, 1868.

Ordered, That the Secretary forthwith communicate an official and authenticated copy of the resolution of the Senate non-concurring in the suspension of Edwin M. Stanton as Secretary of War, this day adopted, to the President of the United States, to the said Edwin M. Stanton, and also to the said U. S. Grant, the Secretary of War *ad interim*.

And certified as follows:

I, John W. Forney, Secretary of the Senate of the United States, do hereby certify that he foregoing are true extracts from the journal of the Senate.

These extracts are made and certified under the authority of the act approved 8th August, 1846, entitled "An act making copies of papers certified by the Secretary of the Senate and the Clerk of the House of Representatives legal evidence."

Given under my hand, at Washington, this 11th day of March, 1868.

[SEAL] J. W. FORNEY,
Secretary of the Senate.

I next produce and offer as evidence the following extract from the journal of the Senate:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
February 21, 1868.

The following message was received from the President of the United States, by Mr. Moore, his secretary:

WASHINGTON, D. C., *February* 21, 1868.

To the Senate of the United States:

On the 12th day of August, 1867, by virtue of the power and authority vested in the President by the Constitution and laws of the United States, I suspended Edwin M. Stanton from the office of Secretary of War. In further exercise of the power and authority so vested in the President, I have this day removed Mr. Stanton from the office, and designated the Adjutant General of the army as Secretary of War *ad interim.*

Copies of the communications upon this subject, addressed to Mr. Stanton and the Adjutant General, are herewith transmitted for the information of the Senate.

ANDREW JOHNSON.

The copies attached are as follows:

EXECUTIVE MANSION, WASHINGTON, D. C.,
February 21, 1868.

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon the receipt of this communication.

You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other property now in your custody and charge.

Respectfully yours,

ANDREW JOHNSON.

Hon. EDWIN M. STANTON, *Washington, D. C.*

EXECUTIVE MANSION, WASHINGTON, D. C.,
February 21, 1868.

SIR: Hon. Edwin M. Stanton having been this day removed from the office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim,* and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,

ANDREW JOHNSON.

Brevet Major General LORENZO THOMAS,
Adjutant General United States Army, Washington, D. C.

To these papers is appended this certificate:

I, John W. Forney, Secretary of the Senate of the United States, do hereby certify that the foregoing is an extract from the journal of the Senate.

This extract is made and certified under the authority of the act approved August 8, 1846, entitled "An act making copies of papers certified by the Secretary of the Senate and the Clerk of the House of Representatives legal evidence."

Given under my hand at Washington this 11th of March, 1868.

[SEAL.] J. W. FORNEY,
Secretary of the Senate.

I now offer an extract from the journal of the Senate, showing the action taken by the Senate on the message notifying that body of the removal of the Secretary of War and the appointment of a Secretary of War *ad interim:*

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
February 21, 1868.

Whereas the Senate have received and considered the communication of the President stating that he had removed Edwin M. Stanton, Secretary of War, and had designated the Adjutant General of the army to act as Secretary of War *ad interim:* Therefore,

Resolved by the Senate of the United States, That under the Constitution and laws of the United States the President has no power to remove the Secretary of War and to designate any other officer to perform the duties of that office *ad interim*.

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
February 21, 1868.

Resolved, That the Secretary of the Senate is hereby directed to communicate copies of the foregoing resolution to the President of the United States, to the Secretary of War, and to the Adjutant General of the army of the United States.

To these papers this certificate is attached:

I, John W. Forney, Secretary of the Senate of the United States, do hereby certify that the foregoing are true extracts from the journal of the Senate.

These extracts are made and certified under the authority of the act approved 8th August, 1846, entitled "An act making copies of papers certified by the Secretary of the Senate and the Clerk of the House of Representatives legal evidence."

Given under my hand at Washington, this 11th day of March, 1868.

[SEAL.] J. W. FORNEY,
Secretary of the Senate.

I now offer an authenticated copy of the commission of Edwin M. Stanton as Secretary of War, and will here state that this is the only commission under which we claim that he has acted as Secretary of War:

Abraham Lincoln, President of the United States of America, to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, integrity, and abilities of Edwin M. Stanton, I have nominated, and by and with the advice and consent of the Senate, do appoint him to be Secretary of War of the United States, and do authorize and empower him to execute and fulfil the duties of that office according to law, and to hold the said office with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said Edwin M. Stanton, during the pleasure of the President of the United States for the time being.

In testimony whereof, I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the 15th day of January, in the year of our Lord 1862, and of the independence of the United States of America the eighty-sixth.

[SEAL.] ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD,
Secretary of State.

UNITED STATES OF AMERICA,
Department of State.

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy from the records of this department.

In testimony whereof, I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 21st day of March, A. D. 1868, and of the independence of the United States of America the ninety-second.

[SEAL.] WILLIAM H. SEWARD.

Mr. Manager BUTLER. Mr. President, will the Senate allow me to call in a witness, William J. McDonald, of Washington? Mr. Sergeant-at-arms, is he in attendance? I do not know but that the managers will have to ask that the witnesses be allowed to come on the floor of the Senate, because there will otherwise be some delay in calling them. I believe the Sergeant-at-arms has given them a room.

The CHIEF JUSTICE. Unless the Senate otherwise orders, the witnesses will remain in their room until they are called.

Mr. Manager BUTLER. I only spoke of the delay.

The CHIEF JUSTICE. Mr. McDonald is present. The witness will stand on the left of the Chair when examined.

Mr. Manager BUTLER. I move that this witness be sworn.

The Secretary of the Senate administered the following oath to Mr. McDonald, and to each of the other witnesses as sworn:

"You do swear that the evidence you shall give in the case now depending between the United States and Andrew Johnson shall be the truth, the whole truth, and nothing but the truth: so help you God."

WILLIAM J. MCDONALD, being sworn, was examined as follows:

By Mr. Manager BUTLER:

Question. State your name and office.
Answer. William J. McDonald, chief clerk of the Senate.
Q. Will you look at that paper [exhibiting a paper] and read the certificate that appears to be signed by your name?
A. It is as follows:

OFFICE SECRETARY SENATE UNITED STATES,
Washington, February 27, 1868.

An attested copy of the foregoing resolution was left by me at the office of the President of the United States in the Executive Mansion, he not being present, about nine o'clock p. m., on the 13th of January, 1868.

W. J. McDONALD,
Chief Clerk Senate United States.

Q. Is that certificate a correct one of the acts done?
A. That is a correct certificate of the acts done.
Q. And the paper was left in accordance, as that certificate states?
A. Yes, sir.
Mr. Manager BUTLER. I have nothing further to ask the witness.
The CHIEF JUSTICE. Are there any questions to be put on the part of the accused?
Mr. STANBERY and Mr. CURTIS. No, sir.
Mr. Manager BUTLER. I will ask Mr. McDonald to take the stand again.
Q. Will you read that certificate? [handing a paper to the witness.]
A. It is—

OFFICE SECRETARY SENATE UNITED STATES,
Washington, February 27, 1868.

An attested copy of the foregoing resolution was delivered by me into the hands of the President of the United States at his office in the Executive Mansion about ten o'clock p. m. on the 21st of February, 1868.

W. J. McDONALD,
Chief Clerk Senate United States.

Q. Do you make the same statement as regards this service?
A. Yes, sir; the same statement in regard to that.
Mr. Manager BUTLER. We have nothing further to ask.
Mr. STANBERY. Nothing on our part.
Mr. Manager WILSON. The resolution to which the first certificate of Mr. McDonald refers is:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
January 13, 1868.

Resolved, That, having considered the evidence and reasons given by the President in his report of the 12th of December, 1867, for the suspension from the office of Secretary of War of Edwin M. Stanton, the Senate do not concur in such suspension.
Attested:

J. W. FORNEY, *Secretary.*

The resolution as to the service of which the other certificate relates:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
February 21, 1868.

Whereas the Senate have received and considered the communication of the President stating that he has removed Edwin M. Stanton, Secretary of War, and designated the Adjutant General of the army to act as Secretary of War *ad interim*: Therefore,

Resolved by the Senate of the United States, That, under the Constitution and laws of the United States, the President has no power to remove the Secretary of War and designate any other officer to perform the duties of that office *ad interim*.

Attest:

J. W. FORNEY, *Secretary*.

Mr. Manager BUTLER. We now call J. W. Jones as a witness.

J. W. JONES sworn and examined.

By Mr. Manager BUTLER:

Q. Please state your name and position?
A. J. W. Jones, keeper of the stationery.
Q. An officer of the Senate?
A. Yes, sir.
Q. Do you know Major General Lorenzo Thomas, of the United States army, Adjutant General?
A. I do, sir.
Q. How long have you known him?
A. I have known him about six or seven years.
Q. Were you employed by the Secretary of the Senate to serve a notice of the proceedings of the Senate upon him?
A. I was.
Q. Looking at that memorandum, [handing a paper to the witness,] what day did you attempt to make the service?
A. The 21st of February.
Q. What year?
A. The present year.
Q. Where did you find him?
A. I found him at Marini's Hall, at a masquerade ball.
Q. Was he masked?
A. He was.
Q. How did you know it was him?
A. I saw his shoulder-straps, and I asked him to unmask.
Q. Did he so do?
A. He did, sir.
Q. After ascertaining it was him, what did you do?
A. I handed him the resolution of the Senate.
Q. About what time of the day or night?
A. About 11 o'clock at night.
Q. Did you make the service then?
A. I did.
Q. Have you certified the fact on that paper?
A. Yes, sir.
Q. Is that certificate true?
A. It is.
Q. Will you read it?
A. Attached to this copy of the resolution is my certificate, in these words:

An attested copy of the foregoing resolution was placed in my hands by the Secretary of the Senate to be delivered to Brevet Major General Lorenzo Thomas, Adjutant General of the United States army, and the same was by me delivered into the hands of General Thomas about the hour of 11 o'clock p. m. on the 21st day of February.

J. W. JONES.

Q. Is that certificate true?
A. It is, sir.
No cross-examination.

Mr. Manager WILSON. The document thus served is as follows:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
February 21, 1868.

Whereas the Senate have received and considered the communication of the President, stating that he had removed Edwin M. Stanton, Secretary of War, and designated the Adjutant General of the army to act as Secretary of War *ad interim:* Therefore,

Resolved by the Senate of the United States, That, under the Constitution and laws of the United States, the President has no power to remove the Secretary of War and designate any other officer to perform the duties of that office *ad interim.*

Attest: J. W. FORNEY, *Secretary.*

Mr. Manager BUTLER. I desire to call C. E. Creecy, of the Treasury Department.

CHARLES E. CREECY sworn and examined.

By Mr. Manager BUTLER:

Q. What is your full name, and what is your official position, if any?

A. Charles Eaton Creecy. I am clerk in charge of the appointments in the Treasury Department.

Q. Will you look at the bundle of papers you have brought, in obedience to our subpœna, and give me the form of commission which was used in the Treasury Department before the passage of the act of March 2, 1867?

A. This is it; [producing a paper.]

Q. You produce this as such form?

A. Yes, sir; I do.

Q. Was that the ordinary form, or one used without exception?

A. It was the ordinary form for the permanent commission.

Mr. JOHNSON and Mr. PATTERSON of Tennessee. We cannot hear one word.

Mr. HOWARD. The witness must speak louder.

Mr. JOHNSON. If his answer were repeated by the counsel it would be better.

Mr. Manager BUTLER. If it will not be considered improper, Mr. President, I will repeat the answer.

The CHIEF JUSTICE. The witness will speak for himself.

Mr. EVARTS. We prefer that the witness should speak so as to be heard.

Mr. Manager BUTLER. I have no desire to undertake the labor.

The CHIEF JUSTICE, (to the witness.) Mr. Creecy, you will raise your voice and speak as loud as possible.

The WITNESS. Yes, sir.

Mr. Manager BUTLER, (to the witness.) What is your answer, then; loud enough to be heard?

Mr. TRUMBULL I think it would help us all to hear if the witness would stand further from the counsel. If he would stand on the other side of the Secretary's desk he would have to speak louder, and all could hear.

The CHIEF JUSTICE. That would be better. Mr. Creecy, you will go to the opposite side of the Secretary's desk.

The witness changed his position to the other side of the desk, and subsequent witnesses were examined standing at the Secretary's desk, to the right of the presiding officer.

Mr. Manager BUTLER, (to the witness.) What is the answer to the question whether this is the ordinary form of commission used before March 2, 1867?

A. That is the ordinary form.

Q. For the class of appointments for which such commissions would be issued was there any other form used before that time?

A. I think that is the form for the permanent commission.

Q. Will you now give me the form which has been used since in the Treasury Department?

[The witness produced a paper and handed it to Mr. Manager Butler.]

Mr. STANBERY. Will the honorable manager allow me to ask what is the object of this testimony?

Mr. Manager BUTLER. The object of this testimony is to show that prior to the passage of the act of March 2, 1867, known as the civil tenure-of-office bill, a certain form of commission had been used in the practice of the government, and issued by the President of the United States; that after the passage of the civil tenure-of-office bill a new form was made conforming to the provisions of the tenure-of-office act, showing that the President acted in the Treasury Department under the tenure-of-office act as an actual and valid law. Is there any objection?

Mr. STANBERY. No, sir.

Mr. Manager BUTLER, (to the witness.) I return the first paper you handed me. I see there are certain interlineations; did you speak of the form before it was interlined, or subsequently, or both?

A. This is the commission. The alterations in this commission show the changes that have been made to conform to the tenure-of-office bill.

Q. There is a portion of that paper in print and a portion in writing. Do I understand you that the printed portion was the form used before?

A. Yes, sir.

Q. And the written portion shows the changes?

A. Yes, sir.

Q. Will you read with a loud voice so as to be heard the printed portion of the commission; the original commission, the whole commission?

Mr. CONNESS. I think if the reading should be done by the clerk, who is in the habit of reading, it would be very much better for the whole Senate.

The CHIEF JUSTICE. The Secretary will read it.

The Secretary read as follows:

ANDREW JOHNSON, *President of the United States of America, to all whom these presents shall come, greeting:*

Know ye, that reposing special trust and confidence in the integrity, diligence, and discretion of ——— ———, I have nominated, and by and with the advice and consent of the Senate do appoint him ——— ———, and do authorize and empower him to execute and fulfil the duties of that office according to law, and to have and to hold the said office, with all the rights, privileges, and emoluments thereunto legally appertaining, unto him the said ——— ——— during the pleasure of the President of the United States for the time being.

In testimony whereof, I have caused these letters to be made patent and the seal of the Treasury Department of the United States to be hereunto affixed.

Given under my hand at the city of Washington the — day of ——, in the year of our Lord 18—, and of the independence of the United States of America, the ——.

———— ————,
Secretary of the Treasury.

By the President:

———— ————.

Q. Please state what was the alteration made of that printed form to conform to the provisions of the tenure-of-office act?

A. The words "during the pleasure of the President of the United States for the time being"——

Mr. JOHNSON. We cannot hear. The clerk had better read those words.

The SECRETARY. The words written are as follows: "Until a successor shall have been appointed and duly qualified."

Mr. JOHNSON. What are the words stricken out?

The SECRETARY. The words stricken out are "during the pleasure of the President of the United States for the time being."

By Mr. Manager BUTLER:

Q. Since that act has any other form of commission been used than the one as altered for such permanent appointments?

A. No, sir.

Q. Have you now a form of official bond for officers as used prior to the civil tenure-of-office act?

A. Yes, sir; [producing a paper.]

Q. Has any change been made in that?

A. No, sir.

Q. Please give me, if you have it, a copy of the commission issued for temporary appointments since the tenure-of-office act.

Mr. STANBERY. Is the bond put in?

Mr. Manager BUTLER. It is.

Mr. STANBERY. Will you have it read?

Mr. Manager BUTLER. No, unless you desire it. It is the common, ordinary form of bond.

Mr. STANBERY. Let me see it.

The paper was handed to Mr. Stanbery, and read by him.

Mr. Manager BUTLER, (to the witness.) State whether the printed part of this paper was the part in use prior to the tenure-of-office act?

A. It was.

Mr. CURTIS. What is the paper?

Mr. Manager BUTLER. The paper is the form of commission for temporary appointments. Will the Secretary read it?

The Secretary read as follows:

The President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that reposing special trust and confidence in the integrity, diligence, and discretion of —— ——, I do appoint him, and do authorize and empower him to execute and fulfil the duties of that office according to law, and to have and to hold the said office with all the rights, privileges and emoluments thereunto legally appertaining, unto him the said —— ——, during the pleasure of the President of the United States for the time being, until the end of the next session of the Senate of the United States, and no longer.

In testimony whereof I have caused these letters to be made patent, and the seal of the Treasury Department of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, this — day of ——, in the year of our Lord 18—, and of the independence of the United States of America the ——.

—— ——,

Secretary of the Treasury.

By the President:

—— ——.

By Mr. Manager BUTLER:

Q. Was any change made in that commission?

A. The alteration shows the change.

Mr. Manager BUTLER. Read the alteration, Mr. Secretary.

The SECRETARY. Strike out "during the pleasure of the President of the United States for the time being," and insert "unless this commission be sooner revoked by the President of the United States for the time being."

By Mr. Manager BUTLER:

Q. Do you know whether before these changes were made the official opinion of the Solicitor of the Treasury was taken?

A. It was.

Q. Have you that opinion?

A. I have.

Mr. Manager BUTLER. I withdraw the question as to the opinion, on consultation. (To the witness.) Do you know whether since the alteration of these forms any commissions have been issued signed by the President of the United States?

A. Yes, sir.

Q. As altered?

A. Yes, sir.

Q. It is suggested to me to ask you if the President had signed both forms, both the temporary and permanent forms as altered?

A. Yes, sir.

Q. Now look at the paper which I send you, [handing a paper,] and say what is that paper.

A. It is a commission issued to Mr. Cooper as Assistant Secretary of the Treasury.

Q. Under what date?

A. The 20th day of November, 1867.

Q. Who was Assistant Secretary of the Treasury at the time of the issuing of that commission?

A. Mr. W. E. Chandler was one.

Q. Do you happen to remember, as a matter of memory, whether the Senate was then in session?

A. I think it was not.

Q. State whether Mr. Cooper qualified and went into office under that first commission.

A. He did not qualify under the first commission at all.

Q. What is the paper I now send you? [Handing a paper.]

A. It is authority from the President to Edmund Cooper to act as Assistant Secretary of the Treasury.

Q. Read it.

Mr. EVARTS. Is the other considered as read, the one under which he did not qualify?

Mr. Manager BUTLER. Yes, sir; I meant so to consider it.

Mr. EVARTS. How are we ever to know the contents if they are not read when produced?

Mr. Manager BUTLER. It is exactly the same form as the other that has been read.

Mr. EVARTS. Then let it be so stated. We know nothing whatever about it.

Mr. Manager BUTLER. I will hand that first paper to the counsel. [The paper was handed to the counsel for the President, examined by them, and returned.]

Mr. Manager BUTLER. Do the counsel for the President desire to have the paper read?

Mr. STANBERY. Certainly.

Mr. Manager BUTLER. Very well. Let the Secretary read it.

The Secretary read as follows:

ANDREW JOHNSON, *President of the United States of America, to all who shall see these presents, greeting:*

Know ye, that reposing special trust and confidence in the integrity and ability of Edmund Cooper, I do appoint him to be Assistant Secretary of the Treasury, and do authorize and empower him to execute and fulfil the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments thereunto of right appertaining unto him, the said Edmund Cooper, until the end of the next session of the Senate of the United States, and no longer, subject to the conditions prescribed by law.

In testimony whereof I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, the 20th day of November, in the year of our Lord 1867, and of the independence of the United States of America the ninety-second.

[L. S.] ANDREW JOHNSON.

By the President:

WILLIAM H. SEWARD, *Secretary of State.*

Mr. Manager BUTLER, (to the witness.) Now, will you pass to the Secretary the letter of authority of which you have spoken, and let it be read?

The Secretary read as follows:

EXECUTIVE DEPARTMENT,
Washington, December 2, 1867.

Whereas a vacancy has occurred in the office of Assistant Secretary of the Treasury of the United States, in pursuance of the authority vested in me by the first section of the act of Congress approved February 13, 1795, entitled "An act to amend the act entitled 'An act making alterations in the Treasury and War Departments,'" Edmund Cooper is hereby authorized to perform the duties of Assistant Secretary of the Treasury until a successor be appointed or such vacancy be filled.

ANDREW JOHNSON.

By Mr. Manager BUTLER:

Q. How did Mr. Chandler get out of office?

A. He resigned.

Q. Have you a copy of his resignation?

A. I have not with me.

Q. Can you state from memory (if it is not objected to) at what time his resignation took effect?

A. I cannot. I think it was a day or two before this appointment or this authority was given to Mr. Cooper.

Q. Will you have the kindness to produce a copy of his resignation after you leave the stand?

A. I will try to do so.

Cross-examined by Mr. CURTIS:

Q. Can you fix the date when the change in the form of permanent appointments of which you have spoken first occurred?

A. I think it was about four days after the passage of the tenure-of-office act.

Q. With what confidence do you speak? Do you speak from any recollection?

A. We obtained an opinion from the Solicitor of the Treasury on the subject. It was given on the 6th, and from that day we followed his opinion.

Q. Then you would fix the date as the 6th of what month?

A. The 6th of March, 1867.

Hon. BURT VAN HORN sworn and examined.

By Mr. Manager BUTLER:

Q. Will you state whether you were present at the War Department when Major General Lorenzo Thomas, Adjutant General of the United States, was there to make demand for the office, property, books, and records?

A. I was.

Q. When was it?

A. It was on Saturday, the 22d of February, 1868, I believe.

Q. About what time in the day?

A. Perhaps a few minutes after 11 o'clock.

Q. Who were present?

A. General Charles H. Van Wyck, of New York; General G. M. Dodge, of Iowa; Hon. Freeman Clarke, of New York; Hon. J. K. Morehead, of Pennsylvania; Hon. Columbus Delano, of Ohio; Hon. W. D. Kelley, of Pennsylvania; Hon. Thomas W. Ferry, of Michigan, and myself. The Secretary of War, Mr. Stanton, and his son were also present.

Q. Please state what took place.

A. The gentlemen mentioned and myself were in the office the Secretary of War usually occupies, holding conversation; General Thomas came in; I saw him coming from the President's; he came into the building and came up stairs, and came into the Secretary's room first; he said, "Good morning, Mr. Secretary," and "Good morning, gentlemen;" the Secretary replied, "Good morning,"

and I believe we all did; then began this conversation as follows: [Referring to a printed document.] "I am Secretary of War *ad interim*, and am ordered by the President of the United States to take charge of the office;" Mr. Stanton then replied, "I order you to repair to your room and exercise your functions as Adjutant General of the army;" Mr. Thomas replied to this, "I am Secretary of War *ad interim*, and I shall not obey your orders; but I shall obey the orders of the President, who has ordered me to take charge of the War Office;" Mr. Stanton replied to this as follows: "As Secretary of War, I order you to repair to your place as Adjutant General;" Mr. Thomas replied, "I shall not do so;" Mr. Stanton then said in reply, "Then you may stand there, if you please." pointing to Mr. Thomas, "but you cannot act as Secretary of War; if you do, you do so at your peril;" Mr. Thomas replied to this, "I shall act as Secretary of War." This was the conversation, I may say, in the Secretary's room.

Q. What happened then?

A. After that they went to the room of General Schriver, which is just across the hall, opposite the Secretary's room.

Q. Who went first?

A. I think, if I remember aright, that General Thomas went first, and was holding some conversation with General Schriver, which I did not hear. He was followed by Mr. Stanton, by General Moorhead, by General Ferry, and then by myself. Some little conversation was had there, which I did not hear, but after I got into the room, which was but a moment after they went in, however, Mr. Stanton addressed Mr. Thomas as follows, which I concluded was the summing up of the conversation had before——

Mr. CURTIS. No matter about that.

The WITNESS. Mr. Stanton then said: "Then you claim to be here as Secretary of War, and refuse to obey my orders?" Mr. Thomas said: "I do, sir; I shall require the mails of the War Department to be delivered to me, and shall transact all the business of the War Department." That is the substance of the conversation which I heard, and, in fact, the conversation as I heard it entirely.

By Mr. Manager BUTLER:

Q. Did you make any memorandum of it afterward?

A. I made it at the time. I had my memorandum in my hand. When the conversation began I had paper and pencil and wrote it down as the conversation occurred, and after the conversation ended I drew it up from my pencil sketches, in writing, immediately, in the office, in the presence of the gentlemen who heard it.

Q. What was done after that? Where did Thomas go?

A. It was then after eleven o'clock, and my duties and the duties of the rest of us called us here to the House, and I left General Thomas in the room of General Schriver.

Cross-examined by Mr. STANBERY:

Q. Will you please state what was your business in the War Department on that morning?

A. Well, sir, I went there that morning, I suppose, as other gentlemen did; at least I went there for the purpose of visiting the Secretary. I had no special public business.

Q. Was there no object in the visit, except merely to see him?

A. Yes, sir; I had an object. The times were rather exciting at that moment, and I went, as much as anything else, to talk with the Secretary, to confer with him about public affairs.

Q. Public affairs generally?

A. No, not public business particularly.

Q. What public affairs were the object of the conference?

A. Well, sir, the matter of the removal of Mr. Stanton. I felt an interest in that matter, and of course was talking with him upon that subject.

Q. Did you go with these other gentlemen whom you found there, or did you go there alone?

A. I think I did go in company with one or two of them.

Q. With whom did you go in company?

A. I think I went with Mr. Clarke, of New York, and General Van Wyck. I am not certain that any others were with me.

Q. When you arrived at his room what was the hour?

A. It was a little before eleven o'clock.

Q. Whom did you find there when you arrived—these other gentlemen whom you have mentioned?

A. Not all of them.

Q. Who were there when you arrived?

A. I think General Moorhead was there for one; I think Mr. Ferry was there; I think Mr. Delano was there. Two or three others came in after I got there.

Q. Do you know what their business was in the office that morning?

A. No, sir.

Q. Did they state any business?

A. No, sir; they stated no business to me.

Q. All being there, the next thing was that General Thomas came into the room?

A. After we had been there some moments.

Q. You say that when that conversation began between General Thomas and the Secretary you were ready to take notes?

A. I appeared to be ready. I had a large white envelope in my pocket, and I had a pencil also in my pocket; and when the conversation began it seemed to me that it might be well to note what was said.

Q. Are you in the habit, generally, in conversations of that kind, of making memoranda of what is said?

A. I do not know that I am, unless I deem it important to do so.

Q. Did any one request you to take memoranda?

A. No, sir.

Q. It was on your own motion?

A. On my own responsibility, supposing I had a perfect right to do so.

Q. Undoubtedly. After the conversation was ended in the room with the Secretary, General Thomas, as I understand you, went out first?

A. I think he did; he went across the hall.

Q. Who went with the Secretary from his room across the hall to where General Thomas had gone?

A. I am not aware that any one went directly with him, but immediately after him, if not with him, General Moorhead and Mr. Ferry.

Q. How long after General Thomas had left the office was it that the Secretary of War followed him?

A. But a moment or two; perhaps two minutes.

Q. Did he state, when he left, what was his object?

A. I do not recollect that the Secretary stated anything. General Thomas was in the room talking.

Q. Did he request any gentleman to go along with him?

A. Not that I am aware of.

Q. Did you go upon your own motion or by agreement?

A. I went on my own motion.

Q. All that were there did not go?

A. I do not think they all went in. I think they did not all go in at that time. The two gentlemen named, I know, went in before me.

Q. How long after the Secretary went did you go?

A. Perhaps it was a minute; it was very soon. I followed the other two gentlemen very soon.

Q. What had taken place between the Secretary and General Thomas before you arrived in the room, or had anything?

A. I cannot say; they had some conversation; I cannot say what was said.

Q. As you have given the conversation in your notes, it would seem as if it then began after you first got in?

A. The conversation I have given began after I got in. As I said before, I heard some talking, but I do not know what was said.

Q. You mean you heard some talking before you got in there?

A. Certainly.

Q. Whose voices?

A. I heard General Thomas's voice and Mr. Stanton's voice. They had some conversation.

Q. But what that was you do not know?

A. I do not.

Q. Then the conversation followed which you have detailed?

A. Certainly. The first I heard when I went in was the question of Mr. Stanton, which I have stated, and the answer of General Thomas.

Q. Did you keep your notes with you and take your notes into that room?

A. I had my envelope in my hand when I went in.

Q. And your pencil?

A. And my pencil.

Q. Where is that envelope which you had at that time?

A. I cannot say. I presume it was destroyed. The envelope was a large, long, white envelope that I put in my pocket with letters. It was the only convenient thing I had at the time. I wrote on both sides of it, and then drew it off immediately on the Secretary's table.

Q. What did you do with that original memorandum—the envelope?

A. I presume it was torn up and destroyed; I do not know anything to the contrary.

Q. When did you destroy it?

A. That I cannot say; perhaps very soon after the conversation took place.

Q. Why did you destroy it?

A. I cannot say that it is destroyed; but I have no knowledge of it now. I cannot say that it is destroyed; perhaps it may be. I had no occasion to keep it. I supposed there was no occasion to keep it because I had written the thing off, or, rather, a young man wrote it off at the table as I read it, and that is the same thing, I suppose, and I compared what he wrote after it was written with the notes, because I wanted to be particular in regard to it.

Q. Is the document from which you have read here to-day a manuscript?

A. No, sir; it is my testimony before the committee, which is an exact copy of the notes I took.

Q. And those notes were written by some young man who was present?

A. At my suggestion he took the pen, and I read to him, and then compared it word for word.

Q. Where are those notes?

A. I do not know where they can be found. I did not suppose it important to keep the notes, because I had a copy of the notes before the committee and testified to it exactly.

Q. A copy of what notes do you mean?

A. I had the notes I took there.

Q. You mean the notes written by that young man?

A. Yes, sir; I had them there.

Q. What is his name? Who was he?

A. One of the clerks there. I do not recollect what the young man's name

was. I do not know that I ever knew his name. I did not ask his name. I would know him if I saw him.

Q. You preserved those notes until you testified?

A. Yes, sir.

Q. How long after you testified did you preserve them?

A. I cannot say that I kept them any length of time after that. I thought it was of no consequence.

Q. How you disposed of the envelope, or how you disposed of those notes, you have no recollection?

A. No, sir; I cannot say what became of the envelope; it may be in my papers somewhere.

Q. Have you made any search for them?

A. No, sir; my attention has not been called to that before.

Q. When you came back into the Secretary's room, who suggested to you, or did you suggest the matter yourself, that the notes should be written out? How did that come to be?

A. It was upon my own motion.

Q. Did you ask for a clerk?

A. I had taken notes and proposed in the presence of the gentlemen who heard the conversation that they should see that I had them correct; and that was consented to by General Moorhead, Mr. Kelley, and others who were present.

Q. Then you proposed to have them copied?

A. I proposed to have them drawn off. A young man was there ready to do it, or willing to do it, and I asked him to write it out as I would read it to him from my notes.

Q. Now, did anything else take place in General Schriver's room besides this talk that you have testified to?

A. Not that I am aware of; only, as I have said, I heard some voices in there; but what was said I cannot say.

Q. After you went in, while you were there?

A. I think there was no conversation.

Q. I did not ask you simply for conversation, but what else took place?

A. Nothing took place that I am aware of.

Q. Who first left the room?

A. After the conversation?

Q. Yes, sir.

A. I cannot say whether I left it first or General Moorhead or Mr. Ferry. We were all there. I think we went out in a moment afterward.

Q. Did you leave Mr. Stanton there?

A. Mr. Stanton was there when I went out.

Q. Did you go into his room from there?

A. I did, sir.

Q. Did you leave Thomas there also?

A. Yes, sir.

Q. How long did Mr. Stanton remain in Schriver's room?

A. I cannot say, because as soon as I had this copied I left for the House.

Q. Do you mean to say that he did not come in while you were engaged in having the copy taken?

A. At the moment of making the copy? I will not say that he came in while the copy was being taken or not. There was a short time consumed in taking it. He might have done so, but I will not say.

Q. Do you recollect whether you saw him at all in his office after you had left Schriver's room?

A. I cannot swear positively that I did. I saw him after I left the room. The doors were open. There are but a few feet from one room to the other. I

saw him sitting in General Schriver's room. I will not swear positively that I saw him in his own office after I left that room.

Q. What took place between them afterward you do not know?

A. No, sir; I do not know, because I left.

Q. Was there any friendly greeting or other circumstance took place at that time between the Secretary and General Thomas while you were in Schriver's room?

A. Well, sir, if there was, I did not see it. I do not know that there was while I was in. What happened before I cannot say.

Q. Was the memorandum that you made on that envelope complete or abbreviated.

A. The questions and answers as I have them were complete.

Q. Was the copy, then, an exact transcript of the memorandum?

A. It was merely questions and answers. The questions were short and the answers were short.

Q. Did it exhibit the whole conversation?

A. I cannot say. I will not say that it did every word. I think it did not. I recollect one expression, for instance, that General Thomas made that I did not put down. I did not think it material. I can state it if the court desire it. It occurs to me now. It is one expression that was used. I can state it if the gentleman wishes.

Q. All I want to know is, whether it completely covered the conversation?

A. It covered all the conversation of any importance.

Q. That you thought important?

A. At least what I wrote. I wrote down just as the questions were given and answered. I took all the conversation in substance, and all of any account as it was had, as the questions and answers were given

Q. This conversation that you took down in that way, did you take it down in short hand?

A. No, sir; I did not.

Q. You wrote it out?

A. I wrote it out.

Q. Without abbreviation?

A. Without abbreviation.

Q. Were there pauses in their conversation? Did they pause to allow you to follow them?

A. The conversation, as I said before, was very slow and deliberate. There was sufficient time for me to write these questions and answers, as they were short, as counsel can see. General Thomas said but very little.

Q. Now, I will ask you if, in that conversation, Mr. Stanton asked him if he wished him to vacate immediately, or would give him time to arrange his private papers?

A. Mr. Stanton?

Q. Yes, sir; did Mr. Stanton ask Mr. Thomas whether he wished him to vacate immediately, or whether he would accord him (Stanton) time to arrange his private papers?

A. There was nothing said in that conversation in reference to that. There were other conversations, I understand, at other times, at which such remarks were made, as I saw in the papers, but there was nothing of that kind said at that time in that conversation. The question of giving time and changing papers did not come up in that conversation at all.

Re-examined by Mr. Manager BUTLER:

Q. You said, if I understood you, that there was a single remark of Thomas that you did not write down that now occurred to you, in answer to the counsel for the President; what was that remark?

A. I said that in answer to his question whether I had sworn to all that he did say. I recollect now General Thomas saying he did not wish any "*on*pleasantness." I did not think it necessary to put that in my record.

Q. Did he emphasize it in that "*on*pleasantness?"

A. The gentlemen heard it, and it was spoken of afterward, but I did not think it was anything pertaining to this question; and perhaps some other little words were said now and then that did not amount to anything.

Q. I must still ask you to give to the Senate with a little more distinctness whether it was the remark, saying, "I do not want any unpleasantness between us," or was it the use of what has almost become a technical term, that "there shall not be any *on*pleasantness?"

A. Well, sir, I can only state what General Thomas said.

Q. The emphasis is something.

A. "*On*pleasantness" was the expression used.

By Mr. STANBERY:

Q. This evidence is as to a word; I do not know its materiality; but did he speak the word in the ordinary way?

A. He spoke it in the way I have mentioned.

Q. Now give his expression?

A. He said as he came in, in connection with what I have said—I did not consider it material, and did not put it down—that he did not wish any "*on*-pleasantness."

Q. In what part of the conversation did that come in?

A. Somewhere in the first part of the conversation; it was in the first part.

Q. Was it in the first part or after Stanton had ordered him to go to his room?

A. I think it was before that—in the fore part of his conversation.

Q. At the very beginning?

A. Yes, sir; near the beginning.

Q. Had you taken down anything before that was said?

A. Yes, sir; the first thing he said was, "Good morning, Mr. Secretary," and "Good morning, gentlemen"

Q. Did you take that down?

A. I did, sir.

Q. You thought that was material?

A. I took it down.

Q. Then next, after that, did he say he did not wish any unpleasantness?

A. I cannot say that the next words he said after that were those. It was in the fore part of the conversation.

Q. But that you thought immaterial?

A. I did not put it down; I thought perhaps it was immaterial. It occurs to me now, as I know it excited something of a smile at the time he spoke it.

Mr. Manager BINGHAM. As I understand it, the counsel are desiring to know of the witness what he thought of the importance that ought to be attached to the word. I suppose it is not for the witness to swear what he thought about it.

Mr. EVARTS. We are cross-examining as to the completeness or perfection of the witness's memorandum. It certainly is material to know why he omitted some parts and inserted others.

Mr. Manager BINGHAM. We will not press the objection.

Mr. STANBERY. We have nothing further to ask of this witness.

Hon. JAMES K. MOORHEAD sworn and examined.

By Mr. Manager BUTLER:

Q. I believe you are a member of the House of Representatives?

A. I am.

Q. We have learned from the testimony of the last witness that you were present at Mr. Secretary Stanton's office when General Thomas came in there to make some demand; will you state now in your own way, as well as you can, what took place there, assisting your memory, if you have any memorandum, as you please?

A. I will, sir. I was present at the War Department on Saturday morning, the 22d of February, I believe, and I understood that General Thomas was to be there to take possession of the department that morning. I went from my boarding-house, which is Mrs. Carter's on the hill; I went to the War Department in company with Dr. Burleigh, who boarded there, a friend of Mr. Johnson's, who told me he had a conversation with General Thomas the night before——

Mr. CURTIS. That is not material.

The WITNESS. I was giving the reason why I went there. I was there, and General Thomas came in. The testimony of Mr. Van Horn is correct as to what passed. I did not take any memorandum of the early part of the conversation; but I would corroborate his statement——

Mr. CURTIS. That we object to.

Mr. STANBERY. That will not do.

The WITNESS, (continuing.) Until the point at which he said General Thomas went across to General Schriver's room. He did go there; he was followed by Mr. Stanton, and Mr. Stanton asked me to go over there. After they got there Mr. Stanton put a direct question to General Thomas, and asked me to remember it. He said, "General Moorhead, I want you to take notice of this and of the answer;" and that induced me to make a memorandum of it, which I think I have among my papers now. [The witness proceeded to search his papers.] It is very brief, and was made roughly, but so I thought I could understand and know what it meant myself, and I can explain it to any person. [Reading.] Mr. Stanton said, "General Thomas, you claim to be here as Secretary of War, and refuse to obey my orders?" General Thomas replied, "I do, sir." After that had passed I walked to the door leading into the hall and I was called back, or from what I heard my attention was attracted so that I returned. Mr. Stanton then said, "General Thomas requires the mails of the department to be delivered to him." General Thomas said, "I require the mails of the department to be delivered to me, and I will transact the business of the office." I had not heard General Thomas say this entirely and clearly, but Mr. Stanton repeated it in this way, and said, "General Thomas says, 'I require the mails of the department to be delivered to me, and I will transact the business of the office.'" I asked General Thomas if he had made use of those words. I asked him if he had stated this, and he assented, and added: "You may make it as full as you please."

That is all the memorandum I made, and I made that at the time and place.

Cross-examined by Mr. STANBERY:

Q. When you arrived at Mr. Stanton's office whom did you find there?

A. I did not make a memorandum of that, and I cannot tell exactly. There were a number of members of Congress there. When Mr. Van Horn was reciting the names, I recognized them as having been there, and I remember Judge Kelley in addition to the names mentioned.

[Mr. Van Horn, sitting in the chamber, said, "I mentioned him."]

Q. How long had you been at the office before General Thomas came in?

A. I think about half an hour.

Q. Did you see him coming?

A. Yes, sir; I saw him coming. The windows opened out toward the White House, and it was announced by some person near the window that General

Thomas was coming; and I, with some others, got up and looked out of the window and saw him coming along the walk, and we expected somewhat of a scene then.

Q. When he came in, did he come in attended, or was he alone?

A. He was alone.

Q. Was he armed in any way?

A. I did not notice any arms.

Q. Side arms or other?

A. I did not notice anything except what the Almighty had given him.

Q. Now, state just what took place and what was said after he came in, according to your own recollection.

A. I think I have stated it about as well as I can. When he came in he passed the compliments, "Good morning, Mr. Secretary;" and "Good morning, gentlemen;" and I think Mr. Stanton asked him if he had any business with him.

Q. Did Mr. Stanton return his salute?

A. Yes, sir; I think so.

Q. Was Mr. Stanton sitting or standing?

A. During the time I was there he was doing both; I cannot tell exactly what he was doing at the time General Thomas spoke to him, but he was down and up and walking around—sometimes sitting, sometimes standing.

Q. Did he ask the general to take a seat?

A. I think not, sir.

Q. Did he take a seat?

A. No, sir; he did not; he did not in that room. I think he took a seat when he went into General Schriver's room.

Q. But he neither took a seat nor, as you recollect, was asked to take a seat?

A. Not that I recollect.

Q. After these "good mornings" passed, what was the next thing?

A. General Thomas said that he was there as Secretary of War *ad interim;* he was appointed by the President, and came to take possession.

Q. Was there nothing said before that?

A. Not to my recollection. I took no memorandum of anything before that, and before what I have stated already.

Q. Did I not understand you to say that Mr. Stanton, when he came in and the salutes were passed, asked him what business he had with him?

A. Yes, sir; and in reply to that he said what I have stated. I did not know you wished me to repeat what I had stated. I stated that.

Q. In reply to that question of Mr. Stanton, what did Mr. Thomas say?

A. He said he was there as Secretary of War *ad interim,* to take possession of the office. Mr. Stanton told him: "General Thomas, I am Secretary of War; you are the Adjutant General; I order you to your room, sir."

Q. He ordered him to his room?

A. Yes, sir.

Q. What was the reply?

A. The reply was that he would not obey the order; that he (Thomas) was Secretary of War *ad interim.*

Q. What followed that?

A. I do not know that there was anything further. Very soon after that General Thomas retired over to General Schriver's room; Mr. Stanton followed him and asked me to go over, and I have given you what occurred there.

Q. After General Thomas left, did Mr. Stanton tell you why he wanted you to accompany him?

A. No.

Q. But he asked you to go with him?

A. Yes, sir.

Q. Did you know where he was going?
A. I knew he was going over to that room.
Q. Did you know he was going to have a further conversation with General Thomas?
A. I expected so; but he did not say so.
Q. Did he ask any one else besides yourself to go?
A. I expect not.
Q. Did any one else go besides yourself?
A. Mr. Van Horn and some other gentlemen followed.
Q. Did you get into the room as soon as Mr. Stanton?
A. Immediately after him.
Q. Did you get there before any conversation began?
A. I think about the time. I followed immediately, and there was no conversation of any marked significance until that which I have mentioned.
Q. What was the conversation, significant or not, that took place between Mr. Stanton and General Thomas after you got into that room?
A. I cannot recite it, because, as I told you, I did not take a memorandum of it, and it was not important enough to be impressed on my mind. I do not recollect.
Q. But you have an impression that there was some?
A. I think there was some—perhaps joking, or something of that kind. They appeared to be in pretty good humor with each other.
Q. That is, the parties did not seem to be in any passion, at all?
A. Not hostile.
Q. But in good humor?
A. Yes, sir.
Q. Joking?
A Yes, sir.
Q. Do you recollect any of the jokes that passed?
A. No, sir.
Q. Then who first commenced the serious conversation in Schriver's room?
A. Mr. Stanton, I think, asked this question.
Q. When the question was answered, as I understand, Mr. Stanton desired you to remember it?
A. Yes, sir.
Q. And then immediately you left the room?
A. Very shortly after.
Q. Do you recollect anything said between them except that, before you left the room?
A. No, sir; I do not.
Q. Did you get back to Mr. Stanton's room, or only into the ante-chamber or hall, and then return?
A. I had got back to Mr. Stanton's room, I think, or to the door.
Q. What then induced you to return to General Schriver's room?
A. I found there was some question asked there then that I thought was important, and I paid some attention to that, and I then went to hear what that was; and then Mr. Stanton told me that he wanted me to take notice of that.
Q. That was as to the mails of the department?
A. Yes, sir.
Q. Anything further?
A. Yes, sir; what I read. There was, in addition to the mails of the department, a statement that he was there as Secretary of War.
Q. After that did you remain any longer in Schriver's room?
A. No, sir; I think not.
Q. Who came out first, Mr. Stanton or yourself?
A. I came out first, and left Mr. Stanton there.

Q. How long did Mr. Stanton remain there after you left?

A. I think a very short time, for I left about that time to go to the Capitol. It was then getting on towards 12 o'clock; and I left, and I know I did not get to the Capitol until after 12 o'clock.

Q. Did all the company then leave?

A. Most of them left. I think the members of the House all left.

Q. Who staid?

A. I do not remember who staid. The were a number of gentlemen there, though.

Q. Who do you recollect was there, besides members of the House?

A. I cannot call to mind now, or give the name of a gentleman that was there, but I know there were others.

Q. Were any other gentlemen there except the regular clerks of the department at that time?

A. Yes, sir; others than clerks of the department.

Q. Were they military men or civilians?

A. During some part of the morning there was a military man there. I believe during the time I was there I saw General Grant there.

Q. At what time was he there?

A. I think it was during that morning, but I am not certain. I have been there a good many times, and I have seen him there at different times.

Q. Was he there during either of these conversations that you have mentioned?

A. No, sir; he was not present at the conversations.

Q. Was it before or after the conversations that General Grant came in?

A. I have stated that I was not distinct about the time, nor certain whether it was that morning or at another, but I rather think he was there during that morning.

Q. Do you recollect any observation on the part of General Thomas, to the effect that he wished no unpleasantness?

A. I do not think I recollect his using that term.

Q. Anything like it?

A. No, sir; I do not.

Q. Did there appear to be any unpleasantness?

A. There did not; General Thomas wanted to get in, I thought, and Mr. Stanton did not want to go out.

Q. But there was nothing offensive on either side?

A. There was nothing very belligerent on either side.

Q. Was there any joking in Mr. Stanton's room, as well as in Schriver's room?

A. No, sir.

Q. Any occasion for a laugh?

A. It was more stern in Mr. Stanton's room, as he once or twice ordered General Thomas to go to his room as a subordinate.

Q. That was the only thing that looked like sternness?

A. That was rather stern, I thought.

Re-examined by Mr. Manager BUTLER:

Q. The counsel for the President asked you if General Thomas was armed on that occasion; will you allow me to ask if on that occasion he was masked?

A. He was not, sir.

Hon. WALTER A. BURLEIGH sworn and examined.

By Mr. Manager BUTLER:

Q. What is your name and position?

A. My name is Walter A. Burleigh. At present I am a delegate from Dakota Territory in the lower house of Congress.

Q. Do you know Lorenzo Thomas, Adjutant General of the army?

A. I do, sir.
Q. How long have you known him?
A. For several years; I cannot say how many.
Q. Have you been on terms of intimacy with him?
A. I have been.
Q. He visiting your house, and you his?
A. Yes, sir.
Q. Do you remember an occasion when you had some conversation with Mr. Moorhead about visiting Mr. Stanton's office? Do you remember that you had such a conversation?
A. I recollect going to the Secretary of War with Mr. Moorhead on the morning of the 22d of last February, I think.
Q. Had you on the evening before seen General Thomas?
A. I had.
Q. Where?
A. At his house.
Q At what time in the evening?
A. In the early part of the evening; I cannot name precisely the hour.
Q. Had you a conversation with him?
A. Yes, sir.
Q. Mr. STANBERY. Wait a moment, if you please. What is the relevancy of that to this inquiry? I understand this is about a conversation of this witness with General Thomas.
A. Mr. Manager BUTLER. The object is to show the intent and purpose with which General Thomas went to the War Department on the morning of the 22d of February; that he went with the intent and purpose of taking possession by force; that he alleged that intent and purpose; that in consequence of that allegation Mr. Burleigh invited General Moorhead and went up to the War Office. The conversation which I expect to prove is this: after the President of the United States had appointed General Thomas and given him directions to take the War Office, and after he had made quite a visit there on the 21st, on the evening of the 21st he told Mr. Burleigh that the next day he was going to take possession by force. Mr. Burleigh said to him——
Mr. STANBERY. No matter about that. We object to that testimony.
Mr. Manager BUTLER. You do not know what you object to if you do not hear what I offer.
Mr. STANBERY. We object to it.
Mr. CURTIS. We know sufficiently for the purpose of the objection.
The CHIEF JUSTICE. The Chief Justice thinks the testimony is competent, and it will be heard unless the Senate think otherwise.
Mr. DRAKE. I suppose, sir, that the question of the competency of evidence in this court is a matter to be determined by the Senate, and not by the presiding officer of the court. The question should be submitted, I think, sir, to the Senate. I take exception to the presiding officer of the court undertaking to decide a point of that kind.
The CHIEF JUSTICE. The Chief Justice is of opinion that it is his duty to decide preliminarily upon the objections to evidence. If he is incorrect in that opinion it will be for the Senate to correct him.
Mr. DRAKE. I appeal, sir, from the decision of the chair, and demand a vote of the Senate upon the question.
Mr. FOWLER. Mr. Chief Justice, I beg to know what your decision is.
The CHIEF JUSTICE. The Chief Justice states to the Senate that in his judgment it is his duty to decide upon questions of evidence in the first instance, and that if any senator desires that the question shall then be submitted to the Senate it is his duty to submit it. So far as he is aware, that has been the

usual course of practice in trials of persons impeached in the House of Lords and in the Senate of the United States.

Mr. DRAKE. My position, Mr. President, is that there is nothing in the rules of this Senate sitting upon the trial of an impeachment which gives that authority to the Chief Justice presiding over the body.

Mr. FESSENDEN. The senator is out of order.

Mr. JOHNSON. I call the honorable member from Missouri [Mr. Drake] to order. The question is not debatable in the Senate.

Mr. DRAKE. I am not debating it; I am stating my point of order.

The CHIEF JUSTICE. The senator will come to order.

Mr. Manager BUTLER. If the President please, is not this question debatable?

The CHIEF JUSTICE. It is debatable by the managers and counsel for the defendant; not by senators.

Mr. Manager BUTLER. We have the honor, Mr. President and gentlemen of the Senate, to object to the ruling just attempted to be made by the presiding officer of the Senate, and with the utmost submission, but with an equal degree of firmness, we must insist upon our objection, because, otherwise, it would always put the managers in the condition, when the ruling was against them, of appealing to the Senate as a parliamentary body against the ruling of the Chair. We have been too long in parliamentary and other bodies not to know how much disadvantage it is to be put in that position—the position, whether real or apparent, of appealing from the ruling of the presiding officer of the Senate. We are very glad that this question has come up upon a ruling of the presiding officer which is in our favor, so that we do not appear to be invidious in making the objection. Although it has fallen from the presiding officer that he understands that all the precedents are in the direction of his intimation of opinion, yet, if we understand the position taken, the precedents are not in support of that position. Lest I should have the misfortune to misstate the position of the presiding officer of the Senate, I will state it as I understand it, subject to his correction.

I understand the position to be that primarily, as a judge in court would have the right to do, the presiding officer of the Senate claims the right to rule a question of law, and then if any member of the court chooses to object, it must be done in the nature of an appeal as taken by one senator just now. If I am incorrect in my statement of the position of the presiding officer I beg to be corrected.

The CHIEF JUSTICE. The Chief Justice will state the rule which he conceives to be applicable once more. In this body he is the presiding officer; he is so in virtue of his high office under the Constitution. He is Chief Justice of the United States, and, therefore, when the President of the United States is tried by the Senate, it is his duty to preside in that body; and, as he understands, he is, therefore, the President of the Senate sitting as a court of impeachment. The rule of the Senate which applies to this question is the seventh rule, which declares that "the presiding officer may, in the first instance, submit to the Senate, without a division, all questions of evidence and incidental questions." He is not required by that rule so to submit those questions in the first instance; but for the despatch of business, as is usual in the Supreme Court, he expresses his opinion in the first instance. If the Senate, who constitute the court, or any member of it, desires the opinion of the Senate to be taken, it is his duty then to ask for the opinion of the court.

Mr. Manager BUTLER. May I respectfully inquire whether that would extend to a manager; whether a manager would have the right to ask that a question of law should be submitted to the Senate?

The CHIEF JUSTICE. The Chief Justice thinks not. It must be by the action of the court or a member of it.

Mr. Manager BUTLER. Then this matter becomes of very important and

momentous substance, because the presiding officer, who is not a member of the court, who has no vote in the court, as we understand it, except possibly upon a question of equal division, gives a decision on a question of law, it may be of the first importance—which, if made, precludes the House of Representatives from asking even that the Senate, who are the triers, shall pass upon it. Therefore if this is to be adopted as a rule our hands are tied; and it was in order to get the exact rule that I have asked the presiding officer of the Senate to state, as he has kindly and fully stated, his exact position.

The CHIEF JUSTICE. Mr. Manager, the Chief Justice has no doubt of the right of the honorable managers to propose any question they see fit to the Senate, but it is for the Senate itself to determine how a question shall be taken.

Mr. Manager BUTLER. I understand the distinction. It is a plain one. The managers may propose a question to the Senate, and the Chief Justice decides it, and we then cannot get the question we propose before the Senate unless through the courtesy of some senator. I think I state the position with accuracy; and it is the one to which we object, I again say, respectfully as we ought, but firmly, as we must.

Now, how are the precedents upon this question? Sorry I am to be obliged to deny the position taken by the presiding officer of the Senate, that the precedents in this country and England are with him. I understand that this question, as a question of precedents in England, has been settled many, many years, hundreds of years. Not expecting that it would arise here, I have not at hand at this moment all the books to which I could refer, but I can give a leading case where this question arose. If I am not mistaken, it arose in the trial of Lord Strafford, in the thirty-second year of the reign of Charles II. The House of Lords had a rule prior to the trial of Strafford, by which the Commons were bound to address the lord high steward as his grace or "my lord," precisely as the counsel for the respondent seem to think themselves obliged to address the presiding officer of this body as "Mr. Chief Justice." When the preliminaries of the trial of Strafford and the other popish lords were settled, the Commons objected that, as a part of the Parliament of Great Britain, they ought not to be called upon through their managers to address any individual whatever, and that their address should be made to the Lords in Parliament. A committee of conference between the Commons and Peers was thereupon had, and the rule previously adopted in the House of Lords was, after much consideration, rescinded, and a rule was reported and adopted in that trial, and it has obtained ever since in all other trials. The result of the conference is stated in this way:

> On the 29th of November, 1680, it is agreed at the joint committee, upon the objection made by the Commons to one of the rules laid down by the Lords, viz: That when the Commons should ask any questions at the trial they should apply themselves to the lord steward, that the managers should speak to the Lords as a House, and say "my lords," and not to the lord high steward, and say "my lord" or "your grace."

A reason being given that the lord high steward was not a necessary part of the court, but only as speaker of the House of Lords, and the lords themselves were the only body of triers. When Lord Strafford came to the bar the Lords, conformably to this doctrine, on the 29th of November, 1680, order—

> That the Lord Strafford shall be directed to apply himself to the Lords, and not to the lord high steward, as often as he shall have occasion to speak at his trial.

And from that day to the latest trial in Parliament, which is the Earl of Cardigan case, in 1841, the rule has been followed. Earl Cardigan being tried in the House of Lords, Lord Chief Justice Denman presided upon that trial, and in that case, as in all the others, the body was universally addressed by counsel on all sides, by prisoner, by managers, by everybody, as "my lords," so that there should be no recognition of any superior right in the presiding officer over any other member of the assembly.

Nor need I, upon this matter of precedents, stop here. In more than these cases this question has arisen. In Lord Macclesfield's case, in 1724, if I remember aright, the point arose whether the presiding officer should decide an incidental question upon the trial; but in every case Lord Chief Justice King referred all questions wholly to the Lords, saying to the Lords, "You may decide as you please."

Again, when Lord Erskine presided on the trial of Lord Melville, which was a trial early in the century, conducted with as much care, regard to forms, and with the utmost preservation of decency and order of the proceedings, the question was put to him whether he ruled points of law, and he expressly disclaimed that power, saying in substance, on every ruling of an incidental question, "Unless any noble lord should think that this matter should be further considered in the Chamber of Parliament, I will give my opinion," thereby always submitting the question to the lords in the first instance.

Again, in Lord Cardigan's case, to which I have just referred, when a question of evidence arose as to whether a card on which the name of Harvey Garnett Tuckett was placed should be given in evidence, the question being whether the man's name was Harvey Garnett Phipps Tuckett or only Harvey Garnett Tuckett, but a question on which the whole trial finally turned when afterward the whole evidence was in, Lord Denman, instead of deciding the question, submitted it to the lords, as follows:

> The inconvenience of clearing the house is so great that I should rather venture to propose that the decision of this question, if your lordships should be called upon to decide it, had better be postponed.

The question was not at that time pressed.

And when the attorney general of England made his argument upon the evidence, Lord Denman arose and apologized to the House of Lords for having allowed him to argue, and said in substance he hoped this would not be drawn into a precedent in criminal trials, but that he did not think it quite right for him to interfere and stop him. And when, finally, the Lords deliberated with closed doors upon the point taken, and Lord Denman gave an opinion to the Lords upon whether the proof sustained the indictments, his lordship said:

> If, my lords, the present were an ordinary case, tried before one of the inferior courts, and the same objection had been taken in this stage to the proof of identity, the judge would consult his notes and explain how far he thought the objection well founded, and I apprehend that the jury would at once return a verdict of acquittal.
>
> Your lordships sitting in this high court of parliament unite the functions of both. I have stated my own views, as an individual member of the court, of the question by you to be considered, discussed, and decided. Though I have commenced the debate, it cannot be necessary for me to disclaim the purpose of dictating my own opinion, which is respectfully laid before you with the hope of eliciting those of the house at large. If any other duty is cast upon me, or if there is any more convenient course to be pursued, I shall be greatly indebted to any of your lordships who will be so kind as to instruct me in it. In the absence of any other suggestion, I venture to declare my own judgment, grounded on the reasons briefly submitted, that the Earl of Cardigan is entitled to be declared not guilty.

Now, then, in the light of authority, in the light of the precedents to which the presiding officer has appealed, in the light of reason, and in the light of principle, we are bound to object to this claim of power on the part of the Chief Justice. I say again that it is not a mere question of form, for all mere forms we would waive, but it is a question of substance. It is a question whether the House of Representatives can bring, by their own motion, to the Senate a question of law if the Chief Justice who is presiding chooses to stand between the Senate and the House and its prosecution. That is a question of vital importance, upon which, for the benefit of the people for all time hereafter, if it did not make any difference in this case, I would not yield one hair, because no jot or tittle of the rights of the people or of the House of Representatives, so far as I understand them, shall ever fall to the ground by any inattention or inadvertence or yielding of mine.

Allow me to state again the proposition declared by the learned presiding officer, because to me it seems an invasion of the privileges of the House of Representatives. It is this: that when the House of Representatives propose a question of law to the Senate of the United States on the trial by impeachment of the President of the United States, the Chief Justice presiding in this as a court can stand between the House of Representatives and the Senate and decide the question; and then, unless by the courtesy of some senator who may be induced to make a motion for them, the House of Representatives, through its managers, cannot get that question of law decided by the Senate.

I should be inclined to deem it my duty, and I believe my associate managers will agree with me if we are put in that position, to ask leave to withdraw and take instruction from the House before we lay the rights of the House, bound hand and foot, at the feet of any one man, however high or good or just he may be; for, as I respectfully bring to your attention, it is a question of most momentous consequence, although not so great, not of so much consequence now, when we have a learned, able, honest, candid, patriotic Chief Justice in the chair, as it may be hereafter. Let us look forward to the time which may come in the history of this nation when we get a Jeffries as lord high steward or Chief Justice. I want, then, that the precedent set in this good time, by good men, when everything is quiet, when the country is not disturbed, to be such as to hold any future Jeffries as did the precedents of old; for this brings to my mind Jeffrie's conduct on an exactly similar question, when he was held bound by the precedents of the House of Lords. In the trial of Lord Delamere, Chief Justice Jeffries, being lord high steward, presiding, said to the earl as he came to plead—I give substance now, not words—"My lord, you had better confess and throw yourself on the mercy of the King, your master; he is the fountain of all mercy, and it will be better for you so to do." The accused earl replied to him: "Are you, my lord, one of my judges, that give me such advice here on my trial for my death?" Jeffries, quailing before the indignant eye of the man whose rights he was interfering with, said: "No, I am not one of your judges; I only advise you as a friend." I desire the precedent fixed now in good times as strong as they were before Jeffries's time, so that hereafter, when we get a Jeffries, if we ever have that misfortune, he shall be bound by them. We have had a Johnson in the presidential chair; and we cannot tell who may get into the chair of the Chief Justice in the far future; but, if we ever do get a Jeffries in that chair, I want the precedent upon this point so settled now that it cannot be in any way disturbed, so as to hold him to the true rule as with hooks of steel.

The CHIEF JUSTICE. The Chair will state the question for the consideration of the Senate. The honorable manager put a question to the witness. It was objected to on the part of the counsel for the President. The Chief Justice is of opinion that it is his duty to express his judgment upon that question, subject to having the question put upon the requisition of any senator to the Senate. Are you ready for the question?

Mr. GRIMES. The question is, whether the judgment of the Chief Justice shall stand as the judgment of the Senate?

The CHIEF JUSTICE. Yes, sir.

Mr. DRAKE. No, sir. I raise the question that the presiding officer of the Senate had no right to make a decision of that question.

The CHIEF JUSTICE. The senator is not in order.

Mr. DRAKE. I wish that question put to the Senate, sir.

The CHIEF JUSTICE. The senator will come to order.

Mr. CONKLING. Mr. President, I rise for information from the Chair. I beg to inquire whether the question upon which the Senate is about to vote is whether the proposed testimony be competent or not, or whether the presiding officer be competent to decide that question or not?

The CHIEF JUSTICE. It is the last question, whether the Chair in the first instance may state his judgment upon such a question. That is the question for the consideration of the Senate. The yeas and nays will be called.

Mr. CONKLING. Before the yeas and nays are called, I beg that the whole of the latter clause of the seventh rule may be read for the information of the Senate.

The CHIEF JUSTICE, (to the Secretary.) Read the rule.

Mr. HOWARD. Read the whole of the rule.

The Secretary read as follows:

VII. The presiding officer of the Senate shall direct all necessary preparations in the Senate chamber, and the presiding officer upon the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. The presiding officer may, in the first instance, submit to the Senate, without a division, all questions of evidence and incidental questions; but the same shall, on the demand of one-fifth of the members present, be decided by yeas and nays.

Mr. Manager BINGHAM. Mr. President, after consultation with my associate managers, I ask leave to make some additional remarks to the Senate before this vote be taken, and to call the attention of senators especially to rule seven to which the President made reference. We think ourselves justified in asking the Senate to consider that rule seven does not contemplate any departure from the long-established usage governing proceedings of this character; in other words, that rule seven simply does provide that "The presiding officer may, in the first instance, submit to the Senate, without a division, all questions of evidence and incidental questions; but the same shall, on the demand of one-fifth of the members present, be decided by yeas and nays." We respectfully submit to the Senate, with all respect to the presiding officer, that this rule means no more than this: that if no question be raised by the senators and one-fifth do not demand the yeas and nays, it authorizes the presiding officer simply to take the sense of the Senate upon all such questions without a division, and there it ends.

I beg leave further to say to the senators, in connection with what has fallen already from my associate, that I look upon this question now involved in the decision of the presiding officer as settled by the terms of the Constitution itself. The Constitution of the United States, as the senators will remember, provides that the Senate has the sole power to try all impeachments. The expression, "the sole power," as the Senate will doubtless agree, necessarily means the only power. It includes everything pertaining to the trial. Every judgment that must be made is a part of the trial, whether it be upon a preliminary question or a final question. It seems to me that the words were incorporated in the Constitution touching this procedure in impeachment in the very light of the long-continued usage and practice in Parliament. It is settled, I beg leave to remind senators, in the very elaborate and exhaustive report of the Commons of England upon the Lords' Journals that the peers alone decide all questions of law and fact arising in such a trial.

It is settled, in other words, that the peers alone are the judges in every case of the law and the fact; that the lord chancellor presiding is but a ministerial officer to keep order; to present for the decision of the peers the various questions as they arise; to take their judgment upon them; and there his authority stops.

And this doctrine is considered so well settled, I may be permitted to say further, (here speaking from recollection of that which I have, however, carefully examined,) that it is carried into the great text-books of the law and finds a place in the fourth Institute of Coke, wherein he declares that the peers are the judges of the law and fact, and conduct the whole proceedings according to the law and usage of Parliament.

As I understand this question as it is presented here, I agree with my asso-

ciate that it is of very great importance, not only as touching the admissibility of evidence—for we certainly have no ground of complaint of the presiding officer for the ruling he made touching the admissibility of the evidence which we offer through this witness—but as touching every other question that can arise; for example, questions that may involve the validity, legality, if you please, of any of the charges preferred in these articles. If such a ruling were asked here of the presiding officer, we submit that it is not competent for him to pronounce any judgment on the subject—that it is alone for the Senate to determine; and they determine it simply for the reason, as I said before, that they have the sole power to try all questions involved in the case.

We stand, then, upon what we believe has been the uniform practice touching this question in England, and we consider that the President presiding now in the Senate has no more power over this question before the Senate than has the lord chancellor, when he presides over the deliberations of the peers, to decide any question. Being himself a peer, he has but his own vote. I do not think a case can be found wherein it was consented by the peers that the lord chancellor should give a decision in any case which is to stand as the judgment of the court without consulting the peers. That is the position that we assume, and we ask it to be understood and considered by the Senate. We understand that the question upon which the vote of the Senate is to be had is, whether the Senate shall decide that the presiding officer, himself not being a member of that body which is invested with the sole power to try impeachments, and therefore to decide all questions in the trial, can himself make a decision, which decision is to stand as the judgment of this tribunal unless reversed by a subsequent action of the Senate. That we understand to be the question that is submitted, and upon which the Senate is about to vote.

Mr. Manager BUTLER. And that the managers cannot raise the question.

Mr. Manager BINGHAM. It is also suggested by my associate that there is also involved in the question the further proposition that the managers, in the event of such decision being made by the presiding officer, cannot call even for a review of that decision by the Senate.

Mr. WILSON. I move that the Senate retire for the purpose of consultation.

Several SENATORS. No, no.

Mr. SHERMAN. Before that is done I desire to submit a question to the managers, in accordance with the rule.

The CHIEF JUSTICE. Does the senator from Massachusetts withdraw his motion?

Mr. WILSON. I withdraw it for a moment.

Mr. SHERMAN. I send to the Chair a question.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read the question of Mr. Sherman, as follows:

I ask the managers what are the precedents in the cases of impeachment in the United States upon this point? Did the Vice-President, as presiding officer, decide preliminary questions, or did he submit them in the first instance to the Senate?

Mr. Manager BOUTWELL. Mr. President and gentlemen of the Senate, I am very much indisposed to ask the attention of the Senate further. As a question concerning the rights of the House in this proceeding, it seems to me of the gravest character; and yet I can very well foresee that the practical assertion on all questions arising in a protracted trial of the principle which the managers assert here in behalf of the House is calculated to delay the proceeding, and very likely at times to involve us in temporary difficulties. In what I say I speak with the highest personal respect for the Chief Justice, who presides, being fully assured that in the rulings he might make upon questions of law and the admissibility of testimony he would always be guided by that conscientious regard for the right for which he is eminently distinguished.

But I also foresee that if the managers acting for the House in the case now before the Senate and before the country, and acting, I may say, in behalf of other generations and of other men who unfortunately may be similarly situated in future times, should admit that the Chief Justice of the Supreme Court of the United States, sitting here as the presiding officer of this body for a specified purpose, and for a specified purpose only, has a right to decide, even as preliminary to the final judgment of the Senate, questions of law and evidence which in the end may be vital in the decision of this tribunal upon the question of the guilt or the innocence of the person arraigned, they should make a surrender, in substance, of the constitutional rights of the House and the constitutional rights of the Senate sitting as the tribunal to try impeachments presented by the House of Representatives. With all deference I maintain that the language of the Constitution, in these words—

"When the President of the United States is tried the Chief Justice shall preside"—

is conclusive without argument. He presides here not as a member of this body; for if that were assumed the claim would be in derogation, nay, in violation, of another provision of the Constitution, which confides to the Senate the sole power of trying all impeachments. I know of no language which could be used, more specific in its character, more inclusive and exclusive in its terms. The language includes, as has been maintained by Mr. Manager Butler in the opening argument, all the members of the Senate, all the men chosen under the Constitution and representing the several States of the Union, whatever may be their qualities, whatever may be their capacities, whatever may be their interests, whatever may be their affiliation with or to the person accused. The Senate sits in its constitutional capacity to decide under the Constitution the question of the guilt of the accused, with all the felicities and with all the infelicities which belong to the tribunal organized under and by virtue of the Constitution. We must accept it as it is, with no power to change it in any particular.

So, also, the words of the Constitution are exclusive. With all deference I am forced to assert and maintain that these words exclude every other man, whatever his station, rank, position elsewhere, whatever his relations to this body under or by the Constitution. The Senate, by the Constitution, has the sole power to try all impeachments, and no person not of the Senate, and exercising the functions of a senator in legislative and executive affairs, can in any way interfere or control or affect their decision or their judgment in the slightest degree. Therefore, Mr. President, it must follow as a constitutional duty that the Senate, without advice, as a matter of right, must decide every incidental question which, by any possibility, can control the ultimate judgment of the Senate upon the great question of the guilt or innocence of the party accused. If, under any circumstances, the testimony of a witness proffered may be denied, or may be admitted, upon the judgment of any person, or by any authority, except upon the judgment and authority of the tribunal before which we here stand, then a party accused and impeached by the House of Representatives may be acquitted or he may be convicted upon any authority or opinion which is not in fact the judgment of the Senate itself. Upon this point I think there can finally be no difference of opinion.

But, Mr. President, as one of the managers, and without having had an opportunity to consult my associates on the point, and speaking, therefore, with deference to what may be their judgment, or what might be the judgment of the House, I shall be willing to proceed in the conduct of this case upon the understanding that the right is here and now solemnly asserted by the Senate for themselves, and as a precedent for all their successors, that every question of law is to be decided by the Senate without consultation with the presiding officer. I hold that the judgment must be exclusively with the Senate. Still I am willing that in all these proceedings the presiding officer of the Senate shall give his opinion or his ruling, if you please to call it a ruling, upon ques-

tions incidental of law and evidence as they arise, unless some member of the Senate, or the managers, or the counsel for the respondent, should first desire the judgment of the Senate.

I happen to have an extract from the record in the case referred to by my associate, and I will read it in the presence of the Senate.

In the trial of Lord Melville, which is reported in the twenty-ninth volume of the State Trials, Lord Chancellor Erskine evidently acted upon this idea. Upon a question of the admissibility of testimony, it having been argued by the managers on one side and the counsel for the respondent on the other, Lord Erskine said :

> If any noble lord is desirous that this subject should be a matter of further consideration in the Chamber of Parliament, it will be proper that he should now move to adjourn; if not, I have formed an opinion, and shall express it.

To that theory of the administration of the duties of the Chair with reference to the rights of the House of Representatives and to the rights of the respondent, for myself, I should not object; but I cannot conscientiously, even in this presence, consent to the doctrine as a matter of right that the presiding officer of the Senate is to decide interlocutory questions, and especially to decide them under such circumstances that it will not be in the power of the managers to take the judgment of the Senate upon the wisdom and justice of the decision.

Mr. Manager BINGHAM. By leave of the Senate I desire to read in their hearing an abstract which I have made touching this question from the authorities to which I referred, and which I believe is accurate. I read first in the hearing of the Senate the abstract which was made from the report of the Commons of England upon the Lords' Journals :

RELATION OF JUDGES, ETC., TO THE COURT OF PARLIAMENT.

Upon examining into the course of proceeding in the House of Lords, and into the relation which exists between the peers on the one hand, and their attendants and assistants, the judges of the realm, barons of the exchequer of the coif, the King's learned counsel, and the civilians masters of the chancery, on the other, it appears to your committee that these judges and other persons learned in the common and civil laws are no integrant and necessary part of that court. Their writs of summons are essentially different; and it does not appear that they or any of them have, or of right ought to have, a deliberate voice, either actually or virtually, in the judgments given in the high court of Parliament. Their attendance in that court is solely ministerial; and their answers to questions put to them are not to be regarded as declaratory of the law of Parliament, but as merely consultory responses, in order to furnish such matter (to be submitted to the judgment of the peers) as may be useful in reasoning by analogy, so far as the nature of the rules in the respective courts of the learned persons consulted shall appear to the peers to be applicable to the nature and circumstances of the case before them, and not otherwise. (8 Burke, p. 42; Report on the Lords' Journal; Trial of Warren Hastings.)

In the volume of Burke here quoted the report is set out at length. I read further from the same report:

JURISDICTION OF THE LORDS.

Your committee finds that in all impeachments of the Commons of Great Britain for high crimes and misdemeanors, before the peers in the high court of Parliament, the peers are not triers or jurors only, but by the ancient laws and constitution of this kingdom known by constant usage are judges both of law and fact; and we conceive that the Lords are bound not to act in such a manner as to give rise to an opinion that they have virtually submitted to a division of their legal powers, or that, putting themselves into the situation of mere triers or jurors, they may suffer the evidence in the cause to be produced or not produced before them, according to the discretion of the judges of the inferior courts. (8 Burke, p. 42; Report on the Lords' Journal; Trial of Warren Hastings.)

I read, also, the extract from fourth Institute, to which I before referred :

It is by the laws and customs of Parliament that all weighty matters in Parliament moved concerning the peers of the realm, &c., ought to be determined, adjudged, and discussed by the course of the Parliament, and not by the civil law, and yet by the common law of this realm used by the more inferior courts; for this reason the judges ought not to give any opinion in a matter of Parliament. (Fourth Institute, p. 15.)

Mr. Manager BUTLER. Mr. President, there was a question asked by one member of the Senate as to the precedents. I have sent for the trial of Judge Chase, which I read from the third volume of Benton's Abridgment of the Debates of Congress. The rule in that case was in the following words:

All motions made by the parties or their counsel shall be addressed to the President of the Senate, and, if he shall require it shall be committed to writing, and read at the Secretary's table; and all decisions shall be had by yeas and nays, and without debate, which shall be entered on the records.

In the course of the trial there arose this question: whether a Mr. Hay, a witness in the case, should use a certain paper to refresh his memory.

Mr. Harper here interrupted Mr. Hay, and said: "The witness may refer to anything done by himself at the time the occurrence happened which he relates. But I submit it to the court how correct it is to refer to what was not done by him, or done at the time."

The President asked Mr. Hay whether the notes were taken by him.

Mr. Hay. The statement was made by different persons. Some parts were made by myself, perhaps the greater part; the rest by Mr. Nicholas and Mr. Wirt. I believe I shall be able to state from it every material occurrence which took place at the time.

The President. Have you the parts made by yourself separate?

Mr. Hay said he had not.

The President then put the question, whether the witness should be permitted to use the paper; and the question being taken by yeas and nays, passed in the negative—yeas 16, nays 18.

There, upon the question whether Mr. Hay should refresh his memory on the stand by notes which were not made by himself, which was certainly an incidental question of law, the President, instead of undertaking to decide it in Chase's case, directly put the question to the court and had it decided in the first instance by yea or nay, not expressing any opinion whatever upon that question.

We have nothing further to add.

Mr. EVARTS. I rise, Mr. Chief Justice and Senators, to make but a single observation in reference to a position or an argument pressed by one of the honorable managers to aid the judgment of the Senate upon the question submitted to it. That question we understand to be whether, according to the rules of this body, the Chief Justice presiding shall determine, preliminarily, interlocutory questions of evidence and of law as they arise, subject to the decision of the Senate upon presentation by any senator of the question to them. The honorable manager, Mr. BOUTWELL, recognizing the great inconvenience that would arise in the retarding of the trial from this appeal to so numerous a body upon every interlocutory question, while he insists upon the magnitude and importance of the right determination, yet intimates that the managers will allow the Chief Justice to decide, unless they see reason to object. On the part of the counsel for the President, I have only this to say: that we shall take from this court the rule as to whether the first preliminary decision is to be made by the Chief Justice or is to be made by the whole body, and we shall not submit to the choice of the managers as to how far that rule shall be departed from. Whatever the rule is we shall abide by it. But if the court determines that in the first instance the proper appeal is to the whole body on every interlocutory question, we shall claim as a matter of right and as a matter of course that that proceeding shall be had.

Mr. Manager BOUTWELL. That is conceded, Mr. President. We do not debate that point.

Mr. WILSON. I renew my motion that the Senate retire for consultation.

Mr. THAYER. On that motion I call for the yeas and nays.

Mr. CAMERON. I hope we shall not retire.

Several SENATORS. Debate is out of order.

The CHIEF JUSTICE. The senator is out of order.

Mr. CAMERON. Well, I only say that——.

The question being taken by yeas and nays, resulted—yeas 25, nays 25; as follows:

YEAS—Messrs. Anthony, Buckalew, Cole, Conness, Corbett, Davis, Dixon, Edmunds, Fowler, Grimes, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Vickers, Williams, and Wilson—25.

NAYS—Messrs. Cameron, Cattell, Chandler, Conkling, Cragin, Doolittle, Drake, Ferry, Fessenden, Frelinghuysen, Henderson, Howard, Morgan, Nye, Ramsey, Saulsbury, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, and Willey—25.

NOT VOTING—Messrs. Bayard, Harlan, Wade, and Yates—4.

The CHIEF JUSTICE. On this question the yeas are 25, and the nays are 25. The Chief Justice votes in the affirmative. The Senate will retire for conference.

The Senate, with the Chief Justice, thereupon (at seven minutes before 3 o'clock) retired to their conference room for consultation.

The Senate having retired,

Mr. SHERMAN submitted the following order:

Ordered, That under the rules, and in accordance with the precedents in the United States in cases of impeachment, all questions other than those of order should be submitted to the Senate.

After debate,

Mr. HENDERSON moved to postpone the present question for the purpose of taking up for consideration the seventh rule, that he might propose an amendment thereto.

Mr CONNESS called for the yeas and nays on this motion, and they were ordered; and being taken, resulted—yeas 32, nays 18; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Cameron, Cattell, Cole, Corbett, Cragin, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Saulsbury, Sprague, Trumbull, Van Winkle, Vickers, Willey, and Williams—32.

NAYS.—Messrs. Chandler, Conkling, Conness, Drake, Ferry, Howard, Howe, Morgan, Morrill of Maine, Morton, Nye, Ramsey, Sherman, Stewart, Sumner, Thayer, Tipton, and Wilson—18.

NOT VOTING—Messrs. Grimes, Harlan, Wade, and Yates—4.

So the motion to postpone was agreed to.

Mr. HENDERSON submitted the following resolution:

Resolved, That rule seven be amended by substituting therefor the following:

The presiding officer of the Senate shall direct all necessary preparations in the Senate chamber, and the presiding officer of the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the presiding officer of the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance submit any such question to a vote of the members of the Senate.

Mr. MORRILL, of Maine, moved to amend the proposed rule by striking out the words "which ruling shall stand as the judgment of the Senate."

After debate,

The amendment was rejected.

Mr. SUMNER moved to amend the resolution by striking out all after the word "Resolved," and inserting:

That the Chief Justice of the United States, presiding in the Senate on the trial of the President of the United States, is not a member of the Senate, and has no authority, under the Constitution, to vote on any question during the trial, and he can pronounce decision only as the organ of the Senate, with its assent.

After debate,

Mr. SUMNER called for the yeas and nays on his amendment, and they were ordered; and being taken resulted—yeas 22, nays 26; as follows:

YEAS—Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake,

Howard, Morgan, Morrill of Maine, Morton, Nye, Pomeroy, Ramsey, Stewart, Sumner, Thayer, Tipton, Trumbull, Williams, and Wilson—22.

NAYS—Messrs. Bayard, Buckalew, Cole, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Sherman, Sprague, Van Winkle, Vickers, and Willey—26.

NOT VOTING—Messrs. Anthony, Grimes, Harlan, Saulsbury, Wade, and Yates—6.

So the amendment of Mr. Sumner was rejected.

Mr. DRAKE moved to amend the resolution by striking out all after the word "that" and inserting :

It is the judgment of the Senate that under the Constitution the Chief Justice presiding over the Senate in the pending trial has no privilege of ruling questions of law arising thereon, but that all such questions should be submitted to a decision by the Senate alone.

After debate,

Mr. DRAKE called for the yeas and nays, and they were ordered ; and being taken, resulted—yeas, 20 ; nays, 30 ; as follows :

YEAS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Drake, Ferry, Howard, Howe, Morgan, Morrill of Maine, Morton, Nye, Ramsey, Stewart, Sumner, Thayer, Tipton, and Wilson—20.

NAYS—Messrs. Anthony, Bayard, Buckalew, Corbett, Cragin, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers, Willey, and Williams—30.

NOT VOTING—Messrs. Grimes, Harlan, Wade, and Yates—4.

So the amendment was rejected.

The question recurring on the rule proposed by Mr. HENDERSON, after debate,

Mr. FERRY called for the yeas and nays, and they were ordered ; and being taken, resulted in—yeas, 31 ; nays, 19 ; as follows :

YEAS—Messrs Anthony, Bayard, Buckalew, Cameron, Corbett, Cragin, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of New Hampshire. Patterson of Tennessee, Pomeroy, Ross, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers, Willey, and Williams—31.

NAYS—Messrs. Cattell, Chandler, Cole, Conkling, Conness, Drake, Ferry, Howard, Howe, Morgan, Morrill of Maine, Morton, Nye, Ramsey, Stewart, Sumner, Thayer, Tipton, and Wilson—19.

NOT VOTING—Messrs. Grimes, Harlan, Wade, and Yates—4.

So the resolution submitted by Mr. HENDERSON was agreed to.

Mr. SUMNER submitted the following resolution :

Resolved, That the Chief Justice of the United States presiding in the Senate on the trial of the President of the United States is not a member of the Senate, and has no authority under the Constitution to vote on any question during the trial.

Mr. HENDRICKS objected to the reception of the proposition, as it did not relate to the matter on which the Senate had retired to confer; and he moved that the Senate return to the Senate chamber; which motion was agreed to.

The Senate returned to its chamber at 18 minutes past 6 o'clock p. m.

The CHIEF JUSTICE. The Senate has had under consideration the question before it when it retired, and has directed me to report the rule adopted, which will be read by the Secretary.

The SECRETARY. The seventh rule, as now amended, reads :

The presiding officer of the Senate shall direct all necessary preparations in the Senate chamber, and the presiding officer of the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the presiding officer of the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon; in which case it shall be submitted to the Senate for decision, or he may, at his option, in the first instance submit any such question to a vote of the members of the Senate.

The CHIEF JUSTICE. Gentlemen, managers on the part of the House of Representatives, you will please state your question.

Mr. Manager BUTLER. Will you spare us a moment for consultation? The chairman of the managers is out.

Mr. TRUMBULL. Mr. President, unless the managers desire that we should continue now in session to take immediate action, I would propose that the Senate adjourn until half-past 12 o'clock to-morrow.

Mr. FERRY and others. The rules fix 12 o'clock.

Mr. TRUMBULL. Very well; until 12 o'clock. If the managers desire to submit any particular action at this moment I will withdraw the motion; if not, I insist upon it.

Mr. WILLIAMS. I move, first, that the rules, as amended, be printed for the use of the Senate.

The CHIEF JUSTICE. The senator from Oregon moves that the rules, as amended, be printed for the use of the Senate.

The question being put, the motion was agreed to.

Mr. TRUMBULL. I now renew my motion that the Senate, sitting as a court of impeachment, adjourn.

Mr. Manager BUTLER. We have nothing to oppose to the motion.

The CHIEF JUSTICE. Have the counsel for the President anything to propose?

Messrs. STANBERY and EVARTS indicated that they had not.

The CHIEF JUSTICE. It is moved that the Senate, sitting as a court of impeachment, adjourn until to-morrow at 12 o'clock.

The motion was agreed to; and the Chief Justice declared the Senate, sitting as a court of impeachment, adjourned until to-morrow at 12 o'clock.

WEDNESDAY, *April* 1, 1868.

The Chief Justice of the United States entered the Senate chamber at five minutes past 12 o'clock and took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives appeared and took the seats assigned them.

The counsel for the respondent also appeared and took their seats.

The presence of the House of Representatives was next announced, and the members of the House, as in Committee of the Whole, with Mr. E. B Washburne, the chairman of the committee, accompanied by the Speaker and Clerk, and they were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the minutes of the last day's proceedings.

The Secretary read the journal of the proceedings of the Senate yesterday sitting for the trial of the impeachment.

Mr. SUMNER. Mr. President, I send to the Chair an order which is in the nature of a correction of the journal.

The CHIEF JUSTICE. The Secretary will read the order proposed.

The Secretary read as follows:

It appearing from the reading of the journal of yesterday that on a question where the Senate were equally divided the Chief Justice, presiding on the trial of the President, gave a casting vote, it is hereby declared that, in the judgment of the Senate, such vote was without authority under the Constitution of the United States.

Mr. SUMNER. On that question I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 21, nays 27; as follows:

YEAS—Messrs. Cameron, Chandler, Cole, Conkling, Conness, Cragin, Drake, Howard, Howe, Morgan, Morrill of Maine, Morton, Pomeroy, Ramsey, Stewart, Sumner, Thayer, Tipton, Trumbull, Williams, and Wilson—21.

NAYS—Messrs. Anthony, Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, Mc Creery, Morrill of Vermont, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Sherman, Sprague, Van Winkle, Vickers, and Willey—27.

NOT VOTING—Messrs. Cattell, Harlan, Nye, Saulsbury, Wade, and Yates—6.

So the proposed order was rejected.

The CHIEF JUSTICE. Senators, during the proceedings yesterday a question was submitted by the managers on the part of the impeachment in relation to evidence, and that question was objected to by the counsel for the President. The managers will now please to submit that question in writing.

Mr. Manager Butler presented the question in writing at the Secretary's desk.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read the following question proposed to be put to the witness, Walter A. Burleigh:

You said yesterday, in answer to my question, that you had a conversation with General Lorenzo Thomas on the evening of the 21st of February last. State if he said anything as to the means by which he intended to obtain, or was directed by the President to obtain, possession of the War Department? If so, state all he said as nearly as you can.

Mr. STANBERY. We object, Mr. Chief Justice.

The CHIEF JUSTICE. Do you desire to make any observations to the court?

Mr. STANBERY. We do, sir.

The CHIEF JUSTICE. The question will be submitted to the Senate.

Mr. HOWARD. What is the question?

The CHIEF JUSTICE. The Secretary will read the question again.

The Secretary again read the question.

Mr. FRELINGHUYSEN. Mr. President, I desire to submit a question.

The CHIEF JUSTICE. The Secretary will read the question submitted by the senator from New Jersey [Mr. Frelinghuysen] to the managers.

The Secretary read as follows:

Do the managers intend to connect the conversation between the witness and General Thomas with the respondent?

The CHIEF JUSTICE. Are the managers prepared to reply to the question?

Mr. Manager BUTLER. Mr. President, if the point is to be argued, with the leave of the Senate we will endeavor to answer that question in the argument.

The CHIEF JUSTICE. It is to be argued. The manager will proceed, if he desires.

Mr. STANBERY. We do not hear the answer.

Mr. Manager BUTLER. The answer is, Mr. President, if you will allow me to repeat it, that, as I understand the point raised is to be argued on the one side and the other, we will endeavor to answer the question submitted by the senator from New Jersey, in the course of our argument.

Mr. TRUMBULL. Mr. President, I should like to hear the question read again, as I think the answer to the inquiry of the senator from New Jersey is in the question propounded by the managers, as I heard it.

The CHIEF JUSTICE. The Secretary will read the question again. Senators will please give their attention.

The Secretary again read the question of Mr. Manager Butler.

The CHIEF JUSTICE. Do the managers propose to answer the question of the senator from New Jersey?

Mr. Manager BUTLER. If there is to be no argument, Mr. President, I will answer the question proposed. If there is to be an argument on the part of the counsel for the President, we propose, as a more convenient method, to answer the question in the course of our argument, because otherwise we might have to make an argument now. I can say that we do propose to connect the respondent with this testimony.

The CHIEF JUSSTICE. Senators——

Mr. STANBERY. Is it in order now, Mr. Chief Justice, for us to argue the question?

The CHIEF JUSTICE. If the counsel desire to submit any observations to the Senate, they may do so.

Mr. STANBERY. Mr. Chief Justice and senators, we have at length reached the domain of law; we are no longer to argue questions of mere form or modes of procedure, but have come at last to a distinct legal question, proper to be argued by lawyers and to be considered by lawyers.

The question now, Mr. Chief Justice and senators, is, whether any foundation is laid, either in the articles or in any testimony yet given, why the declarations of General Thomas should be used in evidence against the President. General Thomas is not on trial; it is the President, the President alone, and the testimony to be offered must be testimony that is binding upon him or admissible against him.

It is agreed that the President was not present on the evening of the 21st of February, when General Thomas made these declarations. They were made in his absence. He had no opportunity of hearing them or contradicting them. If they are to be used against him, it is because they were uttered by some one speaking for him, who was authorized by him to make these declarations of his intentions and his purposes.

Now, first of all, what foundation is laid why the declarations of General Thomas as to what he intended to do, or what the President had authorized him to do, should be given in evidence against the President? It will be seen that by the first article the offence charged against the President is, that he issued a certain order to Mr. Stanton for his removal; ordering his removal, and adding that General Thomas was authorized to receive from him a transfer of the books, papers, records, and property in the department. Now, the offence laid in that article is not as to anything that was done under it, but simply that in itself the mere issuing of that order is the *gravamen* of the offence charged. So much for the first article.

What is the second? That on the same day, the 21st of February, 1868, the President issued a letter of authority to General Thomas, and the *gravamen* there is the issuing of that letter of authority, not anything done under it.

What next? The third article goes upon the same letter of authority, and charges the issuing of it to be an offence with intention to violate a certain statute.

Then we come to the fourth article, which charges a conspiracy. Senators will observe that in the three first articles the offence charged is issuing certain orders, nothing beyond, as in violation either of the Constitution or of the act called the tenure-of-office act. But by the fourth article the managers proceed to charge us with an entirely new offence against a totally different statute, and that is a conspiracy between General Thomas and the President, and other persons unknown, by "force" in one article, "by intimidation and threats" in another, to hinder and prevent Mr. Stanton from holding the office of Secretary of War, and that in pursuance of that conspiracy certain acts were done which are not named, with intent to violate the conspiracy act of July, 1861.

These are the only charges that have any relevancy to the question which is now put. I need not refer to the other articles, in which offences are charged against the President, arising out of his declarations to General Emory, the speeches made, one at the Executive Mansion in August, 1866, another at Cleveland on the 3d day of September, 1866, and another at St. Louis on the 8th of September, 1866. For the present they are out of the way.

Now, what proof has yet been made under the first eight articles? The proof is simply, so far as this question is concerned, the production in evidence of the orders themselves. There they are to speak for themselves. As yet we have not had one particle of proof of what was said by the President, either

before or after he gave those orders, or at the time he gave those orders—not one word. The only foundation now laid for the introduction of this testimony is the production of the orders themselves. The attempt made here is, by the declarations of General Thomas, to show with what intent the President issued those orders; not by producing him here to testify what the President told him, but, without having him sworn at all, to bind the President by his declarations not made under oath; made without the possibility of cross-examination or contradiction by the President himself; made as though they are made by the authority of the President.

Now, senators, what foundation is laid to show such authority, given by the President to General Thomas, to speak for him as to his intent, or even as to General Thomas's intent, which is quite another question. You must find the foundation in the orders themselves, for as yet you have no other place to look for it. Now, what are these orders? That issued to General Thomas is the most material one; but, that I may take the whole, I will read also that issued and directed to Mr. Stanton himself. He says to Mr. Stanton, by his order of February 21, 1868:

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon receipt of this communication.

You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

So much for that. Then the order to General Thomas for the same day is:

SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

To Brevet Major General LORENZO THOMAS,
Adjutant General United States Army, Washington, D. C.

There they are; they speak for themselves; orders made by the President to two of his subordinates; an order directing one of them to vacate his office and to transfer the books and public property in his possession to another party, and the order to that other party to take possession of the office, receive a transfer of the books, and act as Secretary of War *ad interim*. Gentlemen, does that make them conspirators? Is that proof of a conspiracy or tending to have a conspiracy? Does that make General Thomas an agent of the President in such a sense as that the President is to be bound by everything he says and everything he does, even, within the scope of his agency? If it makes him his agent, does this letter of authority, this written authority, authorize him to do anything but that which he is commanded to do—go there and demand possession, go there and receive a transfer from the person? Does it authorize him to use force? Does it authorize him to go beyond the letter and the meaning of the authority which is given him? Not at all.

Now, in the first place, it must be either on the footing of a conspiracy between General Thomas and the President or upon the footing of a direct agency, in which the President is the principal and General Thomas is the agent, that the declarations of General Thomas, either as co-conspirator or as agent of a principal, acting within his authority, are to be admitted in evidence. I do not know any other ground upon which the learned managers can place the admissibility of this hearsay declaration, not under oath, by a party not on the record.

I agree that when a proper foundation is laid by proof of a conspiracy in which A, B, and C are concerned, then the declarations of any one of the con-

spirators, made while the conspiracy is in process, made, too, in furtherance of the conspiracy, not outside of it, not in reference to any other unlawful act, but in reference to the very unlawful act agreed upon, may be admitted. I concede that, under these circumstances, the declaration of any one conspirator binds all his fellows, although made in their absence. So, too, I agree, senators, that when an agency is established, either by parol proof or by writing—and when established by writing that is the measure of the agency, and you cannot extend it by parol proof—when an agency is constituted either by parol proof or by writing to do a certain thing, the acts, and, under certain circumstances, the declarations of the agent, made in performance of that authority, not outside of it, but in performance of it, bind the principal.

Now, I ask this honorable court where is there any evidence yet establishing anything like a conspiracy between the President and General Thomas? Where is there any proof yet establishing any agency between General Thomas and the President, in which the President was principal and General Thomas the agent, save this letter of authority? I do not admit that this letter of authority constitutes the relation of principal and agent at all. I do not admit that the President is to be bound by any declarations made by General Thomas on the footing that he is agent of the President; but if he were, if this were a case strictly of principal and agent, then I say this letter of authority gives no authority to General Thomas to bind his principal beyond the express authority so given.

The object of this proof, as we are told by the learned manager, is to show that General Thomas declared that it was his intention and the intention of the President, in executing that authority, to use force, intimidation, and threats. Does the authority authorize anything of that sort, even if it were a case of principal and agent? Suppose a principal gives authority to his agent to go and take possession of a house of his in the occupation of a tenant, and to receive from that tenant the delivery of the house, does it authorize the agent to go there *manu forti* to commit an assault and battery upon the tenant, to drive him out *vi et armis*, or even scarcely to use the *molliter manus?* I submit not. Is the principal to be made a criminal by the act of his agent acting simply under an authority which purports only to give a right of peaceable possession and of surrender by the consent of the party in possession? Is the principal to be bound by any excess of authority used by his agent in executing it; or is he, when the authority is in writing and does not authorize force, to be bound by the declarations of the agent that force will be used? Which of us would ever be safe in giving any authority to an agent if we are to be submitted to consequences like these?

But, senators, this is not a question of principal and agent. What, I pray you, has the President done that he is held to be a conspirator or as a principal giving unlawful authority to an agent? Does the President appoint General Thomas his agent in any individual capacity to take possession of an office that belonged to him, or of books and papers that were his property? Not at all. What is the nature of this order? It is, according to the accustomed formula, the designation of an officer, an officer already known to the law, to do what? To exercise a public duty, to perform the duties of a public office. Is the person thus appointed by the President his agent? When he accepts his appointment does he act only under the instructions of the principal, and is he the agent of the principal to carry out a private purpose or to perform a private duty? Certainly not. He at once becomes an officer of the law, with liabilities himself as a public officer, liable to removal, liable to impeachment, liable to indictment and prosecution for anything which he may do in violation of his duties as a public officer.

Are all the officers of the United States who have been appointed just in this way the agents of the President? When the President gives a commission,

either a permanent one or a temporary one, to fill a vacancy or to fill an office during a disability, are the persons so designated and appointed his agents, and is he bound by everything they do? If they take a bribe, is it a bribe to him? If they commit an assault and battery, is it an assault and battery committed by him? If they exceed their authority, does he become liable? Not at all. If third persons are injured by them in the exercise of the power which he has given, may those third persons go back upon the President as the responsible party under the principle *respondeat superior?*

There is no idea of principal and agent here; it is the case of one public officer giving orders to another public officer. He clothes him, not with his authority, but with the authority of the law, and the public officer so appointed stands under an obligation of oath, not to the principal, not to the President, but to the law itself; and if he does any act which injures a third person, or which violates any law, it is he that is responsible, not the President who has appointed him.

Senators, it seems to us that these conclusions are inevitable. I shall scarcely trouble this honorable court, made up so largely of lawyers of the greatest eminence, with the citation of authorities upon a point so clear as this. I understand the learned managers to say that they expect hereafter to connect the President with these declarations of General Thomas.

Mr. Manager BUTLER. I believe I did not use the word "hereafter."

Mr. STANBERY. Does the learned manager say that he has heretofore done it?

Mr. Manager BUTLER. I only say now that I did not say "hereafter."

Mr. STANBERY. You expect to do it, not that you have done it? I do not want to criticise the language of the gentleman nor to have mine criticised. What I understand the gentleman to say, in answer to a question put by a senator, was that he did expect to show a connection. If he did not mean that he meant nothing; or he meant one thing and said another. It was to meet the objection that as yet you have laid no foundation that the question was put to the learned manager "do you expect to lay a foundation;" and the answer was in the affirmative. Drawn out after one or two repetitions of the question, the honorable manager tells us they expect to lay the foundation. Is that enough for the introduction of evidence which *prima facie* is inadmissible? Is that enough? It is not enough.

I agree that there are exceptions in cases of conspiracy, and, perhaps, of agency, to the necessity of the introduction of preliminary proof, laying the foundation before witnesses are called to state the declarations of a co-conspirator or of an agent. They are extreme cases, and so put in the books, but no such extreme case is shown here. But we have heard no reason why we must in this case reverse the order of testimony and go into that which is *prima facie* inadmissible under the assurance that a foundation is hereafter to be laid.

What prevents the gentleman from laying that foundation? What prevents them from showing a conspiracy in the first place? What prevents them from showing instructions outside of this letter of authority to use force, intimidation, or threats? What reason is there? None whatever is stated. Is it a matter merely at the option of counsel in the introduction of testimony to begin at the wrong end, to introduce what is clearly inadmissible without a foundation, and to say "We will give you the superstructure first and the foundation last?" Does that lie merely in the option of counsel? Was such a thing as that ever heard? None have ever heard it; and I say, and such are the authorities, that it must be an extreme case, founded upon direct assurance upon the professional honor of counsel, before a court will allow testimony *prima facie* inadmissible to be admitted under the statement that hereafter a proper foundation will be laid.

Mr. Manager BUTLER. Mr. President, I must ask that the usual rule shall be enforced here; that if any authorities are to be cited by the counsel for the

President they must be cited in their opening, so that we can have opportunity to reply to them, and not after I have replied have authorities cited. If there are none I will go on.

The CHIEF JUSTICE. Such is the undoubted rule.

Mr. STANBERY. I think, Mr. Chief Justice, I will allow this question to stand without the production of authorities.

Mr. Manager BUTLER. Mr. President and Senators, the gravity of the question presented, being more than the mere decision of a given interrogatory, has induced the President's counsel to argue it at length, they seeing that largely upon this question and the testimony adduced under it upon one of the articles of this impeachment the fate of their client may depend. It is a grave question, and therefore I must ask the attention of the Senate and the presiding officer, as well as I may, to some considerations which determine it in my mind.

But before I do so I pray leave to sketch the exact status of the case up to the point at which the question is produced; and I may say—I trust without offence—that the learned counsel for the President has entirely ignored that status. I take for the evidence of it the propositions put forward in the answer of the President, the papers that have been already adduced, and the testimony, so far as we have gone. It appears, then, that on or about the 12th day of August last past, possibly before the President conceived the idea of removing Edwin M. Stanton from office at all hazards, claiming the power and right to do so against the provisions of the act known as the tenure-of-civil-office act, he undertook to suspend him under that act. Therefore, the decision of this question, in one of its aspects, will decide the great question here at issue this hour. Is that act, up to this time, to be treated as a law of the land, as an act of Congress valid and not to be infringed by any executive officer whatever? Because, if it is a law, then the President admits that he undertook to remove Mr. Stanton in violation of that law, and that he issued the order to General Thomas for that purpose, and only to violate it; and his palliation is, that he meant to make a case for judicial decision; but to do so, he intended to issue the order to Mr. Thomas, and Thomas was, under it, to act in violation of the provisions of that act. Am I not right upon this proposition?

That being so, then we have him, on his part, intending to violate the law; we have him, then, issuing an order in violation of the law; we have him, then, calling to his aid, to carry out the violation of that law, an officer of the army.

Now, in the light of that position, what is the next thing we find? We find that he issues an order to Lorenzo Thomas to take possession of the War Department. The learned counsel for the President says that that is an order in the usual form. I take issue with him. There are certain ear-marks about that order which show that it was not in the usual form. It has in it words of imperative command. It is not simply, "you are authorized and empowered to take possession of the War Department; but it is "you will immediately"—all other things being laid aside, at once, whatever may oppose—"you will immediately enter upon the discharge of the duties of that office."

Now, we must take another thing which appears in this case beyond all possibility of cavil, and that is, that the President knew at that time that Mr. Stanton from the first, to wit, on the 12th of August last, claimed the right not to be put out of that office, and when he went out he notified the President solemnly that he only went out in obedience to superior force. To get him out, the President authorized to take possession the General of the army of the United States; and that, for all legal purposes and for all actual purposes, was equivalent to using the force of the whole army of the United States to take possession of that office, because if the General of the army thought that the order was legal, he, obeying the orders of his superior, when he was ordered to take possession by force, had a right to use the whole army of the United States to enforce the President's order. Therefore, the President was notified

that Mr. Stanton only yielded his office at first to superior force; and so he did wisely and patriotically, because if he had not yielded, a collision might have been brought which would have raised a civil war, which, in the language of the late rebels and General Thomas, is an "onpleasantness" between loyal and rebel men.

The President knew that Mr. Stanton at first said, "I will only yield this office to superior force." Then Mr. Stanton having thus yielded it, the General of the army took possession, and on the action of the Senate the General vacated it in obedience to the high behest of the Senate, and Mr. Stanton was reinstated in it in obedience to the high behest of the Senate, and being there he was still more fortified in his position than at first. If he would not yield it except to superior force on the 12th of August, 1867, do you believe, senators, is any man so besotted as to believe that the President did not know that Mr. Stanton, so reinstated, so fortified, meant to hold the office against everything but force? The President had been notified that Stanton yielded only to the General of the army; wielding superior force, he had seen Stanton put back by the high authority of the Senate; he had seen Stanton sustained by a vote of the Senate, declaring that the attempt to remove him was illegal and unconstitutional; and then, for the purpose of bringing this to an issue, the President of the United States issued his order to General Thomas, another officer of the army, "You will immediately enter upon the discharge of the duties of the War Office." What then? He had come to the conclusion to violate the law and take possession of the War Office; he had come to the conclusion to do that against the law and in violation of the law; he had sent for Thomas, and Thomas had agreed with him to do that by some means if the President would give him the order, and thus we have the agreement between two minds to do an unlawful act; and that, I believe, is the definition of a conspiracy all over the world.

Let me restate this. You have the determination on the part of the President to do what had been declared to be, and is, an unlawful act; you have Thomas consenting; and you have therefore an agreement of two minds to do an unlawful act; and that makes a conspiracy, so far as I understand the law of conspiracy. So that upon that conspiracy we should rest this evidence under article seven, which alleges that—

> Andrew Johnson * * * * did unlawfully conspire with one Lorenzo Thomas, with intent unlawfully to seize, take, and possess the property of the United States in the Department of War in the custody and charge of Edwin M. Stanton.

And also under article five, which alleges a like unlawful conspiracy not alleging that intent.

Then there is another ground upon which this evidence is admissible, and that is upon the ground of principal and agent. Let us, if you please, examine that ground for a few moments. The President claims by his answer here that every Secretary, every Attorney General, every executive officer of this government exists by his will, upon his breath only; that they are all his servants only, and are responsible to him alone, not to the Senate or Congress, or either branch of Congress; and he may remove them for such cause as he chooses; he appoints them for such cause as he chooses; and he claims this right to be illimitable and uncontrollable, and he says in his message to you of December 12, 1867, that if any one of his Secretaries had said to him that he would not agree with him upon the unconstitutionality of the act of March 2, 1867, he would have turned him out at once. All this had passed into history, and Mr. Thomas knew that as well as anybody else. Now, then, what is the position and duties of a Secretary of War, whether *ad interim* or permanent? It is that he—

> Shall perform and execute such duties as shall from time to time be enjoined on or intrusted to him by the President of the United States agreeably to the Constitution—

Intrusted to him agreeably to the Constitution—

Relative to military commissions, or to the land or naval forces, ships, or warlike stores of the United States, or such other matters respecting military or naval affairs as the President of the United States shall assign to the said department, * * * * and that the said principal officer shall conduct the business of the said department in such manner as the President of the United States shall from time to time order or instruct.

Therefore, his commission is to do precisely as the President desires him to do about anything that pertains to the War Office, and he stands, then, as the agent of the principal—to do what? He was authorized by the President to obtain possession of the War Office. Was he authorized to do anything else that we hear of up to that time? No. He was to obtain possession of the office. Now, what do we propose to show by this evidence? Having shown that Thomas was authorized to obtain possession of the office; having shown that he had agreed with the President to obtain it; having put in testimony that the two stood together in the pursuit of one common object, the President wanting Thomas to get in, and Thomas wanting to get in, and both agreeing and concerting means together to get in, the question is whether, under every rule of law, we are not permitted to show the acts and declarations, however naked these declarations may be, of either of these two parties about the common object? And the very question presupposes that we are only to ask the declarations of Thomas about the common object. But the case does not quite stop here, because we shall show that Thomas was then talking about to execute the common purpose. We asked Mr. Burleigh if he was a friend to General Thomas; he said yes; if they were intimate? yes; accustomed to visit backward and forward? yes. Governor Moorhead has already told you that Mr. Burleigh was a friend of the President. There needed somebody to aid in this enterprise; some moral support was wanted in this enterprise; and we propose to show that General Thomas was endeavoring to get one of the members of the House of Representatives to support him in the enterprise, and was laying out the plan, and that he asked him to go with him the next morning and aid him in the enterprise, and be there aiding and abetting in the enterprise. Such is the testimony we propose to show, and that is one way in which we propose to connect the President with the joint enterprise. Such is the exact condition of things.

Now, having shown a common object—whether a lawful or unlawful one would make no difference as to this point; but, as I contend, a common, unlawful object—and having shown the two parties agreeing upon one thing, having shown the authority of one to the other to do an act, can we not put in the declarations of both parties in regard to that act? Do not the acts of one become the acts of the other? Take the testimony we put in yesterday. Why did not my learned friends object to what Thomas said to Mr. Stanton when he demanded the War Office? The President was not there. To use the arguments of the learned counsel for the President, Thomas was not upon oath; he was acting in the President's absence. Why should we put in the act of Congress there yesterday? It was because he was doing in relation to the thing itself.

Mr. STANBERY. That was within the authority.

Mr. Manager BUTLER. Ah! that was within the authority. How was it within the authority? It was within the authority because the President had commanded him to take possession. Now, then, I want to show the means by which he was to take possession. How was that to be done? Why, they say (and only the gravity of the occasion prevents me from believing it a stupendous joke) we should show what he said by calling Thomas. On the trial of one conspirator call the other to show the conspiracy! Was that ever done in any court upon any question whatever, except one conspirator turns State's evidence or King's evidence, as it is called? and Thomas, I believe, is not quite bad enough to do that yet. It was never done by intelligent counsel.

These, then, are the foundations on which we stand. Now, what are the authorities for receiving these declarations? I hold in my hand Roscoe's Criminal Evidence, and I propose to cite it upon this point: that we are not bound to put in all our evidence at once, and that, by the very acts and declarations of the conspirators themselves, we may prove the conspiracy.

I read from page 390:

The rule, says Mr. Starkie, that one man is not to be affected by the acts and declarations of a stranger, rests on the principles of the purest justice—

"Acts and declarations of a stranger," you will observe.

and although the courts, in cases of conspiracy, have, out of convenience, and on account of the difficulty in otherwise proving the guilt of the parties, admitted the acts and declarations of strangers to be given in evidence, in order to establish the fact of a conspiracy, it is to be remembered that this is an inversion of the usual order, for the sake of convenience, and that such evidence is, in the result, material so far only as the assent of the accused to what has been done by others is proved. (2 Stark. Ev., 235, second edition.)

It has since been held that the prosecutor may either prove the conspiracy which renders the acts of the conspirators admissible in evidence, or he may prove the acts of different persons, and thus prove the conspiracy.

And we have attempted to prove the conspiracy in the same way.

Again, the authority says:

Where, therefore, a party met, which was joined by the prisoner the next day, it was held, that directions given by one of the party on the day of their meeting, as to where they were to go, and for what purpose, were admissible, and the case was said to fall within Rex *vs.* Hunt, 3 B. and Ald., 566, where evidence of drilling at a different place two days before, and hissing an obnoxious person, was held receivable.

The answer of the learned counsel to the authority would be to say, "those were acts." I agree; but declarations simply may be proof of such conspiracy. Now, then, if the Senate believe that we have shown any common purpose, which is all that is necessary, between the President and Thomas, then this authority which we find on page 393 is in point:

The cases in which, after the existence of a conspiracy is established, and the particular defendants have been proved to have been parties to it, the acts or declarations of other conspirators may be given in evidence against them, have already been considered (*vide ante*, pp. 76–80.) It seems to make no difference as to the admissibility of this evidence, whether the other conspirators be indicted or not, or tried or not; for the making of them co-defendants would give no additional strength to their declarations as against others.

That authority answers the argument of the learned counsel for the defendant when he says Thomas is not here on trial. No; but his conspirator is, his master is, his principal is, and the fact that he is not present makes no difference on the question of evidence. The evidence is admissible because of the mutual agreement.

To show that this doctrine stands upon the same ground, as well in civil cases as in criminal, I refer next to 2 Carrington and Payne, page 232. This was an action of false imprisonment against three certain defendants:

The plaintiff's counsel wished to give in evidence, that several weeks after all the defendants had locked the plaintiff up in the cage, the defendant, Court, said, "I will take care that neither of the Wrights shall have a bed to lie on before the end of six months." At the time this was said the other defendants were not present.

These three men had engaged in locking a man up in jail, and weeks afterward one of the defendants made a declaration as to his purpose, and that was to oppress the party injured by keeping him locked up and putting him to bodily inconvenience.

Jervis, for the defendants, objected that this declaration of the defendant, Court, ought not to be received in evidence, because it was made in the absence of the other defendants.

* * * * * * * * *

GARROW, B.—I am of opinion that this declaration of the defendant, Court, is evidence. It is necessary that the plaintiff should connect all the defendants as joint trespassers in the fact of imprisonment; and, having done so, I must receive in evidence anything that either of the defendants said relative to the trespass, though in the absence of the others. So much as to the law. On the hardship of the case I need only say that if the law were not

so, a man going to do another an injury might proclaim his malice in the market-place and yet shut out evidence of such malice from the consideration of the jury by only associating himself in the transaction with other persons a shade less guilty than himself; and persons may always avoid the declarations of the malice of their co-defendants operating against them by taking care not to be concerned in the doing of things which they cannot afterward justify.

Is not this case precisely in point with ours, only a hundred times stronger? But I may be answered that that is an English case. Well, I have here a United States case, the case of the United States *vs.* Gooding, (12 Wheaton.) I shall read from pages 469 and 470. Let me state the case. One Gooding had fitted out at Baltimore a slaver called the General Winder—and I may say, in passing, a very proper name for it—and having fitted her out he sent her to the West Indies, and there being at the West Indies, before she started on her voyage to Africa, the captain undertook to tell a witness on what voyage she was going, where she was bound; the evidence offered being:

That he, Captain Coit, was at St. Thomas while the General Winder was at that island in September, 1824, and was frequently on board the vessel at that time; that Captain Hill, the master of the vessel, then and there proposed to the witness to engage on board the General Winder as mate for the voyage then in progress, and described the same to be a voyage to the coast of Africa for slaves, and thence back to Trinidad de Cuba; that he offered to the witness seventy dollars per month, and five dollars per head for every prime slave which should be brought to Cuba; that on the witness inquiring who would see the crew paid in the event of a disaster attending the voyage, Captain Hill replied, "Uncle John," meaning (as the witness understood,) John Gooding, the defendant.

The defendant being in Baltimore at that time, the first point taken in this case was that the act of hiring a man to be a mate was in the scope of his authority; and the second point was that telling who would pay him was a declaration of one of the principals, of one of the conspirators, if you please, of one party engaged in a joint transaction with the other. Upon that the court say:

Those declarations and explanations are as much within the scope of the authority as the act of hiring itself. Our opinion of the admissibility of this evidence proceeds upon the ground that these were not the naked declarations of the master, unaccompanied with his acts in that capacity, but declarations coupled with proceedings for the objects of the voyage, and while it was in progress. We give no opinion upon the point whether mere declarations, under other circumstances, would have been admissible.

Now, let us see the condition of General Thomas. He had been on the 21st of February ordered to take possession "immediately," at once. He had gone to a friend of his, Mr. Burleigh, and wanted him to aid him in this object. He was hiring a mate, if you please, on that voyage, precisely within the case of Gooding. He was wanting somebody to aid him; and he thereupon describes to Burleigh the voyage; that it was to be a slaver's voyage; what he was to pay; how it was to be received; how he was to seize the slave; or, in other words, how he is to seize the War Department; and we offer to put these things in evidence by his declarations.

I have but one authority more, and I will cease troubling the Senate upon this point. I read from 3 Greenleaf on Evidence, section 93:

The evidence in proof of a conspiracy will generally, from the nature of the case, be circumstantial. Though the common design is the essence of the charge, it is not necessary to prove that the defendants came together and actually agreed in terms to have that design and to pursue it by common means. If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another another part of the same, so as to complete it with a view to the attainment of that same object, the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object.

Almost in the language of this authority the object was to get the War Department at all hazards. That is agreed; that is in the President's answer. It is there said to be a high constitutional prerogative to do it! They had been notified that Stanton would hold it by force, as, thank God, up to this hour, he has held it against these conspirators; and being notified that he

would not deliver it except to force, they then started out to devise ways and means, and we shall show you, and by these very conversations with this very person, Thomas declared that if he had not been arrested by the intervention of the courts he would have used force on the morning when he was there, as has been shown.

Now, are we, upon the trial of this issue, to be told that the President of the United States can employ men to go to do this, that, and the other, which is illegal, admitted to be illegal, unless the law is unconstitutional, and then turn back upon us and say, "Oh, you cannot put in what my agents said while they were pursuing this thing, while they were getting together means to execute my will." Let me illustrate for a moment. This is only to Burleigh. Suppose Thomas had gone to get the commander of this department, General Emory, with his forces. Suppose he had said to him, "I want you to come to-morrow to aid me and see me take this department by force," could we not put that in? Is this objected to because he only asked Mr. Burleigh? If he kept asking men enough to go with him he would have had enough, as he thought he had, until the hand of the law was laid upon him. Therefore I respectfully answer the question put by the learned senator, that we have connected and do expect to connect the President with this by a series of acts, a series of declarations, a series of operations which will leave no doubt on the mind of any senator what this purpose was. But we claim, further, that there is no doubt upon any man's mind what the purpose was at that hour.

I desire, in closing, simply to call your attention to the opening address of the Attorney General—I beg pardon, the learned counsel for the defendant; he will pardon me, but I have been so accustomed to meet him in other relations that I sometimes forget. He says that we have now got to a question of law fit to be argued by lawyers to lawyers, implying that all other questions which have been argued before this high court, as he insists upon calling it, have not been fit to be argued either by lawyers or to lawyers. It is for you to defend yourselves from that sort of imputation. I had supposed the great questions we had been arguing were not only fit to be argued by lawyers to lawyers, but by statesmen to statesmen, by the representatives of the people to the senators of the United States. And I insist that this question is not one to be narrowed down to the attorney's office, but is to be viewed in the light of the law and enlightened jurisprudence as it will be administered by the Senate of the United States.

The question for you to determine is, will this evidence aid you, for you are both court and jury—this is not a case where the court rule one way and the jury may go another; but you are both court and jury—will this evidence enlighten you if you hear from this Secretary *ad interim* as to what he was doing and intending to do in this matter, joint enterprise of himself and the President? Will it enlighten you upon the judgment you are to render? If it will not, then you will say so, and vote that it shall not be heard, and the people's case will not be brought before the Senate. If, on the contrary, it will enlighten you, then I respectfully and earnestly urge that it may be received. And in this we are fortunate in being sustained by the high authority of the presiding officer. I had supposed this question was ruled and settled yesterday, and hardly expected to debate it this morning. All I can say is, as the decision is made, however much I might have objected to the mode in which it was made, I respectfully submit *stare decisus* let the decision stand, in the language of the rule, as the judgment of the Senate.

Mr. CURTIS. Mr. Chief Justice, I ask to have the question propounded by the honorable managers read. It is long, and consists of different parts, and I desire it to be distinctly understood before I speak to it.

The CHIEF JUSTICE. The Secretary will read the question propounded by Mr. Manager Butler to the witness.

The Secretary read as follows:

You said yesterday, in answer to my question, that you had a conversation with General Lorenzo Thomas on the evening of the 21st of February last. State if he said anything as to the means by which he intended to obtain, or was directed by the President to obtain, possession of the War Department. If so, state what he said as nearly as you can.

Mr. CURTIS. Mr. Chief Justice and Senators, you will observe that this question contains two distinct branches. The first inquires of the witness for declarations of General Thomas respecting his own intent. The second inquires of the witness for declarations of General Thomas respecting directions given to him by the President. In reference to the first branch, that is, the separate and independent intent of General Thomas himself, I am not aware that its subject-matter is anywhere put in issue by the articles. General Thomas is not on trial. It is the President who is on trial. It is his intentions or directions, the means, the unlawful means, which he is charged with having adopted and endeavored to carry into effect, which constitute criminality in those articles which relate at all to this subject; and therefore it seems to me that it is a sufficient objection to the first part of this question that it relates to a subject-matter wholly immaterial, and which, if proved by legitimate evidence, ought in no manner to affect the case of the President. The President is not charged here with any ill intentions or illegal intentions of General Thomas; he is charged here with his own illegal intentions; with them alone can he be charged; and therefore I respectfully submit to senators that that branch of the question which seeks to draw into this case evidence of the intentions of General Thomas, aside from instructions given to him or views communicated to him by the President himself, is utterly immaterial, and ought not to be allowed to be proved by any evidence, whether competent or incompetent.

In the next place, I submit that the evidence which is offered to prove the intention of General Thomas, if that fact were in issue here, and could, when proved, have any effect upon the President's case, is not of an admissible character. The intent of a party, as every lawyer knows, is a fact, and it is a fact to be proved by legal and admissible evidence, just as much as any other fact. It is natural for a person not a lawyer to say that the true way to ascertain a man's intent is to take what he says is his intent; because intent is a state of mind, and when that is expressed that expression is fit evidence of it. All that is true; but inasmuch as it is not sworn evidence of it, inasmuch as it is not given by the man when on the stand in the presence of the accused, and with opportunity for cross-examination, it is no evidence at all, unless you can bring the case within one of the exceptions which exist in the law; one of these exceptions, as has been said by my associate counsel, being the case of principal and agent; the other the case of co-conspirators.

I do not propose to go over the argument which was so clearly and forcibly put, as it seems to me, by my associate who opened it. I think senators must have understood perfectly well the grounds upon which it is our intention to rest this objection to the declarations of General Thomas, so far as regards his own intent, that he was not the agent of the President, that he received from a superior officer an order to do a certain thing, and in no sense thereby became an agent of that superior officer, nor did that superior officer become accountable for the manner in which he might carry out that order; and that this is specially true when the nature of the order is nothing but the designation of one public officer to notify another public officer that he has been designated to discharge the duties of the office from which the latter has been removed; in which case whatever this designated person may do he does on his own account and by force of his own views of how the authority is to be carried out, unless he has received some special instructions in regard to the mode of carrying them out.

We submit, then, in the first place, that the intentions of General Thomas are immaterial, and the President cannot be affected by them; and secondly, if

they be material, they must be proved by sworn evidence, and not by hearsay statements.

The other part, senators, of the question appears to me to admit of even less doubt; and that part is attempting to inquire of the witness what was said by General Thomas respecting directions or instructions given to him by the President, which presents the naked case of an attempt to prove an authority of an agent by the agent's own declarations. The question is whether the President gave instructions to General Thomas in regard to the particular manner or means by which this order was to be carried out. Upon its face the order is intelligible. We understand it to be in the usual form. There is no allusion made to the exercise of force, threats, or intimidation of any kind. Now they propose to superadd to this written order, by means of the declarations of the agent himself, that he had an authority to use threats, intimidation, or force; and no lawyer will say that that can be done unless there is first laid the foundation for it by showing that the two parties were connected together as co-conspirators. I agree that if they could show a conspiracy between the President and General Thomas to which these declarations relate, then the declarations of one of them in reference to the subject-matter of that conspiracy would be evidence against the other.

Now, what is the case as it stands here before you, and as is asserted by the honorable manager himself? He starts out with the proposition that the President in his answer has admitted his intention to remove Mr. Stanton from office. That, he says, was an illegal intention. That, he says, was an intention to be carried out by means of the order given to General Thomas; and when the President, he says, gave that order to General Thomas and General Thomas accepted it and undertook to execute it, there was an agreement between them to do an illegal act. What was the illegal act which thus far we have got what he calls a conspiracy to do? It was to remove Mr. Stanton; and, if that be contrary to the tenure-of-office act, that, when accomplished, may be an illegal act. But is that the illegal act which they are now undertaking to prove? Is that the extent of the conspiracy which they are now undertaking to show? Not at all. They are passing altogether beyond that. They now undertake to say, "we will show that he conspired with General Thomas to remove Mr. Stanton by force, threats, or intimidation, and thus to commit a totally distinct crime under the conspiracy act." That is the conspiracy which they propose to show. Having shown only an agreement to remove Mr. Stanton, and starting with that agreement, which, of course, makes the entire limits of the conspiracy, as they call it, of which they have given evidence, all circumscribed within this intention merely to remove Mr. Stanton, they now graft on to that by a pure and mere assumption a conspiracy to remove him by force; and so, having proved a conspiracy to remove him without force, we will now give in evidence the declaration of these co-conspirators to show a conspiracy to remove him with force. I respectfully submit they have then travelled out of the limits of the conspiracy which they themselves pretend they have given any evidence of; and as soon as they get out of the limits of that conspiracy which they allege and say they have given some proof of, and advance to another and totally different conspiracy, namely, the conspiracy to turn out Mr. Stanton by force, then they must give some evidence of that other conspiracy before they can use the declarations of either of the parties to it as evidence against the President.

But, senators, I do not think this thing should be left here. It is an entire misconception of the relations of these two parties, the Commander-in-chief and a subordinate officer, one receiving an order from the other, under any circumstances which appear here, or which there is any evidence here tending to prove, to call it a conspiracy. The learned manager has said: "If I show an agreement between two persons to do an unlawful act, that is a conspiracy, is it

not?" It may be; but when the Commander-in-chief gives an order to a subordinate officer to do an act, and the subordinate officer goes to do it, is that done by agreement between them? Does it derive its force and character and operation from any agreement with them, any concurrence of their minds by which the two parties assent and agree together so as to accomplish something which without that assent and agreement could not be done? Is it not as plain as day that military obedience is not conspiracy and cannot be conspiracy? Is it not as plain as day that it is the duty of the subordinate officer when he receives an order from his commander to execute that order?

My associate [Mr. Evarts] suggests to me that, as is a well-known fact, and will, no doubt, appear in the course of the proceedings, when General Grant received an order from the President to take this same place, he put it upon the ground of military obedience. Was that a conspiracy? Senators, there can be no such thing as a conspiracy between the Commander-in-chief and a subordinate officer, arising simply from the fact, that the Commander-in-chief issues an order and the subordinate officer obeys it. Therefore I respectfully submit that the honorable managers have not only proved not even the conspiracy to remove Mr. Stanton without force, but they have offered no evidence here tending to prove any conspiracy at all. It rests exactly where the written orders place it; an order from a superior officer to an inferior officer and an assent by him to execute that order.

It has been said by the learned manager in the course of his argument that we ought to have objected, if we took this view of the case, to the declarations made by General Thomas when he went to the War Department on Saturday, the 22d of February. We could not make any objection to what he then said. It was competent evidence. He was there in pursuance of an order given by the President. He was doing what the President authorized him to do, namely, delivering one order to Mr. Stanton, he being for that purpose merely the messenger of the President; and, having executed that, to take possession under the other order. Of course he authorized him to demand possession, and he did demand it; but that demand was as much an act and as capable of proof and proper to be proved as any other act. Therefore we could have taken no such exception; it could not have come at all within the range of any of the objections which we now take.

The learned manager relies, also, on certain authorities which he has produced from the books. The first is a case stated in Roscoe's Criminal Evidence; page 390, I think, he read from, showing that under some circumstances the acts of co-conspirators, even before the person on trial had joined the conspiracy, may be proved. I see no difficulty in that. The first thing is to prove a conspiracy, which is a separate and independent fact, or may be wholly separate and independent from the evidence by which you prove the other step, namely, that a particular person joined in it. In that case the government undertook to show, in the first place, that there was a conspiracy. They proved it by the assembling together of a body of men for the purpose of military training, &c. Having proved that there was a conspiracy, they then took the necessary step to show that the accused on a subsequent day joined himself in that conspiracy. That was all regular and proper.

If they will take the first step here and in support of their articles undertake to show by evidence a conspiracy between the President and General Thomas, when they have done that they may go on and give evidence of the declarations of one or both of them to charge the other; but, until they do, I submit that they cannot give such evidence.

The case from 2 Carrington and Payne was a case of a joint act of three persons falsely imprisoning a fourth. There was the conspiracy; there was the false imprisonment, the illegal act, done in pursuance of the conspiracy; and the court decided that a declaration made subsequent to the imprisonment as to what

the intentions of the parties were and how they intended to carry it out would be admissible against the others, all of which falls easily within the same rule.

The case from 12 Wheaton was one where the owner of a ship having authorized the master to fit out a vessel, the declarations of the master were given in evidence to show the object and intentions of the voyage. Unquestionably, if he had made him his agent to carry on a slaving voyage, he made him his agent to do all acts necessary to carry it out. What was the act that was given in evidence? It was an attempt to engage a person to go on a slave-trading voyage in a subordinate capacity. In the course of that attempt he stated to him what the character and purposes of the voyage were; but it was an act which he was engaged in, an act within the scope of his authority to carry on the voyage, and to engage persons to assist him in doing so. This, also, falls easily within the scope of the principles upon which we rely.

We submit, then, to the Senate that neither of these questions should be allowed to be put to this witness. I ought to say, and I am reminded by one of my associates to say, that the statement by the honorable manager that the answer of the President admits his intention to remove Mr. Stanton from office illegally and at all hazards is not true. The honorable manager is mistaken if he has so read the answer. The answer distinctly says, in the first place, that the President believed, after the greatest consideration, that Mr. Stanton's case was not within the tenure-of-office act; and the answer further says that he never authorized General Thomas to employ threats, force, or intimidation, and if the honorable manager refers to the answer as his evidence for one purpose he must take it as it stands.

Mr. Manager BINGHAM. Mr. President and senators, I had occasion to remark yesterday, upon the ruling of the presiding officer of the Senate, that the managers on the part of the House had no cause of complaint touching that ruling, which had relation to the introduction of this testimony. I said it, senators, because I was assured when I did say it that the ruling of the presiding officer stands upon all the authorities, English and American, and upon that point I challenge to-day any authority to call in question the ruling that the testimony this morning objected to, and ruled as admissible yesterday by the presiding officer, is not admissible.

I have listened with due attention to the learned gentlemen who have argued in support of this objection. Admitting their premises, it might be but just to them to say that their conclusions follow; but, senators, I deny their premises. There is nothing in the record that justifies that they shall assume here, for the purposes of this question, that we are restricted, as was intimated by the learned counsel for the President, to the article which alleges that this conspiracy was to be executed by force. There is nothing in this case, as it stands before the Senate, that justifies the assumption that the Senate is to be restricted in the decision of this question to the other article which alleges that this conspiracy was to be exercised by threats and intimidation. There is nothing in the question propounded by my associate to the witness which justifies the assumption made here that the witness is to testify that any force was to be employed at all, although, if he were so to testify, I claim upon the authorities, and upon all the authorities, that the testimony is admissible.

The Senate will notice that in article five there is no averment of force, there is no averment of threat or intimidation. There is simply an averment in article five of an unlawful conspiracy entered into between the accused and Lorenzo Thomas to violate the tenure-of-office act. My associate was right upon all authority, and it is conceded that if two or more agree together to violate a law of the land, it is a conspiracy. That is the point we make here. In article five there is no averment of force, nor is any needed; there is no averment of threat or intimidation, nor is any needed; but there is simply an averment of a conspiracy entered into between the accused and Lorenzo Thomas, and

other persons unknown to the House of Rrepresentatives to prevent the execution of the tenure-of-office act. That act declares that a removal, appointment, or employment made or had contrary to the act, or an interference, if you please, with the provisions of the act and contrary to its requirements, shall be a misdemeanor on the part of any man. Of course, if a combination be entered into between two or more to prevent its execution, that combination itself amounts to a conspiracy.

The counsel have succeeded most admirably in diverting the attention of senators from the question which underlies the admissibility of this evidence, and which controls it. I refer now specifically to article five, upon which, among other articles, we claim this question arises which was not referred to by the counsel for the accused :

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, and on divers other days and times in said year, before the 25th day of March, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and in pursuance of said conspiracy, did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary of the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

Now, the tenure-of-office act, which is recited in this article, provides expressly that the person holding any civil office at the time of its enactment, who has theretofore been appointed by the advice and consent of the Senate,

And every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified.

That is to say, all such officers shall hold their office until a successor be appointed by and with the advice and consent of the Senate. The act then provides that the President of the United States shall, during the recess of the Senate, not at other time but during the recess of the Senate, in case he is satisfied that any officer is

Guilty of misconduct in office or crime, or for any reason shall become incapable or legally disqualified to perform its duties, in such case, and in no other, the President may suspend such officer and designate some suitable person to perform, temporarily, the duties of such office until the next meeting of the Senate, and until the case shall be acted upon by the Senate; and such person so designated shall take the oaths and give the bonds required by law to be taken and given by the person duly appointed to fill such office; and in such case it shall be the duty of the President, within twenty days after the first day of such next meeting of the Senate, to report to the Senate such suspension, with the evidence and reasons for his action in the case, and the name of the person so designated to perform the duties of such office; and if the Senate shall concur in such suspension and advise and consent to the removal of such officer, they shall so certify to the President, who may thereupon remove such officer, and, by and with the advice and consent of the Senate, appoint another person to such office. But if the Senate shall refuse to concur in such suspension, such officer, so suspended, shall forthwith resume the functions of his office.

The sixth section of the same act provides :

That every removal, appointment, or employment made, had, or exercised contrary to the provisions of this act, and the making, signing, sealing, countersigning, or issuing of any commission or letter of authority for or in respect to any such appointment or employment, shall be deemed, and are hereby declared to be, high misdemeanors.

The conspiracy entered into here between these two parties was to prevent the execution of this law, which is so plain that no man can mistake it; nor can the President, in the presence of this tribunal, or Lorenzo Thomas either, shelter himself by the intimation that it was a military order to a subordinate. Are we to be told, in the presence of the Senate, that it is competent for the President of the United States either to shelter himself or any of his subordinates by issuing to-morrow a military order, either to Adjutant General Thomas or to any other officer of the army of the United States, to disperse the

Congress of the nation? It is an afterthought, gentlemen of the Senate. It is no military order; it is a letter of authority within the express words of the statute and in violation of it. The evidence is that Lorenzo Thomas accepted it and acted upon it. The evidence of his action upon it was given yesterday, and received by the Senate without objection. It is too late to raise the question of the competency of this evidence after there is evidence here tending to show a conspiracy to violate the plain letter of this law.

It is perfectly justifiable, I take it, in this tribunal for me to say further, and say it upon my own honor as one of the managers on the part of the House, that we rely not simply upon the declaration of Lorenzo Thomas to show this purpose of the accused at your bar to disregard this statute, to violate its plain provisions, that the officer thus affirmed by the Senate upon suspension shall forthwith enter upon the duties of his office, but we expect by the written confession of the accused himself to show to this Senate this day, or as soon thereafter as we can be heard, that it was his declared, fixed purpose, in any event, to defy the authority of the Senate, and prevent Stanton from resuming the functions of the office. There was no reference then made to the intervention of courts. The accused grasped the power in his own hands of repealing the law of the nation, of challenging the power of the nation to bring him to its bar to answer; and now, when we attempt to progress with the trial according to the known and established rules of evidence in all courts of justice, we are met with the plausible and ingenious—more plausible and more ingenious than sound—remark of the learned counsel for the accused who has just taken his seat, that the declaration of one co-conspirator cannot be given in evidence against another as to his mode of executing it. I state it, perhaps, a little more strongly than the counsel stated it, but that was exactly the significance of his remark. I should like to know whence he derives any such authority.

A declaration of a co-conspirator made in the prosecution of the conspiracy, I venture to say here upon all authority, is admissible, even as to the mode in which he would execute and carry out the common design—admissible not simply against himself, but admissible against his co-conspirator, admissible against them, not to establish the original conspiracy, but to prove the intent and purpose of the party to execute the conspiracy. The conspiracy is complete upon all authority whenever the agreement is entered into to violate the law, no matter whether an overt act is ever committed afterward in pursuance of it or not; but the overt acts that are committed afterward by any one of the conspirators in pursuance of the conspiracy are evidence against him, and against his co-conspirators. That is precisely the ground upon which the ruling was made yesterday by the presiding officer of the court. That is the ground upon which we stand to-day.

I quite agree with the learned counsel for the accused that the declaration of a purpose to do some act independent of the original design of the conspiracy, to commit some substantive, independent crime, is evidence against nobody but the party who makes it; but how can the Senate judge that such was the declaration of Thomas, when not one word was dropped from the lips of the witness as to how he intended to carry into effect this conspiracy, which was to prevent the execution of this law, and which, in the language of the accused, as we hope to show it here to the Senate, was determined upon by himself, in which Lorenzo Thomas was in perfect accord with him, having voluntarily entered upon this duty? He did not act that day, senators, as Adjutant General of the United States. He acted as Secretary of War *ad interim;* so denominated himself in presence of the Secretary; claimed that he was Secretary of War by virtue of a letter of authority which he carried upon his person.

Now we are to be told that because he is not on trial before this tribunal his declarations cannot be admitted in evidence, while the counsel themselves read the text going to show that if they were joined in the record, as he may be here-

after, in the event of a certain decision by this tribunal, his declarations would be clearly admissible.

The Senate have it in their power, (and there is authority for saying that,) sitting as a high court of impeachment, to apply the reason of the rule, although by the order of the proceeding at the common law a different condition of things might obtain in which alone it would apply. We cannot impeach Lorenzo Thomas at all, for the reason that he is not a civil officer of the government. So we understand it. The power of the House of Representatives does not extend beyond the President, Vice-President, and other civil officers. To be sure, he claims to be a civil officer; and he is one, if the President of the United States has power, by this combination with him, to repeal your statute and to repeal the Constitution of the country.

I have thus spoken on this question, senators, for the purpose of exposing the significance and importance which I know the counsel for the accused attach to it. It is not simply that they desire (I say it with all respect) that this testimony shall be ruled out; but they desire in some sort, in some questionable shape, a judgment now, on the part of the Senate, upon the main question, whether Andrew Johnson is guilty of a crime, even though it be proved hereafter as charged. As I have intimated, it was his purpose to defy the final judgment of the Senate itself and the authority of the law which declares, if he does so defy it, his act shall be a high misdemeanor. That is what is to be signified by this decision of the Senate. It is not simply the incompetency of this evidence that is looked for, but the insufficiency of the charge in the fifth article against the accused which is hoped for by your decision.

I understand it was intimated by one of the counsel that, if this was a conspiracy, the acceptance by General Grant of the appointment of Secretary of War *ad interim* was also a conspiracy. The Senate will see very clearly from my reading of the statute, or from my reminding them, rather, of that which they do know, that it does not follow, and cannot be at all. It involves a very different question, for the reason that the statute expressly authorizes the President, for reasons of course satisfactory to himself, during the recess of the Senate, to suspend the Secretary of War, and to appoint a Secretary *ad interim*, upon the condition, nevertheless, that he shall, within twenty days after the next session of the Senate, report his action together with the evidence, and have the decision of the Senate upon it. He did so act. There was no conspiracy in it, and there is none alleged here. He did so act. He did recognize the obligation of the law. He did avail himself of the authority with which it invested him. He did suspend the Secretary of War, and appoint a Secretary *ad interim*. He did within twenty days thereafter report the fact to the Senate, together with his reasons. The Senate, in pursuance of the act, did pronounce judgment upon the sufficiency of the causes of suspension, and reversed, in accordance with the act, the action of the President. The Senate notified him of it. In the mean time he enters into his combinations, his conspiracies, to defeat the action of the Senate, and to overturn the majesty of the law; and now, when we bring him into court and produce his written letter of authority issued to his co-conspirator, in direct violation of the law, while the Senate was in session, and after its action upon this very question, and prove Thomas's act, in pursuance of the conspiracy, at the War Department asserting the authority to control that department, declaring that he would take possession of its mails, declaring that he would not obey the orders of the Secretary of War, Edwin M. Stanton, who is declared such by the solemn action of the Senate, and by the express letter of the law; and while we attempt to pursue it further, by showing his declarations, coupled with an attempt, as I assert now in the presence of the Senate, to get additional aid in the execution of this conspiracy, we are told that it is not competent.

I desire to see the authority anywhere recognized as respectable in a court of

justice that, when there is evidence tending to show a conspiracy for the accomplishment of a given purpose between two or more persons, it is not competent upon the trial of any one of the conspirators to prove the declarations and acts of any of his co-conspirators, whether living or dead, whether on trial or not, in the prosecution of the common design, no matter what means he intended to employ.

Now, I beg leave to say that I believe it will turn out—as I said before, the Senate will be the judge of that when they hear the evidence—and they cannot judge of it before—that there will be in this conversation between Burleigh and Thomas enough to indicate to the satisfaction of senators that he did not simply desire to acquaint him of how this agreement and conspiracy between himself and Johnson was to be executed in the morning, but relying upon his personal friendship he desired his presence there on that occasion. If that be so, he was seeking for aid by which to carry into effect the original conspiracy and execute it, and what was that? To defeat the action of the Senate, to defeat the requirement of the law that the Secretary of War should forthwith resume the duties of the office, and to control it himself.

I think that I have said all that is needful for me to say. I leave the question for the decision of the Senate, perfectly assured that they will hear first and decide afterward. It is certainly very competent for the Senate, as it is competent for any court of justice in the trial of cases where questions of doubt arise, to hear the evidence, and, where they themselves are the judges both of the law and the fact, to dismiss so much of it as they may find incompetent, if there be any of it incompetent. I insist upon it that there is no word of this evidence which upon any just rule of evidence can for a moment be questioned or challenged by anybody.

Mr. JOHNSON. Mr. Chief Justice, I desire the honorable managers to answer two questions which I send to the Chair.

The CHIEF JUSTICE. The Secretary will read the questions propounded by the senator from Maryland.

The Secretary read as follows:

The honorable managers are requested to say whether evidence hereafter will be produced to show—

First. That the President, before the time when the declarations of Thomas which they propose to prove were made, authorized him to obtain possession of the office by force or threats, or intimidation, if necessary; or,

Secondly. If not, that the President had knowledge that such declarations had been made and approved of them.

Mr. Manager BINGHAM. I am instructed by my associates to say—and I am in accord in judgment with them, Mr. President—that we do not deem it our duty to make answer to so general a question as that; and it will certainly occur to the Senate why we should not make answer to it.

Mr. EVARTS. Mr. Chief Justice, as we claim on the part of the counsel——

Mr. Manager BINGHAM. I rise to a question here. I understand that we speak here under a rule of the Senate, as yet at least, that requires us to be restricted to an hour on each side.

Mr. STANBERY. And one counsel, if you go according to the rule.

Mr. Manager BINGHAM. No. I do not understand that. I understand, on the contrary, that the practice heretofore thus far in the progress of this trial has been to allow the counsel to divide their time as they pleased, within but one hour on each side. The point to which I rise, now, however, is this: that we understand that in a proceeding of this sort the managers have always claimed and asserted, where the point was raised at all, the right to conclude upon all questions that were raised in the progress of the trial. The hour has been well nigh expended in this instance on each side, as I am told, though I have not taken any special note of the time. But we raise the question; and I state that the fact that our time has been exhausted, as I am advised, is the

only reason why I raise it now; and thus we are cut off from any further reply. Our only object in raising the question is that we shall not be deemed to have waived it, because we are advised that it was settled years ago in Melville's case by the lord chancellor presiding and by the peers that the managers might waive their privilege by their silence.

Mr. Manager BUTLER. We have the affirmative.

Mr. STANBERY. On this question? Oh, no.

Mr. Manager BINGHAM. We have made the proposition to introduce the proof, but the objection to its admissibility comes from the other side.

The CHIEF JUSTICE. Do the managers object to the counsel for the President proceeding?

Mr. Manager BINGHAM. We only raise the question to save our right of being heard in reply; and, as I stated before, the only reason we object now is that we understand, without notice given to us, that our hour has been exhausted. Therefore we object.

Mr. EVARTS. Mr. Chief Justice and Senators——

The CHIEF JUSTICE. Before the counsel proceeds the Chair desires to state to the Senate and obtain their judgment upon the construction of this rule. In the present case, with the consent of the Senate, the Chief Justice will not apply the rule, but pursue the course which has been heretofore pursued, of allowing each counsel an hour and not limiting the number of persons speaking, but for future guidance the Chief Justice would like to take the sense of the Senate, and will as soon as this discussion is closed; or he will take it now if any senator desires it.

Mr. Manager BUTLER. Will the presiding officer allow me a single observation here?

The CHIEF JUSTICE. Certainly.

Mr. Manager BUTLER. It is this: that I limited myself expressly, and divided my time with my brother manager in the argument, and left out many things that I should have endeavored to address to the Senate, upon the understanding of the rule that we could only have an hour on a side. The rule said so, and I supposed it meant what it said. Now, if the presiding officer and the Senate shall allow the gentlemen on the other side to have an hour each, there will have been an administration of the rule which is exceedingly onerous upon us, and which we ought to have been notified of before; and we should like to know whether we can ever have a conclusion on one of these questions, which is our right and the right of the people of the United States.

Mr. CONNESS. Mr. President, I ask for the application of the rule.

The CHIEF JUSTICE. Senators, the Chair will state the question to the Senate. The twentieth rule provides that—

> All preliminary or interlocutory questions and all motions shall be argued for not exceeding one hour on each side, unless the Senate shall, by order, extend the time.

The twenty-first rule provides:

> The case on each side shall be opened by one person. The final argument on the merit may be made by two persons on each side, (unless otherwise ordered by the Senate, upon application for that purpose,) and the argument shall be opened and closed on the part of the House of Representatives.

On looking at these two rules together, the Chief Justice was under the impression that it was intended by the twentieth rule to limit the time, and not limit the persons; whereas, by the twenty-first rule, it was intended to limit the number of persons and leave the time unlimited; and he has acted upon that construction. He will now, with the leave of the Senate, submit to them the question: Does the twentieth rule limit the time without respect to the number of persons? Upon that question the Chair will take the sense of the Senate.

Mr. DRAKE. The yeas and nays are required, I suggest, Mr. President.

The CHIEF JUSTICE. They have not been required as yet.

Mr. DRAKE. I suggest now this point of order: that all orders and decisions must, since the change made in the seventh rule yesterday, be taken by yeas and nays; that there is no provision now existing in the rules for putting a question to the Senate without a division; that that is struck out; and that the twenty-third rule requires that "all the orders and decisions shall be made and had by yeas and nays."

The CHIEF JUSTICE. The Chair sees nothing in the seventh rule which requires this question to be taken by yeas and nays, unless they are demanded in the usual mode by one-fifth of the senators present. Senators, you who are of opinion that the limitation in the twentieth rule applies to the whole number of persons to argue will please say ay, and the contrary opinion no.

The question being put, it was decided in the affirmative, *nem. con.*

The CHIEF JUSTICE. The Senate decides that the limitation of one hour has reference to the whole number of persons to speak on each side, and not to each person severally; and will apply the rule as thus construed.

Mr. CONKLING. Mr. President, I move that the counsel for the President, having been under misapprehension as to the application of this rule, owing to the suggestion of the Chair, have permission in this instance to submit any additional remarks which they may wish to submit.

Mr. TRUMBULL. Mr. President, before that motion is put I desire to inquire whether the counsel for the President have exhausted their hour.

The CHIEF JUSTICE. They have.

Mr. THAYER. Mr. President, I hope the senator from New York——

The CHIEF JUSTICE. Debate is not in order.

Mr. THAYER. I desire to submit an amendment to the motion of the senator from New York.

The CHIEF JUSTICE. The senator will send his amendment to the Chair in writing.

Mr. EVARTS. Mr. Chief Justice, perhaps I may be allowed to say that we do not understand that as yet on our side we have transcended the twentieth rule. We have not occupied an hour in debate on our side of the question.

The CHIEF JUSTICE. The Chief Justice thinks that the counsel for the defendant have occupied one hour.

Mr. EVARTS. Subject, of course, to the computation of the Chair. If the hour has expired I was not aware of it. I do not desire, nor do my associates desire, that we should transcend the rule. We supposed we had some moments of the hour unoccupied. I rose with the intention, however, of claiming, on the part of the counsel for the President, the right of closing as well as opening, according to the ordinary rules of interlocutory discussion.

The CHIEF JUSTICE. That question is not at present before the Senate.

Mr. CONKLING. After the suggestion of the counsel I withdraw my motion.

The CHIEF JUSTICE. The Secretary will read the question proposed by Mr. Manager Butler.

The Secretary read as follows:

You said yesterday, in answer to my question, that you had a conversation with General Lorenzo Thomas on the evening of the 21st of February last. State if he said anything as to the means by which he intended to obtain, or was directed by the President to obtain, possession of the War Department. If so, state all he said as nearly as you can.

Mr. JOHNSON. I ask now that the question I sent to the Chair be read.

The CHIEF JUSTICE. The question before the Senate now is, Shall the question propounded by Mr. Manager Butler be put to the witness?

Mr. DRAKE. On that question the yeas and nays must be taken under the rules, I submit.

Mr. EDMUNDS and others. No, no.

Mr. DRAKE. It is so, sir.

Mr. EDMUNDS. It is not so.

The CHIEF JUSTICE. Upon the question of order raised by the senator from Missouri, the Chair is of opinion that he may submit this question to the Senate without having the yeas and nays taken, unless the yeas and nays are demanded by one-fifth of the members present.

Mr. TRUMBULL. I should like to hear the seventh rule read as amended.

The CHIEF JUSTICE. The Secretary will read the rule.

The Secretary read as follows:

VII. The presiding officer of the Senate shall direct all necessary preparations in the Senate chamber, and the presiding officer on the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the presiding officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance, submit any such question to a vote of the members of the Senate.

Mr. JOHNSON. The questions that I submitted ——

The CHIEF JUSTICE. Debate is not in order.

Mr. JOHNSON. I am not about to debate. The questions that I submitted were not, as I think, heard by all the members of the Senate. I mean the questions which the honorable managers thought it their duty to decline to answer. I ask that they be again read before the vote is taken.

The CHIEF JUSTICE. The questions submitted by the senator from Maryland will be again read.

Mr. Manager BOUTWELL. May the managers be allowed to suggest that the managers heard the questions and respectfully declined to answer them? It seems to the managers, also, somewhat in the nature of an argument upon the questions involved.

Mr. JOHNSON. Read the question.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read as follows:

The honorable managers are requested to say whether evidence hereafter will be produced to show—

1. That the President before the time when declarations of Thomas which they propose to prove were made, authorized him to obtain possession of the office by force, or threats, or intimidation, if necessary; or,

2. If not, that the President had knowledge that such declarations had been made and approved of them.

Several SENATORS. Question! Question!

The CHIEF JUSTICE. Senators ——

Mr. DRAKE. I call for the yeas and nays, if the President will not order them.

The yeas and nays were ordered; and being taken, resulted—yeas 39, nays 11; as follows:

YEAS—Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Willey, Williams, and Wilson—39.

NAYS—Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, and Vickers—11.

NOT VOTING—Messrs. Harlan, Saulsbury, Wade, and Yates—4.

The CHIEF JUSTICE. On this question the yeas are 39, and the nays 11. So the Senate decides that the question proposed by Mr. Manager Butler shall be put to the witness.

Hon. WALTER A. BURLEIGH, resumed the stand, and his examination was continued.

By Mr. Manager BUTLER:

Q. You said yesterday, in answer to my question, that you had a conversation

with General Lorenzo Thomas on the evening of the 21st of February last. State if he said anything as to the means by which he intended to obtain or was directed by the President to obtain possession of the War Department. If so, state all he said, as nearly as you can.

A. On the evening of the 21st of February last, I learned that General Thomas had been appointed Secretary of War *ad interim*, I think while at the Metropolitan Hotel. I invited Mr. Leonard Smith, of Leavenworth, Kansas, to go with me up to his house and see him. We took a carriage and went up. I found the general there getting ready to go out with his daughters to spend the evening at some place of amusement. I told him I would not detain him if he was going out; but he insisted on my sitting down, and I sat down for a few moments. I told him that I had learned he had been appointed Secretary of War. He said he had; that he had been appointed that day, I think; that after receiving his appointment from the President he went to the War Office to show his authority or his appointment to Secretary Stanton, and also his order to take possession of the office; that the Secretary remarked to him that he supposed he would give him time to remove his personal effects or his private papers, something to that effect; and his reply was "Certainly." He said that in a short time the Secretary asked him if he would give him a copy of his order, and he replied "Certainly," and gave it to him. He said that it was no more than right to give him time to take out his personal effects. I asked him when he was going to assume the duties of the office. He remarked that he should take possession the next morning at ten o'clock, which would be the 22d; and I think in that connection he stated that he had issued some order in regard to the observance of the day; but of that I am not quite sure. I remarked to him that I should be up at that end of the avenue the next day, and he asked me to come in and see him. I asked him where I would find him, and he said in the Secretary's room, up stairs. I told him I would be there. Said he, "Be there punctual at ten o'clock." Said I, "You are going to take possession to-morrow?" "Yes." Said I, "Suppose Stanton objects to it—resists." "Well," said he, "I expect to meet force by force" or "use force."

Mr. CONKLING. Repeat that.

The WITNESS. I asked him what he would do if Stanton objected or resisted. He said he would use force or resort to force. Said I, "Suppose he bars the doors?" His reply was, "I will break them down." I think that was about all the conversation that we had there at that time in that connection.

By Mr. Manager BUTLER:

Q. Did he say anything to you about being there at the time?

A. He told me to be there at 10 o'clock, if I came.

Q. Was there anything said further in the conversation that you remember, by you to him, as to what purpose you would be there for?

A. Well, to witness the performance; to see him take possession of the office; nothing more than that.

Q. Were you up there at the office at any time before he assumed the duties of Secretary *ad interim* after he assumed the duties of Adjutant General?

The WITNESS. At the Secretary's office?

Mr. Manager BUTLER. At the Adjutant General's office.

A. Yes, sir; I have frequently been there.

Mr. CURTIS, (to Mr. Manager BUTLER.) Will you repeat the question?

Mr. Manager BUTLER. The question is whether you were at the Adjutant General's office after General Thomas assumed the duties of Adjutant General, and before he attempted to assume the duties of Secretary *ad interim*. You say you were?

A. Yes, sir; I was there several times; I do not recollect how many; but two or three times.

Q. Did you hear him saying anything to the officers and clerks of the department there as to what his intention was when he came in command?

Mr. EVARTS. That we object to. What date do you fix that inquiry as applying to, Mr. Butler?

Mr. Manager BUTLER. I believe he was restored by the President to the Adjutant General's office about a week, if I remember aright—you will correct me if I am wrong—before he was made Secretary *ad interim;* and it was within that week that he made these declarations which I now offer.

Mr. EVARTS. Your inquiry, then, is for declarations made antecedent to the action of the President of which you have given evidence?

Mr. Manager BUTLER. My inquiry is not for declarations. My inquiry is for attempts on his part to seduce the officers of the War Department to his allegiance by telling them what he would do for them when he came in over them; precisely as Absalom sat at the gate of Israel and attempted to seduce the people from their allegiance to David, the king, by telling them what he would do for them when he got to be king. [Laughter.]

Mr. EVARTS. Do you propose that in your question, about Absalom?

Mr. Manager BUTLER. No, sir; I put that in my illustration. [Laughter.]

The CHIEF JUSTICE. Do the counsel for the President object to the question?

Mr. EVARTS. We object.

Mr. Manager BUTLER. Shall I reduce it to writing?

The CHIEF JUSTICE. Yes, sir.

Mr. EDMUNDS, [at 3 o'clock p. m.] I move that the Senate sitting on this trial take a recess for fifteen minutes.

The motion was agreed to.

The CHIEF JUSTICE resumed the chair at three o'clock and fifteen minutes, and called the Senate to order.

Hon. WALTER A. BURLEIGH'S examination resumed:

Mr. Manager BUTLER. With the President's leave, I will withdraw the question I put for a moment, in order to put another which I think will not be objected to. [To the witness.] I observe, Mr. Burleigh—I did not observe at the moment, but I have observed since—that you did not answer one part of my first question to-day, which was, whether anything was said by Thomas at that conversation as to what orders he had received from the President?

Mr. EVARTS. That is covered by our previous objection.

Mr. Manager BUTLER. Certainly; it is the same thing; part of the same question. [To the witness.] Will you answer?

A. During the conversation General Thomas, after stating, in reply to my inquiry, that he would use force if necessary, stated that he had been required or ordered by the President to take charge of the War Department, and he was bound to obey the President, as his superior or superior officer.

Q. Did that come in before or after he spoke of force in the conversation?

A. It was in connection with the force, and it was repeated, also, in connection with the breaking of the door to which I have alluded. I thought I mentioned it; but perhaps I did not.

Mr. Manager BUTLER. I now offer the question which was objected to.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read as follows:

Q. Shortly before this conversation about which you have testified, and after the President restored Major General Thomas to the office of Adjutant General, if you know the fact that he was so restored, were you present in the War Department, and did you hear Thomas make any statements to the officers and clerks, or either of them, belonging to the War Office, as to the rules and orders of Mr. Stanton or of the office which he, Thomas, would revoke, relax, or rescind in favor of such officers and employés when he had control of the affairs therein? If so, state when, as near as you can, it was such conversation occurred, and state all he said as nearly as you can.

Mr. EVARTS. The counsel for the President object to that question as irrelevant and immaterial to any issue in this cause, and as not to be brought in evidence against the President by any support given by the testimony already in, which would, under any ruling of this court, or on any principle of law, permit these declarations or statements of General Thomas made to the clerks of the War Department antecedent to the time of the issue of the orders by the President, which are in evidence, as to what he, Thomas, would do when he, Thomas, if at all, should become Secretary of War.

Mr. Manager BUTLER. Mr. President, I do not desire to argue this question, for the reason that I think it falls within the question last discussed. If Thomas, as was the ground we put the last question upon, was a co-conspirator with the President, how can either my learned friends on the other side or the Senate know when that conspiracy commenced? You will observe the question carries with it this state of facts: Thomas had been removed from the office of Adjutant General for many years under President Lincoln under the administration of Mr. Stanton of the War Office. That is a fact known to all men who know the history of the war. Just before he made him Secretary of War *ad interim*, the President restored Thomas to the War Office as the Adjutant General of the army. That was the first step to get him in condition to make a Secretary of War of him. That was the first performance of the President, the first act in the drama. He had to take a disgraced officer, and take away his disgrace, and put him into the Adjutant General's office, from which he had been by the action of President Lincoln and Mr. Stanton suspended for years, in order to get a fit instrument on which to operate; get him in condition. That was part of the training for the next stage. Having got him in that condition, he being sufficiently virulent toward Mr. Stanton for having suspended him from the office of Adjutant General, the President then is ready to appoint him Secretary *ad interim*, which he does within two or three days thereafter.

We charge that the whole procedure shows the conspiracy. Here is the taking up of this disgraced officer and restoring him to a position in the War Office when he was a known enemy of Mr. Stanton's, feeling aggrieved, undoubtedly, that Mr. Stanton had deposed him, and putting him in there so that he might have some official station; and then, after having done that, Mr. Thomas goes to seducing clerks to get them ready to receive him when he should be brought into the War Office itself as its head. Now, I propose to show his acts, the acts of one of these co-conspirators, clustering about the point of time just before the period when he was going to break down the doors of this office with crowbars and axes and force, as has been testified as he said he was, that he was trying to seduce the clerks and employés from their allegiance. We insist it is all a part of one transaction, and entirely comes within the ruling which has just been made. I believe I have stated the matter as the managers desired I should.

Mr. EVARTS. The question which led to the introduction of this witness's statements of General Thomas's statements to him, of his intentions, and of the President's instructions to him, General Thomas, was based upon the claim that the order of the President of the 21st of February, upon Mr. Stanton for removal, and upon General Thomas to take possession of the office, created and proved a conspiracy; and that thereafter, upon that proof, declarations and intentions were to be given in evidence. That step has been gained, and, in the judgment of this honorable court, in conformity with the rules of law and of evidence. That being gained, it is similarly argued that if, on a conspiracy proved, you can introduce declarations made thereafter, by the same rule you can introduce declarations made theretofore; and that is the only argument which is presented to the court for the admission of this evidence.

So far as the statements of the learned manager relate to the office, the position, the character, and the conduct of General Thomas, it is sufficient for me to

say that not one particle of evidence has been given in this cause bearing upon any one of those topics. If General Thomas has been a disgraced officer; if these aspersions, these revilings are just, they are not justified by any evidence before this court. And if, as matter of fact, applicable to the situation upon which this proof is sought to be introduced, the former employments of General Thomas, and the recent restoration of him to the active duties of Adjutant General are pertinent, let them be proved; and then we shall have at least the basis of fact of General Thomas's previous relations to the War Department, to Mr. Stanton, and to the office of Adjutant General.

And now, having pointed out to this honorable court that the declarations sought to be given in evidence of General Thomas to affect the President with his intentions are confessedly of a period antecedent to the date to which any evidence whatever before this court brings the President and General Thomas in connection, I might leave it safely there. But what is there in the nature of the general proof sought to be introduced that should affect the President of the United States with any responsibility for these general and vague statements of an officer of what he might or could or would do, if thereafter he should come into the possession of power over the department?

Mr. Manager BINGHAM. I desire to say a word or two in reply. I am willing to concede that any question beyond what may have been said by one who is shown to have entered into a conspiracy before the transaction is not admissible. I concede it, however, subject to this exception: that the Senate being the triers of the fact as well as the law, will remember that the rule of evidence has been so extended on very similar occasions in courts of justice as to allow of declarations of this sort so shortly anterior to the time in which the conspiracy is shown to have been actually entered into to go to the jury and allow them to determine what weight ought to be attached to them. That is the principle upon which the question is put. It is qualified by the words "shortly before." Suppose it were within two or three days, and the act done on the part of the co-conspirator was an act tending to bring about the result sought to be accomplished by that which was afterward mutually agreed upon between them; is there any one here to doubt that it is evidence tending to show that beyond the facts, so far as they have been traced, some understanding, some arrangement was entered into, and, if you please, a voluntary one, on the part of the man who afterward became by solemn agreement a party to the conspiracy—a voluntary act committed on his part in order to commend him to the chief in the conspiracy itself. The general rule as stated in the book would admit, I am satisfied, of that latitude of construction. I read from Roscoe's Criminal Evidence, p. 88:

> The evidence in conspiracy is wider than, perhaps, in any other case, other principles as well as that under discussion tending to give greater latitude in proving this offence. Taken by themselves the acts of a conspiracy are rarely of an unequivocally guilty character, and they can only be properly estimated when connected with all the surrounding circumstances.
>
> Not only, as in the cases before mentioned, may the acts and declarations of the prisoner himself on former occasions be admitted when referable to the point in issue, but also the acts and declarations of other persons—

Meaning, of course, on former occasions, supplying the ellipsis—

> with whom he has conspired, may, if referable to the issue, be given in evidence against him.

That is the general rule; and yet I admit if it were so framed as not in probability to connect itself with the transaction, it ought not to be received; but the question is so restricted—and we do not stand here to claim it unless it falls out on the evidence that it is nearly connected in point of time with the operations of these parties—and the testimony itself manifestly, as is explained by the manager on the part of the House who has put the question, indicates a desire and purpose on the part of Thomas to make his arrangements with the employés of the War Department.

The CHIEF JUSTICE. The Chief Justice is of opinion that no sufficient foundation has been laid for the introduction of this testimony. He will submit the question to the Senate with great pleasure if any senator desires it. The question is ruled to be inadmissible.

Mr. HOWARD. Mr. President——

Mr. Manager BUTLER. I respectfully——

The CHIEF JUSTICE. The senator from Michigan. Does the senator desire the question to be taken by the Senate?

Mr. HOWARD. Yes, Mr. President.

Mr. Manager BUTLER. I was about rising to ask the Senate if they would not relax the rule, and when the managers on the part of the House of Representatives and the people have a question which they deem of consequence to their case allow that to be put to the Senate upon the motion of the House of Representatives.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read as follows:

Q. Shortly before this conversation about which you have testified, and after the President restored Major General Thomas to the office of Adjutant General, if you know the fact that he was so restored, were you present in the War Department, and did you hear Thomas make any statement to the officers and clerks, or either of them, belonging to the War Office, as to the rules and orders of Mr. Stanton, or of the office which he, Thomas, would revoke, relax, or rescind in favor of such officers and employés when he had control of the affairs therein? If so, state as near as you can when it was such conversation occurred, and state all he said as nearly as you can.

THE CHIEF JUSTICE. The question is, Shall the question proposed by Mr. Manager Butler be put to the witness?

Mr. HOWARD. On that question I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 28, nays 22; as follows:

YEAS—Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Henderson, Howard, Howe, Morgan, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, and Wilson—28.

NAYS—Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Johnson, McCreery, Morrill of Maine, Norton, Patterson of Tennessee, Sherman, Van Winkle, Vickers, Willey, and Williams—22.

NOT VOTING—Messrs. Harlan, Saulsbury, Wade, and Yates—4.

The CHIEF JUSTICE. On this question the yeas are 28 and the nays 22. So the Senate decides that the question shall be put to the witness.

Mr. Manager BUTLER. With the leave of the President, I will put this question by portions. [To the witness.] Shortly before the conversation about which you have testified, and after the President restored Major General Thomas to the office of Adjutant General, if you know the fact that he was so restored, were you present in the War Department?

A. Yes, sir; I was.

By the CHIEF JUSTICE:

Q. Did you know the fact that he was so restored?

A. He told me so. He was acting in the office.

By Mr. Manager BUTLER:

Q. Did you hear Thomas make any statement to the officers and clerks, or either of them, belonging to the War Office, as to the rules and orders of Mr. Stanton, or of the office, which he, Thomas, would revoke, relax, or rescind in favor of such officers and employés when he had control therein? If so, state when this conversation was as near as you can.

A. Soon after General Thomas was restored to his position as Adjutant General I had occasion to go to his office to transact some business with him; and

after transacting the business I invited him to take a short walk with me. The general remarked that he had made an arrangement ——

Mr. EVARTS. Mr. Butler, your question was "when?"

Mr. Manager BUTLER, (to the witness.) When was this?

A. Soon after General Thomas's restoration to office as Adjutant General.

Q. How long before the time when he was appointed Secretary of War?

A. I should think not more than a week or ten days. I have no definite means of knowing now.

Q. Go on.

A. He remarked to me——

Mr. EVARTS. Wait a moment, Mr. Witness. I understood your question, Mr. Butler, allowed by the Senate, to refer to statements made by General Thomas at the War Office, as heard by this witness, to clerks there of the department. The witness is now proceeding to state what took place in a walk between him and General Thomas.

The WITNESS. No, sir; we had not taken the walk. I am not in the habit of testifying before courts, and you will pardon me for a little latitude.

Mr. Manager BUTLER. He had not said that they took the walk.

Mr. EVARTS. This, I understand, is only inducement, Mr. Butler.

Mr. Manager BUTLER. The inducement to the conversation.

The WITNESS. The general remarked to me that he had made an arrangement to have all the heads or officers in charge of the different departments of the office come in with their clerks that morning, and he wanted to address them. He stated that the rules which had been adopted for the government of the clerks by his predecessor were of a very arbitrary character, and he proposed to relax them. I suggested to him that perhaps I had better go. Said he, "No; not at all; remain;" and I sat down, and he had some three or four officers—four or five perhaps—come in, and each one brought in a room-full of clerks, and he made an address to each company as they came in, stating to them that he did not propose to hold them strictly to the letter of the instructions; but when they wanted to go out they could go out, and when they wanted to come in they could come in; that he regarded them all as gentlemen, and supposed they would do their duty, and he should require them to do their duty; but so far as their little indulgences were concerned—I suppose such as going out across the street or something of that kind—he did not propose to interfere with them; all he expected was that they would do their duty. I waited until he concluded, and we took the walk, and I came away. I remarked to the general he would make a very fine politician.

Q. Did he say anything as to the character of the orders that existed before?

A. He said that they were very harsh and arbitrary—nothing more than that, that I know of—and he proposed to relax them.

Q. You have told us that you had known General Thomas for some time. Had he been off duty as Adjutant General of the army for some time before this?

A. Yes, sir.

Q. How long?

A. I am not able to tell you; some two or three years, I should think.

Mr. STANBERY. Mr. Chief Justice, we object to this mode of proving orders for removal.

Mr. Manager BUTLER. I will not press it a hair. I will get the order.

Mr. STANBERY. Especially do we object when it is said to disgrace an officer. We would rather see the proof than hear the assertion.

Mr. Manager BUTLER. Does the gentleman, when he makes the gesture accompanying those words, mean my assertion? For I am going to prove it upon the oath of a witness.

Mr. STANBERY. Is the gentleman speaking to me? What was the question?

Mr. Manager BUTLER. Whether you mean my assertion, or the assertion of the witness?

The CHIEF JUSTICE. This controversy does not appear to have any proper relation to the case on trial.

Mr. Manager BUTLER, (to the witness.) Had he been away from the city, and not in the Adjutant General's office for a considerable period of time?

A. Yes, sir; he had been sent south.

Mr. STANBERY. That will not do.

Mr. Manager BUTLER, (to the witness.) How lately had he returned to the office when he made this speech?

A. I am not able to say; but a very few days.

Q. Since you had the conversation about breaking down the doors of the War Office by force, have you seen General Thomas?

A. Yes, sir; I have.

Q. Were you called upon by the managers to give your testimony in their room?

A. I was.

Q. Did you do so?

A. I did.

Q. Was it taken down in short-hand?

A. I am not able to say how it was taken down; I did not see it.

Q. After it was taken down after you gave it, was General Thomas called in?

A. He told me he was to be called in. I did not see him go in. I saw him on the floor of the House, and he told me he had been summoned and was going up as soon as some one came for him.

Q. Did you see him after he had been up?

A. I did.

Q. What did he tell you as to your testimony?

Mr. EVARTS. That we object to.

The CHIEF JUSTICE, (to the managers.) The honorable managers will reduce the question to writing.

Mr. Manager BUTLER. I have heard the objection. I propose to show, if I am allowed, that Mr. Burleigh's testimony before the managers, which I propose to put in his hand and identify in a moment, was read to General Thomas, containing exactly what he has testified here, and General Thomas said it was all true, and never informed Mr. Burleigh that it was not true. I do this by way of settling the question, that there can be no mistake about it——

Mr. STANBERY. For what purpose?

The CHIEF JUSTICE. The manager will reduce his question to writing, it being objected to.

Mr. Manager BUTLER. Well, I will not press it to take time by an argument. (To the witness.) Have you had any conversation since, with him, as to this conversation about which you have testified?

A. I have.

Q. What has he said about it?

Mr. STANBERY, Mr. EVARTS, and Mr. CURTIS. That we object to.

Mr. Manager BUTLER. I propose to put in subsequent declarations confirming exactly the declarations which have been allowed to be put in. I suppose I can put in the same declarations twice.

The CHIEF JUSTICE. The question will be reduced to writing, if objected to.

Mr. Manager BUTLER. I will ask a single question before that, so as to fix the date. (To the witness.) When did you see him, as near as you can recollect?

A. I have seen him nearly every day since then.

Q. At any time did you have any conversation with him about this conversation as to which you have testified?

A. I have had.

Mr. EVARTS. You mean the conversation with the clerks?

Mr. Manager BUTLER. No, sir; I mean the conversation about breaking down the doors of the War Office by force.

The WITNESS. I have, sir.

Mr. Manager BUTLER. Do you still object, gentlemen?

Mr. STANBERY. Let us see your question.

Mr. Manager BUTLER. I will put the question. The question is, at the time when you have seen him since has he restated to you any portion or all of that conversation about breaking down the doors of the War Office?

Mr. EVARTS. That we object to as leading, among other things.

Mr. STANBERY. It is clearly a leading question.

Mr. Manager BUTLER. I will put it in this form: Since the first conversation has he restated any portion of that conversation; and, if so, what portion?

Mr. STANBERY. We object to that as leading.

Mr. EVARTS. We object, if the court please, that the question should be what subsequent conversations he has had, if they are to be given in evidence.

Mr. Manager BUTLER. Very well; to save all objection, then, I will ask this question: What did he state to you, if anything, as to the conversation which he had previously had with you about breaking down the War Office?

Mr. EVARTS. That we object to. Ask what conversations the witness has had with him since, if you wish to give them in evidence.

Mr. Manager BUTLER. I am content with that, if that is not objected to. (To the witness.) What conversations have you had with him on that subject since?

Mr. EVARTS. That we object to as not admissible evidence.

Mr. Manager BUTLER. *Timeo Danaos et dona ferentes.* I shall not alter my question again.

The CHIEF JUSTICE. The question, being objected to, will be reduced to writing.

Mr. Manager BUTLER reduced his question to writing, and read it, as follows:

Q. Have you had any conversation since the first one, and since his appointment as Secretary of War *ad interim*, with Thomas, when he said anything about using force in getting into the War Office, or in any way or manner reasserting his former conversation? and if so, state what he said.

The CHIEF JUSTICE. Do the counsel object to that question?

Mr. EVARTS. We object to the question, if the court please.

The CHIEF JUSTICE. Do you desire to be heard in support of the objection?

Mr. EVARTS. Very briefly. The acts of the President and the acts of General Thomas, in pursuance of any authority from the President or otherwise, have been given in evidence. That testimony is very limited. What occurred between General Thomas and Mr. Stanton at the War Office is the only measure and extent of evidence bearing upon the actual conduct either of the President, through his agent, or of the agent. It was allowed to give evidence of this appointee's declarations as to what he intended to do, and that evidence has been given. Now, statements after the action was complete as to what his intentions were before cannot be at all material, for intentions not executed in the subsequent action certainly are not material. But this is still more objectionable as being but an alleged repetition, after the transaction was complete, of what his intentions had been before, or rather relative to what he said about what his intentions had been before. It is enough to prove what his intentions had been before under the latitude which has been allowed by the court to introduce that evidence, to wit, the declarations made to this witness; but Gen-

eral Thomas's statements afterward as to what previously he, General Thomas, had stated as to what his intentions were, is not admissible within any rules of evidence.

Mr. Manager BUTLER. Mr. Chief Justice, I understand the Senate by solemn decision have decided that Adjutant General Thomas, being Secretary of War *ad interim*, under the circumstances, was so far in conspiracy or in agreement with the President, was so far his servant or agent, that in the course of the proceeding in which he was engaged his acts might be, and his declarations were, evidence. That decision, of course, covers all acts and all declarations. We have shown that on the night of the 21st of February General Thomas said: "I am going up to-morrow morning with axes and force, bills and bows, to go into the office, break open the door; I am going in by force; I am going to obey my orders; I am going to obey the orders of the President; I am going in with force, and I am going to break down the doors if they are not opened to me." Then it is also in evidence that Mr. Thomas went up the next morning, not at 10 o'clock, but about half past 11, in a much more mild and quiet manner than he had threatened over night to do.

The argument will be raised by the counsel for the President, "This was mere talk of Mr. Thomas, because if he meant anything by it, or if the President had so ordered him, if it was serious really, why did he not the next morning go up there with force, either with the Maryland militia or the Virginia militia, or some other proper force with which Mr. Thomas should deal, or with a portion of the regular army of the United States?" That is the argument, and as he did not these declarations meant nothing. I want to show that afterwards Mr. Burleigh asked him, "General Thomas, I went up there to see the performance and it did not come off according to contract; what is the meaning of this? You did not go and break in; I wanted to see that go on; I was going to stand by you," or words to that effect: "I went there to give you my countenance," or something like that; and thereupon Mr. Thomas said: "Well, the reason I did not was that I was arrested by the courts and held to bail, and I could not. I concluded it was not best to use force; I did not dare do it." Is not that perfectly competent to meet this argument of the counsel, and to show what prevented the outbreak of a civil war; that it was not the President; it was not his co-conspirator; it was not their malignity nor want of it; it was not their will or want of it; but it was the fortunate intervention of the tribunal of justice. That is the point upon which we propose to put in this question.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read the question as follows:

Q. Have you had any conversation since the first one, and since his appoint ment as Secretary of War *ad interim*, with Thomas, where he has said anything about using force in getting into the War Office, or in any way or manner reasserting the former conversation? and if so, state what he said.

The CHIEF JUSTICE. Senators, the Chief Justice is of opinion that within the spirit of the decision just made by the Senate, this question is admissible. Does any senator desire that the question shall be submitted to the Senate? If not, the question will be put.

Mr. Manager BUTLER, (to the witness.) Will you now state? Mr. Burleigh, you say you have had many conversations. I want to call your attention to one special conversation——

Mr. CURTIS. I suppose the question should be put to him.

Mr. Manager BUTLER, (to the witness.) Have you had any conversation since the first one, and since his appointment of Secretary of War *ad interim*, with Thomas, wherein he said anything about using force in getting into the War Office, or in any way or manner reasserting the former conversation? and if so, state what he said.

A. Some time in the fore part of last week I met General Thomas and we were talking over this question, It had become noised about, and he told me that the only thing that prevented his taking possession of the War Department that morning was his arrest by the United States marshal, who called on him at a very unusual hour, I think about the time he was getting out of bed.

Q. You have stated what he said. Now say what you stated to him. Give us the whole conversation as well as you can on that occasion.

The WITNESS. This last occasion.

Mr. EVARTS. That is not within your question.

Mr. STANBERY. You are now asking for declarations of Mr. Burleigh.

Mr. Manager BUTLER. I am asking for both parts of the conversation, which I never yet heard objected to in a court of justice.

Mr. STANBERY. You ask for declarations of this witness.

Mr. Manager BUTLER, (to the witness.) What you said to Thomas, and he said to you, part of which you have just given us.

The WITNESS. I do not now recollect the precise language which I used to him. It was, however, in connection with my having gone up there, and that the feast to which I was invited or the performance did not come off; and he gave me as a reason for it that he was arrested by the United States marshal and taken down before Judge Cartter's court, otherwise he should have gone in and taken possession of the office, as he told me he would.

Q. When was this last conversation, as near as you can tell!

A. I think it was about the first of last week.

Cross-examined by Mr. STANBERY:

Q. Referring to the interview you had with General Thomas in the Adjutant General's office prior to his appointment as Secretary of War, had you business there with him as Adjutant General?

A. I had business with the Adjutant General. I can state what it was, if you desire to know.

Q. No; I do not care about that. But you went there to see the Adjutant General on business?

A. Yes, sir.

Q. And you say you had heard before that that General Thomas was restored to his office?

A. I think I had heard it the day before, and I think I heard it from himself.

Q. While you were there he sent for the heads of bureaus and their clerks, did he?

A. Yes, sir.

Q. Whom did he first send for?

A. I cannot name them now. In fact, I am not sufficiently familiar with their names to tell.

Q. Who first came in?

A. I am not able to say. General Williams was present. I do not know but that he came in first, and I do not know as he did.

Q. Did he make an address to each head of bureau and his clerks or did he talk to them altogether?

A. Each one.

Q. In succession?

A. Yes, sir.

Q. How many addresses, then, did he make to separate assemblies?

A. I think he made four or five. I did not count them, and it was a matter that did not impress itself on my mind very much.

Q. Did he make the same address to all of them?

A. Very nearly the same.

Q. Now, please to state what his address was to each of them that he made on that occasion.

A. I can only give it to you in a very vague manner. It was a matter that did not concern me very much. It was to state to them that he had come back and assumed the duties of the office; that he was glad to see them; that he proposed to relax somewhat the arbitrary rules; perhaps he did not denominate them arbitrary rules; he had to me before that; that he did not wish to hold them up to so strict accountability in being there precisely at nine o'clock, and in not leaving without a written leave, as he said had been the case before. He stated to them that he should expect them to discharge their duty, and if they did that it was all he cared about.

Q. When he said he had returned to his office what office did you understand him as returning to?

A. Adjutant General.

Q. When he gave these orders to these heads of bureaus and their clerks did you understand him to be giving orders as Adjutant General?

A. I did not understand him to be giving orders at all, but it was a mere address.

Q. Was he delivering an address then as Adjutant General?

A. Certainly.

Q. In reference to how he expected to carry on that office?

A. What he expected of them.

Q. You do not mean that he sent for all the employés in the War Department, do you?

A. I think he told me that he directed the head of every department connected with the Adjutant General's office to come.

Q. But not those connected with the other offices—those of the Commissary General, the Quartermaster General, &c.?

A. No; only those that were under him.

Q. When these heads of bureaus received these orders, did they object that he had no right to give them such orders, or did they thank him for them?

A. I heard no objection. They congratulated him, a great many of them.

Q. Was anything said about his giving them any other orders, or giving them to any other than his own officers, those under him as Adjutant General?

A. I did not understand it in any other way.

Q Then did you hear or see anything improper at that time, and if you did let us know what it was.

A. I do not know that I am the judge of what is proper or not proper in the Adjutant General's office. Nothing occurred that was very offensive to me.

Q. Did anything occur that was at all offensive?

A. No, sir.

SAMUEL WILKESON sworn and examined.

By Mr. Manager BUTLER:

Question. Do you know Lorenzo Thomas, Adjutant General of the United States army?

Answer. I do.

Q. How long have you known him?

A. Between six and seven years.

Q. Have you had any conversation with him relative to the change in the War Department? If so, state as near as you can when it was and what it was in relation to that change.

A. I had a conversation with him respecting that change on the 21st day of February.

Q. What time in the day?

A. Between one and two o'clock in the afternoon.
Q. Where?
A. At the War Department, in his office.
Q. State what took place at that interview.
Mr. EVARTS. Do you propose this as covered by the former ruling?
Mr. Manager BUTLER. Entirely so, after he had his order.

The WITNESS. I asked him to tell me what had occurred that morning between him and the Secretary of War in his endeavor to take possession of the War Department. He hesitated to do so till I told him that the town was filled with rumors of the change that had been made, of the removal of Mr. Stanton and the appointment of himself. He then said that since the affair had become public he felt relieved to speak to me with freedom about it. He drew from his pocket a copy, or rather the original, of the order of the President of the United States, directing him to take possession of the War Department immediately. He told me that he had taken as a witness of his action General Williams, and had gone up into the War Department and had shown to Edwin M. Stanton the order of the President, and had demanded, by virtue of that order, the possession of the War Department and its books and papers. He told me that Edwin M. Stanton, after reading the order, had asked him if he would allow to him sufficient time for him to gather together his books, papers, and other personal property and take them away with him; that he told him that he would allow to him all necessary time to do so, and had then withdrawn from Mr. Stanton's room. He further told me, that day being Friday, that the next day would be what he called a *dies non*, being the holiday of the anniversary of Washington's birthday, when he had directed that the War Department should be closed; that the day thereafter would be Sunday, and that on Monday morning he should demand possession of the War Department and of its property, and if that demand was refused or resisted he should apply to the General-in-chief of the army for a force sufficient to enable him to take possession of the War Department; and he added that he did not see how the General of the army could refuse to obey his demand for that force. He then added that under the order that the President had given to him he had no election to pursue any other course than the one that he indicated; that he was a subordinate officer directed by an order from a superior officer, and that he must pursue that course.

Q. Did you see him afterward and have conversation with him on the subject?
A. I did.
Q. When was that?
A. That evening.
Q Where?
A. At Willards' hotel.
Q. What did he say there?
A. He then said that he should the next day demand possession of the War Department, and that if the demand was refused or resisted he should apply to General Grant for force to enable him to take possession, and he also repeated his declaration that he could not see how General Grant could refuse to obey that demand for force.
Q. State whether these were earnest conversations or otherwise?
A. Earnest conversations?
Q. Yes, sir, on his part?
A. If you mean by earnestness that he meant what he said——
Q. Yes.
A. They were in that sense earnest.

Cross-examined by Mr. EVARTS:

Q. Are you connected with the press?

A. I am a journalist by profession.

Q. And have been for a great number of years?

A. A great number of years.

Q. Living in Washington during the session of Congress for the most part?

A. I have for the last seven years lived in Washington in the winter.

Q. You say that General Thomas told you that, under the order of the President, he did not see how he could do otherwise than he had stated?

Mr. Manager BUTLER. Are you repeating the testimony of the witness?

Mr. EVARTS. Yes.

Mr. Manager BUTLER. I understood him to say "under the orders of the President."

Mr. Evarts. I understood him to say "under the order."

Mr. Manager BUTLER. That I wanted certain.

The WITNESS. "Under the order," referring to the original.

Mr. EVARTS. Paper?

The WITNESS. The original paper.

Q. Nothing else?

A. Nothing else.

Mr. EVARTS, (to Mr. Manager Butler.) Now you are answered.

Mr. Manager BUTLER. Entirely.

Mr. EVARTS, (to the witness.) So all the difference between the conversation on Friday night and Friday forenoon was that at night he proposed to do what he did propose to do on Saturday, and in the forenoon conversation he proposed to do it on Monday?

A. On Monday.

Q. Did you say anything further regarding the expected holiday, Saturday, except that that would be a *dies non*?

A. Nothing, sir.

Q. No orders to that effect were referred to?

A. Pardon me; he told me that he had issued an order to close the War Department on Saturday.

Q. That he had himself?

A. That he had himself issued an order to close the War Department on Saturday.

Q. As Adjutant General?

A. He did not say whether he had done that as Adjutant General or as Secretary of War.

Q. You did not understand anything about that?

A. He simply told me he had issued an order to close the War Department on Saturday.

Q. This was in the morning conversation?

A. It was in the afternoon conversation of Friday.

Q. The one o'clock conversation?

A. Yes, sir.

Q. Did he tell you when that order had been issued?

A. No, sir.

Q. Did you know, from anything said in that conversation, when it had been issued?

A. No, sir.

Q. Did you know, from anything said in that conversation, by whom it had been issued other than that it was by him, General Thomas, in some capacity?

A. No, sir. He told me that it had been issued, and he told me that on Friday.

Q. So far as you know, or then understood, it might have been issued by him as Adjutant General?

A. I know nothing about that.

Re-examined by Mr. Manager BUTLER:

Q. In either of these conversations, in connection with what he said, did he say whether he was Secretary of War, or did he claim to be?
A. Yes, sir. He claimed to be Secretary of War.

GEORGE W. KARSNER sworn and examined.

By Mr. Manager BUTLER:

Question. What is your full name?
Answer. George Washington Karsner.
Q. Of what place are you a citizen?
A. Of Delaware.
Q. What county?
A. New Castle county.
Q. Do you know Major General Lorenzo Thomas?
A. Yes, sir.
Q. How long have you known him?
A. I have known him a great while; I think I have known him since a short time after his graduation from West Point.
Q. Was he originally from the same county with you?
A. Yes, sir.
Q. Did you see him in Washington somewhere about the 1st of March of this year?
A. I think it was about the 9th of March I first recollect seeing him here.
Q. When had you seen him prior to that time?
A. Not for several years. I cannot remember exactly when I last saw him before that.
Q. Where did you see him in Washington?
A. I saw him in the President's house; in the East Room of the President's house.
Q. What time in the day or evening?
A. It was, perhaps, a quarter past ten o'clock in the evening.
Q. The evening of what day in the week; do you remember?
A. I think it was on a Monday evening.
Q. Was the President holding a levee that evening?
A. Yes, sir.
Q. Did you have any conversation with him?
A. Yes, sir.
Q. Please state how the conversation began; what was said?
Mr. EVARTS. With General Thomas?
Mr. Manager BUTLER. With General Thomas.
A. Well, it commenced by my approaching him and mentioning that I was a Delawarean, and I supposed he would recognize me, which I think he did, but could not remember my name. I then gave him my name, and told him I knew him a great many years ago, and knew his father and brother and all the family. I gave him my hand, and he talked. He said he was a Delaware boy, which I very well knew; and he asked me what we were doing in Delaware. I do not remember the answer I gave to him, but said I to him, "General, the eyes of Delaware are on you." [Laughter.]
The CHIEF JUSTICE. Order!
The WITNESS. I gave my advice to him. I told him I thought Delaware would require him to stand firm. "Stand firm, general," said I. He said he would; he was standing firm, and he would not disappoint his friends; and in two days, or two or three days, or a short time, he would kick that fellow out. [Laughter.]
Q. Was anything further said?

A. Yes; there was something further said. I will try to recollect it. [A pause.] I repeated again to him what the desire, I presumed, of Delaware would be, and he said I need not give myself any concern about that, he was going to remain firm, and kick that fellow out without fail.

Q. When he said he would "kick that fellow out," did he in any way indicate to you to whom he referred?

A. He did not mention any name.

Q. The question was whether he indicated to whom he referred?

A. Well, I think he referred to the Secretary of War. I did not have any doubt on my mind.

Mr. EVARTS. That was not the question.

Mr. Manager BUTLER. It answers all I desire. The witness is yours, gentlemen.

Cross-examined by Mr. STANBERY:

Q. You said you had known General Thomas many years before?

A. Yes, sir.

Q. Please to state as near as you can recollect when you had seen General Thomas before this interview in the East Room. How many years was it since you had seen him before?

A. I was in this city during the war, and perhaps I might have seen him then, but I am not certain.

Q. What is the time that you are certain that you last saw him?

A. It was a good many years; I cannot remember how long it was. I cannot remember the time.

Q. Where? In Delaware, or here?

A. I think I saw him in New Castle at one time.

Q. Before, or after he went to West Point?

A. Long since he left West Point; long since he was in the army.

Q. On what occasion was it at New Castle that you think you recollect seeing him?

A. I saw him in the street. I do not recollect that I had any conversation with him at New Castle. His father lived there, and his brother.

Q. In which of the streets of New Castle did you see him?

A. Well, there are not many streets in New Castle. [Laughter.] I saw him in the main street, I think.

Q. What part of the street?

A. It was not in the middle of it; it was on the pavement, and I was standing by the court-house, to the best of my recollection.

Q. You were standing by the court-house and he was on the pavement?

A. I think so.

Q. Was he walking past or standing there?

A. I cannot recollect.

Q. But you do recollect that one day being before the court-house you saw Thomas standing on the pavement?

A. I was standing by the court-house.

Q. How near?

A. Within half the space of this room.

Q. How far was he from you?

A. I think he was on the opposite side of the street.

Q. On the other pavement?

A. Yes; I think so. As regards the time and whether I spoke to him or not I cannot tell. I saw him there.

Q. That is what you recollect; seeing him there that day? Was he standing or walking?

A. I presume he was walking. I do not recollect.

Q. But you recollect seeing him there?
A. Yes.
Q. Can you not tell us whether he was standing or walking?
A. Sometimes it is a little difficult for a person's memory to run that well. That has been several years ago, many years before the war.
Q. When did you ever see him to speak with him?
A. I used to speak to him a great many years ago when he would be at New Castle visiting his people. He married his wife in New Castle.
Q. How many years and when? That is the question.
A. It is very difficult for me to answer how many years or when; but I saw him there and I saw him in the city of Washington.
Q. You now recollect that you saw him in the city of Washington; a little while ago you could not recollect that?
A. I think now I do recollect seeing him, but not to speak to him. He was an officer, I was a citizen.
Q. Whereabouts in Washington did you see him before this time?
A. I cannot tell that; but I have seen him in Washington. I know him when I see him.
Q. When, then, did you ever speak to him before this time? Name a time.
A. Every time I would come within speaking distance of him I have spoken to him; but to name a time I cannot.
Q. You cannot answer when it was or where you ever spoke to him before?
A. No, sir; not particularly.
Q. On this occasion did you come from Delaware to see General Thomas?
A. No, sir; I had other business in Washington.
Q. Did you expect to see him or intend to see him?
A. Well, I wished to see the President of the United States, and I wished to see the cabinet. I saw them all except General Thomas in the Reception Room. I then walked into the East Room, and I saw him there; I went to him in the East Room and spoke to him.
Q. You wanted to see him as well as the rest of the cabinet.
A. Well, he was acting, the papers stated, as a member of the cabinet.
Q. Whereabouts in the East Room did you encounter him?
A. On the west side, I think, of the East Room.
Q. Was it near the door of exit?
A. No, sir.
Q. Near the centre of the room?
A. I think it was. It was not the centre of the room exactly, but somewhere in the centre of the distance between that and the place of going out.
Q. At that time was General Thomas apparently going out?
A. No, sir. When I first saw him there he was very much engaged, speaking with a gentleman very earnestly, and I waited until he had leisure and then I approached him.
Q. Did you know the gentleman he was speaking with?
A. No, sir.
Q. But you had something to say to him. What did you intend to say to him when you found out that he was there? You say you went over to see him; what did you intend to say to him?
A. Well, his being a Delawarean, and I from the same State, I wanted to pass the compliments with him. I was glad to see him. I had no particular desire to see him on any business; but I just said to him what I have already stated.
Q. You did not go there especially to say to him that thing, then, but only to see him?
A. I was drawn there for the purpose of seeing Mr. Johnson, President of the United States. I had never seen him.

Q. After you had seen Mr. Johnson, and the other members of the cabinet, I understand you to say you then wanted to see General Thomas?

A. I asked a friend with me where General Thomas was; said I, "I do not see him."

Q. Who was that friend that was with you?

A. It was John B. Tanner.

Q. Where was he from?

A. Washington.

Q. Does he live here?

A. Yes, sir.

Q. Did you go with Tanner to that levee?

A. Yes, sir.

Q. And after you had seen the President and cabinet, you then asked him where you would find Thomas?

A. No; that was not the manner.

Q. What was it?

A. Said I, "I see them all but General Thomas." I did not know the members of the cabinet personally, but they were pointed out to me, Mr. Browning and all the cabinet except Mr. Thomas. I think they were all present in the Reception Room.

Q. And all were pointed out to you?

A. Yes, sir; they were pointed out to me.

Q. Having seen the President, and having seen all the members of the cabinet, then you asked where you could find General Thomas?

A. No, sir.

Q. What then?

A. I did not ask where I could find him. Said I, "I miss General Thomas here; he is not in this room." My friend said no, he was not in that room; and when we left the Reception Room and came into the East Room I saw him there.

Q. Did you go with your friend Tanner from the Reception Room to the East Room?

A. Yes, sir.

Q. Did he point out Thomas to you?

A. No, sir; I pointed him out myself.

Q. What was the first thing you said to Thomas after he was through with his conversation with the gentlemen he was speaking to; how did you first address him?

A. I have already stated that.

Q. State it again.

A. I addressed him as a Delawarean, knowing him to be so. I told him I was from Delaware. He said he was a Delaware boy himself. I knew that very well, and knew his family.

Q. Did you shake hands with him?

A. Yes, sir.

Q. What followed when you told him you were from Delaware?

A. As I before stated, he asked me how things were coming on in Delaware, how we were all getting along or how we were coming on; that was about the amount he asked me.

Q. What was your answer?

A. I do not recollect the answer I gave.

Q. What was said next, if you do not recollect that answer?

A. The next was, as I before stated, that I told him the eyes of Delaware were on him, and to stand firm; that was the language I addressed to him.

Q. Was that all you said?

A. Well, no; I repeated, perhaps, some part of that or pretty much all. I repeated a portion of it, at any rate.

Q. When you asked him to stand firm, what was his reply?

A. He said he was standing firm.

Q. What did you next say?

A. I told him the people of Delaware would expect it of him. He said they should not be disappointed.

Q. What next?

A. That he would stand firm; and he then remarked that he would kick that fellow out in two or three days, or in a short time, or in a few days; I cannot remember what his exact expression was.

Q. Now, I ask you, Mr. Karsner, if this idea of kicking out did not first come from you: whether you did not suggest it?

A. No, sir.

Q. You did not?

A. No, sir.

Q. You are sure of that?

A. I have taken an oath here.

Q. I ask you if you are sure of that?

A. I am sure of that.

Q. When he said he would kick him out did you reply?

A. I do not know what I did reply just to that, for it was a pretty severe expression.

Q. What did you reply, severe or not; what did you say to him?

A. I do not think I told him it would be all right even; I do not think I did.

Q. What did you tell him?

A. I said "I think Delaware will expect something from you." [Great laughter.]

Q. Was that what you meant by the severe remark you made to him?

The WITNESS. What do you mean?

Mr. STANBERY. Was that the severe remark, "that Delaware expected he would do something?"

The WITNESS. Delaware, I told him, would expect him to stand firm, and his conduct would be viewed by Delaware, or something to that effect.

Q. Was that the severe remark which you have said you made?

A. I did not make any severe remark.

Mr. Manager BUTLER. I think you misunderstood the witness, Mr. Stanbery. He said simply that it was a severe remark that General Thomas made.

The WITNESS. Yes, sir; that is what I intended to convey.

Mr. STANBERY, (to the witness.) Did the conversation stop there?

A. It was not a very long one. There might have been some few words said after that. Just before I left I renewed the desires of Delaware. [Laughter.]

The CHIEF JUSTICE. Order! order!

By Mr. STANBERY:

Q. How did you renew the desires of Delaware? Did you feel yourself authorized to speak for Delaware?

A. Oh, well, you know, when we get away from home we think a good deal of home, and are inclined to speak in behalf of our own State.

Q. At that time were you in sympathy with the wishes of Delaware that he should do something in regard to the War Office?

Mr. Manager BUTLER. I object.

Mr. STANBERY. What is the ground of the objection?

Mr. Manager BUTLER. I do not think this is the proper mode of proving the sympathies of Delaware on this occasion; and, if it is, the sympathies of Delaware are a matter wholly immaterial to this issue.

Mr. STANBERY. We agree to that. The question was as to the sympathies of the witness. I will put the question in this form. (To the witness.) Was the line of conduct he spoke of taking that which suited you?

A. I do not know whether it would or no.

Q. Did you in that conversation give him any advice beyond standing firm what he should do?

A. No, sir; not any advice further than I have stated.

Q. After you parted there to whom did you first communicate this conversation that you had had there with General Thomas?

A. Well, I communicated it—if the question is right for me to answer——

Mr. STANBERY. Yes, sir; you will answer it.

A. I communicated it to Mr. Tanner.

Q. Your friend?

A. Yes, sir; that night.

Q. Whereabouts did you communicate that to Mr. Tanner?

A. Going along the street.

Q. Going away from there that night?

A. Yes, sir; if my memory serves me aright, I think I did that night.

Q. To whom next?

A. I cannot tell the next one exactly.

Q. Do you mean to say you have no recollection now of telling anybody else but Tanner?

A. Yes; I told several that same thing. I did not charge my memory with the persons I told it to.

Q. You told several that night, the next day, or when?

A. The next day

Q. In Washington?

A. Yes, sir.

Q. What did you tell, and whom to?

A. I say I cannot recollect precisely the persons I told it to. I told it to several.

Q. Do you recollect any one besides Tanner?

A. Yes, I recollect a gentleman from Delaware.

Q. What was his name?

A. His name was Smith. [Laughter.]

Q. What was the first name of that Mr. Smith

A. It was not John. [Great laughter.]

Q. What was it, if you say you recollect it was not John?

A. I think it was William.

Q. Whereabouts did you see William Smith?

A. In Washington.

Q. Whereabouts?

A. I saw him on the street.

Q. Near the court-house?

A. No, sir.

Q. Whereabouts, then?

A. I do not know where your court-house is here.

Q. Whereabouts in Washington did you see Smith?

A. I think it was on Pennsylvania avenue.

Q. That is a pretty long avenue. Whereabouts on the avenue?

A. Not far from the National Hotel.

Q. On the street?

A. Yes, sir.

Q. What did you tell William Smith?

A. I told William Smith just what I have told you. [Laughter.] Yes, sir, I told him just what I have sworn to here.

Q. What part of Delaware was William Smith from?
A. He is from the banks of the Brandywine. [Great laughter.]
Q. Which bank of the Brandywine does he live on?
A. I think he is on the east bank of the Brandywine, or northeast.
Q. Does he live in town or country?
A. He lives in the country. He is a farmer.

The CHIEF JUSTICE. The Chief Justice thinks that this examination is irrelevant and should not be protracted.

By Mr. STANBERY:

Q. Mr. Karsner, when were you summoned before any committee in this matter?
A. I do not recollect the day. It was about the 13th, I think.
Q. Did you remain in Washington from the 9th till the 13th?
A. Yes, sir. I was engaged in trying to get a mail route in Delaware to facilitate post office matters, and I was detained here. I had engaged our representative, Mr. Nicholson, and his father was very ill at the time, and he was some time out of the House, which protracted my stay.
Q. Have you remained here ever since?
A. No, sir.
Q. Do you know at whose instance you were summoned?
A. No; I cannot tell that exactly, at whose instance, what particular person had me summoned. I was summoned before the managers of the House of Representatives, and ordered at a certain time to be at the judiciary apartment up stairs over the House of Representatives.

Re-examined by Mr. Manager BUTLER:

Q. You have been asked if you were summoned before the managers. Did you testify there?
A. I did.
Q. After you had testified there, was General Thomas called in?
A. Yes, sir.
Q. Was your testimony, as you have given it here, read over before him?
Mr. GROESBECK. We object to that.
The WITNESS. Yes, sir.
Mr. Manager BUTLER. Now, I propose to ask whether General Thomas was asked if that was true, and if he admitted upon his oath that it was true, all you have stated.
Mr. CURTIS. We object to that, Mr. Chief Justice.
Mr. Manager BUTLER. I think it is competent.
Mr. CURTIS. We do not think they can support their witness by showing what a third person, General Thomas, said.
The CHIEF JUSTICE, (to the managers.) Do you press the question?
Mr. Manager BUTLER. I do press the question, Mr. Chief Justice, for this reason: upon an innocent and unoffending man there has been a very severe cross-examination within the duties of the counsel—undoubtedly he did not mean to do more than his duty—attempting to discredit him here by that cross-examination as to a conversation. If that cross-examination meant anything, that is what it meant. Now, I propose to show that the co-conspirator here, Thomas, admitted the correctness of this man's statements. This man was heard as a witness by the House of Representatives; the managers of the House of Representatives, having taken his testimony, not willing to do any injustice to General Thomas, brought General Thomas in and sat him down, and on his oath put the question to him, is what this man says true? being the same then as he swears here; and General Thomas admitted it word for word. I think it is competent and do press it.
Mr. CURTIS. Our view of it is, Mr. Chief Justice, that, having called this

witness and put him on the stand, they cannot show that he has, on a different occasion, told the same story. That is a plain matter, and I do not understand that that is the ground which they take.

Mr. Manager BUTLER. We do not propose that.

Mr. CURTIS. Then they offer the declarations of General Thomas, not in reference to any conspiracy, not in reference to any agreement between himself and the President as to doing anything, not in reference to any act done pursuant to that conspiracy, but simply the declarations of General Thomas as to something which General Thomas had said to this witness to support the credit of the witness. We object to that as incompetent.

Mr. Manager BUTLER. Mr. President, having made the offer, and it being objected to, and it being clearly competent, if General Thomas is ever brought here to contradict it I will waive it.

Mr. CURTIS. Very well.

Mr. Manager BUTLER. Then we are through with the witness; but we must request him to remain in attendance until discharged.

Mr. DOOLITTLE. Now, Mr. Chief Justice, I move that the court adjourn until to-morrow at 12 o'clock.

The CHIEF JUSTICE. It is moved by the senator from Wisconsin that the Senate, sitting as a court of impeachment, adjourn until to-morrow, 12 o'clock.

The motion was agreed to; and the Senate, sitting for the trial of the impeachment, adjourned until to-morrow at 12 o'clock.

THURSDAY, *April* 2, 1868.

The Chief Justice of the United States entered the Senate chamber at five minutes past 12 o'clock and took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives appeared and took the seats assigned them.

The counsel for the respondent also appeared and took their seats.

The presence of the House of Representatives was next announced, and the members of the House, as in Committee of the Whole, headed by Mr. E. B. Washburne, the chairman of that committee, and accompanied by the Speaker and Clerk, entered the Senate chamber and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the minutes of the last day's proceedings.

The Secretary read the journal of the proceedings of the Senate yesterday sitting for the trial of the impeachment.

Mr. DRAKE. I send to the Chair and offer for adoption an amendment to the rules.

The CHIEF JUSTICE. The Secretary will read the amendment.

The Secretary read as follows:

Amend rule seven by adding the following:

Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one fifth of the members present or requested by the presiding officer, when the same shall be taken.

Mr. DRAKE. Please read the rule as it would be if amended.

The Secretary read as follows:

VII. The presiding officer of the Senate shall direct all necessary preparations in the Senate chamber, and the presiding officer on the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the presiding officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the

judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance, submit any such question to a vote of the members of the Senate. Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the members present or requested by the presiding officer, when the same shall be taken.

Mr. HENDRICKS. I suppose that, being a change of a rule, stands over for one day.

The CHIEF JUSTICE. If any senator objects.

Mr. HENDRICKS. Yes, sir; I do object.

The CHIEF JUSTICE. It will lie over for one day. The managers on the part of the House of Representatives will proceed with their evidence. Senators will please to give their attention.

Mr. Manager BUTLER. We propose now to call General Emory.

Mr. STANBERY. Before the managers proceed with another witness we wish to recall for a moment Mr. Karsner, the last witness.

Mr. Manager BUTLER. Mr. President, I submit that if Mr. Karsner is to be recalled, the examination and cross-examination having been finished on both sides, he must be recalled as the witness for the respondent, and the proper time to recall him will be when they put in their case.

Mr. STANBERY. We wish to recall him but a moment to ask a question which, perhaps, would have been put if it had not been stopped yesterday.

The CHIEF JUSTICE. Is there any objection to recalling the witness for the purpose of putting a single question to him?

Mr. Manager BUTLER. Not if it shall not be drawn into a precedent.

GEORGE W. KARSNER recalled.

By Mr. STANBERY:

Q. Mr. Karsner, where did you stay that night of the 9th of March, after you had the conversation with General Thomas?

A. I staid at the house of my friend, Mr. Tanner, in Georgetown.

Q. What is the employment of Mr. Tanner?

A. I believe he is engaged in one of the departments here in Washington.

Q. In which one?

A. I think the War Department.

Q. Do you recollect whether on the next morning you accompanied Mr. Tanner to the War Department?

A. I do not.

Q. You do not recollect that?

A. I do not recollect whether I accompanied him or not. Sometimes I did and sometimes I did not. I had other business, and sometimes I was engaged in that and did not accompany him, and at other times I did accompany him.

Q. At any time did you go with him to the War Department and see Mr. Stanton in regard to your testimony?

The WITNESS. I appeal to the court.

The CHIEF JUSTICE. Answer the question.

A. I saw Mr. Stanton.

Several SENATORS. Louder; we cannot hear.

The CHIEF JUSTICE. Raise your voice so that you can be heard in the chamber.

By Mr. STANBERY:

Q. You say you saw Mr. Stanton?

A. Yes, sir; I saw Mr. Stanton.

Q. What did you see him about?

A. Nothing particular about; only I was introduced to him.

Q. Whom by?

A. By Mr. Tanner.

Q. What was your object in seeing him?

A. Well, I had seen all the great men in Washington, and I wished to see him.

Q. That is your answer?

A. Yes, sir.

Q. In that conversation with Mr. Stanton was any reference made to your conversation with General Thomas?

A. I think there was.

Q. Did you receive a note from Mr. Stanton at that time, a memorandum?

A. No, sir.

Q. Did he give you any directions where to go?

A. No, sir.

Q. Did he speak about your being examined as a witness before the committee, or that you should be?

A. There was something said to that effect.

Mr. STANBERY. That is all, sir.

Mr. Manager BUTLER. That is all, Mr. Karsner.

Hon. THOMAS W. FERRY sworn and examined.

By Mr. Manager BUTLER:

Q. Were you present at the War Office on the morning of the 22d of February when General Thomas came there?

A. I was.

Q. At the time when some demand was made?

A. I was.

Q. Will you state whether you paid attention to what was going on there, and whether you made any memorandum of it?

A. I did pay attention, and I believe I made a memorandum of the occurrences as far as I observed them.

Q. Have you that memorandum?

A. Yes, sir, [producing a paper.]

Q. Will you please state, assisting your memory by that memorandum, what took place there, in the order as well as you can, and as distinctly as you can?

A. I believe, if my recollection serves me, that the memorandum covers it perhaps as distinctly as I could possibly state it. I wrote it immediately after the occurrence of the appearance of General Thomas, and perhaps it will state substantially and more perfectly than I could state from memory now what occurred.

Q. Unless objected to, you may read it.

Mr. STANBERY. We shall make no objection.

The witness read as follows:

WAR DEPARTMENT, WASHINGTON CITY,
February 22, 1868.

In the presence of Secretary Stanton, Judge Kelley, Moorhead, Dodge, Van Wyck, Van Horn, Delano, and Freeman Clarke, at twenty-five minutes past twelve m., General Thomas, Adjutant General, came into this Secretary of War office, saying, "Good morning," the Secretary replying, "Good morning, sir." Thomas looked around and said, "I do not wish to disturb these gentlemen, and will wait." Stanton said, "Nothing private here; what do you want, sir?"

Thomas demanded of Secretary Stanton the surrender of the Secretary of War office. Stanton denied it to him, and ordered him back to his own office as Adjutant General. Thomas refused to go. "I claim the office of Secretary of War, and demand it by order of the President."

STANTON. "I deny your authority to act, and order you back to your own office."

THOMAS. "I will stand here. I want no unpleasantness in the presence of these gentlemen."

STANTON. "You can stand there if you please, but you cannot act as Secretary of War. I am Secretary of War. I order you out of this office and to your own."

THOMAS. "I refuse to go, and will stand here."
STANTON. "How are you to get possession; do you mean to use force?"
THOMAS. "I do not care to use force, but my mind is made up as to what I shall do. I want no unpleasantness, though. I shall stay here and act as Secretary of War."
STANTON. "You shall not, and I order you, as your superior, back to your own office."
THOMAS. "I will not obey you, but will stand here and remain here."
STANTON. "You can stand there, as you please. I order you out of this office to your own. I am Secretary of War, and your superior."
Thomas then went into opposite room across hall (General Schriver's) and commenced ordering General Schriver and General E. D. Townsend. Stanton entered, followed by Moorhead and Ferry, and ordered those generals not to obey or pay attention to General Thomas's orders; that he denied his assumed authority as Secretary of War *ad interim*, and forbade their obedience of his directions. "I am Secretary of War, and I now order you, General Thomas, out of this office to your own quarters."
THOMAS. "I will not go. I shall discharge the functions of Secretary of War."
STANTON. "You will not."
THOMAS. "I shall require the mails of the War Department to be delivered to me, and shall transact the business of the office."
STANTON. "You shall not have them, and I order you to your own office."

Mr. Manager BUTLER, (to the counsel for the respondent.) The witness is yours, gentlemen.

Cross-examined by Mr. STANBERY:

Q. Did the conversation stop there?
A. So far as I heard.
Q. You then left the office?
A. I left in about fifteen or twenty minutes after that. I left General Thomas in General Schriver's room, and returned into the Secretary of War's room.
Q. Did the Secretary return with you, or did he remain?
A. He remained a few moments in General Schriver's room, and then returned to his own room. When I left, he was in his own room.
Q. How early in the morning of the 22d did you get to the office of the Secretary of War?
A. My impression is it was about a quarter past eleven in the morning. It was a little after eleven, at any rate.
Q. Had you been there at all the night before?
A. I had not.
Q. Did you hear the orders given by General Thomas in Schriver's room?
A. Yes, sir.
Q. Were you in Schriver's room at the time those orders were given?
A. I was at the threshold; I had reached the threshold. I believe I was the first that followed Secretary Stanton. I believe I was the first and Mr. Moorhead second.

WILLIAM H. EMORY sworn and examined.

By Mr. Manager BUTLER:

Q. State your full name.
A. William Helmsley Emory.
Q. What is your rank and command in the army?
A. I am colonel of the fifth cavalry, and brevet major general in the army. My command is the department of Washington.
Q. How long have you been in command of that department?
A. Since the 1st of September, 1867.
Q. Soon after you went into command of the department did you have any conversation with the President of the United States as to the troops in the department or their station?
A. Yes.
Q. Before proceeding to give that conversation, will you state to the Senate the extent of the department of Washington, to what it extends, its territorial limits, I mean?

A. The department of Washington consists of the District of Columbia, Maryland, and Delaware, excluding Fort Delaware.

Q. State as well as you can; if you cannot give it all, give the substance of that conversation which you had with the President when you first entered upon command.

A. It is impossible for me to give anything like that conversation. I can only give the substance of it. It occurred long ago. He asked me about the location of the troops, and I told him the strength of each post, and, as near as I can recollect, the commanding officer of the post.

Q. Go on, sir, if that is not all.

A. That was the substance and important part of the conversation. There was some conversation as to whether more troops should be sent here or not. I recommended that there should be troops here, and called the President's attention to a report of General Canby, my predecessor, recommending that there should always be at the seat of government at least a brigade of infantry, a battery of artillery, and a squadron of cavalry; and some conversation, mostly of my own, was had in reference to the formation of a military force in Maryland that was then going on.

Q. What military force?

A. A force organized by the State of Maryland.

Q. Please state, as well as you can, what you stated to the President, in substance, relative to the formation of that military force.

A. I merely stated that I did not see the object of it, as near as I can recollect, and that I did not like the organization; I saw no necessity for it.

Q. Did you state what your objections were to the organization?

A. I think it is likely I did; but I cannot recollect exactly at this time what they were. I think it likely that I stated that they were clothed in uniform that was offensive to our people, some portions of them; and that they were officered by gentlemen who had been in the southern army.

Q. By the offensive uniform do you mean the gray?

A. Yes, sir.

Q. Do you remember anything else at that time?

A. Nothing.

Q. Did you call upon the President upon your own thought or were you sent for at that time?

A. I was sent for.

Q. When again did he send for you for any such purpose?

A. I think it was about the 22d of February.

Q. In what manner did you receive the message?

A. I received a note from Colonel Moore.

Q. Who is Colonel Moore?

A. He is the secretary of the President and an officer of the army.

Q. Have you that note?

A. I have not. It may be in my desk at the office.

Q. Did you produce that note before the committee of the House of Representatives?

A. I read from it.

Q. Have you since seen that note as copied in their proceedings?

A. I have.

Q. Is that a correct copy?

A. That is a correct copy.

Mr. Manager BUTLER, (to the counsel for the respondent.) Shall I use it, gentlemen?

Mr. CURTIS. Certainly.

Mr. EVARTS. Use it, subject to the production of the original.

Mr. Manager BUTLER. If desired. I suppose it will not be insisted on, [handing a printed paper to the witness.] Will you read it?

The witness read as follows:

EXECUTIVE MANSION, WASHINGTON, D. C,
February 22, 1868.

GENERAL: The President directs me to say that he will be pleased to have you call on him as early as practicable.

Very respectfully and truly, yours,

WILLIAM G. MOORE,
United States Army.

Q. How early did you call?

A. I called immediately.

Q. How early in the day?

A. I think it was about midday.

Q. Whom did you find with the President, if anybody?

A. I found the President alone when I first went in.

Q. Will you have the kindness to state as nearly as you can what took place there?

A. I will try and state the substance of it, but the words I cannot undertake to state exactly. The President asked me if I recollected a conversation he had had with me when I first took command of the department. I told him that I recollected the fact of the conversation distinctly. He then asked me what changes had been made. I told him no material changes; but such as had been made I could state at once. I went on to state that in the fall six companies of the twenty-ninth infantry had been brought to this city to winter; but, as an offset to that, four companies of the twelfth infantry had been detached to South Carolina, on the request of the commander of that district; that two companies of artillery, that had been detached by my predecessor, one of them for the purpose of aiding in putting down the Fenian difficulties, had been returned to the command; that although the number of companies had been increased, the numerical strength of the command was very much the same, growing out of an order reducing the artillery and infantry companies from the maximum of the war establishment to the minimum of the peace establishment. The President said, "I do not refer to those changes." I replied that if he would state what changes he referred to, or who made the report of the changes, perhaps I could be more explicit. He said, "I refer to recent changes, within a day or two," or something to that effect. I told him I thought I could assure him that no changes had been made; that, under a recent order issued for the government of the armies of the United States, founded upon a law of Congress, all orders had to be transmitted through General Grant to the army, and, in like manner, all orders coming from General Grant to any of his subordinate officers must necessarily come, if in my department, through me; that if, by chance, an order had been given to any junior officer of mine, it was his duty at once to report the fact. The President asked me, "What order do you refer to?" I replied, "To Order No. 17 of the series of 1867." He said, "I would like to see the order," and a messenger was despatched for it. At this time a gentleman came in who I supposed had business in no way connected with the business that I had in hand, and I withdrew to the further end of the room, and while there the messenger came with the book of orders, and handed it to me. As soon as the gentleman had withdrawn I returned to the President, with the book in my hand, and said I would take it as a favor if he would permit me to call his attention to that order; that it had been passed in an appropriation bill, and I thought it not unlikely had escaped his attention. He took the order and read it, and observed, "This is not in conformity to the Constitution of the United States, that makes me Commander-in-chief, or with the terms of your commission."

Mr. HOWARD. Repeat his language, if you please.

The WITNESS. I cannot repeat it any nearer than I am now doing.

Mr. CONKLING. Repeat your last answer louder, so that we may hear.

Mr. JOHNSON. What he said.

The WITNESS. What who said, the President or me?

Mr. HOWARD. The President.

The WITNESS. He said, "This is not in conformity with the Constitution of the United States, which makes me Commander-in-chief, or with the terms of your commission." I replied, "That is the order which you have approved and issued to the army for our government," or something to that effect. I cannot recollect the exact words, nor do I intend to quote the exact words, of the President. He said, "Am I to understand that the President of the United States cannot give an order except through the General of the army," or "General Grant?" I said, in reply, that that was my impression; that that was the opinion that the army entertained, and I thought upon that subject they were a unit. I also said, "I think it is fair, Mr. President, to say to you that when this order came out there was considerable discussion on the subject as to what were the obligations of an officer under that order, and some eminent lawyers were consulted—I myself consulted one—and the opinion was given to me decidedly and unequivocally that we were bound by the order, constitutional or not constitutional." The President observed that the object of the law was evident.

Mr. Manager BUTLER. Before you pass from that, did you state to him who the lawyers were that had been consulted?

A. Yes.

Q. What did you state on that subject?

A. Perhaps, in reference to that, a part of my statement was not altogether correct. In regard to myself, I consulted Mr. Robert J. Walker.

Q. State what you said to him, whether correct or otherwise?

A. I will state it. I stated that I had consulted Mr. Robert J. Walker, in reply to his question as to whom it was I had consulted; and I understand other officers had consulted Mr. Reverdy Johnson.

Q. Did you say to him what opinion had been reported from those consultations?

A. I stated before that the lawyer that I had consulted stated to me that we were bound by it undoubtedly; and I understood from some officers, who I supposed had consulted Mr. Johnson, that he was of the same opinion.

Q. What did the President reply to that?

A. The President said, "The object of the law is evident." There the conversation ended by my thanking him for the courtesy with which he had allowed me to express my own opinion.

Q. Did you then withdraw?

A. I then withdrew.

Q. Did you see General Thomas that morning?

A. I did not, that I recollect. I have no recollection of it.

Q. (Handing a paper to the witness.) State whether that is an official copy of the order to which you referred?

A. No, sir. It is only a part of the order. The order which I had in my hand, and which I have in my office, has the appropriation bill in front of it. That is, perhaps, another form issued from the Adjutant General's office; but it is the substance of one part of the order.

Q. Is it so far as it concerns this matter?

A. So far as it concerns this matter it is the same order; but it is not the same copy, or, more properly, the same edition. There are two editions of the order, one published with the appropriation bill, and this is a section of the appropriation bill, and probably has been published as a detached section.

Q. Is that an official copy?

A. Yes, sir; that is an official copy.

Q. This, I observe, is headed "Order No. 15." I observed you said "No. 17." Do you refer to the same or different orders?

A. I refer to the same order, and I think Order No. 17 is the one containing the appropriation bill, the one I referred to, and the one I had in my hand, and, I think, the one that is on file in my office. That made the confusion in the first place. I may have said Order 15 or 17, but Order No. 17 embraces, I think, all the appropriation bill, and is the full order.

Q. This is No. 15, and covers the second and third sections of that act?

A. The sections are the same.

Mr. Manager BUTLER, (to the counsel for the respondent.) I propose to put this paper in evidence, if you do not object.

Mr. EVARTS. Allow us to look at it.

[The paper was handed to the counsel and examined.]

Mr. STANBERY. We have no objection.

Mr. EVARTS. We will treat that as equivalent to Order No. 17, unless some difference should appear.

Mr. Manager BUTLER. There is no difference, I believe, and it is the same as is set out in the answer. Do you desire to have it read?

Mr. JOHNSON. The manager will read it, if he pleases.

Mr. Manager BUTLER read as follows:

[General Orders No. 15.]

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, March 12, 1868.

The following extract of an act of Congress is published for the information and government of all concerned:

[PUBLIC—No. 85.]

AN ACT making appropriations for the support of the army for the year ending June 30, 1868, and for other purposes.

* * * * * * * *

SEC. 2. *And be it further enacted*, That the headquarters of the General of the army of the United States shall be at the city of Washington, and all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the army, and, in case of his inability, through the next in rank. The General of the army shall not be removed, suspended, or relieved from command, or assigned to duty elsewhere than at said headquarters, except at his own request, without the previous approval of the Senate; and any orders or instructions relating to military operations issued contrary to the requirements of this section shall be null and void; and any officer who shall issue orders or instructions contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office; and any officer of the army who shall transmit, convey, or obey any orders or instructions so issued contrary to the provisions of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction.

SEC. 3. *And be it further enacted*, That section three of the joint resolution relative to appointments to the Military Academy, approved June 16, 1866, be and the same is hereby repealed.

* * * * * * *

SEC. 5. *And be it further enacted*, That it shall be the duty of the officers of the army and navy and of the Freedmen's Bureau to prohibit and prevent whipping or maiming of the person as a punishment for any crime, misdemeanor, or offence, by any pretended civil or military authority in any State lately in rebellion, until the civil government of such State shall have been restored, and shall have been recognized by the Congress of the United States.

SEC. 6. *And be it further enacted*, That all mititary forces now organized or in service in either of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Mississippi, and Texas, be forthwith disbanded, and that the further organization, arming, or calling into service of the said militia forces, or any part thereof, is hereby prohibited, under any circumstances whatever, until the same shall be authorized by Congress.

* * * * * * *

Approved March 2, 1867.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant General.

Official:

E. D. TOWNSEND,
Assistant Adjutant General.

Q. You are still in command of the department, as I understand?
A. Yes, sir.

Cross-examined by Mr. STANBERY:

Q. The paper which you had, and which was read by the President on that day, was marked "Orders No. 17," was it?
A. 15 or 17.
Q. This is 15; is the other 17?
A. I think it was, but I will not be sure.
Q. In that paper marked No. 17 was the whole appropriation act printed and set out, and was it in other respects like this?
A. In other respects like that. There is one thing I wish to state. The copy on file in my office contains the appropriation bill, and I may have confounded them. It is numbered 17.
Q. And it is your impression that the paper read by you at the President's was the same you had?
A. That is my impression, although it may have been that now before you. I cannot say.
Q. As I understand you, when the document No. 17 was sent to the officers of the army, there was a discussion among them, you said?
A. Yes.
Q. I see this document contains no construction of that act, but simply gives the act for their information; is that so?
A. Yes, sir.
Q. Upon reading the act, then, a discussion arose among the officers of the army?
A Yes.
Q. As to its meaning, or what?
A. A discussion with a view of ascertaining what an officer's obligations were under that act.
Q. You had received no instructions from the War Department or elsewhere except what are contained in that document itself?
A. None whatever.
Q. It left you, then, to construe the act?
A. Yes, sir.
Q. Upon that you say that to settle your doubts you applied to an eminent lawyer?
A. I had no doubt myself, but to satisfy the doubts of others.
Q. You applied to an eminent lawyer?
A. Yes, sir.
Q. And that gentleman whom you applied to was Mr. Robert J. Walker?
A. Yes, sir.
Q. Was it he that advised you that you were bound to obey only orders coming through General Grant, whether it was constitutional or unconstitutional to send orders in that way?
A. The question of Constitution was not raised; it was only a question of whether we were bound by that order.
Q. I understood you to say that the answer was "constitutional or not constitutional," in your response to General Butler?
A. I made a mistake, then. The question was whether we were bound by it, and I should like to correct it.
Mr. Manager BUTLER. You may do so.
Mr. STANBERY. Certainly. (To the witness.) You said in your former answer that the advice was that you were bound to obey it whether it was constitutional or not.
A. Until it was decided. We had no right to judge of the Constitution—the officers had not.

Q. That was the advice you got?

A. Yes, sir.

Q. Until it was decided—decided by whom and where?

A. By the Supreme Court; and not only that, after the decision is made it must be promulgated to us in orders as null and void, and no longer operating.

Q. When you said to the President that he had approved something, did you speak in reference to that Order No. 17 which contained the whole of the act?

A. I did.

Q. What did you mean to say—that he had approved the order, or had approved the act?

A. As far as we are concerned, the order and the act are the same thing; and if you will observe, it is marked "approved." That means by the President.

Q. What is marked "approved," the order or the act?

A. The act is marked "approved." The order contains nothing but the act; not a word besides.

Q. Then the approval that you referred to was to the act?

A. I consider the act and the order the same.

Q. But the word "approved" you speak of was to the act?

A. Of course; but as far as we are concerned in the army the act and the order are the same thing.

Mr. Manager WILSON. Mr. President, we now offer a duly authenticated copy of General Emory's commission:

The President of the United States, to all who shall see these presents greeting:

Know ye, that I do hereby confer on William H. Emory, of the army of the United States, by and with the advice and consent of the Senate, the rank of major general by brevet in said army, to rank as such from the 13th day of March, in the year of our Lord 1865, for gallant and meritorious services at the battle of Cedar Creek, Virginia; and I do strictly charge and require all officers and soldiers to obey and respect him accordingly; and he is to observe and follow such orders and directions from time to time as he shall receive from me or the future President of the United States of America, and other officers set over him according to law, and the rules and discipline of war. This commission to continue in force during the pleasure of the President of the United States for the time being.

Given under my hand at the city of Washington, this 17th day of July, in the year of our Lord 1866, and of the ninety-first year of the independence of the United States.

ANDREW JOHNSON.

[Seal of the War Department.]

By the President:

EDWIN M. STANTON,
Secretary of War.

This is duly certified from the department, the certificate being as follows:

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
March 24, 1868.

It appears from the records of this office that the annexed document is a true copy of the original commission issued to Brevet Major General W. H. Emory, United States army, from this office.

E. D. TOWNSEND,
Assistant Adjutant General.

Be it known that E. D. Townsend, who has signed the foregoing certificate, is an assistant adjutant general of the army of the United States, and that to his attestation as such full faith and credit are and ought to be given.

In testimony whereof I, E. M. Stanton, Secretary of War, have hereunto set my hand, and caused the seal of the Department of War of the United States of America to be affixed on this 24th day of March, 1868.

[SEAL.] E. M. STANTON, *Secretary of War.*

We also offer the order assigning General Emory to the command of the department of Washington:

[Special Orders, No. 426.]

HEADQUARTERS ARMY OF THE UNITED STATES,
ADJUTANT GENERAL'S OFFICE, *Washington, August* 27, 1867.

[Extract.]

25. Brevet Major General W. H. Emory will forthwith relieve Brevet Major General Canby, in command of the department of Washington, and by direction of the President is assigned to duty according to his brevet of major general while exercising such command.

By command of General Grant.

E. D. TOWNSEND,
Assistant Adjutant General.

Official:

E. D. TOWNSEND,
Assistant Adjutant General.

We now offer the order of the President, under which General Thomas resumed his duties as Adjutant General of the army of the United States:

EXECUTIVE MANSION, *Washington, D. C., February* 13, 1868.

GENERAL: I desire that Brevet Major General Lorenzo Thomas resume his duties as Adjutant General of the army of the United States.

Respectfully yours,

ANDREW JOHNSON.

General U. S. GRANT,
Commanding Army of the United States Washington, D. C

It is the original order.

I now offer the original letter of General Grant requesting the President to put in writing a verbal order which he had given him prior to the date of this letter. Both the letter and the indorsement by the President are original.

Mr. STANBERY. Allow us to look at it.

Mr. Manager WILSON. Certainly.

[The letter was handed to counsel, and after examination returned to the managers.]

Mr. Manager WILSON. I will read it:

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., January 24, 1868.

SIR: I have the honor very respectfully to request to have in writing the order which the President gave me verbally on Sunday, the 19th instant, to disregard the orders of Hon. E. M. Stanton as Secretary of War until I knew from the President himself that they were his orders.

I have the honor to be, very respectfully, your obedient servant,

U. S. GRANT, *General.*

His Excellency A. JOHNSON,
President of the United States.

Upon which letter is the following indorsement:

EXECUTIVE MANSION,
Washington, D. C., January 29, 1868.

ANDREW JOHNSON, *President of the United States.*

In reply to request of General Grant of the 24th January, 1868, the President does so, as follows:

As requested in this communication, General Grant is instructed in writing not to obey any order from the War Department assumed to be issued by the direction of the President, unless such order is known by the General commanding the armies of the United States to have been authorized by the Executive.

ANDREW JOHNSON.

Mr. CAMERON. I should be glad to have that read by the Clerk.

The CHIEF JUSTICE. The Secretary will read the order.

The Secretary read the letter of General Grant and the indorsement last read by Mr. Manager Wilson.

Mr. Manager WILSON. The next document which we produce is a letter written by the President of the United States to General Grant of date of February 10, 1868. It is the original letter, and I send it to counsel that they may examine it.

[The letter was handed to the counsel for the President, and examined by them.]

Mr. STANBERY. Mr. Chief Justice, it appears that this is a letter purporting to be a part of a correspondence between General Grant and the President. I ask the honorable managers whether it is their intention to produce the entire correspondence?

Mr. Manager WILSON. It is not our intention to produce anything beyond this letter which we now offer.

Mr. STANBERY. No other part of the correspondence but this letter?

Mr. Manager WILSON. That is all we propose now to offer.

[The letter was returned to the managers.]

Mr. STANBERY. We wish the honorable managers to state what is the purpose of introducing this letter? What is the object? What is the relevancy? What does it relate to?

Mr. Manager WILSON. I may state that the special object we have in view in the introduction of this letter is to show the President's own declaration of his intent to prevent the Secretary of War, Mr. Stanton, resuming the duties of the office of Secretary of War, notwithstanding the action of the Senate on his case, and the requirement of the tenure-of-office bill. Do you desire it read?

Mr. STANBERY. Certainly, if it is to come in.

Mr. Manager WILSON. I ask the Secretary to read it.

The CHIEF JUSTICE. The Secretary will read it.

The Secretary read the letter, as follows:

EXECUTIVE MANSION, *February* 10, 1868.

GENERAL: The extraordinary character of your letter of the 3d instant would seem to preclude any reply on my part; but the manner in which publicity has been given to the correspondence of which that letter forms a part, and the grave questions which are involved, induce me to take this mode of giving, as a proper sequel to the communications which have passed between us, the statements of the five members of the cabinet who were present on the occasion of our conversation on the 14th ultimo. Copies of the letters which they have addressed to me upon the subject are accordingly herewith enclosed.

You speak of my letter of the 31st ultimo as a reiteration of the "many and gross misrepresentations" contained in certain newspaper articles, and reassert the correctness of the statements contained in your communication of the 28th ultimo; adding—and here I give your own words—"anything in yours in reply to it to the contrary notwithstanding."

When a controversy upon matters of fact reaches the point to which this has been brought, further assertion or denial between the immediate parties should cease, especially where, upon either side, it loses the character of the respectful discussion which is required by the relations in which the parties stand to each other, and degenerates in tone and temper. In such a case, if there is nothing to rely upon but the opposing statements, conclusions must be drawn from those statements alone, and from whatever intrinsic probabilities they afford in favor of or against either of the parties. I should not shrink from this test in this controversy; but, fortunately, it is not left to this test alone. There were five cabinet officers present at the conversation, the detail of which, in my letter of the 28th ultimo, you allow yourself to say contains "many and gross misrepresentations." These gentlemen heard that conversation and have read my statement. They speak for themselves, and I leave the proof without a word of comment.

I deem it proper, before concluding this communication, to notice some of the statements contained in your letter.

You say that a performance of the promises alleged to have been made by you to the President "would have involved a resistance to law, and an inconsistency with the whole history of my connection with the suspension of Mr. Stanton." You then state that you had fears the President would, on the removal of Mr. Stanton, appoint some one in his place who would embarrass the army in carrying out the reconstruction acts, and add:

"It was to prevent such an appointment that I accepted the office of Secretary of War *ad interim*, and not for the purpose of enabling you to get rid of Mr. Stanton by my withholding it from him in opposition to law, or, not doing so myself, surrendering it to one who would, as the statements and assumptions in your communication plainly indicate was sought."

First of all, you here admit that from the very beginning of what you term "the whole history" of your connection with Mr. Stanton's suspension, you intended to circumvent the President. It was to carry out that intent that you accepted the appointment. This was in your mind at the time of your acceptance. It was not, then, in obedience to the order of your superior, as has heretofore been supposed, that you assumed the duties of the office. You knew it was the President's purpose to prevent Mr. Stanton from resuming the office of Secretary of War; and you intended to defeat that purpose. You accepted the office, not in the interest of the President, but of Mr. Stanton. If this purpose, so entertained by you, had been confined to yourself; if, when accepting the office, you had done so with a mental reservation to frustrate the President, it would have been a tacit deception. In the ethics of some persons such a course is allowable. But you cannot stand even upon that questionable ground. The "history" of your connection with this transaction, as written by yourself, places you in a different predicament, and shows that you not only concealed your design from the President, but induced him to suppose that you would carry out his purpose to keep Mr. Stanton out of office, by retaining it yourself after an attempted restoration by the Senate, so as to require Mr. Stanton to establish his right by judicial decision.

I now give that part of this "history" as written by yourself in your letter of the 28th ultimo:

"Some time after I assumed the duties of Secretary of War *ad interim*, the President asked me my views as to the course Mr. Stanton would have to pursue, in case the Senate should not concur in his suspension, to obtain possession of his office. My reply was, in substance, that Mr. Stanton would have to appeal to the courts to reinstate him, illustrating my position by citing the ground I had taken in the case of the Baltimore police commissioners."

Now, at that time, as you admit in your letter of the 3d instant, you held the office for the very object of defeating an appeal to the courts. In that letter you say that in accepting the office, one motive was to prevent the President from appointing some other person who would retain possession, and thus make judicial proceedings necessary. You knew the President was unwilling to trust the office with any one who would not, by holding it, compel Mr. Stanton to resort to the courts. You perfectly understood that in this interview, "some time" after you accepted the office, the President, not content with your silence, desired an expression of your views, and you answered him that Mr. Stanton "would have to appeal to the courts."

If the President had reposed confidence before he knew your views, and that confidence had been violated, it might have been said he made a mistake; but a violation of confidence reposed after that conversation was no mistake of his nor of yours. It is the fact only that needs be stated, that at the date of this conversation you did not intend to hold the office with the purpose of forcing Mr. Stanton into court, but did hold it then, and had accepted it, to prevent that course from being carried out. In other words, you said to the President: "That is the proper course," and you said to yourself: "I have accepted this office and now hold it to defeat that course." The excuse you make in a subsequent paragraph of that letter of the 28th ultimo, that afterwards you changed your views as to what would be a proper course, has nothing to do with the point now under consideration. The point is, that before you changed your views, you had secretly determined to do the very thing which at last you did—surrender the office to Mr. Stanton. You may have changed your views as to the law, but you certainly did not change your views as to the course you had marked out for yourself from the beginning.

I will only notice one more statement in your letter of the 3d instant—that the performance of the promises, which it is alleged were made by you, would have involved you in the resistance of law. I know of no statute that would have been violated had you, carrying out your promises in good faith, tendered your resignation when you concluded not to be made a party in any legal proceedings. You add:

"I am in a measure confirmed in this conclusion by your recent orders directing me to disobey orders from the Secretary of War, my superior and your subordinate, without having countermanded his authority to issue the orders I am to disobey."

On the 24th ultimo you addressed a note to the President, requesting in writing an order given to you verbally five days before to disregard orders from Mr. Stanton as Secretary of War, until you "knew from the President himself that they were his orders."

On the 29th, in compliance with your request, I did give you instructions in writing "not to obey any order from the War Department, assumed to be issued by direction of the President, unless such order is known by the General commanding the armies of the United States to have been authorized by the Executive."

There are some orders which a Secretary of War may issue without the authority of the President; there are others which he issues simply as the agent of the President, and which purport to be "by direction" of the President. For such orders the President is responsible, and he should therefore know and understand what they are before giving such "direction." Mr. Stanton states, in his letter of the 4th instant, which accompanies the published correspondence, that he "has had no correspondence with the President since the 12th of August last;" and he further says that since he resumed the duties of the office he has continued to discharge them "without any personal or written communication with the President;" and

he adds, "no orders have been issued from this department in the name of the President with my knowledge, and I have received no orders from him."

It thus seems that Mr. Stanton now discharges the duties of the War Department without any reference to the President, and without using his name.

My order to you had only reference to orders "assumed to be issued by the direction of the President." It would appear from Mr. Stanton's letter that you have received no such orders from him. However, in your note to the President of the 30th ultimo, in which you acknowledge the receipt of the written order of the 29th, you say that you have been informed by Mr. Stanton that he has not received any order limiting his authority to issue orders to the army, according to the practice of the department, and state that "while this authority to the War Department is not countermanded, it will be satisfactory evidence to me that any orders issued from the War Department by direction of the President are authorized by the Executive."

The President issues an order to you to obey no order from the War Department, purporting to be made "by the direction of the President," until you have referred it to him for his approval. You reply that you have received the President's order and will not obey it; but will obey an order purporting to be given by his direction, *if it comes from the War Department.* You will not obey the direct order of the President, but will obey his indirect order. If, as you say, there has been a practice in the War Department to issue orders in the name of the President without his direction, does not the precise order you have requested and have received change the practice as to the General of the army? Could not the President countermand any such order issued to you from the War Department? If you should receive an order from that department, issued in the name of the President, to do a special act, and an order directly from the President himself not to do the act, is there a doubt which you are to obey? You answer the question when you say to the President, in your letter of the 3d instant, the Secretary of War "is my superior and your subordinate," and yet you refuse obedience to the superior out of deference to the subordinate.

Without further comment upon the insubordinate attitude which you have assumed, I am at a loss to know how you can relieve yourself from obedience to the orders of the President, who is made by the Constitution the Commander-in-chief of the army and navy, and is therefore the official superior as well of the General of the army as of the Secretary of War.

Respectfully yours,

ANDREW JOHNSON.

General U. S. GRANT,
Commanding Armies of the United States, Washington, D. C.

[Several senators had gone out during the reading of the letter.]

Mr. Manager WILSON. We now——

The CHIEF JUSTICE. Before the honorable manager proceeds, he will wait until the seats of the senators are filled. The Sergeant-at-arms will inform senators that their presence is wanted.

Several senators having returned to the chamber.

The CHIEF JUSTICE. The honorable manager may proceed.

Mr. STANBERY. I ask the honorable manager if he is done reading all that belongs to that letter. In that letter certain documents are referred to as explanatory of it. Do you propose to read those papers?

Mr. Manager WILSON. All has been read which we propose to offer.

Mr. STANBERY. You do not, therefore, propose to offer the papers, copies of which accompany that letter and which are referred to in it?

Mr. Manager WILSON. I have stated to the counsel that we offered a letter of the President of the United States. It has been read. We proposed to offer the letter; we have offered it; and it is in evidence.

Mr. STANBERY. You do not now propose to offer——

Mr. Manager WILSON. The entire letter has been read.

Mr. STANBERY. We do not understand that. We ask that the documents referred to be read with that letter. They accompany it, and are referred to in it and explain it.

Mr. Manager WILSON. We offer nothing, sir, but the letter.

Mr. STANBERY. Then we object to it.

Mr. Manager WILSON. If the counsel have anything to offer when they come to present their case we will then consider it.

Mr. STANBERY. We ask it as a part of the letter. Suppose there were a postscript there, would you not read it?

Mr. Manager WILSON. There is no postscript. That settles it.

Mr. STANBERY. But there is matter added to it.

Mr. Manager WILSON. There is no matter added to it. The letter is there as written by the President.

Mr. STANBERY. Mr. Chief Justice, we will take a ruling upon that point. On the first page of the letter the matter is referred to, which I will read:

GENERAL: The extraordinary character of your letter of the 3d instant would seem to preclude any reply on my part; but the manner in which publicity has been given to the correspondence of which that letter forms a part, and the grave questions which are involved, induce me to take this mode of giving, as a proper sequel to the communications which have passed between us, the statements of the five members of the cabinet, who were present on the occasion of our conversation on the 14th ultimo. Copies of the letters which they have addressed to me upon this subject are accordingly herewith enclosed.

Again, he says:

There were five cabinet officers present at the conversation, the detail of which, in my letter of the 28th ultimo, you allow yourself to say, contains "many and gross misrepresentations." These gentlemen heard that conversation, and have read my statement. They speak for themselves, and I leave the proof without a word of comment.

That is an answer to the statement referred to, and made a part of the letter.

Mr. Manager WILSON. I suppose the counsel does not claim that this is not she letter complete. We propose to offer nothing beyond that, and this letter it in evidence.

Mr. STANBERY. We wish to make the point, Mr. Chief Justice, that the gentlemen are now bound to produce those communications as a part of that letter.

The CHIEF JUSTICE. Do the counsel object to the introduction of the letter without the accompanying papers?

Mr. STANBERY. Certainly.

Mr. Manager WILSON. I submit, Mr. President, that the objection comes too late, even if it would have been of force if made at the proper time. The letter has been submitted and read, and is in evidence now.

Mr. STANBERY. We assumed that you were going to read the whole of it.

Mr. Manager WILSON. The whole of the letter has been read.

The CHIEF JUSTICE. The Chief Justice is of opinion that the objection may now be taken. (To the counsel for respondent.) Do you object to the introduction of the letter without the accompanying papers?

Mr. STANBERY. We do, sir.

Mr. EVARTS. Our point is that these enclosures form a part of the communication made by the President to General Grant; and we assumed that they would be read as a part of it when the letter was offered.

Mr. Manager BINGHAM. We desire to state, Mr. President, that we claim that we are under no obligation by any rule of evidence whatever, in introducing a written statement of the accused, to give in evidence the statements of third persons referred to generally by him in that written statement. In the first place, their statements, we say, would not be evidence against the President at all. They would be hearsay. They would not be the best evidence of what the parties affirmed. The matter contained in the letter of the President shows that the papers, without producing them here, have relation to a question of fact between himself and General Grant, which question of fact, so far as the President is concerned, is affirmed in his letter by himself and for himself, and concludes him; and we insist that if forty members of his cabinet were to write otherwise it could not affect this question. It concludes him; it is his own declaration; and the matter of dispute between himself and General Grant, although it is referred to in this letter, is no part of the matter upon which we rely in this accusation against the President.

Mr. STANBERY and Mr. CURTIS. We rely upon it.

Mr. Manager BINGHAM. Of course the gentlemen rely on it; but they ask us to introduce matter which we say by no rule of evidence is admissible at all,

and for the reason which I have stated already; it is not the highest evidence of the fact. If we are to have the testimony of the members of his cabinet about a matter of fact, and, as I said before, this letter discloses that it is a matter of fact, I claim that the highest evidence, so far as they are concerned, is not their unsworn letter, but is their sworn testimony; and that by no rule of evidence are the letters admissible. I admit that if the letters, according to the statement here, showed a statement adopted by the President himself in regard to the matter with which we charge him, it would be a somewhat different question, although it would not take it then entirely out of the rule of evidence; but anybody can see by this reference that it is not the point at all. I venture to say that in these letters, when the gentlemen come to offer them in evidence here and we come to consider them, there is not a single statement of any cabinet officer whatever that will in any manner qualify the confession of the President written upon the paper now read that his purpose was to prevent the execution of the tenure-of-office act and prevent the Secretary of War, after being confirmed by the Senate, and his suspension being non-concurred in, from entering upon forthwith and resuming, as that law requires, the duties of his office. That is the point of this matter. We introduce it for the purpose of showing the President's confession of his intent, and we say that in every point of light we can view it, for the reasons I have already stated, the letters referred to of the cabinet ministers are foreign to the case, and we are under no obligation to introduce them, and in our judgment have no right to introduce them at all, being wholly irrelevant.

Mr. EVARTS. Mr. President——

The CHIEF JUSTICE. Before you proceed the counsel for the President will please to state their objection in writing.

The objection was reduced to writing and sent to the desk.

The CHIEF JUSTICE. The Secretary will read the objection made by the counsel for the President.

The Secretary read as follows:

The counsel for the President object that the letter is not in evidence in the case unless the honorable managers shall also read the enclosures therein referred to and by the letter made part of the same.

Mr. STANBERY. Mr. Chief Justice, is the question now before your honor or before the court?

The CHIEF JUSTICE. Before the body.

Mr. STANBERY. Before the body?

The CHIEF JUSTICE. Before the court.

Mr. STANBERY. The managers read a letter from the President to use against him certain statements that are made in it, and perhaps the whole. We do not know the object. They say the object is to prove a certain intent, with regard to the exclusion of Mr. Stanton from office. In the letter the President refers to certain documents which are enclosed in it as throwing light upon the question, and explaining his own views. Now, I put it to the honorable senators: suppose he had copied these letters in the body of his letter, and had said, just as he says here, "I refer you to these; these are part of my communication," could any one doubt that these copies, although they come from other persons, would be admissible? He makes them his own. He chooses to use them as explanatory of his letter. He is not willing to let that letter go alone; he sends along with it certain explanatory matter. Now, you must admit, if he had taken the trouble to copy them himself in the body of his letter, they must be read. Suppose he attaches them, makes them a part, calls them "exhibits," affixes them, attaches them to the letter itself by tape or seal or otherwise, must they not be read as part of the communication, as the very matter which he has introduced as explanatory, without which he is not willing to send that letter? Undoubtedly. Does the form of the thing alter it? Is he not careful to send

the documents, not in a separate package, not in another communication, but enclosed in the letter itself, so that when the letter is read the documents must be read? It seems to me there cannot be a question but that they must read the whole, and not merely the letter, for it was the whole that the President sent to be read to give his views, and not merely the letter unconnected with these documents.

Mr. Manager WILSON. Mr. President, the managers do not care to protract this discussion. We have received from the files of the proper department a letter complete in itself—a letter written by the President, and signed by the President—in which, it is true, he refers to certain statements made by members of the cabinet touching a question of veracity pending between the President and General Grant. Now, we insist that that question has nothing to do with this case. Everything contained in the letter which can by any possibility be considered as relevant to the case is tendered by offering the letter itself, and the statement of the President referring to the alleged enclosures shows that those enclosures relate exclusively to that question of veracity pending between himself and the General, and are in nowise connected with the issue pending between the President and the representatives of the people in this case. We are willing to submit this point without further discussion.

The CHIEF JUSTICE. Does the honorable manager consider himself entitled to read an extract from the letter containing so much of it as would bear upon his immediate object without reading the whole letter?

Mr. Manager WILSON. We read all there is of the letter.

The CHIEF JUSTICE. That is not the question. Would the honorable manager consider himself entitled to read so much of the letter as bore upon his immediate object without reading the whole?

Mr. Manager WILSON. I will state, in reply to the question propounded by the president, that we, of course, expect to use the letter for any proper purpose connected with the issues of the case.

The CHIEF JUSTICE. The Chief Justice will submit the objection to the consideration of the Senate. The Secretary will read the objection.

The Secretary read as follows:

The counsel for the President object that the letter is not evidence in the case unless the honorable managers shall also read the enclosures therein referred to and by the letter made part of the same.

Mr. CONKLING. Mr. President, may I ask a question? I call for the reading of the words in the letter relied upon now for this purpose. I send my question to the Chair in writing.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from New York.

The Secretary read as follows:

The counsel for the respondent will please read the words in the letter relied upon touching enclosures.

Mr. STANBERY read as follows:

GENERAL: The extraordinary character of your letter of the 3d instant would seem to preclude any reply on my part; but the manner in which publicity has been given to the correspondence of which that letter forms a part, and the grave questions which are involved, induce me to take this mode of giving, as a proper sequel to the communications which have passed between us, the statements of the five members of the cabinet who were present on the occasion of our conversation on the 14th ultimo. Copies of the letters which they have addressed to me upon the subject are accordingly herewith enclosed.

The CHIEF JUSTICE. Senators, you who are of opinion that the objection of the counsel for the President be sustained will say "ay"——

Mr. CONNESS. I call for the yeas and nays.

The yeas and nays were ordered.

The CHIEF JUSTICE. Senators, you who are of opinion that the objection of

the counsel for the President be sustained will answer "yea" as your names are called; those of the contrary opinion will answer "nay."

Mr. DRAKE. I ask for information, whether, if this objection is sustained, it has the effect of ruling out the letter as evidence altogether?

The CHIEF JUSTICE. It has.

Mr. ANTHONY. Mr. President, I would desire, if it is proper, that the question should be put in a different form; that it should be an affirmative vote.

The CHIEF JUSTICE. This is an affirmative form.

Mr. CONNESS. I wish the Chair would state the question.

The CHIEF JUSTICE. Senators, you who are of opinion that the objection of the counsel for the President be sustained will, as your names are called, answer "yea;" those of the contrary opinion, "nay." If the yeas carry it the effect will be to exclude the evidence. If the nays carry it the effect will be to admit it.

Mr. EVARTS. To exclude it, unless the enclosures are also offered, if our objection prevail.

Mr. ANTHONY. Mr. President, perhaps I am rather dull, but I do not precisely understand the effect of the decision of this question. A negative vote admits the evidence, I understand.

The CHIEF JUSTICE. It does.

Mr. ANTHONY. And an affirmative vote excludes it.

The CHIEF JUSTICE. Unless the enclosures are produced and read.

Mr. HENDERSON. Mr. President, listening to the question asked by the senator from Rhode Island, I presume he desires to know whether the letter with the enclosures can afterward be read as evidence, even if the objection be sustained.

The CHIEF JUSTICE. Undoubtedly it excludes the evidence only in the case that the enclosures be not read.

Mr. HENDERSON. So I understand.

The CHIEF JUSTICE, (to the Secretary.) Call the roll.

The Secretary called the roll down to the name of Mr. Cameron.

Mr. JOHNSON. Mr. Chief Justice, I do not think the question is understood.

The CHIEF JUSTICE. The roll is being called.

Mr. JOHNSON. The question is not understood, evidently.

The CHIEF JUSTICE, (to the Secretary.) Proceed with the call. The call of the roll cannot be interrupted.

The Secretary concluded the calling of the roll, and the result was—yeas 20, nays 29; as follows:

YEAS—Messrs. Bayard, Conkling, Davis, Dixon, Doolittle, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Vermont, Norton, Patterson of Tennessee, Ross, Sprague, Trumbull, Van Winkle, Vickers, and Willey—20.

NAYS—Messrs. Anthony, Buckalew, Cameron, Cattell, Chandler, Cole, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Howard, Howe, Morgan, Morrill of Maine, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Thayer, Tipton, Williams, and Wilson—29.

NOT VOTING—Messrs. Harlan, Morton, Saulsbury, Wade, and Yates—5.

The CHIEF JUSTICE. On this question the yeas are 20 and the nays 29. So the objection is not sustained.

Mr. Manager WILSON. I now offer the letter in evidence, it having already been read. I now offer a copy of the letter of appointment of the President appointing Lorenzo Thomas Secretary of War *ad interim*, as certified to by General Thomas. I will, however, in the first place, submit it to the counsel for examination, [submitting the paper to the counsel for the respondent.] I call the attention of counsel to one thing in connection with that letter, and that is, we offer it for the purpose of showing that General Thomas attempted to act as Secretary of War *ad interim*, and that his signature as such is attached to

that copy. If we are not called upon to prove his signature, of course we shall not introduce any testimony for that purpose.

Mr. CURTIS. Stop one moment, if you please. Let us look at this paper further.

[The counsel for the respondent having examined the paper, returned it to the managers.]

Mr. STANBERY. We see that this is the copy Mr. Stanton requested. Read the indorsement, if you please.

Mr. Manager WILSON. Have you any objection to its being read?

Mr. STANBERY. No; we want it read.

Mr. Manager WILSON. It is as follows:

EXECUTIVE MANSION,
Washington, D. C., February 21, 1868.

SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,

ANDREW JOHNSON.

Brevet Major General LORENZO THOMAS,
Adjutant General United States Army, Washington, D. C.

Official copy:

Respectfully furnished to Hon. Edwin M. Stanton.

L. THOMAS,
Secretary of War ad interim.

Mr. CURTIS. We want the indorsement read.

Mr. Manager WILSON. The indorsement is, "Received 2.10 p. m., February 21, 1868; present General Grant."

Mr. EVARTS. That indorsement is whose?

Mr. STANBERY. It is in the handwriting of Mr. Stanton.

Mr. Manager WILSON. I do not know.

Mr. STANBERY. Is that fact admitted?

Mr. Manager BUTLER. It is in the handwriting of Mr. Stanton.

Mr. Manager WILSON. We next offer copies of the order removing Mr. Stanton and the letter of authority appointing General Thomas, with certain indorsements thereon, forwarded by the President to the Secretary of the Treasury for his information. [The document was handed to the counsel for the respondent, and afterward returned by them to the managers.] Have the counsel for the respondent any objection to the introduction of that document? If not, I ask that it may be read by the Secretary.

The CHIEF JUSTICE. The Secretary will read the paper.

The chief clerk read as follows:

[Copy.]

EXECUTIVE MANSION,
Washington, D. C., February 21, 1868.

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from office as Secretary of the Department of War, and your functions as such will terminate upon receipt of this communication.

You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

Hon. E. M. STANTON, *Washington, D. C.*

Official

W. G. MOORE, *United States Army.*

[Copy.]

EXECUTIVE MANSION,
Washington, D. C., February 21, 1868.

SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

Brevet Major General LORENZO THOMAS,
Adjutant General United States Army, Washington, D. C.

Official:

W. G. MOORE, *United States Army.*

FEBRUARY 21, 1868.

Respectfully referred to the honorable the Secretary of the Treasury, for his information.

By order of the President:

W. G. MOORE, *United States Army.*

TREASURY DEPARTMENT, *February* 29, 1868.

I certify the within to be true copies of the copies of orders of the President on file in this department for the removal of Edwin M. Stanton from the office of Secretary for the Department of War and the appointment of Lorenzo Thomas to be Secretary *ad interim*.

H. MCCULLOCH, *Secretary of the Treasury.*

Mr. Manager BUTLER. Mr. President, we have here now an official copy of General Order No. 17, of which General Emory spoke, and we now offer it, so that there may be no mistake that this document and the one shown to him are the same so far as regards the point at issue. [The document was handed to the counsel for the respondent, and presently returned to the managers.] Do you want it read?

Mr. STANBERY. O, no.

Mr. Manager BUTLER. Then we offer it without reading it.

The document is as follows:

[General Orders No. 17.]

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, March 14, 1867.

The following acts of Congress are published for the information and government of all concerned:

I. An act making appropriations for the support of the Military Academy for the year ending June 30, 1868.

II. An act making appropriations for the support of the army for the year ending June 30, 1868.

III. An act making appropriations for fortifications for the year ending June 30, 1868.

I.—[PUBLIC—No. 54.]

AN ACT making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1868, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby appropriated, out of any money in the treasury not otherwise appropriated, for the support of the Military Academy for the year ending the 30th of June, 1868:

For pay of officers, instructors, cadets, and musicians, $154,840.

For commutation of subsistence, $5,050.

For pay in lieu of clothing to officers' servants, $156.

For current and ordinary expenses, $66,467.

For increase and expense of library, $3,000.

For expenses of Board of Visitors, $5,000.

For forage for artillery and cavalry horses, $9,000.

For horses for artillery and cavalry practice, $1,000.

For repairs of officers' quarters, $5,000.

For targets and batteries for artillery practice, $500.

For furniture of cadets' hospital, $200.
For gas pipes, gasometers, and retorts, $600.
For materials for quarters for subaltern officers, $5,000.
For ventilating and heating the barracks and other academic buildings; improving the apparatus for cooking for the cadets; repairing the hospital buildings, including the introduction of baths for the sick, the construction of water-closets in the library building, and new furniture for the recitation-rooms, $40,000.
For purchase of fuel for cadets' mess-hall, $3,000.
For the removal and enlargement of the gas-works, $20,000.
For additional appropriations, for which estimates were not made last year:
For enlarging cadet laundry, $5,000.
For furniture for soldiers' hospital, $100.
For increasing the supply of water, replacing mains, &c., $15,000.
For ice-house and additional store and servants' rooms, $7,500.
For fire-proof building for public offices, $15,000.
For breast-high wall of water battery, $5,000.
For permanent derrick on the wharf, $2,500.

SEC. 2. *And be it further enacted*, That the cadets of the Military Academy be entitled to the ration now received by the acting midshipmen at the Naval Academy, commencing at the date of the approval of the law authorizing the same.

SEC. 3. *And be it further enacted*, That hereafter the assistant professor of Spanish shall receive the same pay and emoluments allowed to other assistant professors of the academy.

SEC. 4. *And be it further enacted*, That no part of the moneys appropriated by this or any other act shall be applied to the pay or subsistence of any cadet from any State declared to be in rebellion against the government of the United States, appointed after the 1st day of January, 1867, until such State shall have been restored to its original relations to the Union.

Approved February 23, 1867.

II.—[PUBLIC—No. 85.]

AN ACT making appropriations for the support of the army for the year ending June 30, 1868, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, out of any money in the treasury not otherwise appropriated, for the support of the army for the year ending the 30th of June, 1868:

For expenses of recruiting, transportation of recruits, and compensation of citizen surgeons for medidal attendance, $300,000.
For pay of the army, $14,757,952.
For commutation of officers' subsistence, $2,228,982.
For commutation of forage for officers' horses, $104,600.
For payments in lieu of clothing for officers' servants, $276,978.
For payments to discharged soldiers for clothing not drawn, $200,000.
For contingencies of the army, $100,000.
For artificial limbs for soldiers and seamen, $70,000.
For army medical museum, $10,000.
For medical works for library of Surgeon General's office, $10,000.
For expenses of Commanding General's office, $10,000.

For repairs and improvements of armories and arsenals:

For arsenal and armory at Rock Island, Illinois, $686,500.
For the erection of a bridge at Rock Island, Illinois, as recommended by the Chief of Ordnance, $200,000: *Provided*, That the ownership of said bridge shall be and remain in the United States, and the Rock Island and Pacific Railroad Company shall have the right of way over said bridge for all purposes of transit across the island and river, upon the condition that the said company shall, before any money is expended by the government, agree to pay and shall secure to the United States, first, half the cost of said bridge; and second, half the expenses of keeping said bridge in repair; and upon guaranteeing said conditions to the satisfaction of the Secretary of War, by contract or otherwise, the said company shall have the free use of said bridge for purposes of transit, but without any claim to ownership thereof.
For Watervliet arsenal, West Troy, New York, $38,200.
For current expenses of the ordnance service, $300,000.
For Allegheny arsenal, Pittsburg, Pennsylvania, $34,000.
For Champlain arsenal, at Vergennes, Vermont, $800.
For Columbus arsenal, Columbus, Ohio, $139,625.
For Fort Monroe arsenal, Old Point Comfort, Virginia, $6,000.
For Fort Union arsenal, Fort Union, New Mexico, $10,000.
For Frankford arsenal, Bridesburg, Pennsylvania, $30,000.

For Kennebec arsenal, Augusta, Maine, 1,525.
For Indianapolis arsenal, Indianapolis, Indiana, $169,625.
For Leavenworth arsenal, Leavenworth, Kansas, $15,000.
For New York arsenal, Governor's island, New York, $1,200.
For Pikesville arsenal, Pikesville, Maryland, $800.
For St. Louis arsenal, St. Louis, Missouri, $65,000.
For Washington arsenal, Washington, District of Columbia, $50,000.
For Watertown arsenal, Watertown, Massachusetts, $21,667.
For the purchase of the Willard Sears estate, adjoining the Watertown arsenal grounds, $49,700, or so much thereof as may be necessary; and the Secretary of War is hereby authorized to sell at public auction a lot of land belonging to the United States, situated in South Boston, if, in his opinion, the same is not needed for the public service, and pay the proceeds thereof into the treasury.

Bureau of Refugees, Freedmen, and Abandoned Lands:

For salaries of assistant commissioners, sub-assistant commissioners, and agents, $147,500.
For salaries of clerks, $82,500.
For stationery and printing, $63,000.
For quarters and fuel, $200,000.
For commissary stores, $1,500,000.
For medical department, $500,000.
For transportation, $800,000.
For school superintendents, $25,000.
For buildings for schools and asylums, including construction, rental, and repairs, $500,000.
For telegraphing and postage, $18,000: *Provided*, That the Commissioner be hereby authorized to apply any balance on hand, at this date, of the refugees and freedmen's fund, accounted for in his last annual report, to aid educational institutions actually incorporated for loyal refugees and freedmen: *And provided further*, That no agent or clerk not heretofore authorized by law shall receive a monthly allowance exceeding the sum of $200.

SEC. 2. *And be it further enacted*, That the headquarters of the General of the army of the United States shall be at the city of Washington, and all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the army, and, in case of his inability, through the next in rank. The General of the army shall not be removed, suspended, or relieved from command, or assigned to duty elsewhere than at said headquarters, except at his own request, without the previous approval of the Senate; and any orders or instructions relating to military operations issued contrary to the requirements of this section shall be null and void; and any officer who shall issue orders or instructions contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office; and any officer of the army who shall transmit, convey, or obey any orders or instructions so issued contrary to the provisions of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction.

SEC. 3. *And be it further enacted*, That section three of the joint resolution relative to appointments to the Military Academy, approved June 16, 1866, be, and the same is hereby, repealed.

SEC. 4. *And be it further enacted*, That the sum of $150,000 be, and the same is hereby, appropriated out of any moneys in the treasury not otherwise appropriated, to be disbursed by the Secretary of War, in the erection of fire-proof buildings at or near the city of Jeffersonville, in the State of Indiana, to be used as storehouses for government property.

SEC. 5. *And be it further enacted*, That it shall be the duty of the officers of the army and navy and of the Freedmen's Bureau to prohibit and prevent whipping or maiming of the person as a punishment for any crime, misdemeanor, or offence, by any pretended civil or military authority in any State lately in rebellion until the civil government of such State shall have been restored and shall have been recognized by the Congress of the United States.

SEC. 6. *And be it further enacted*, That all militia forces now organized or in service in either of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Mississippi, and Texas be forthwith disbanded, and that the further organization, arming, or calling into service of the said militia forces, or any part thereof, is hereby prohibited, under any circumstances whatever, until the same shall be authorized by Congress.

SEC. 7. *And be it further enacted*, That the Paymaster General be authorized to pay, under such regulations as the Secretary of War shall prescribe, in addition to the amount received by them, for the travelling expenses of such California and Nevada volunteers as were discharged in New Mexico, Arizona, or Utah, and at points distant from the place or places of enlistment, such proportionate sum according to the distance travelled as have been paid to the troops of other States similarly situated; and such amount as shall be necessary to pay the same is hereby appropriated out of any moneys in the treasury not otherwise appropriated.

Approved March 2, 1867

III.—[PUBLIC—No. 86.]

AN ACT making appropriations for the construction, preservation, and repairs of certain fortifications and other works of defence for the fiscal year ending June 30, 1868.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated out of any money in the treasury not otherwise appropriated for the construction, preservation, and repair of certain fortifications and other works of defence for the year ending the 30th of June, 1868:

For Fort Scammel, Portland, Maine, $50,000.
For Fort Georges, on Hog Island ledge, Portland, Maine, $50,000.
For Fort Winthrop, Boston, Massachusetts, $50,000.
For Fort Warren, Boston, Massachusetts, $50,000.
For fort at entrance of New Bedford harbor, Massachusetts, $30,000.
For Fort Schuyler, East river, New York, $5000.
For fort at Willett's Point, opposite Fort Schuyler, New York, $50,000.
For fort on site of Fort Tompkins, Staten Island, New York, $50,000.
For fort at Sandy Hook, New Jersey, $50,000.
For repairs of Fort Washington, on the Potomac river, $25,000.
For Fort Monroe, Hampton Roads, Virginia, $50,000.
For Fort Taylor, Key West, Florida, $50,000.
For Fort Jefferson, Garden Key, Tortugas, $50,000.
For Fort Clinch, Amelia island, Florida, $25,000.
For Fort at Fort Point, San Francisco bay, California, $50,000.
For fort at Lime Point, California, $50,000.
For fort at Alcatraz island, San Francisco bay, California, $100,000.
For Fort Preble, Portland harbor, Maine, $50,000.
For Fort McClary, Portsmouth harbor, New Hampshire, $50,000.
For Fort Independence, Boston harbor, Massachusetts, $50,000.
For survey of northern and northwestern lakes, $150,000.
For Fort Montgomery, at the outlet of Lake Champlain, $25,000.
For purchase and repair of instruments, $10,000.

For purchase of sites now occupied and lands proposed to be occupied for permanent sea-coast defences: *Provided*, That no such purchase shall be made except upon the approval of its expediency by the Secretary of War and of the validity of the title by the Attorney General, $50,000.

For purchase of sites now occupied by temporary sea-coast defences: *Provided*, That no such purchase shall be made except upon the approval of its expediency by the Secretary of War and of the validity of the title by the Attorney General, $25,000.

For construction and repair of barracks and quarters for engineer troops at the depot of engineer supplies near St. Louis, Missouri, $20,000.

For construction and repair of barracks and quarters for engineer troops at the depot of engineer supplies at Willett's Point, New York, $25,000.

SEC. 2. *And be it further enacted*, That there shall not be over fifty per cent. of the foregoing appropriations expended during the fiscal year ending 30th June, 1868, and the residue thereof shall not be expended till otherwise ordered.

SEC. 3. *And be it further enacted*, That, in order to determine the relative powers of resistance of the turret and the broadside systems of iron-clad vessels of war, and whether or not our present heaviest guns are adequate to the rapid destruction of the heaviest plated ships now built, or deemed practicable on either system, and whether or not our best stone forts will resist our heaviest guns, and, if not, what increase in strength, by adding either stone or iron, or variation in form, is necessary to that end, the Secretary of War and the Secretary of the Navy are hereby authorized to detail a joint board of not less than six competent officers, three from the army and three from the navy, whose duty it shall be to construct and test, by firing upon them, such targets as they may deem necessary for the purposes above named. And the Secretary of War and the Secretary of the Navy are hereby authorized and directed to supply the board with such facilities for this purpose as they may require: *Provided*, It can be done from the unexpended funds and materials now at their disposal, the expenses to be borne equally by the War and Navy Departments, and from such funds at their disposal as the Secretary of War and the Secretary of the Navy may designate respectively.

Approved March 2, 1867.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant General.

Official:

E. D. TOWNSEND,
Assistant Adjutant General.

GEORGE W. WALLACE sworn and examined:

By Mr. Manager BUTLER:

Question. What is your name and rank in the army of the United States, if you have any?

Answer. George W. Wallace, lieutenant colonel of the twelth infantry, commanding the garrison of Washington.

Q. How long have you been in command of the garrison of Washington?

A. Since August last.

Q. What time in August?

A. The latter part of the month. The exact date I do not recollect.

Q. State if at any time you were sent for to go to the Executive Mansion about the 23d of February last.

A. On the 22d of February I received a note from Colonel Moore desiring to see me the following morning at the Executive Mansion.

Q. Who is Colonel Moore?

A. He is on the staff of the President; an officer of the army.

Q. Does he act as secretary to the President?

A. I believe he does.

Q. You received that note on the night of the 22d; about what time at night?

A. About seven o'clock in the evening.

Q. Was any time designated when you should go?

A. Merely in the morning.

Q. Sunday morning? Did you go?

A. I did.

Q. At what time in the morning?

A. About ten o'clock.

Q. Did you meet Colonel Moore there?

A. I did.

Q. What was the business?

A. He desired to see me in reference to a matter directly concerning myself.

Q. How concerning yourself?

A. Some time in December my name had been submitted to the Senate for brevets. Those papers had been returned to the Executive Mansion, and on looking over them he was under the impression that my name had been set aside, and his object was to notify me of that fact in order that I might make use of influence, if I desired it, to have the matter rectified.

Q. After that did he say anything about your seeing the President?

A. I asked how the President was. He replied "Very well; do you desire to see him?" to which I replied "Certainly;" and in the course of a few moments I was admitted into the presence of the Executive.

Q. Was a messenger sent in to know if he would see you?

A. I am unable to answer. I had a conversation with Colonel Moore at the time. He notified him.

Q. Did Colonel Moore leave the room where you were conversing with him until you went in to see the President?

A. He left the room to bring out this package of papers. No other object, that I am aware of.

Q. Did he go into the office of the President where the President was for that purpose?

A. Yes, sir; he passed in the same door I did.

Q. And came out and brought a package and explained to you that your name appeared to be rejected, and then you went in to see the President?

A. I did. I went in at my own request.

Q. After you had passed the usual salutations, what was the first thing he said to you?

A. The President asked me if any changes had been made in the garrison within a short time; any movement of troops.

Q. The garrison of Washington?

A. The garrison of Washington.

Q. What did you tell him?

A. I replied that four companies of the twelfth infantry had been sent to the second military district on the 7th of January, and beyond that no other changes had been made. In doing so I omitted to mention another company that I have since thought of.

Q. Had he ever sent to you on such an errand before?

Mr. CURTIS and Mr. EVARTS. He did not send this time.

Mr. Manager BUTLER. Is that quite certain?

Mr. CURTIS. Yes; it is proved.

Mr. Manager BUTLER. Perhaps we shall see differently when we get through. (To the witness.) Did he ever get you into his room, directly or indirectly, in order to put such a question as that before?

Mr. EVARTS. That we object to. It assumes that he was got in there.

Mr. Manager BUTLER. If he was not got in, how was he there?

Mr. EVARTS. This witness has said that upon his inquiry how the President was, the private secretary said: "Would you like to see him?" and the witness said "Certainly," and went into his room. If that is being got into his room, directly or indirectly, I am very much mistaken.

Mr. Manager BUTLER. I assume one theory, Mr. President, and the counsel assume another.

Mr. EVARTS. No; I follow the testimony. I assume nothing.

Mr. Manager BUTLER. I again say that I assume another theory upon the testimony, and I think the testimony was that he came there by the procurement of the President. I should so argue to the Senate if it become my opportunity to argue; but, without pausing for that, I will ask this question: (To the witness.) Were you ever in that like position with regard to the President before you got there then?

A. Never.

Q. Did he say to you anything upon this subject: "I asked the same question of your commander, General Emory, yesterday, and he told me the same as you do?"

A. I do not understand the question.

Q. Did he say to you that he had asked the same question the day before of General Emory, and got the same answer?

A. No, sir.

Q. Did he speak of it as a thing that he desired to know, or a thing that he did know already?

Mr. EVARTS. What he did say is the question.

Mr. STANBERY. We object, Mr. Chief Justice, to that mode of examination in chief. That way of examining a witness is altogether new to us.

Mr. Manager BUTLER. I will not press it, sir. I always desire to waive wherever I can. (To the witness.) Was there anything more said?

A. Nothing more said on that subject.

Q. On your part or his?

A. Neither.

Q. Did you find out next day that you had not been rejected by the Senate?

Mr. STANBERY. What has that got to do with it?

Mr. EVARTS. It is wholly immaterial.

Mr. Manager BUTLER. Not at all. The President sends for an officer of the army through his secretary, and informs him that the Senate has rejected

him; and then having got him into his presence begins to inquire about the movement of troops, when it was not true that he had been rejected.

The WITNESS. If I used the word "rejected" in my testimony I was not aware of it. I do not know that that was the expression; and when I come to reflect I think the language was that my name had been "set aside."

Mr. Manager BUTLER. What made you change it?

Mr. STANBERY. He did not change it. He said "set aside" before.

Mr. Manager BUTLER, (to the witness.) Do you say now that you did not understand that you were rejected?

The WITNESS. That my name was set aside. My own view of the matter was that I had been rejected.

Q. If that was your view why did you change the language just now from "rejected" to "set aside?"

Mr. EVARTS. He did not change it. He said "set aside" before. It was you that changed it.

Mr. Manager BUTLER. I understand what he says, perfectly.

Mr. EVARTS and Mr. STANBURY. So do we.

Mr. Manager BUTLER, (to the witness.) Why did you interrupt, sir, and say, "Well, I do not know that I did say 'rejected?'"

The WITNESS. I have a perfect right, sir, I presume, to make use of such language as I think proper in my replies.

Mr. Manager BUTLER. Undoubtedly. I also have a right to ask why do you use it? I do not object to the right. I only want to know the reason.

The WITNESS. My reason was to correct any misapprehension in regard to the expression of Colonel Moore. My own view was that it amounted to a rejection; but he said "set aside;" he used that language, I believe.

Q. Did he make any difference between "set aside" and "rejected," that you know of, at that time?

A. That is a question I never thought of.

Q. You did not think of it at that time?

A. No, sir.

Q. Did he advise you to use influence with senators to get yourself confirmed?

Mr. STANBERY. What has that to do with the question—what Colonel Moore advised him?

Mr. Manager BUTLER. In order to show whether he understood that he was rejected, because there was no occasion to use influence with senators if he did not understand that he was rejected. (To the counsel for the respondent.) Do you continue your objections?

Mr. STANBERY. Certainly; but there is no use to continue it; you keep on asking the question in that way. [A pause.] Are you through with the witness, Mr. Manager?

Mr. Manager BUTLER. I will let you know when I am, sir. [A pause.] I am now through with the witness.

Mr. STANBERY. So are we.

Mr. DRAKE. Mr. President, I move that the Senate take a recess for ten minutes.

The motion was agreed to; and the Senate resumed its session at two o'clock and forty-five minutes p. m.

The CHIEF JUSTICE. The honorable managers will proceed with their evidence.

Mr. Manager WILSON. We now offer a certified copy of the order restoring General Thomas to the duties of the Adjutant General's office.

The CHIEF JUSTICE. Is there any objection to the order?

Mr. STANBERY. Has not that been put in before?

Mr. Manager WILSON. No, sir; this is the order of the General of the army, issued in pursuance of the President's request, which we put in before.

The CHIEF JUSTICE. The Secretary will read the order.

The Secretary read as follows:

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., February 14, 1868.

SIR: General Grant directs me to say that the President of the United States desires you to resume your duties as Adjutant General of the army.

C. B. COMSTOCK,
Brevet Brigadier General, A. A. G. D. C.

General L. THOMAS, *Adjutant General.*

Official copy for Hon. E. M. Stanton, Secretary of War:

L. THOMAS, *Adjutant General.*

ADJUTANT GENERAL'S OFFICE, *February* 14, 1868.

WILLIAM E. CHANDLER sworn and examined.

By Mr. Manager BUTLER:

Question. Mr. Chandler, I believe you were once Assistant Secretary of the Treasury?

Answer. I was, sir.

Q. From what time to what time?

A. From June, 1865, until the 30th of November, 1867.

Q. While in the discharge of the duties of your office, did you learn the office routine of practice by which money was drawn from the treasury for the use of the War Department?

A. I did, sir.

Q. Will you state the steps by which money could be drawn from the treasury for the use of the War Department?

A. By requisition of the Secretary of War upon the Secretary of the Treasury, which requisition passes through the accounting offices of the department, and is then honored by the issue of a warrant signed by the Secretary of the Treasury, upon which the money is paid by the Treasurer of the United States.

Q. Please name the accounting officers through whose offices it will pass.

A. The Second Comptroller of the Treasury has the control of the war and navy accounts. Several of the auditing officers pass upon war requisitions—the Second Auditor and the Third Auditor, and possibly others.

Q. Please trace and give the offices, if you can, through which a requisition from the War Department for money would go, from one office to the other, until the money would get back to the War Office.

A. My attention has not been called to that subject until now, and I am not sure that I can state accurately the process in any given case. My impression, however, is that a requisition from the Secretary of War would come to the Secretary of the Treasury, and pass from the Secretary's office to the office of the Second Comptroller of the Treasury for the purpose of ascertaining whether or not the appropriation upon which the draft was to be made had, or had not, been overdrawn. The requisition would pass from the office of the Comptroller through the office of the Auditor, and thence back to the Secretary of the Treasury. Thereupon, in the warrant room of the Secretary of the Treasury a warrant for the payment of the money would be issued, which would also pass through the office of the Comptroller, being countersigned by him. Then it would pass into the office of the Register of the Treasury to be there registered, and thence to the Treasurer of the United States, who, upon this requisition, would issue his draft for the payment of the money. This is substantially the process, although I am not sure that I have stated the different steps accurately.

Q. Ought it not to go to the Second Auditor first?

A. Quite possibly the requisition would first go to the Auditor.

Q. The Second Auditor and then the Comptroller?

A. The Second or Third Auditor, and then to the Comptroller.

Q. Is there any method known to you by which the President of the United States or any other person can get money from the treasury of the United States for the use of the War Department except through a requisition of the Secretary of War?

A. There is not.

Q. I now desire to ask you what is the course of issuing a commission to an officer, say who has been confirmed by the Senate? What is the official routine in the Treasury Department? I suppose it is the same for all.

A. A commission is prepared in the department and signed by the Secretary. It is forwarded to the President and signed by him. It is then returned to the Treasury Department, where, in the case of a bonded officer, it is held until his oath and bond have been filed and approved; in the case of an officer not required by law to give bond the commission is held until he qualifies by taking the oath. It is my impression that this is the usual form. There are some officers in the Treasury Department whose commissions are countersigned by the Secretary of State instead of by the Secretary of the Treasury. The Assistant Secretaries, for instance, have commissions which are countersigned by the Secretary of State, and not by the Secretary of the Treasury.

Q. As I suppose the Secretary of the Treasury's own commission is?

A. It issues from the office of the Secretary of State, I suppose.

Q. On the 20th of November, 1867, was there any vacancy in the office of Assistant Secretary of the Treasury?

A. There was not, sir.

Q. Was there any vacancy up to the 30th of November?

A. There was not.

Q. Do you know Edmund Cooper?

Mr. STANBERY. Will the honorable manager allow me to ask what is the object of this testimony about Mr. Cooper? What is the purpose?

Mr. Manager BUTLER. The object is to show that one of the ways and means described in the eleventh article by which the President proposed to get control of the moneys of the United States appropriated for the use of the War Department was, against law and without right, to appoint his Private Secretary Assistant Secretary of the Treasury.

Mr. CURTIS. Is that all the answer?

Mr. Manager BUTLER. I have answered so far. If you have any other question I shall be very glad to answer it.

Mr. CURTIS. Is that the only answer you make to the question?

Mr. Manager BUTLER. It is a sufficient answer, in my judgment, for the time.

Mr. EVARTS. What part of the eleventh article is this applicable to?

Mr. Manager BUTLER. Both the eighth and the eleventh articles. The eleventh article charges him with—

> Unlawfully devising and contriving, and attempting to devise and contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur, &c.; and, also, by further unlawfully devising and contriving, and attempting to devise and contrive, means, then and there, to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867; and also to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed, &c.

And in order to get the means of doing that, he wanted to control the purse as well as the sword, and he wanted his man, his secretary, if in no warmer and closer relations to him, to be in the office of Assistant Secretary of the Treasury, the Assistant Secretary of the Treasury now by law being allowed to sign warrants.

Mr. Manager BINGHAM and Mr. Manager WILSON. Then the eighth article.

Mr. Manager BUTLER. Then, as my associates call to my attention, the eighth article charges that—

With intent unlawfully to control the disbursement of the moneys appropriated for the military service and for the Department of War, on the 21st day of February, in the year of our Lord 1868—

He—

did, unlawfully and contrary to the provisions of an act, &c.—

Do these acts.

Mr. EVARTS. No; appointed Thomas. You now propose to prove under that that he appointed Cooper, or tried to do so.

Mr. Manager BUTLER. This is the means: "with intent unlawfully to control."

Mr. EVARTS and Mr. STANBERY. Did what?

Mr. Manager BUTLER:

Did unlawfully and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1868, and the violation of the Constitution of the United States—

And while the Senate were in session, not to go on with the verbiage, appoint Lorenzo Thomas.

Mr. EVARTS. The allegation is that with this intent which you have stated, the President did—

There being no vacancy in the office of Secretary for the Department of War, and with intent to violate and disregard the act aforesaid—

Which is the tenure-of-office act—

Then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing, in substance as follows: that is to say.

Now, you propose to prove under that, that there being no vacancy in the office of Assistant Secretary of the Treasury, he proposed to appoint his private secretary, Edmund Cooper, Assistant Secretary of the Treasury. That is the idea, is it, under the eighth article? We object to this as not admissible under the eighth article. As by reference to it it will be perceived, it charges nothing but an intent to violate the civil-tenure act, and no mode of violating that except, in the want of a vacancy in the War Department, the appointment of General Thomas contrary to that act.

As for the eleventh article the honorable court will remember that in our answer we stated that there was in that article no such description, designation of ways or means, or attempts at ways or means, whereby we could answer definitely; and the only allegations there are that, in pursuance of a speech that the President made on the 18th of August, 1866, he—

Afterward, to wit, on the 21st day of February, A. D. 1868, at the city of Washington, in the District of Columbia, did, unlawfully, and in disregard of the requirement of the Constitution that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, by unlawfully devising and contriving, and attempting to devise and contrive means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and also, by further unlawfully devising and contriving, and attempting to devise and contrive means, then and there, to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867; and, also, to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867, whereby, &c.

The only allegation here as to time and principal action, in reference to which all these unnamed and undescribed ways and means were used, is, that on the 21st of February, 1868, at the city of Washington, he did unlawfully, and in disregard of the Constitution, attempt to prevent the execution of the civil

tenure-of-office act, by unlawfully devising and contriving and attempting to devise and contrive means by which he should prevent Edwin M. Stanton from resuming his place in the War Department. And now proof is offered here, substantively, of efforts in November, 1867, to appoint, in the want of a vacancy in the office of the Assistant Secretary of the Treasury, Mr. Edmund Cooper. We object to that evidence.

Mr. Manager BUTLER. The objection, Mr. President and senators, is twofold: first, that the evidence is not competent; second, that the pleading is not sufficient. I do not propose now to discuss the question of pleading. It is said that the pleading is too general. If we were trying an indictment at common law for a conspiracy, or for any acts in the nature of a conspiracy, and we made the allegation too general, the only objection to that would be that it did not sufficiently inform the defendant under it what acts might be given in evidence: and the remedy for a defendant in that case would be to move for a specification or for a bill of particulars; and if he neglects to move for that, the court take care in the course of the case, if any surprise is upon him, because of evidence that he could not have known of, or could not have expected to allow him to come in and meet that new evidence. Therefore indictments for conspiracies are generally drawn as was the indictment in the Martha Washington case, which I now have in my mind, it having been drawn by an exceedingly good pleader, as tradition says, giving one general count, and then several specific counts, or setting out specific acts in the nature of specifications; so that, if the pleader fail in setting out his specific acts, he still may hold under the general count, and the count setting out specifications is instead of a bill of particulars. Now, then, I say we need not discuss the question of pleading.

The only question is, is this competent, if we can show it was one of the ways and means? The difficulty that rests in the minds of my learned friends on the other side is that they cluster everything about the 21st of February, 1868. They seem to forget that the act of the 21st of February, 1868, was only the culmination of a purpose formed long before, as in the President's answer he sets forth, to wit: as early as the 12th of August, 1867, that he was determind then to get out Mr. Stanton, at any rate—I would use the words "at all hazards;" but perhaps they might be subject to criticism until we get through our case—certainly by the use of force, as the evidence now in shows. He formed his purpose.

To carry it out there are various things to do. He must get control of the War Office; but what good does that do if he cannot get somebody who shall be his servant, his slave, dependent on his breath, to answer the requisitions of his pseudo officer whom he may appoint; and therefore he began when? Stanton was suspended, and as early as the 12th of December he had got to put that suspension and the reasons for it before the Senate, and he knew it would not live there one moment after it got fairly considered. Now he begins. What is the first thing he does? "To get somebody in the Treasury Department that will mind me precisely as Thomas will, if I can get him in the War Department." That is the first thing; and thereupon, without any vacancy, he must make an appointment. The difficulty that we find is that we are obliged to argue our case step by step upon a single point of evidence. It is one of the infelicities always of putting in a case that sharp, keen, ingenious counsel can insist at all steps on impaling you upon a point of evidence; and therefore I have got to proceed a little further.

Now, our evidence, if you allow it to come in, is, first, that he made this appointment; that this failing, he sent it to the Senate, and Cooper was rejected. Still determined to have Cooper in, he appointed him *ad interim*, precisely as this *ad interim* Thomas was appointed, without law and against right. We put it as a part of the whole machinery by which to get hold, to get, if he could, his hand into the Treasury of the United States, although Mr. Chandler has just

stated there was no way to get it except by a requisition through the War Department; and at the same moment, to show that this was part of the same illegal means, we show you that although Mr. McCulloch, the Secretary of the Treasury, must have known that Thomas was appointed, yet the President took pains—we have put in the paper—to serve on Mr. McCulloch an attested copy of the appointment of Thomas *ad interim*, in order that he and Cooper might recognize his warrants.

Did I not answer my friends that this was a sufficient ground? More than that, I have yet to learn in a somewhat extended practice of the law, (not extending, however, so long as that of most of the gentlemen on the other side,) that it was ever objected anywhere, when I was tracing a man's motives, when I was tracing this course, that I had not a right to put in every act that he did, *valeat quantum*. Everything that comes out of his mouth, every act that he does, I have a right to put in.

Let us see if that is not sustained by authorities. The question arose in the trial of James Watson for high treason in the year 1817 before one of the best lawyers of England, Lord Ellenborough, assisted by Mr. Justice Holroyd, Mr. Justice Bayly, and Mr. Justice Abbott. The objection there was precisely the one the learned counsel raise here. It was alleged that certain speeches had been made which were treasonable speeches. That was all that was said about them; they were not set out any further. I got this book (32 State Trials) for an entirely different purpose; but it contains an authority directly in point. Certain speeches were alleged; the indictment charged that certain speeches were made without setting them out; and it was claimed that they could not be proved as overt acts; and the question was whether certain other speeches could be put in as tending to show the *animus* with which the first set of speeches had been spoken. Lord Ellenborough closed the discussion by saying:

Lord Ellenborough. If there had been no particular overt act under which this evidence was receivable, it is a universal rule of evidence that what a party himself says may be given in evidence against him, to explain any part of his conduct to which it bears reference.

Mr. Wetherell, (the counsel for the defendant.) We do not object that it is not evidence, but that it is not proof of the overt act.

Lord Ellenborough. There cannot be a doubt that whatever proceeds from the mouth of man may be given in evidence against him; it shows the intention with which he acts.—(32 State Trials, page 91.)

"Whatever proceeds from his mouth." *A fortiori*, senators, when it is under his hand like the seal of a commission, if his declarations can be given, may not his acts? I would not have troubled the presiding officer, I would not have troubled senators so long upon this matter, had it not been that there may be other acts all clustering around this grand conspiracy which we propose, if we are permitted, to put in.

The CHIEF JUSTICE. The manager will reduce his question to writing.

Mr. Manager BUTLER. The simple question was, who was Edmund Cooper? I suppose my friends do not mean to object to that alone. The question was, do you know him and who is he?

Mr. STANBERY. We asked what you intended to prove in reference to Edmund Cooper.

Mr. Manager BUTLER. I have stated that at very considerable length. I propose to prove that Mr. Edmund Cooper took possession in the Treasury Department before the 30th of November, and that he had his commission, showing that the President gave a commission illegally in violation of the tenure-of-office act to which I wish to call your attention. The tenure-of-office act provides that "in such case and in no other," to wit, where an officer has been guilty of misconduct or crime, or for any reason becomes incapable or legally disqualified to perform the duties of his office, the President may suspend him; and then the sixth section provides that—

The making, signing, sealing, countersigning, or issuing of any commission or letter of

authority for or in respect to any such appointment or employment, shall be deemed, and are hereby declared to be, high misdemeanors.

Therefore the very signing and issuing of this commission—the signing it, if he did not issue it; the issuing of it, if he did not sign it—there being no vacancy which is contemplated by the act, is a crime, and another crime in and part of the great conspiracy. Therefore the question will be whether we shall be allowed to go into the condition of Mr. Cooper. I cannot put the whole of my offer in one question, because I cannot prove it all by one witness.

The CHIEF JUSTICE. It will be necessary to reduce the question to writing, in order that it may be submitted to the Senate.

Mr. Manager BUTLER. I will put it rather in the form of an offer to prove. I will write it as an offer to prove, in a moment.

Mr. STANBERY. It is not a question so much, Mr. Chief Justice, as to who Edmund Cooper is, but what Edmund Cooper has got to do with this case; what the illegal appointment of Edmund Cooper to be Assistant Secretary of the Treasury *ad interim*, or otherwise, has to do with this case; or what the appointment of Edmund Cooper for the purpose of controlling the moneys in the Treasury Department has to do with this case. That is the material inquiry.

Now I understand the learned manager to say that the proof he intends to make in regard to Mr. Cooper is, in the first place, that there was an illegal appointment of Mr. Cooper, and in that the President violated the Constitution of the United States, and violated the tenure-of-office act. Well, Mr. Chief Justice, have they given us notice to come here to defend any such delinquency as that, if it be a delinquency? Have the House of Representatives impeached the President for anything done in the removal of Mr. Chandler, if he was removed, or in the appointment of Mr. Cooper, if he was appointed in his place? They selected one instance of what they claim to be a violation of the Constitution and of the tenure-of-office act in regard to a temporary appointment made during the session of the Senate; and that was the case of General Thomas, and of General Thomas alone. As to that, of course, we have no objection to their going into evidence, because we have had notice of it, and are here ready to meet it; but as to any high crime and misdemeanor in reference to the appointment of Mr. Cooper, certainly the gentlemen have no authority to make such a charge, because they come here with a delegated authority; they come here only to make the charges found good by the House of Representatives, and not the charges that they choose to manufacture here. The managers have no right to amend these articles. They must go to the House even for that. If they choose to go to the House and get a new article founded upon an illegal act in the appointment of Mr. Cooper, let them go, and let us have time to answer it and to meet it.

So much for the admissibility of the testimony as to the illegal appointment of Mr. Cooper. It is a matter not charged. That is enough. It is a matter they are not authorized to charge; they have no such delegated authority here.

What is the next ground, Mr. Chief Justice, upon which they ask to prove anything in relation to Mr. Cooper? They say they expect to prove that Mr. Cooper was put into that place of Assistant Secretary of the Treasury by the President in order to control the disbursement of the moneys in that department. That I understand to be the next ground. Now, let us see what they have charged about that. Here they have got an article charging an illegal act of the President in reference to the disbursements of the public money—article eight. Let us see what Mr. Cooper has to do with that.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of officer with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War, on the 21st day of February—

Did a certain thing. What was it? Appoint Mr. Cooper? Give him

authority to act in any office? No. He appointed Thomas, and that appointment is the only appointment set out as the means to control those disbursements. If it was necessary to frame an article founded upon the appointment of Thomas as a means used by the President to get control of these public moneys, was it not equally necessary to have an article founded upon the same line of conduct in reference to Mr. Cooper? Unquestionably.

Then, in the eleventh article, what is there that authorizes the introduction of this testimony? That he made certain speeches. What then?

Afterward, to wit, on the 21st day of February, A. D. 1868, at the city of Washington, in the District of Columbia, did, unlawfully and in disregard of the requirement of the Constitution that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices."

That is the unlawful thing; and how?

By unlawfully devising and contriving, and attempting to devise and contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and, also, by further unlawfully devising and contriving, and attempting to devise and contrive, means then and there, to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June 30, 1868, and for other purposes."

That is the act which contains the section requiring the orders for military operations to go through General Grant. That is the means he contrived there to get Stanton out. So that has nothing to do with this. What further?

And, also, to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States."

Now what relevancy has the appointment of Cooper with the government of the rebel States, or with the execution of the reconstruction acts, or, in fact, with any offence charged in any one of the eleven articles?

Mr. Manager BINGHAM. Mr. President, we consider the law to be well settled and accepted everywhere in this country and England to-day, that where an intent is the subject-matter of inquiry in a criminal prosecution, other and independent acts on the part of the accused, looking to the same result, are admissible in evidence for the purpose of establishing that fact. And we go further than that. We undertake to say, upon very high and commanding authority, not to be challenged here or elsewhere, that it is settled that such other and independent acts, showing the purpose to bring about the same general result, although at the time of the inquiry the subject-matter of a separate indictment, are nevertheless admissible. I doubt not that it will occur to the recollection of honorable senators that among other cases illustrative of the rule which I have just cited it has been stated in the books—the cases have been ruled first and then incorporated into books of standard authorities—that where a party, for example, was charged with shooting with intent to kill a person named, it was competent, in order to show the malice, the malicious intent of the act, to show that at another time and place he laid poison. A party is charged with passing a counterfeit note; it is competent, in order to prove the *scienter*, to show that he was in possession of other counterfeit notes of a different denomination; and the rule, as stated in the books, is, that what is competent to prove the *scienter*, as a general principle, is competent to prove the intent.

Now, what is the allegation in the eleventh article? That this procedure was taken on the part of the President for the purpose of setting aside and defeating the operation of that law. That law stands with the other legislation of this country.

Mr. STANBERY. What law?

Mr. Manager BINGHAM. The tenure-of-office act. That law stands with the other legislation of this country; and I undertake to say, without stopping to cite the statutes, that by the existing law of the United States the appropria-

tions made for the support of the Department of War and for the support of the army can only be reached in the treasury of the nation through the requisitions drawn by the Secretary of War. Here is an independent act done by the accused, as is well said by my associate, for the purpose of aiding this result. How? By appointing an Assistant Secretary of the Treasury, who, under the law and regulations, is authorized to act upon the warrants that may be drawn upon the treasury through that department or any other department; by appointing a person, in other words, to discharge the very duty which he desires him to discharge in aid of his design; and what is that? That the money appropriated by Congress, and not to be drawn from the treasury except in pursuance of law, to wit, through the Secretary of War, duly constituted such by the appointment of the President with the advice and consent of the Senate, may, nevertheless, be drawn out of the treasury by a person acting as an officer, without the advice and consent of the Senate, through the requisitions made on the treasury by his Secretary of War *ad interim*, appointed in the presence of the Senate, in defiance of the Senate, and in violation of the law.

If the appointment of such an officer throws no light on the subject, of course it has nothing to do with the matter; if it does, it has a great deal to do with it. If the question stops with the inquiry who Edmund Cooper is, of course it throws no light upon this subject; but if the testimony discloses such relations with the President and his appointment under such circumstances as indicate a purpose on the part of Cooper to co-operate with the President in this general design, I apprehend it will throw a great deal of light upon this subject. And, in the event of the removal of the head of the department, (and if this rule is to be established that might happen any hour, without regard to the opinions of the Senate to the contrary or to the requirements of the law,) this Assistant Secretary of the Treasury would have the control of the whole question. I am free to say, so far as I am concerned in this matter, if nothing further be shown than the mere inquiry of the appointment of Cooper, it may not throw any light upon the subject; but I do not so understand the matter. There is more than that in it.

Mr. Manager BUTLER. In order that there may be a distinct proposition before the Senate, we offer to prove that, there being no vacancy in the office of Assistant Secretary of the Treasury, the President unlawfully appointed his friend and theretofore private secretary, Edmund Cooper, to that position, as one of the means by which he intended to defeat the tenure of civil office act and other laws of Congress.

Mr. EVARTS. Will you be so good as to insert the date in your offer?

Mr. Manager BUTLER. I will, sir. [After a pause.] I have inserted a date satisfactory to myself, and I hope it will be to the counsel for the President

Mr. EVARTS. I have no doubt it is correct.

Mr. Manager BUTLER. We offer to prove that after the President had determined on the removal of Mr. Stanton, Secretary of War, in spite of the action of the Senate, there being no vacancy in the office of Assistant Secretary of the Treasury, the President unlawfully appointed his friend and theretofore private secretary, Edmund Cooper, to that position, as one of the means by which he intended to defeat the tenure of civil office act and other laws of Congress.

Mr. EVARTS. I do not understand that to be a date. I ask you to be good enough to put it on the 20th of November.

Mr. Manager BUTLER. I want to have it appear in relation to that.

Mr. EVARTS. Put in what you have also, if you please.

Mr. Manager BUTLER. If the learned counsel will allow me, I will make my offer as I like.

Mr. EVARTS. Undoubtedly. I only asked you to name the date. You can do as you please about it.

The CHIEF JUSTICE. The Secretary will read the proposition.

The Secretary read as follows:

We offer to prove that, after the President had determined on the removal of Mr. Stanton, Secretary of War, in spite of the action of the Senate, there being no vacancy in the office of Assistant Secretary of the Treasury, the President unlawfully appointed his friend and theretofore private secretary, Edmund Cooper, to that position, as one of the means by which he intended to defeat the tenure-of-civil-office act and other laws of Congress.

Mr. EVARTS. The action of the Senate, I think, was in December, 1867.

Mr. STANBERY. February 13.

Mr. Manager BUTLER. January 13.

Mr. STANBERY. Yes; that is it.

Mr. EVARTS. January 13, 1868; so that what you now offer was after that.

Mr. Manager BUTLER. Oh, no. The President formed the purpose, as he tells us in the letter to General Grant, and as he tells us in his answer, on the 12th of August, 1867, when he suspended Mr. Stanton, to suspend him indefinitely; to try to see if the Senate would not agree to that; if they would not, then to keep him suspended indefinitely, and remove him as soon as ever he could get anybody to aid him. That is our proposition of what the evidence and the claims of the President show; he meant to do that in spite of what happened; and we say after that intent was formed he made the appointment of Cooper.

Mr. EVARTS. After the 12th of August, 1867, then. We want to get at the date; that is all.

The CHIEF JUSTICE. Do the counsel for the President desire to be heard further?

Mr. EVARTS. No, sir; but we object to it. It is not within any article of impeachment.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate. The question is, whether the evidence proposed by the honorable managers shall be admitted?

Mr. SHERMAN. I should like to have the managers answer a question before the vote is taken.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Ohio.

The Secretary read as follows:

Will the managers read the particular clauses of the eighth and eleventh articles to prove which this testimony is offered?

Mr. Manager BUTLER. As I understand it, it is to prove the intent alleged in the eighth article in these words:

With intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War.

He did a certain act with that intent. Now, to prove that intent, we show he did a certain other act which would enable him to control the moneys.

The CHIEF JUSTICE. The eighth article seems to say nothing about money.

Mr. Manager BUTLER. The eighth article reads:

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, with intent unlawfully to control the disbursements of moneys appropriated.

The CHIEF JUSTICE. What act is charged?

Mr. Manager BUTLER. The act charged is, that, with that intent, he appointed Thomas. Now, to prove the intent with which he appointed Thomas, we prove that he also prepared a man who, in the office of Assistant Secretary of the Treasury, would answer Thomas's requisitions.

Now, as to the other point, I will read, in answer to the question of the senator, from the eleventh article:

By unlawfully devising and contriving, and attempting to devise and contrive, means

by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and also, by further unlawfully devising and contriving, and attempting to devise and contrive, means, then and there, to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, and, also, to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867.

He had done what he has been charged to have done. And now, in that connection, we claim that this was a part of the machinery to carry out this thing; because, suppose, looking forward to have happened exactly what did happen, to wit, that Mr. Stanton would not give up the War Department, then the question was, would Mr. McCulloch answer the requisitions of Thomas or of anybody else he should put in, if Stanton should hold on? It is clear that the President knew he would not, because, although he served a notice upon McCulloch to do it, McCulloch will not to-day, and he has not been able to get one through Thomas. Now, then, he gets Thomas in; he must put in somebody in the Treasury Department who will obey Thomas. Thereupon he puts Cooper in; and with a single stroke of his pen he claims to have the right to remove McCulloch; and he also claims, and has put it in his answer, that McCulloch, as one of his cabinet, has agreed to go at a stroke of his pen; so that he has got the whole army and treasury of the United States within his control. It was with intent to do that that he made the appointment of Cooper; and to show that it was with that intent, we show, so anxious was he to do it, that he did not make the appointment lawfully; that he first made it when the Senate was not in session, by issuing a full commission; then he sent it to the Senate, and the Senate rejected Cooper; but still, so bent was he on having Cooper not private secretary, but Assistant Secretary of the Treasury, where he could control the moneys of the United States, that he first appointed him *ad interim*, showing that he got him under the same designation as Thomas; and the designation shows something.

The CHIEF JUSTICE. Are senators ready for the question?

Mr. JOHNSON. I request the managers to answer a question which I have sent to the Chair.

The CHIEF JUSTICE. The Secretary will read the question propounded by the senator from Maryland.

The Secretary read as follows:

The managers are requested to say whether they propose to show that Cooper was appointed by the President in November, 1867, as a means to obtain the unlawful possession of the public money, other than by the fact of the appointment itself?

Mr. Manager BUTLER. We certainly do—is that an answer?—more than by the appointment. That we may not be misunderstood hereafter, we propose to show that he appointed him, and thereupon Mr. Cooper went into the exercise of the duties of the office before his appointment could by any possibility be legal; and that he has been, we hope and believe we shall show that he has been, controlling other public moneys since.

The Chief Justice having put the question on the admissibility of the evidence, declared that the negative appeared to prevail.

Mr. Howard and Mr. Sumner called for the yeas and nays; and they were ordered.

Mr. HENDERSON. Before the vote is taken, I desire that some testimony shall be read. I send my request to the Chair.

The Secretary read Mr. Henderson's request, as follows:

It is requested that the testimony of the witness, Chandler, in regard to the mode and manner of obtaining money on a requisition of the Secretary of War be read.

The CHIEF JUSTICE. It can only be read from the notes of the short-hand reporter; but the witness can restate it.

Mr. HENDERSON. I will inquire if the witness will be permitted to restate it?

The CHIEF JUSTICE. Certainly.

Mr. HENDERSON. My object is to know whether money can be obtained upon the requisition of the Assistant Secretary, and not of the Secretary himself; just to that point.

Mr. EVARTS. Let him answer to that very point.

Mr. Manager BUTLER. Let him answer.

The CHIEF JUSTICE, (to the witness.) Answer the question proposed by the senator from Missouri. Will the senator state the question to the witness?

Mr. HENDERSON. I prefer that the managers should do so.

Mr. Manager BUTLER, (to the witness.) Will you state now whether the Assistant Secretary can sign warrants?

Mr. CURTIS and Mr. EVARTS. That is not the question.

Mr. Manager BUTLER. For the payment of money?

Mr. CURTIS. The question is, whether on requisitions of the War Department——

Mr. Manager BUTLER. Whether, upon the requisition of any department of the government, the Assistant Secretary of the Treasury can sign warrants on the treasury for the payment of money?

The WITNESS. Until the passage of a late statute, whenever the Secretary of the Treasury was present and acting, money could not be drawn from the treasury upon the signature of the Assistant Secretary of the Treasury. An act has been passed within a year allowing the Assistant Secretary to sign covering-in warrants and warrants for the payment of money upon accounts stated; but the practice still continues of signing all customary warrants by the signature of the Secretary of the Treasury. The warrants are prepared and the initials of the Assistant Secretary in charge of the warrants placed upon them, and then they are signed by the Secretary of the Treasury when he is present.

Mr. FESSENDEN. I ask that that law may be read. I should like to know what it is exactly.

Mr. Manager BUTLER, (to the witness.) Do you remember the date of it?

The WITNESS. It is within a year. I can find it if you give me the statutes for the last year.

The CHIEF JUSTICE. The Chief Justice will put a question to the witness: whether before the passage of the act to which he refers any warrant could be drawn by the Assistant Secretary, unless he was Acting Secretary in the absence of the Secretary?

A. There could not. Prior to the passage of this act no money could be drawn from the treasury upon the signature of the Assistant Secretary, unless when Acting Secretary under an appointment for that purpose.

By Mr. Manager BUTLER:

Q. When the Assistant Secretary acts for the Secretary, does he sign all warrants for the payment of money?

A. When Acting Secretary, of course he signs all warrants for the payment of money.

Mr. CAMERON. I desire to ask a question.

The CHIEF JUSTICE. The senator will reduce his question to writing and send it to the Chair.

Mr. CAMERON. I did not understand that. I desire to ask a question merely as to the practice. I can do it in less time than by writing it.

The CHIEF JUSTICE. The rule requires it to be reduced to writing.

Mr. Manager BUTLER. I will read the law to which reference has been made:

AN ACT supplemental to an act to establish the Treasury Department, approved September 2, 1789.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury shall have power, by an appoint-

ment under his hand and official seal, to delegates to one of the Assistant Secretaries of the Treasury authority to sign in his stead all warrants for the payment of money into the public treasury and all warrants for the disbursement from the public treasury of money certified by the proper accounting officers of the treasury to be due upon accounts duly audited and settled by them; and such warrants so signed shall be in all cases of the same validity as if they had been signed by the Secretary of the Treasury himself.

Mr. CONKLING and others. What is the date of that?

Mr. Manager BUTLER. The date is March 2, 1867, the same date as the tenure-of-office act.

A single other question, which, perhaps, is rather a conclusion of law than of fact. (To the witness.) In case of the removal or absence of Mr. McCulloch or the Secretary of the Treasury, as I understand, the Assistant Secretary performs all the acts of the Secretary?

Mr. EVARTS. That is a question of law.

Mr. Manager BUTLER. I said I doubted as to that. I was only asking for the practice. (To the witness.) Is that the practice?

A. I am not certain that it is, without an appointment as Acting Secretary for the Assistant Secretary, signed by the President.

Mr. CAMERON. I desired to put a question, and I think it is contrary to the practice to require me to put it in writing; but I have reduced it to writing, and I ask that it be read.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Pennsylvania.

The Secretary read as follows:

Can the Assistant Secretary of the Treasury, under the law, draw warrants for the payment of moneys by the Treasurer without the direction of the Secretary of the Treasury?

The WITNESS. Since the passage of the act, I understand, the Assistant Secretary can sign a warrant for the payment of money in the cases specified.

By Mr. EVARTS:

Q. Is that by deputation?

A. Which is presumed rather to be with the assent and approval of the Secretary of the Treasury.

Mr. CAMERON. I will ask another question without reducing it to writing.

The CHIEF JUSTICE. If there be no objection, the senator from Pennsylvania will be allowed to put a question without reducing it to writing.

Mr. WILLIAMS. Mr. President, I object.

The CHIEF JUSTICE. The senator from Oregon objects.

Mr. CAMERON. The question I intended to ask was, has it been the practice——

The CHIEF JUSTICE. The senator is not in order.

Mr. Manager BUTLER, (to the witness.) Has it been the practice for him to sign warrants?

A. Since the passage of the act in question it has.

The CHIEF JUSTICE. Senators, the question is: Shall the evidence proposed by the managers be received?

Mr. FESSENDEN. I should like to put a question as soon as I have an opportunity to write it. [After writing.] There are two questions which I wish to put.

The CHIEF JUSTICE. The Secretary will read the questions proposed by the senator from Maine.

The Secretary read as follows:

Q. Has it been the practice since the passage of the law for an Assistant Secretary to sign warrants unless specially appointed and authorized by the Secretary of the Treasury?

Q. Has any Assistant Secretary been authorized to sign any warrants except such as are specified in the act?

The WITNESS. It has not been the practice for an Assistant Secretary, since

the passage of the act, to sign warrants except upon an appointment by the Secretary for that purpose, in accordance with the provisions of the act. Immediately upon the passage of the act, the Secretary authorized one of his Assistant Secretaries to sign warrants of the character described in the act, and they have been customarily signed by that Assistant Secretary in all cases since that time.

Mr. FESSENDEN. Now let the second question be read.

The Secretary read the second question as follows :

Q. Has any Assistant Secretary been authorized to sign any warrants except such as are specified by the act?

The WITNESS. No Assistant Secretary has been authorized to sign warrants except such as are specified in this act, unless when Acting Secretary.

The CHIEF JUSTICE. Senators, you who are of opinion that the evidence offered on the part of the managers should be admitted, will, as your names are called, answer yea; those who are of the contrary opinion will say nay. The Secretary will call the roll.

The question being taken, the result was announced—yeas, 23; nays, 26.

Mr. CONNESS. I desire to know how my name is recored?

The CHIEF JUSTICE. The senator is recorded among the yeas.

Mr. CONNESS. That is a mistake. I voted in the negative, and I wish myself recorded correctly.

The change being made, the result was announced—yeas, 22; nays, 27; as follows :

YEAS—Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Corbett, Cragin, Drake, Howard, Howe, Morgan, Morrill of Vermont, Nye, Pomeroy, Ramsey, Ross, Sprague, Sumner, Thayer, Tipton, and Wilson—22.

NAYS—Messrs. Bayard, Buckalew, Conness, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Norton, Patterson of New Hampshire, Patterson of Tennessee, Sherman, Stewart, Trumbull, Van Winkle, Vickers, Willey, and Williams—27.

NOT VOTING—Messrs. Harlan, Morton, Saulsbury, Wade, and Yates—5.

The CHIEF JUSTICE. The yeas are 22, the nays are 27. So the evidence is not received.

Mr. Manager BUTLER. Then I have nothing further to ask this witness at present. We may wish to call him again, however, at another part of the case, when we get along further, so that we can offer this in another view.

Mr. EVARTS. We shall reserve our questions till then.

CHARLES A. TINKER sworn and examined.

By Mr. Manager BUTLER :

Question. What is your full name?

Answer. Charles A. Tinker.

Q. What is your business?

A. I am a telegraph operator.

Q. Are you in charge of any office?

A. I am in charge of the Western Union Telegraph office in this city.

Q. Were you at any time in charge of the military telegraph office of the War Department?

A. I was.

Q. From what time to what time?

A. I can hardly tell from what time. I was in charge of the military telegraph office of the War Department up to August, 1867. I think I was personally in charge something like a year. I was connected with the office for something like five years.

Q. While in charge of that office, state whether a despatch from Lewis E. Parsons, of Montgomery, Alabama, came to Andrew Johnson, President of the United States; and if so, at what date?

A. I think while in that office I saw a great many such despatches.

Q. What paper have you in your hand?

A. I have what professes to be a copy of a telegram from Lewis E. Parsons, Montgomery, Alabama, addressed to "His Excellency Andrew Johnson, President."

Q. Do you know whether that telegram came through the office?

A. I recognize this as being the character of despatch which passed through, or was received, at the military telegraph office.

Mr. CURTIS. That we must object to.

Mr. Manager BUTLER, (to the witness.) Were there duplicate originals of telegrams received kept at the military telegraph office?

A. What is called a press copy was taken of each despatch before being delivered from the office.

Q. Was such a press copy taken of each despatch before it was sent?

A. Not before being sent.

Q. The original was kept, then?

A. The original was kept on file in the office.

Q. State whether, at my request, you examined those press copies?

A. I did.

Q. Did you find such a despatch as I have described among those press copies?

A. I did.

Q. Did you copy it?

A. I made a copy.

Q. Have you got that in your hand?

A. No, sir, I have not.

Q. Can you give an explanation as to that copy you now have in your hand?

A. I made a copy of the despatch, and answered the summons of the managers, and I placed the copy in your hands, and I heard you order your clerk to make a copy of that; and after a short time the clerk returned with that copy, and read the copy which he had made, and you returned to me the copy I had made.

Q. Have you that copy?

A. I have.

Q. Very well; produce the original despatch and the copy both.

Mr. EVARTS. I ask what is meant by the "original despatch." I understood this was a despatch received here.

Mr. Manager BUTLER. The original press copy is meant.

The WITNESS. I mean to say that I have the original press copy. [Producing a bound letter-book, the pages of which were press copies of despatches.]

Q. Have you that original press copy?

A. I have it.

Mr. Manager BUTLER. Read from it, please.

Mr. STANBERY. Oh, no.

Mr. EVARTS. Let us see what it is.

[The book was handed to the counsel for the respondent.]

Mr. STANBERY. I wish to ask a preliminary question. (To the witness.) Did you make this press copy yourself?

A. The press copy is made by the clerk. The telegram is written by one of the operators.

Mr. EVARTS. By you?

The WITNESS. Not by me personally.

Mr. CURTIS. We object.

Mr. EVARTS. This book does not prove itself.

Mr. Manager BUTLER. I do not understand the objection, if there is any.

Mr. EVARTS. We do not understand that a telegraph company's books prove

themselves like a record. You bring no living witness that verifies anything here.

Mr. Manager BUTLER. I will pass from this for a moment. (To the witness.) Do you remember, as an act of memory, whether such a telegram as that passed through the office?

A. I do not remember this despatch having passed through the office; I cannot take my oath that I remember the particular despatch.

Q. Will you state whether you have an original despatch of the same date signed "Andrew Johnson?"

A. I have.

Q. Produce it.

A. I have a book in which the despatch is filed. (Producing a bound letter-book on the pages of which were pasted despatches.)

Q. Are you so familiar with the signature of Andrew Johnson as to know whether that is his name signed to it?

A. I believe that to be his signature; I am very familiar with it.

Q. Have you any doubt in your own mind as to that?

A. None whatever.

Q. Is this book which I hold in my hand and you have just produced, the record book of the United States military telegraph of the executive office wherein original despatches are put on record?

A. It is the book in which the original despatches were filed.

Q. Do you know whether this despatch passed through the office to Lewis E. Parsons?

A. I do know from the marks it contains.

Mr. CURTIS. That is an inference.

The WITNESS. I can answer that. I saw the despatch in the office.

By Mr. Manager BUTLER:

Q. And it bears the marks of having been sent?

A. Yes, sir.

Mr. STANBERY. Now, let us see the despatch. [The book was handed to the counsel for the respondent and examined by them.] This is very good reading; but will you tell us what is the object of this testimony? We like the document; but what is the object of it here?

Mr. Manager BUTLER. Do you object to this document, whatever the object is?

Mr. STANBERY. We object until we know the purpose.

Mr. Manager BUTLER. The question that I put now is simply whether you object to the vehicle of proof?

Mr. EVARTS. No.

Mr. Manager BUTLER. If it is proper to read it at all, the question is whether it is proved.

Mr. EVARTS. It proceeded from the President, and therefore it is proved.

Mr. JOHNSON. What is the date?

Mr. Manager BUTLER. January 17, 1867; the same date with Parsons's despatch.

Mr. STANBERY. Now, the object?

Mr. Manager BUTLER. Not yet, sir. (To the witness.) On the same day that this is dated do you find in the records of the department a press copy of a despatch from Lewis E. Parsons to which this is in answer?

A. I find in the press copy book a copy of a despatch which that was in answer to.

Mr. EVARTS. How does that appear?

Mr. Manager BUTLER. It appears because the witness has sworn to it.

Mr. EVARTS. If it is an answer, it speaks for itself.

Mr. Manager BUTLER. Again I must reply, if the question is put to me how

it appears, he has sworn that it is an answer. (To the witness.) Now, what was this telegraph office? The heading of the despatch is "United States Military Telegraph." Was this telegraph under the control of the War Department?

A. At that time it was not under the control of the War Department.

Q. Where were the books kept?

The WITNESS. Do I understand you to mean the lines?

Mr. Manager BUTLER. I do not mean the lines. I mean the office; was it in the War Department building?

A. It was.

Q. And were the officers employés of the War Department?

A. They were.

Q. Were the records of its doings at that office kept in the War Department?

A. They were.

Q. And are these books and these papers produced from the War Department?

A. No, sir; they are not.

Q. Where do they come from now?

A. They come from the War Department through the telegraph office; it has the original despatches of the War Department.

Q. They came to the telegraph office from the War Department?

A. Yes, sir.

Q. They came originally as records from the War Department?

A. From the War Department to the telegraph office, and I bring them here.

Mr. Manager BUTLER. I submit now to the Senate that I propose to use in evidence, if it is otherwise competent, the despatch of Lewis E. Parsons to which Andrew Johnson made reply. Having proved what I have proved, is there any objection—I mean now as to the vehicle of evidence simply, not as to the competency of the contents?

Mr. EVARTS. On that point in this present case, although we regard the proof of Mr. Parsons's despatch as incompetent and insufficient, we shall waive any objection of that kind, and the question may now stand upon the competency of the proof.

Mr. Manager BUTLER. On the question of relevancy, I suppose?

Mr. EVARTS. Yes, and competency; its admissibility in any way.

Mr. Manager BUTLER. Admissibility of the proof of the contents?

Mr. EVARTS. Yes. We have had no notice to produce the original, but we care nothing about that.

Mr. Manager BUTLER. To that I answer we have the original here.

Mr. EVARTS. No; but the original of Mr. Parsons's despatch delivered to the President. We have had no notice to produce that; we know nothing about it; but we waive that. Now, we inquire in what view and under what article these despatches dated prior to the civil-tenure act are introduced?

Mr. Manager BUTLER. In order that the Senate acting both as court and jury may understand whether these papers are admissible in evidence, it becomes necessary, with the leave of the President and the Senate, to read them *de bene esse*, in order that we may show how they become competent.

Mr. CURTIS. We do not object to your reading them *de bene esse*.

Mr. Manager BUTLER. The despatch of Mr. Parsons is:

MONTGOMERY, ALABAMA, *January* 17, 1867.

Legislature in session. Efforts making to reconsider vote on constitutional amendment. Report from Washington says it is probable an enabling act will pass. We do not know what to believe. I find nothing here.

LEWIS E. PARSONS,
Exchange Hotel.

His Excellency ANDREW JOHNSON, *President.*

The response is:

UNITED STATES MILITARY TELEGRAPH, EXECUTIVE OFFICE,
Washington, D. C., January 17, 1867.

What possible good can be obtained by reconsidering the constitutional amendment? I know of none in the present posture of affairs; and I do not believe the people of the whole country will sustain any set of individuals in attempts to change the whole character of our government by enabling acts or otherwise. I believe, on the contrary, that they will eventually uphold all who have patriotism and courage to stand by the Constitution and who place their confidence in the people. There should be no faltering on the part of those who are honest in their determination to sustain the several coördinate departments of the government in accordance with its original design.

ANDREW JOHNSON.

Hon. LEWIS E. PARSONS, *Montgomery, Alabama.*

I have no further call, after having read these despatches, so that they may be seen of the Senate, to argue the question whether this is competent evidence upon articles charging Andrew Johnson with attempting to overthrow the acts of Congress, to oppose their validity, and to bring its legislation into contempt. It is either under the tenth or the eleventh article quite competent.

Mr. EVARTS. The tenth is confined to the President's speeches. It alludes to nothing else.

Mr. CURTIS. Speeches, not telegrams.

Mr. Manager BUTLER. I am reminded by the learned counsel that that article refers to speeches and not telegrams. I know it; but with what intent were these speeches made? For what purpose were they made? They were made for the purpose of arraying the country against the Congress of the United States and its lawful acts, and to bring it into ridicule and contempt. Now, I am upon the point where the attempt is made to array the people against the lawful acts of Congress and to "destroy the regard and respect of all the good people of the United States for the Congress and legislative power thereof," and "to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted."

We must go back a moment, if the Senate please, and I shall take but a moment, because I think this is too clear for argument. The President had gone forward in August and September, 1866, declaring everywhere that Congress had no power to do what it was proposing to do. Congress had proposed the constitutional amendment to the people of the States, and for the purpose of preventing that constitutional amendment from being accepted, every possible contumely was thrown upon Congress and every possible step taken to prevent its acceptance, and this is one of the steps.

I will not argue further under that proposition. Then the eleventh article charges that "intending to deny the power of the thirty-ninth Congress to propose amendments to the Constitution of the United States," he did declare so and so. We find with that intent that when Congress had passed an act for the pacification of the southern States and for the settlement of the difficulty, in the shape of a proposed amendment to the Constitution, and when that was being considered by the southern States, the President of the United States, from his high position, was absolutely telegraphing to the legislature, in answer to a question of those States when they were asking for advice, urging them not to accept the amendment to the Constitution. I do not care to argue this any further.

Mr. EVARTS. If we understand the honorable manager aright, this evidence is supposed to be relevant and competent only in reference to the crimes charged in the tenth and eleventh articles. Is that so? Was that your proposition, Mr. Butler?

Mr. Manager BUTLER. My proposition is that it is relevant under those. I have made no proposition as to the rest——

Mr. EVARTS. You did not name any others.

Mr. Manager BUTLER. I did not think it necessary.

Mr. EVARTS. Very well; I shall not think it necessary to consider any others.

Mr. Manager BUTLER. Very well, we are agreed on that.

Mr. EVARTS. Now, if the Chief Justice and senators will give their attention to the tenth article, it will be found that the entire charge there is that the President—

Designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach, the Congress of the United States and the several branches thereof, to impair and destroy the regard and respect of all the good people of the United States for the Congress and legislative power thereof, (which all officers of the government ought inviolably to preserve and maintain,) and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted.

That is the entire purview of the intent. Now, the only acts charged as done with this intent are the delivery of a speech at the Executive Mansion in August, 1866, and two speeches, one at St. Louis and the other at Cleveland, in September, 1866. The article concludes that by means of these utterances—

Said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of, a high misdemeanor in office.

That is the *gravamen* of the crime; that he brought the presidential office into scandal by these speeches made with this intent. Senators will judge from the reading of this telegram, dated in January, 1867, whether that supports the principal charge or intent of his derogating from the credit of Congress or bringing the presidential office into discredit.

The eleventh article has for its substantive charge nothing but the making of the speech of the 18th of August, 1866, saying that by that speech he declared and affirmed—

In substance, that the thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, but, on the contrary, was a Congress of only part of the States, thereby denying, and intending to deny, that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, and, also, thereby denying, and intending to deny, the power of the said thirty-ninth Congress to propose amendments to the Constitution of the United States; and in pursuance of said declaration—

That is, in pursuance of the speech made at the Executive Mansion on the 18th of August, 1866—

The said Andrew Johnson, President of the United States, afterward, to wit, on the 21st day of February, A. D. 1868, at the city of Washington, in the District of Columbia, did, unlawfully, and in disregard of the requirement of the Constitution that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867—

Which was after the date of this despatch—

By unlawfully devising and contriving, and attempting to devise and contrive means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War.

The court will consider whether this despatch touches that subject.

And also by further unlawfully devising and contriving, and attempting to devise and contrive, means, then and there to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867; and also to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867.

Also, after the date of this despatch. It is under one or the other of these

two articles that this despatch is, in its date and in its substance, supposed to be relevant. I will read it:

WASHINGTON, D. C., *January* 17, 1867.

What possible good can be obtained by reconsidering the constitutional amendment? I know of none in the present posture of affairs; and I do not believe that the people of the whole country will sustain any set of individuals in attempts to change the whole character of our government by enabling acts or otherwise. I believe, on the contrary, that they will eventually uphold all who have patriotism and courage to stand by the Constitution, and who place their confidence in the people. There should be no faltering on the part of those who are honest in their determination to sustain the several co-ordinate departments of the government in accordance with its original design.

ANDREW JOHNSON.

Hon. LEWIS E. PARSONS, *Montgomery, Alabama.*

There is nothing here pertinent in depreciation of Congress, nothing that tends to scandal of the presidential office, nothing that has relation to the defeat of laws not then passed, and not possible to be the subject of crime or misdemeanor on the part of the President in resisting or opposing; and we find nothing whatever in these transactions—if introduced undoubtedly leading into a wide field of inquiry—that touches any crime, or any intent, or any purpose mentioned in these articles.

Mr. Manager BOUTWELL. Mr. President and Senators, if this evidence is admissible under either of the articles—and I have no doubt it is admissible under both the tenth and eleventh—it is sufficient for our purpose. It is enough that we show it to be admissible under one; and therefore I treat the proposition to introduce this evidence under the eleventh article only—from which I think it must appear to senators that there can be no doubt upon this point. If attention be given to the eleventh article it will be seen that we charge that the President did—

On the 18th day of August, A. D. 1866, at the city of Washington, and in the District of Columbia, by public speech, declare and affirm, in substance, that the 39th Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, but, on the contrary, was a Congress of only part of the States, thereby denying and intending to deny that the legislation of said Congress was valid or obligatory upon him, and also thereby denying and intending to deny the power of the 39th Congress to propose amendments to the Constitution of the United States—

The very subject of these telegraphic despatches—

And in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterward, to wit, on the 21st day of February, A. D. 1868—

Which we understand to include all these dates, between the time when the declaration which is the basis of this article, to wit, August 18, 1866, up to and including the 21st of February, 1868, so that all that period is open to us for the introduction of testimony showing the transactions of the President on this point—

On the 21st day of February, A. D. 1868, at the city of Washington, in the District of Columbia, did, unlawfully, and in disregard of the requirements of the Constitution that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, by unlawfully devising and contriving, and attempting to devise and contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concurr in the suspension theretofore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and, also, by further unlawfully devising and contriving, and attempting to devise and contrive means, then and there, to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867; and, also, to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867.

Herein we see the nature and extent of the influence of the conduct of the

President in sending out this telegram. Here was Mr. Parsons, who is known upon public fame to have been the provisional governor of the State of Alabama in the year 1865 and 1866, a man of influence in that part of the country, who asks the President's opinion upon the very matter of the reconstruction of the rebel States. He says:

Legislature in session. Efforts making to reconsider vote on constitutional amendment. Report from Washington says it is probable an enabling act will pass.

Which, undoubtedly, related to those acts which have come to be called acts for the government of the rebel States, enabling acts; measures of Congress, by and through which these States were to be restored to the Union. He asks the opinion of the President as to what they shall do. He says:

We do not know what to believe.

Now, what does the President say?

What possible good can be obtained by reconsidering the constitutional amendment?

Which had been rejected.

I know of none in the present posture of affairs; and do not believe the people of the whole country will sustain any set of individuals——

Here is the gist of the offence of this particular telegraphic despatch, and showing, also, wherein it applies under the charge contained in the eleventh article. We set forth in the eleventh article that in August, 1866, he had charged that Congress was not a constitutional body representing all the States of the Union. In this despatch he speaks of Congress, because he can refer to no other set of men, as a "set of individuals." He says:

I do not believe the people of the whole country will sustain any set of individuals——

Thus characterizing Congress as a set of individuals, which is seen in what he says in regard to them——

in attempts to change the whole character of our government by enabling acts or otherwise.

And we say that herein we have evidence of the intent of the President to defeat the will of Congress in regard to the enforcement of the reconstruction laws, which is precisely the offence charged against him in the eleventh article preferred by the House of Representatives. I am reminded, too, that the original reconstruction act provides for the adoption of the constitutional amendment as one of the conditions precedent to or coincident with the rights of a State organized under the reconstruction laws to be admitted to representation in Congress.

The CHIEF JUSTICE. Do the counsel for the respondent desire to say anything further?

Mr. EVARTS and Mr. CURTIS. Nothing further.

Mr. Manager BUTLER. I wish, if the presiding officer will allow me, to call attention to the fifth section of the act of March 2, 1867, known as the reconstruction act, which is the act described in the eleventh article, which provides:

And when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States proposed by the thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law.

So that the adoption of the fourteenth article is a part of the reconstruction acts.

The CHIEF JUSTICE. Do the counsel for the respondent desire to be heard further?

Mr. STANBERY. No, sir

Mr. HOWARD. I offer a question to the managers.

The CHIEF JUSTICE. The question offered by the senator from Michigan will be read.

The Secretary read as follows:

What amendment of the Constitution is referred to in Mr. Parson's despatch?

Mr. Manager BUTLER. I can answer. There was but one amendment at that time pending before the country, and that was known as the fourteenth article, the one concerning which I have just read, and which is required to be adopted by every State legislature before the State can be admitted to representation in Congress.

The CHIEF JUSTICE. Senators, the managers offer in support of the accusations of the House of Representatives two telegraphic messages, one signed by Lewis E. Parsons, and one signed by Andrew Johnson. The question is, is the evidence proposed on the part of the managers admissible?

Mr. DRAKE. I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas, 27; nays, 17; as follows:

YEAS—Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Henderson, Howard, Morgan, Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Willey, and Wilson—27.

NAYS—Messrs. Buckalew, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, McCreery, Morrill of Maine, Norton, Patterson of Tennessee, Trumbull, Van Winkle, Vickers, and Williams—17.

NOT VOTING—Messrs. Bayard, Grimes, Harlan, Hendricks, Howe, Johnson, Morton, Saulsbury, Wade, and Yates—10.

So the evidence was admitted.

Mr. Manager BUTLER. I suppose that the despatches need not be read again; they have been read once or twice.

Mr. CURTIS. No; we waive the further reading.

Mr. DOOLITTLE. Mr. Chief Justice, the hour of five having arrived, I move that the court adjourn until to-morrow at twelve o'clock.

The CHIEF JUSTICE. It is moved that the Senate sitting as a court of impeachment now adjourn until to-morrow at twelve o'clock.

The question being put, it was declared that the motion was not agreed to.

Mr. FOWLER. I call for a division.

The CHIEF JUSTICE. The result has been announced. It is too late to call for a division.

Mr. RAMSEY. The question was not understood, I think.

The CHIEF JUSTICE. If that be the case, the question will be put again.

The question being put again, the Chief Justice declared that the motion appeared to be agreed to.

Mr. CONNESS and Mr. SUMNER called for the yeas and nays, and they were ordered; and being taken, resulted—yeas, 22; nays, 22; as follows:

YEAS—Messrs. Anthony, Buckalew, Cameronr Corbett, Cragin, Davis, Dixon, Doolittle, Fowler, Frelinghuysen, Henderson, McCreery, Morrill of Vermont, Norton, Patterson of Tennessee, Ramsey, Sprague, Tipton, Trumbull, Van Winkle, Vickers, and Willey—22.

NAYS—Messrs. Cattell, Chandler, Cole, Conkling, Conness, Drake, Edmunds, Fessenden, Howard, Howe, Morgan, Morrill of Maine, Nye, Patterson of New Hampshire, Pomeroy, Ross, Sherman, Stewart, Sumner, Thayer, Williams, and Wilson—22.

NOT VOTING—Messrs. Bayard, Ferry, Grimes, Harlan, Hendricks, Johnson, Morton, Saulsbury, Wade, and Yates—10.

The CHIEF JUSTICE. On this question the yeas are 22, and the nays are 22. The Chief Justice votes in the affirmative. The Senate, sitting as a court of impeachment, stands adjourned until to-morrow at 12 o'clock.

FRIDAY, *April* 3, 1868.

The Chief Justice of the United States entered the Senate chamber at five minutes past 12 o'clock and took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives appeared and took the seats assigned them.

The counsel for the respondent also appeared and took their seats.

The presence of the House of Representatives was next announced, and the members of the House, as in Committee of the Whole, headed by Mr. E. B. Washburne, the chairman of that committee, and accompanied by the Speaker and Clerk, entered the Senate chamber, and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the minutes of the last day's proceedings.

The Secretary read the journal of the proceedings of the Senate yesterday sitting for the trial of the impeachment.

Mr. DRAKE. Mr. President, I move that the Senate take up the proposition which I offered yesterday, to amend the seventh rule, and have a vote upon it.

The CHIEF JUSTICE. The amendment will be considered as before the Senate unless objected to.

Mr. EDMUNDS. Let it be read.

The CHIEF JUSTICE. The Secretary will read the amendment.

The Secretary read as follows:

Amend the seventh rule by adding the following:

Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the members present or requested by the presiding officer, when the same shall be taken.

Mr. EDMUNDS. Mr. President, I move to strike out that part of it relating to the yeas and nays being taken upon the request of the presiding officer.

Mr. CONKLING. Not having heard the motion of the Senator from Vermont, I ask for the reading of the seventh rule as it is now, which is not before us, and which we have no means of knowing anything about.

The CHIEF JUSTICE. The Secretary will read the seventh rule.

The SECRETARY. The seventh rule is as follows:

VII. The presiding officer of the Senate shall direct all necessary preparations in the Senate chamber, and the presiding officer on the trial shall direct all the forms of proceedings while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the presiding officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance, submit any such question to a vote of the members of the Senate.

It is proposed to add the following to the rule:

Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the members present, or requested by the presiding officer, when the same shall be taken.

Mr. DRAKE. I have no objection to the amendment proposed by the honorable senator from Vermont.

The CHIEF JUSTICE. The amendment to the rule will be so modified if there be no objection. (To the chief clerk.) Read the amendment as modified.

The chief clerk read the amendment as modified, as follows:

At the end of rule seven insert:

Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the members present, when the same shall be taken.

The amendment to the rules, as modified, was agreed to.

Mr. DRAKE. I move that the rules, as now amended, be printed for the use of the Senate.

The motion was agreed to.

The CHIEF JUSTICE. The managers on the part of the House of Representatives will proceed with their evidence.

Mr. Manager BUTLER. Before putting any question to Mr. Tinker, the witness under examination at the adjournment, I will put in a single paper with the leave of the court. The paper is a "message of the President of the United States, communicating to the Senate a report of the Secretary of State, showing the proceedings under the concurrent resolution of the two houses of Congress of the 13th instant, requesting the President to submit to the legislatures of the States an additional article to the Constitution of the United States."

Mr. STANBERY. What article is that? What date?

Mr. Manager BUTLER. The fourteenth article. The document is dated June 22, 1866. It is the same article to which the despatch related. We offer it in order to show to what the despatch referred.

(The document was handed to the counsel for the respondent.)

Mr. STANBERY, (returning it.) Mr. Chief Justice, we do not see the particular relevancy of this message to any article which we are called upon to answer. However, we have no objection to the gentleman reading it.

Mr. Manager BUTLER. Mr. Clerk, will you read the message?

The chief clerk read as follows:

Message from the President of the United States, communicating to the Senate a report of the Secretary of State, showing the proceedings under concurrent resolutions of the two houses of Congress of the 13th instant, requesting the President to submit to the legislatures of the States an additional article to the Constitution of the United States.

To the Senate and House of Representatives:

I submit to Congress a report of the Secretary of State, to whom was referred the concurrent resolution of the 18th instant, respecting a submission to the legislatures of the States of an additional article to the Constitution of the United States. It will be seen from this report that the Secretary of State had, on the 16th instant, transmitted to the governors of the several States certified copies of the joint resolution passed on the 13th instant, proposing an amendment to the Constitution.

Even in ordinary times any question of amending the Constitution must be justly regarded as of paramount importance. This importance is at the present time enhanced by the fact that the joint resolution was not submitted by the two houses for the approval of the President, and that of the thirty-six States which constitute the Union eleven are excluded from representation in either house of Congress, although, with the single exception of Texas, they have been entirely restored to all their functions as States, in conformity with the organic law of the land, and have appeared at the national capital by senators and representatives who have applied for and have been refused admission to the vacant seats. Nor have the sovereign people of the nation been afforded an opportunity of expressing their views upon the important questions which the amendment involves. Grave doubts, therefore, may naturally and justly arise as to whether the action of Congress is in harmony with the sentiments of the people, and whether State legislatures, elected without reference to such an issue, should be called upon by Congress to decide respecting the ratification of the proposed amendment.

Waiving the question as to the constitutional validity of the proceedings of Congress upon the joint resolution proposing the amendment, or as to the merits of the article which it submits, through the executive department, to the legislatures of the States, I deem it proper to observe that the steps taken by the Secretary of State, as detailed in the accompanying report, are to be considered as purely ministerial, and in no sense whatever committing the Executive to an approval or a recommendation of the amendment to the State legislatures or to the people. On the contrary, a proper appreciation of the letter and spirit of the Constitution, as well as of the interests of national order, harmony, and union, and a due deference for an enlightened public judgment, may at this time well suggest a doubt whether any amendment to the Constitution ought to be proposed by Congress, and pressed upon the legislatures of the several States for final decision, until after the admission of such loyal senators and representatives of the now unrepresented States as have been or as may hereafter be chosen in conformity with the Constitution and laws of the United States.

ANDREW JOHNSON.

WASHINGTON, D. C., *June* 22, 1866.

DEPARTMENT OF STATE, *Washington, June* 20, 1866.

The Secretary of State, to whom was referred the concurrent resolution of the two houses of Congress of the 18th instant in the following words: "That the President of the United States be requested to transmit forthwith to the executives of the several States of the United States copies of the articles of amendment proposed by Congress to the State legislatures, to amend the Constitution of the United States, passed June 13, 1866, respecting citizenship, the basis of representation, disqualification for office, and validity of the public debt of the United States, &c., to the end that the said States may proceed to act upon the said article of amendment, and that he request the executive of each State that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification," has the honor to submit the following report, namely: that on the 16th instant Hon. Amasa Cobb, of the committee of the House of Representatives on Enrolled Bills, brought to this department and deposited therein an enrolled resolution of the two houses of Congress, which was thereupon received by the Secretary of State and deposited among the rolls of the department, a copy of which is hereunto annexed. Thereupon the Secretary of State, on the 16th instant, in conformity with the proceeding which was adopted by him in 1865 in regard to the then proposed and afterward adopted congressional amendment of the Constitution of the United States concerning the prohibition of slavery, transmitted certified copies of the annexed resolution to the governors of the several States, together with a certificate and circular letter. A copy of both of these communications is hereunto annexed.

Respectfully submitted.

WILLIAM H. SEWARD.

The PRESIDENT.

[Circular.]

DEPARTMET OF STATE,
Washington, June 16, 1866.

SIR: I have the honor to transmit an attested copy of a resolution of Congress, proposing to the legislatures of the several States a fourteenth article to the Constitution of the United States. The decisions of the several legislatures upon the subject are required by law to be communicated to this department.

An acknowledgment of the receipt of this communication is requested by your excellency's most obedient servant,

WILLIAM H. SEWARD.

His Excellency the GOVERNOR *of the State of* ———.

UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the annexed is a true copy of a concurrent resolution of Congress, entitled "Joint resolution proposing an amendment to the Constitution of the United States," the original of which resolution, received to-day, is on file in this department.

In testimony whereof, I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 16th day of June, A. D. 1866, and of the independence of the United States of America the ninetieth.

[SEAL.] WILLIAM H. SEWARD.

[Concurrent resolution received at Department of State, June 16, 1866.]

JOINT RESOLUTION proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both houses concurring,) That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians

not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State being twenty one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LAFAYETTE S. FOSTER,
President of the Senate pro tempore.

Attest:
EDWARD MCPHERSON,
Clerk of the House of Representatives.
J. W. FORNEY,
Secretary of the Senate.

[To which is appended the certificate of J. W. Forney, Secretary of the Senate, dated April 2, 1868, that the foregoing are true extracts from the records of the Senate.]

CHARLES A. TINKER'S examination resumed.

By Mr. Manager BUTLER:

Question. You told us yesterday you were a manager of the Western Union telegraph office. Have you from that office what purports to be a copy of a speech which was telegraphed to the country or any portion of the country, as made by Andrew Johnson on the 18th of August, 1866? if so, produce it.

Mr. DRAKE. I will state that we have not heard the question put by the honorable manager.

The CHIEF JUSTICE. The manager will be good enough to repeat the question.

Mr. Manager BUTLER. It is whether, being agent of the Western Union Telegraph Company, you have what purports to be a copy of a speech which was telegraphed over that line, made by Andrew Johnson on the 18th day of August, 1866; if so, produce it.

Answer. I have the files of the Associated Press despatches sent on that day, containing what purports to be a copy of the speech delivered by the President. [Producing a roll of manuscript.]

Q. From the course of business of the office are you enabled to state whether this was sent?

A. It has the "sent" marks put upon all despatches sent over the line.

Q. And this is the original manuscript?

A. That is the original manuscript telegraphed.

Q. By what association was this speech telegraphed?

A. By the Associated Press, by their agent in the city of Washington.

Mr. CURTIS. We must object to this, General Butler. He says it has a mark on it. He does not say he put the mark on it, or that he knows anything was done, thus far.

Mr. Manager BUTLER, (to the witness.) Can you tell me, sir, to what extent over the country the telegraphic messages sent by the Associated Press go?

A. I suppose they go to all parts of the country; I cannot state positively. They are telegraphed direct from Washington to New York, Philadelphia, and Baltimore, there addressed to the agents of the Associated Press, and from New York they are distributed through the country.

Mr. Manager BUTLER, (to the counsel for the respondent.) The witness is yours, gentlemen.

Mr. CURTIS. We will not detain you, Mr. Tinker.

Mr. Manager BUTLER. You can step down for the present, Mr. Tinker; but do not leave.

JAMES B. SHERIDAN sworn and examined.

By Mr. Manager BUTLER:

Question. Your whole name, Mr. Sheridan?

Answer. James Bernard Sheridan.

Q. What is your business?

A. I am a stenographer.

Q. Where employed?

A. At present in New York city.

Q. What was your business on the 18th of August, 1866?

A. I was a stenographer.

Q. State whether you reported a speech of the President on the 18th of August, 1866, in the East Room of the President's Mansion.

A. I did.

Q. Have you the notes taken at the time of that speech?

A. I have; [producing a note-book containing short-hand notes.]

Q. Did you take down that speech correctly as it was given?

A. I did, to the best of my ability.

Q. How long experience have you had as a reporter?

A. Some fourteen years now.

Q. Did you write out that speech at the time?

A. I wrote out a part of it.

Q. Where?

A. At the Presidential Mansion.

Q. Who was present?

A. There were several reporters present—Mr. Clephane, Mr. Smith.

Q. What Clephane? Do you remember his first name?

A. James, I think, was his first name.

Q. What Mr. Smith?

A. Francis H., I believe, is his name.

Q. The official reporter of the House?

A. At that time, I believe, he was connected with the House.

Q. Who else?

A. I think Colonel Moore was in the room part of the time; I do not know that he was in all the time.

Q. What Colonel Moore?

A. The President's private secretary, William G.

Q. After it was written out, what, if anything, was done with it?

Mr. CURTIS. He says he wrote a part.

Mr. Manager BUTLER. The part that you wrote out?

A. I do not know. I think Mr. Moore took it. I was very sick at the time, and did not pay much attention to what was going on.

Q. You think Mr. Moore took it?

A. I think either he or Mr. Smith took it, as I wrote out my share of it.

We divided it among us; Mr. Clephane, Mr. Smith and I wrote out the speech, I think.

Q. Look at that manuscript, [handing to the witness the manuscript produced by C. A. Tinker,] and see whether you recognize your handwriting.

The WITNESS, (having examined the manuscript.) No, sir; I do not recognize any of the writing here as mine.

Q. Have you since written out from your notes any portion of the speech as you reported it?

A. I wrote out a couple of extracts from it.

Q. (Handing a paper to the witness.) Is that your writing?

A. Yes, sir.

Q. State whether what you hold in your hand is a correct transcript of that speech made from your notes.

A. It is.

Q. When was that written?

A. It was written when I appeared before the board of managers.

Q. Will you have the kindness to put your initials upon it? (The witness marked it J. B. S.)

Mr. Manager BUTLER, (to the counsel for the respondent.) The witness is yours, gentlemen.

Mr. STANBERY. Have you got through with this witness?

Mr. Manager BUTLER. I said the witness was yours, gentlemen.

Mr. STANBERY. Is this all you expect of this witness?

Mr. Manager BUTLER. All at present, and we may never recall him.

Cross-examined by Mr. EVARTS:

Q. You have produced a note-book of original stenographic report of a speech of the President?

A. Yes, sir.

Q. Is it of the whole speech?

A. Of the whole speech.

Q. Was it wholly made by you?

A. By me; yes, sir.

Q. How long did the speech occupy in the delivery?

A. Well, I suppose some twenty or twenty-five minutes.

Q. By what method of stenographic reporting did you proceed on that occasion?

A. Pittman's system of phonography.

Q. Which is, as I understand, reporting by sound, and not by sense?

A. We report the sense by the sound.

Q. I understand you report by sound wholly?

A. Signs.

Q. And not by memory of or attention to sense?

A. No good reporter can report unless he always pays attention and understands the sense of what he is reporting.

Q. That is the very point I wish to arrive at, whether you are attending to the sound and setting it down in your notation, or whether you are attending to the sense and setting it down from your memory or attention to the sense.

A. Both.

Q. Both at the same time?

A. Yes, sir.

Q. Your characters are arbitrary, are they not; that is, they are peculiar to your art?

A. Yes, sir.

Q. They are not letters?

A. No, sir.

Q. Nor words?
A. We have word signs.
Q. But generally sound signs?
A. We have signs for sounds, just as the letters of the alphabet represent sounds.
Q. But not the same?
A. No, sir.
Q. This transcript that you made of a portion of your report for the use of the committe was made recently, I suppose?
A. Yes, sir; a few weeks ago.
Q. Now, sir, what in the practice of your art is the experience as to the accuracy of transcribing from these stenographic notes after the lapse of a considerable period of time?
A. Perhaps I can illustrate better by the present case—this report which I made here—the extract I gave when I was called before the managers, as I had accompanied the President on his tour. I did not know what they wanted me for; and when they told me to turn to this speech I did not even know that I had the notes of it with me; but I turned to the speech, and found it there in the book, and I read off, as they requested I should, the extracts which the managers for the prosecution handed me, which I identified.
Q. You read, then, from your stenographic notes?
A. Yes, sir.
Q. And it was taken down?
A. The reporter of the managere, I believe, took it down; but I afterward wrote it out for them.
Q. You do not make a sign for every word?
A. Almost every word. "Of the" we generally drop, and indicate that by putting the two words closer together. Of course, we have rules governing us in writing.
Q. That is, you have signs belonging to every word, excepting when you drop the particles?
A. Yes, sir.
Q. But not, as a matter of course, a sign that is the representative of a whole word?
A. Yes, sir; we have signs representing words.
Q. Some signs?
A. Yes, sir.
Q. For instance, for the word "jurisprudence," you have no one sign that represents it?
A. No, sir; I should write that "j-r-s-p."
Q. And that is an illustration of your course of proceeding, is it not?
A. Yes, sir.
Q. Are these letters that you thus use, or only signs that represent letters?
A. Yes, sir.
Mr. EVARTS, (to the witness) That is all.
Mr. Manager BUTLER. That is all for the present; remain within call.

JAMES O. CLEPHANE sworn and examined.

By Mr. Manager BUTLER:

Q. What is your business?
A. I am at present deputy clerk of the supreme court of the District of Columbia.
Q. What was your employment on the 18th of August, 1866?
A. I was then secretary to Governor Seward, Secretary of State.
Q. Are you a phonographic reporter?
A. I am.

Q. How considerable has been your experience?

A. Some eight or nine years.

Q. Were you employed on the 18th of August, 1866, to make a report of the President's speech in reply to Mr. Johnson?

A. I was. I was engaged in connection with Mr. Smith for the Associated Press, and also for the Daily Chronicle at Washington.

Q. Did you make a report?

A. I did.

Q. Where was this speech made?

A. In the East Room of the White House.

Q. You say it was in reply to Mr. Johnson?

A. It was in reply to Hon. Reverdy Johnson.

Q. State partially who were present?

A. There were a great many persons present—the committee of the convention. I noticed among the prominent personages General Grant, who stood beside the President during the delivery of the speech. Several reporters were present—Mr. Murphy, Mr. Sheridan, Mr. Smith, and some others.

Q. Were any of the cabinet officers present?

A. I do not recollect whether any of them were present or not.

Q. Did you report that speech?

A. I did.

Q. What was done with that report? State all the circumstances.

A. With regard to the Associated Press report I will state that Colonel Moore, the President's private secretary, desired the privilege of revising it before publication; and, in order to expedite matters, Mr. Sheridan, Mr Smith, and myself united in the labor of transcribing it; Mr. Sheridan transcribed one portion, Mr. Smith another, and I a third. After it was revised by Colonel Moore it was then taken and handed to the agent of the Associated Press, who telegraphed it throughout the country.

Q. Look at that roll of manuscript lying before you and see if that is the speech that you transcribed and Moore corrected.

A. (Having examined the manuscript produced by C. A. Tinker.) I will state here that I do not recognize any of my writing. It is possible I may have dictated to a long-hand writer on that occasion my portion, though I am not positive in regard to that.

Q. Who was present at the time of the writing out?

A. Mr. Smith, Mr. Sheridan, and Colonel Moore, as far as I recollect.

Q. Do you know Colonel Moore's handwriting?

A. I do not.

Q. Did you send your report to the Chronicle?

A. I would state that Mr. McFarland, who had engaged me to report for the Chronicle, was unwilling to take the revised report of the President's speech as made by Colonel Moore. He desired to have the speech as it was delivered, as he stated, with all its imperfections, and, as he insisted upon my rewriting the speech, I did so, and it was published in the Sunday Morning Chronicle of the 19th.

Q. Have you a copy of that paper?

A. I have not.

Q. After that report was published in the Chronicle of Sunday morning, the 19th, did you see the report?

A. I did, sir, and examined it very carefully, because I had a little curiosity to see how it would read under the circumstances, being a literal report, with the exception of a word, perhaps, changed here and there.

Q. You say with the exception of a word changed here and there; how?

A. Where the sentence was very awkward, and where the meaning was obscure, doubtless in that case I made a change. I recollect doing it in one or

two instances, though I may not be able to point them out just now. If I had my original notes I could do so.

Q. With what certainty can you speak as to the Chronicle's report being an accurate one?

A. I think I can speak with certainty as to its being accurate, a literal report, with the exception that I have named—perhaps a word or two here and there changed, in order to make the meaning more intelligible, or to make the sentence a little more round.

Q. Will you give us an illustration of that change?

Mr. EVARTS. Some instance.

Mr. Manager BUTLER. Yes, some instance.

Mr. STANBERY. He said he could not recollect.

The WITNESS. I will state that my attention was called to a particular instance; I think it was a day or two after. Some correspondent, learning that the Chronicle had published a *verbatim* report, had carefully scrutinized it—some correspondent who had listened to the delivery of the speech; and he wrote to the Chronicle a complaint of its not being so, as, in one instance, there was an expression of "you and I has saw," or something of that sort, and that sentence, of course, was corrected in the report published in the Chronicle. It appeared in the notes "you and I has saw," as this correspondent stated.

By Mr. Manager BUTLER:

Q. How was it corrected in the Chronicle?

A. "You and myself have seen," or something to that effect; I do not now remember.

Mr. Manager BUTLER. I am informed, Mr. President, there being two manuscripts, that Mr. Tinker has given me the one which was written out at length as a duplicate, and not the original, as I had supposed, and I shall have to ask to bring him on again. I have sent for him for that purpose. He will be here in a moment. This witness is yours, gentlemen, (to the counsel for the respondent.)

Cross-examined by Mr. EVARTS:

Q. You acted upon the employment of the Associated Press?

A. Yes, sir; in connection with Mr. Smith.

Q. You were jointly to make a report, were you?

A. We were to take notes of the entire speech, each of us, and then we were to divide the labor of transcribing.

Q. Now, did you take phonographic notes of the whole speech?

A. I did.

Q. Where are your phonographic notes?

A. I have searched for them, but cannot find them.

Q. Now, sir, at any time after you had completed the phonographic notes did you translate or write them out?

A. I did.

Q. The whole?

A. The whole speech.

Q. Where is that translation or written transcript?

A. I do not know, sir. The manuscript, of course, was left in the Chronicle office. I wrote it out for the Chronicle.

Q. You have never seen it since, have you?

A. I have not.

Q. Have you made any search for it?

A. I have not.

Q. And these two acts of yours, the phonographic report and the translation or writing out, are all that you had to do with the speech, are they?

A. Yes, sir.

Q. Now, you say that subsequently you read a printed newspaper copy of the speech in the Washington Chronicle?

A. Yes, sir.

Q. When was it that you read that newspaper copy?

A. On the morning of the publication, August 19, Sunday morning.

Q. Where were you when you read it?

A. I presume I was at my room. I generally saw the Chronicle there.

Q. And you there read it?

A. Yes, sir.

Q. From this curiosity that you had?

A. Yes. I read it more carefully because of that reason.

Q. Had you before you your phonographic notes, or your written transcript from them?

A. I had not.

Q. And had not seen and have never seen them in comparison with the newspaper copy before you?

A. No, sir.

Re-examined by Mr. Manager BUTLER:

Q (Handing to the witness a bound volume of the Washington Daily Chronicle.) Have you before you a copy of the Sunday Morning Chronicle of the 19th of August, 1866?

A. I have.

Q. Look upon the page before you and see if you can find the speech as you reported it.

A. I find it here, sir.

Q. Look at that speech, look at it a little carefully, and tell me whether you have any doubt that that is a correct report, a *verbatim* report of the speech of Andrew Johnson on that occasion; and if so, what ground have you for doubt?

Mr. EVARTS. Mr. Chief Justice, we object to that as a mode of proving the speech. It is apparent that there is a report of this speech, and that it has been written out, and that is the best and most trustworthy evidence of the actual speech as made. In all legal proceedings we are entitled to that degree of accuracy and trustworthiness which the nature of the case admits; and whenever evidence of that degree of authenticity is presented, then, for the first time, will arise the consideration of whether the evidence is competent and should be received. Now, it is impossible to contend, upon the testimony of this witness, as it stands at present, that he remembers the speech of the President so that he can produce it by recital, or so that he can say upon any memorandum of his own shown him (for none is shown) that from memory he can say it is the speech. What is offered? The same kind of evidence, and that alone, which would grow out of some person who heard the President deliver the speech, and subsequently read in the Chronicle the report of it, that he thinks that report was a true statement of the speech; for this witness has told us distinctly that reading this speech from curiosity, to see how it would appear when reproduced, without the ordinary guarantees of accuracy, he had neither his original notes nor his written transcript, and he read the newspapers as others would read it, but with more care, from this degree of curiosity which he had. If the true character of a production of this kind, as imputed to its author, is to be regarded as important, we insist that this kind of evidence concerning a newspaper report of it is not admissible.

Mr. Manager BUTLER. Mr President, if I understand there is no question of degree of evidence. We must take the business of the world as we find it, and must not burrow ourselves and insist that we have awakened to matters as they were a hundred years ago. The art of stenography and stenographic writing

and phonography has progressed to a point which makes us rely upon it in all the business of life. There is not a gentleman of this Senate who does not rely upon it every day. There is not more than one member of the Senate who in this trial is taking notes of the evidence. Why? Because you rely upon the busy fingers of the reporter who sits by my side to give you a transcript of it, upon which you must judge. Therefore, in every business of life, ay, in the very business of this court, we rely upon stenography.

Now, this gentleman says that he made a stenographic report of that speech; that that was jointly made up by himself, Mr. Sheridan, and Mr. Smith; that his employer not being satisfied with that joint report, which was the President's utterance distilled through the alembic of Colonel Moore's critical discrimination, he drew out with care an exact literal transcript under the chiding of his employer, and for a given purpose; and that the next day, having curiosity to see what would be the difference, and how the President of the United States would appear if put to paper literally, he examined that speech in the Chronicle, and then with the matter fresh in his mind, only a few hours intervening, with his attention freshly called to it, he said then he knew that that was a correct copy; that that was the correct speech.

Now, the learned counsel say the manuscript is the better evidence. If there was any evidence that that manuscript had been preserved perhaps we might be called upon to produce it in some technicality of criticism of law as administered in a very technical manner. But who does not know the ordinary course of business, and, if that is to be disputed, I will ask the witness; who does not know that the ordinary course of business in a newspaper office, after such manuscripts are got through with, is to throw them into the waste-paper basket; they are not preserved. Therefore I act upon the usual and ordinary and common understanding of the business of life as all courts must act upon it.

Then this is a question for the witness, and he testifies. The question that was objected to, the one we are discussing, is, looking at that report, from your knowledge of the report, having twice written it out, portions of it certainly, and from having seen it the next morning, with your curiosity awakened, can you tell the Senate whether that is a correct report? Thereupon the learned counsel for the President gets up and says he cannot. How does the learned counsel for the President know that? How does he know that Mr. Clephane is not one of those gentleman who, in his profession, having once read a speech, can repeat it the next day?

The difficulty is that I do not see how the objection arises. The question I put to the witness is a plain one: "Sir, there is what I say is a copy of that speech, is a transcript of that speech; from your knowledge, having heard it, having written it down in short-hand, having written it once for correction by the President's private secretary, and then having rewritten it again from your notes for publication in the Chronicle, and then having examined it immediately after publication—from all these sources of knowledge can you say that that is a correct copy?" Thereupon the counsel for the President says you cannot. How does he know that the witness cannot repeat every word of it?

The difficulty is the objection does not apply; and I should have contented myself with this statement except that, once for all, I propose to put before the Senate, so as not ever to have to argue it again in the course of putting in this class of testimony, the argument as to stenographic reporting. Now, allow me to state, once for all, two authorities upon this point, because I am not going to take the time of the Senate with arguing these questions hereafter, for by doing so I should play into the hands of this delay which has been so often attempted here. In O'Connell's case, to prove his speeches on that great trial, the newspapers were introduced; and no trial was ever fought with more sharpness or bitterness—newspapers were introduced containing Mr. O'Connell's speeches, or what purported to be his speeches, and the only proof deduced was that they

had been properly stamped and issued from the office, and the court held that Mr. O'Connell, allowing those speeches to go out without contradiction for months, must be held responsible for them to the public.

In the trial of James Watson, for high treason, reported in 32 State Trials, this question arose, and the question was whether a copy might be used, that copy made even of partially obliterated short-hand notes.

Mr. Attorney General, (to Mr. Dowling.) You state that you took in short-hand the address of Mr. Watson to the people?

A. I did.

Q. Have you your short-hand notes here?

A. I have.

Q. Be so good as to read to my lords and the jury what it was he said.

Mr. Wetherell. Pray, Mr. Short-hand Writer, when did you take that note?

A. I took it on the 2d of December, in Spafields.

Q. When did you copy it out?

A. I copied it out the same evening.

Q. Is that the copy you made that evening?

A. No; it is not. This is the short-hand note I took, and this is a literal copy. The short-hand note I took with a pencil, and in the crowd, and, perhaps, having been taken six months back, it may be somewhat defaced; but I can read the short-hand note with a little difficulty, though certainly I could read the transcript with more ease. I will read the short-hand note if it is wished.

Mr. Justice Abbott. You made that transcript the same evening?

A. I made this transcript yesterday. I made another transcript the same evening.

And he was allowed to read his transcript. While this authority is not exactly to the point of difference raised here, I say I put it once for all upon the question, because I have heard a cross-examination as to the merits of Pitman's system of short-hand writing as if we were to have it put in controversy here, that the whole system of stenography was an unavailable means of furnishing information. Therefore my present proposition is the right to put this question: Mr. Witness, looking at that, can you tell me whether that is a correct transcript of the speech made by the President?

Mr. EVARTS. The learned manager is quite correct in saying that I do not know but that this witness can repeat from memory the President's speech; and whenever he offers him as a witness so to do I will not object. It is entirely competent for a person who has heard a speech to repeat it under oath, he asserting that he remembers it and can do so, and whenever Mr. Clephane undertakes that feat it is within the competency of evidence. What success he will have in it we shall determine when that experiment has been tried. That method of evidence from this witness is not attempted, but another form of trustworthy evidence is sought to be made competent; that is, that by his notes, and through his transcript of those notes, he is able to present, under his present oath and belief in his accuracy and competency as a reporter, this form of evidence. Whenever that is attempted we shall make no objection to that as trustworthy.

But when the managers seek to avoid responsibility and accuracy through the oath of the witness applied in either form, and seek to put it, neither upon present memory nor upon his own memoranda, but upon the accuracy with which he has followed or detected inaccuracies in a newspaper report made the subsequent day, and thereupon to give credit and authenticity to the newspaper report upon his wholesale and general approval of it, then we must contend that the sacred right of freedom of speech is sought to be invade by overthrowing certainly one of the responsible and important protections of it; and that the rule requiring the oath of somebody who heard and can remember, or, according to the rules of evidence, preserved the aids and assistances by which he presently in the court of justice may speak, should be adhered to. And we are not to be told that it is technical to maintain in defence of what has been regarded as one of the commonest and surest rights in any free country, freedom of

speech, that whenever it is drawn in question it shall be drawn in question upon the surest and most faithful evidence.

The learned manager has said that you are familiar, as a part of the daily routine of your congressional duties, with the habit of stenographic reporting and reproduction in the newspapers, and that you rely on it habitually; and I may add rely on it habitually to be habitually misled. Correction is the first demand of every public speaker—correction and revision, in order that this apparatus, depending upon the ear and the sudden strokes of the ready writer, may not be the firm judgment against him of what was said by him. Now when sedulously this newspaper has undertaken that no such considerations o' accuracy shall be afforded to the President of the United States in respect o' this speech to be spread before the country, but that express orders shall b given that it shall be reported with all its imperfections——

Mr. Manager BUTLER. I pray correction, sir. I have not sedulously done that; but offer it that the speech of the President's private secretary should not go before the country.

Mr. EVARTS. The instructions of the editor were that it should be reported "with all its imperfections" as caught by the short-hand writer, without the opportunity of that revision which every public speaker at the hustings or in the halls of debate demands as a primary and important right. Whenever, therefore, Mr. Clephane shall rise and speak from memory the speech of the President here, swearing to its accuracy, or whenever he shall produce his notes and their transcript as in Watson's case, some foundation for the proof of the speech will have been laid.

Mr. Manager BUTLER. Stand down, Mr. Clephane, for a moment. I will offer this directly. Now I will call Mr. Tinker.

CHARLES A. TINKER recalled.

The CHIEF JUSTICE. The witness states that he desires to make an explanation. He will make it.

The WITNESS. Yesterday when called upon the stand I was attending to my duties in charge of the telegraph office in the gallery; I had not a moment's notice that I was to be called. I then telegraphed to my office for the documents contained in packages that were there, which I had been previously examined about before the managers. These documents were brought to me by a boy from the office, and I put them upon the stand. Last night when taken from the stand I deposited them in the office of the Sergeant-at-arms, and this morning brought one of these packages upon the stand, and I opened it here, supposing it to be the one on which I was to be examined. As I saw that the reporters were in trouble about it, I thought I had made a mistake, and I consequently went to my office after Mr. Clephane came upon the stand, and I have now the speech of the President telegraphed by the agent of the Associated Press on the 18th of August, 1866.

Mr. STANBERY. Mr. Tinker, what document was that General Butler handed you?

Answer. This is one of the documents.

Mr. STANBERY. Is that the speech of the 18th of August at all?

Answer. This is not the speech of the 18th of August.

Mr. Manager BUTLER. That is the 22d of February speech, is it? [Laughter.]

Mr. STANBERY. No matter what it is.

The WITNESS. I have not looked to see what this is.

Mr. Manager BUTLER. You will find out what that document is in good time.

Mr. STANBERY. You had better put it in "in good time."

Mr. Manager BUTLER. It was simply a mistake. (To the witness.) Now give me the document I asked for.

The WITNESS. Yes, sir. (Producing a roll of manuscript.)

By Mr. Manager BUTLER:

Q. Is this the document you supposed you were testifying about before?

A. This is.

Q. Do you give the same testimony about that that you did——

Mr. CURTIS and Mr. STANBERY. That will not do. Let us have his testimony about this.

Mr. Manager BUTLER. Well, sir, we will give all the delay possible. (To the witness.) Now, sir, will you tell us whether that was sent through the Associated Press?

A. It bears the marks of having been sent, and is filed with their despatches of that date.

Q. From the course of business of your office, have you any doubt that it was so sent?

A. None whatever.

Mr. CURTIS. We object to that. If the witness can say it was sent from any knowledge he has, of course he will say so. He cannot reason on facts.

Mr. Manager BUTLER, (to the witness.) After that speech was sent, if it was, did you see it published in the Associated Press reports?

A. I cannot state positively; I think I did.

Q. Was that brought to your office for the purpose of being transmitted, whether it was or not?

A. I did not personally receive it; but it is in the despatches of the Associated Press sent on that day.

Mr. Manager BUTLER. That is all at present. Now we will recall Mr. Sheridan.

JAMES B. SHERIDAN recalled:

By Mr. Manager BUTLER:

Question. (Handing to the witness the manuscript last produced by Mr. Tinker.) Now, examine that manuscript and see whether you find any of your handwriting in it.

Answer, (having examined the manuscript.) I see my writing here.

Q. What is it you have there?

A. I have a report of the speech made by the President on the 18th of August.

Q. In what year?

A. 1866.

Q. Have you ever seen Mr. Moore write?

A. A good many years ago, when he was reporter for the Intelligencer and I reported for the Washington Union, and we had seats together.

Q. He was a reporter for the Intelligencer, was he?

A. Yes, sir.

Q. Are there any corrections made in that report?

A. Yes, sir.

Q. Do you see any corrections there?

A. Yes, sir.

Q. Is that the manuscript which was prepared in the President's office?

A. I think it is; I am pretty certain it is.

Q. Have you any doubt in your mind?

A. Not the least.

Q. Was the President there to correct it?

A. No, sir.

Q. Then he did not exercise that great right of revision there, did he, to your knowledge?

A. I did not see the President after he left the East Room.

Q. Do you know whether Colonel Moore took any memoranda of that speech?

A. I do not. There was quite a crowd there. I had no opportunity of observing.

Q. Will you pick out and lay aside the portions that are in your handwriting?

(The witness proceeded to do so.)

Mr. Manager BUTLER. I will give you time to do that in a moment. (To the counsel for the respondent.) Anything further with this witness?

No response.

Q. Do you think you know all that are in your handwriting?

A. Yes, sir.

(Selecting certain sheets and handing them to Mr. Manager BUTLER.)

Mr. EVARTS. We will now put a few questions.

Cross-examined by Mr. EVARTS:

Q. You have selected the pages that are in your handwriting and have them before you. How large a proportion do they make of the whole manuscript?

A. I can hardly tell. I have not examined the rest.

Q. Well, no matter; was this whole manuscript made as a transcript from your notes?

A.. This part that I wrote out.

Q Was the whole?

A. No, sir.

Q. The whole was not made from your notes?

A. No, sir; Mr. Clephane wrote his part from his notes, and Mr. Smith from his.

Q. Then it is only the part that you now hold in your hands that was produced from the original stenographic notes that you have brought in evidence here?

A. That is all.

Q. Did you write it out yourself from your stenographic notes, following the latter with your eye, or were your notes read to you by another person?

A. I wrote out from my own notes, reading my notes as I wrote.

Q. Have you made any subsequent comparison of the manuscript now in your hands with your stenographic notes?

A. I have not.

Q. When was this completed on your part?

A. A very few minutes after the speech was delivered.

Q. And what did you do with the manuscript after you had completed it?

A. I hardly know. I sat at the table there writing it out, and I think Mr. Smith took it as I wrote out; I am not certain about that.

Q. That ended your connection with it?

A. That ended my connection with it. I left for New York the same night.

Q. I desire that you should leave your original stenographic notes as a part of the case subject to our disposal?

A. Certainly.

Mr. Manager BUTLER. Put your initials upon these papers.

The WITNESS. I will do so.

(The notes were marked "J. B. S.")

Mr. Manager BUTLER. One of my associates desires me to put this question which I suppose you have answered before: whether that manuscript which you have produced in your handwriting was a true manuscript of your notes of that speech?

A. It was. I will not say it was written out exactly as it was spoken.

Q. What is the change, if any?

A. I do not know that there were any changes, but frequently in writing out

we exercise a little judgment. We do not always write out a speech just as it is delivered.

Q. Is that substantially a true version of what the President said?

A. It is undoubtedly.

FRANCIS H. SMITH sworn and examined.

By Mr. Manager BUTLER:

Question. Are you the official reporter of the House of Representatives?

Answer. I am, sir.

Q. How long have you been so engaged?

A. In the position I now hold since the 5th of January, 1865.

Q. How long have you been in the business of reporting?

A. For something over eighteen years.

Q. Were you employed, and if so by whom, to make a report of the President's speech in August, 1866?

A. I was employed at the instance of one of the agents of the Associated Press at Washington.

Q. Who aided in this report?

A. Mr. James O. Clephane and Mr. James B. Sheridan.

Q. Did you make such report?

A. I did.

Q. Have you got your short-hand notes?

A. I have.

Q. Here?

A. Yes, sir.

Q. Produce them.

A. I will do so, (producing a note-book.)

Q. After you had made your short-hand report, what did you do then?

A. In company with Mr. Clephane and Mr. Sheridan, I retired to one of the offices of the Executive Mansion and wrote out a portion of my notes.

Q. What did the others do?

A. The others wrote out portions of the same speech.

Q. What was done with the portion that you wrote?

A. It was delivered to Colonel Moore, private secretary of the President, sheet by sheet as written by me, for revision.

Q. How came you to deliver it to Colonel Moore?

A. I did it at his request.

Q. What did he do with it?

A. He read it over and made certain alterations.

Q. Was the President present while thatwas being done?

A. He was not.

Q. Had Colonel Moore taken any memoranda of the speech, to your knowledge?

A. I am not aware whether he had or not.

Q. Did Colonel Moore show you any means by which he knew what the President meant to say, so that he could correct the speech?

A. He did not. He stated to me prior to the delivery of the speech that he desired permisssion to revise the manuscript, simply to correct the phraseology, not to make any change in any substantial matter.

Q. (Handing to the witness the manuscript last produced by C. A. Tinker,) Will you look and see whether you can find any portion of the manuscript that you wrote out there?

A. I recognize some portion of it.

Q. Separate it as quickly as you can.

(The witness separated the sheets written by him.)

A. I find what I wrote in two different portions of the speech.

Q. Have you now got the portions, occurring, you say, in two different portions of the speech, which you wrote out?

A. I have.

Q. Are there any corrections on that manuscript?

A. There are quite a number.

Q. In whose handwriting, if you know?

A. In the handwriting of Colonel Moore, so far as I see.

Q. Have you written out from your notes since the speech?

A. I have.

Q. (Handing a manuscript to the witness.) Is that it?

A. It is.

Q. Is that speech, as written out by you, a correct transcript of your notes?

A. (Having examined the manuscript.) It is with the exception of two important corrections, which I handed to the committee a day or two afterward. I do not see them here.

Q. Do you remember what they were?

A. In the sentence "I could express more by remaining silent and letting silence speak what I should and what I ought to say," I think the correction was "and letting silence speak and you infer," the words "you infer" having been accidentally omitted. The other I do not see; it is the insertion of the word "overruling" before the words "unerring Providence."

Cross-examined by Mr. EVARTS:

Q. Is the last paper that has been shown you a transcript of the whole speech?

A. Of the entire speech.

Q. And from your notes exclusively?

A. From my notes exclusively.

Q. Have you any doubt that the transcript that you made at the Executive Mansion from your notes was correctly made?

A. I have no doubt the transcript I made from my notes at the Executive Mansion was substantially correctly made. I remember that, having learned that the manuscript was to be revised, I took the liberty of making certain revision myself as I went along, correcting ungrammatical expressions and changing the order of words in sentences in certain instances—corrections of that sort.

Q. Those two liberties, then, you took in writing out your own notes?

A. Yes, sir.

Q. Have you ever made any examination to see what changes you thus made?

A. I have not.

Q. And you cannot point them out?

A. I cannot now point them out.

Q. You have made a more recent transcript from your notes?

A. Yes, sir.

Q. Did you allow yourself the same liberties in that?

A. I did not.

Q. That, then, you consider a transcript of the notes as they are?

A. A literal transcript of the notes as they are, and as they were taken.

Q. Do you report by the same system of sound, phonography, as it is called, that was spoken of by Mr. Sheridan?

A. I hardly know what system I do report by. I studied short-hand when I was a boy going to school, a system of phonography as then published by Andrews & Boyle, which I have used for my own purposes since then, and made various changes from year to year.

Q. Can you phonographic reporters write out from one another's notes?

A. I do not think any one could write out my notes except myself.

Q. Can you write out anybody else's?

A. Probably not, unless written with a very great degree of accuracy and care.

JAMES O. CLEPHANE recalled.

By Mr. Manager BUTLER:

Q. (Handing to the witness a part of the manuscript last produced by C. A. Tinker.) You have already told us that you took the speech and wrote it out. Is what I now hand you the manuscript of your writing out?

A. It is.

Q. Has it any corrections upon it?

A. It has quite a number.

Q. Who made those?

A. I presume they were made by Colonel Moore. He took the manuscript as I wrote it. I cannot testify positively as regards his handwriting. I am not sufficiently familiar with it.

Q. Was that manuscript as you wrote it a correct copy of the speech as made?

A. I cannot say that I adhered as closely to the notes in preparing this report as I did in regard to the Chronicle.

Q. Was it substantially accurate?

A. It was.

Q. Did you in any case change the sense?

A. Not at all, sir; merely the form of expression.

Q. And the form of expression, why?

A. Oftentimes it tended to obscure the meaning, and for that reason it was changed; or the sentence, perhaps, was an awkward one, and it was changed to make it more readable.

Cross-examined by Mr. EVARTS:

Q. What rules of change did you prescribe to yourself in the deviations you made from your phonographic notes?

A. As I have said, I merely changed the form of expression, in order, perhaps, to make the meaning more intelligible or the sentence less awkward.

Q. That is to say, when the meaning did not present itself to you as it should, you made it clearer, did you?

A. I will state, sir, Mr. Johnson is in the habit of using quite often——

Q. I do not ask you about Mr. Johnson. What I asked you was this: When the meaning did not present itself to you as it should, you made it clearer?

A. I do not know that I in any case altered the meaning.

Q. But you made the meaning clearer?

A. I endeavored to do so.

Q. And you did, did you not?

A. I cannot say whether I succeeded or not.

Q. That was one rule; what other rule of change did you allow yourself?

A. No other.

Q. No grammatical improvement?

A. Yes, sir; I may say, if you will allow me, that very often the singular verb was used where perhaps the plural ought to be.

Q. You corrected, then, the grammar?

A. Yes, sir; in some instances.

Q. Can you suggest any other rule of change?

A. I cannot at the present time.

WILLIAM G. MOORE sworn and examined.

By Mr. Manager BUTLER:

Q. What is your rank?

A. I am a paymaster in the army with the rank of major.

Q. When were you appointed?
A. On the 14th day of November, 1866.
Q. Did you ever pay anybody?
A. No, sir; not with government funds. [Laughter.]
Q. What has been your duty?
A. I have been on duty at the Executive Mansion.
Q. What kind of duty?
A. I have been acting in the capacity of secretary to the President.
Q. Were you so acting before you were appointed?
A. I was.
Q. How long had you acted as secretary before you were appointed major?
A. I was directed to report to the President in person in the month of November, 1865.
Q. Had you been in the army prior to that time?
A. I had been a major and assistant adjutant general.
Q. In the War Department?
A. Yes, sir.
Q. Did you hear the President's speech of the 18th of August, 1866?
A. I did.
Q. Did you take any notes of it?
A. I did not.
(Placing the manuscript last produced by Mr. C. A. Tinker before the witness.)
Q. Look at the manuscript which lies before you and see whether you corrected it. (The witness proceeded to examine the manuscript.) I do not care whether you corrected it all; did you correct any portion of it?
A. Yes, sir.
Q. Where were the corrections made?
A. In an apartment in the Executive Mansion.
Q. Who was in the apartment when you made the corrections?
A. Messrs. Francis H. Smith, James B Sheridan, James O. Clephane, and, I think, Mr. Holland, of the Associated Press.
Q. Had you any memorandum from the President by which to correct it?
A. None, sir.
Q. Do you claim to have the power of remembering, on hearing a speech, what a man says?
A. I do not, sir.
Q. Do you not know that the President, on that occasion, had been exercising his great constitutional right of freedom of speech?
The WITNESS. Will you repeat that question, if you please?
Q. Did you not know that on that occasion the President had been exercising his great constitutional right of freedom of speech?
Mr. CURTIS. That puts a question of law to the witness, and I do not think it is admissible.
Mr. Manager BUTLER. I am not asking a question of law, but a question of fact. (To the witness.) Did you not so understand it?
A. I so understood it, sir.
Mr. STANBERY. Then we are to understand the fact that it was constitutional to exercise freedom of speech?
Mr. Manager BUTLER. In the idea of the President and this witness, he thinks it is constitutional to exercise it in this way. It may be constitutional, but I think not decent.
Mr. STANBERY. That is a matter of taste.

By Mr. Manager BUTLER:

Q. Now, then, sir, how dare you correct the President's great constitutional right of freedom of speech without any memorandum to do it by?
A. It was an authority I assumed.

Q. How came you to assume the authority to exercise this great constitutional right for the President?

A. Well, that is a difficult question to answer.

Mr. EVARTS. It ought to be a difficult one to ask.

By Mr. Manager BUTLER:

Q. Why should you assume the authority to correct his speech?

A. My object was, as the speech was an extemporaneous one, simply to change the language, and not change the substance.

Q. Did you change the substance anywhere?

A. Not that I am aware of.

Q. Are there not pages there where your corrections are the most of it?

A. I am not aware of that fact.

Q. Look and see if there is not a larger number of corrections on some pages?

A. (After examining the manuscript.) In the hasty examination that I have made, I find no one page—perhaps there may be a single exception—where my writing predominates. There is a page in which several lines are erased; but whether or not I erased them I cannot say.

Q. Do you know of anybody else that had anything to do with revising it?

A. No, sir.

Q. Did you do that revision by the direction of the President?

A. I did not, sir, so far as I can recollect.

Q. He did not direct you?

A. No, sir.

Q. Did you say to Mr. Smith then and there that you did it by the direction of the President?

A. Not that I remember.

Q. Do you mean to say that you made these alterations and corrections upon the very solemn occasion of this speech without any authority whatever?

A. That is my impression.

Q. After you made the revision did you show it to the President?

A. No, sir.

Q. Did you ever tell him that you had taken that liberty with his constitutional rights?

A. I cannot recall the fact that I did.

Q. What did you do with the manuscript?

A. The manuscript, as it was revised, was handed, I think, to the agent of the Associated Press, who despatched it from the office in order that it might be published in the afternoon papers.

Q. Was it published in the papers?

A. I think it was.

Q. Have you any doubt about that?

A. I cannot say positively, as I have not examined the papers. That was the object.

Q. Was the speech—whether correctly or not I do not ask—but was that speech, purporting to come from the President, published in the Associated Press despatches?

A. I do not know. I refer more to the city papers than to those to which the Associated Press furnished information.

Q. Was the same speech published in the Intelligencer?

A. The speech was published in the Intelligencer.

Q. Is that paper taken at the Executive Mansion?

A. It is.

Q. Was it at that time?

A. It was at that time.

Q. Seen by the President?

A. Yes, sir; I presume it was.

Q. Did he ever chide you, or say anything to you that you had done wrong in the correction, or had misrepresented him in this speech at all?

A. He did not.

Q. Even down to this day?

A. He has never chided or rebuked me for the correction of a speech.

Q. Has he ever said there was anything wrong about it?

A. I have never heard him say so.

No cross-examination.

Mr. Manager BUTLER. I now propose, with your honor's leave and the Senate's, to read the speech as corrected by Colonel Moore, unless that is objected to. If that is objected to I propose to put in evidence the report of Mr. Smith, the Associated Press report, and the report of the Chronicle, reading one only. You are aware, sir, that the President complains in his answer that we do not give the whole speech. We have now brought all the versions that we can conveniently of his whole speech, and if not objected to we will put them all in. Otherwise I will only put in the extracts.

Mr. EVARTS. What version do you now offer?

Mr. Manager BUTLER. All, hoping to get the truth out of the whole of them.

Mr. EVARTS. The speech as proved now by the witnesses in the version which passed under Colonel Moore's eye?

Mr. Manager BUTLER. I think I must ask that the objection, if any is to be taken to my offer, shall be put in writing.

Mr. EVARTS. Before it is made?

Mr. Manager BUTLER. No, sir; as it is made.

Mr. EVARTS. Well, the speech as proved in Mr. Smith's and Mr. Sheridan's copy we regard as in the shape of evidence, the accuracy of the report to be judged of, there being competent evidence on the subject. The speech in the Chronicle we do not understand to be supported by any such evidence, and we shall object to that as not authentically proved. The speech in the Intelligencer, which seems to have been supported in the intent of the honorable managers by proof of that newspaper being taken at the Executive Mansion, has not been produced, and has not been offered as I understand.

Mr. Manager BUTLER. No.

Mr. EVARTS. Therefore we dismiss that. The Chronicle speech, then, we consider not proved by authentic evidence submitted to the court. The stenographic reports in the two forms indicated we suppose have proof to support them, which is competent, and enable the court under competent evidence to judge of their accuracy, their accuracy to be the subject of remark, of course, as the cause proceeds, and without desiring here to anticipate the discussion as to whether any evidence concerning them (as we have excepted and objected in our answer to the tenth and eleventh articles) is admissible. Saving that for the purpose of discussion in the body of the case, we make no other objection to the reading of the speeches.

Mr. Manager BUTLER. Do you want the whole of them read? We are content with one, the others being subject to be used by either party.

Mr. EVARTS. Whichever version you put in evidence we wish read.

Mr. Manager BUTLER. We put all versions in evidence, and we will read one.

Mr. EVARTS. We should like to have the one read that you rely on.

Mr. TIPTON. Mr. Chief Justice, I move that we now take a recess of fifteen minutes.

Mr. TRUMBULL. Before that motion is put I wish to put it in the form of an adjournment until three o'clock, that we may do some legislative business. ["No, no."] There is a rule that ought to be altered, and if the senator from Nebraska will allow me I will move that the court adjourn until three o'clock.

The CHIEF JUSTICE. The senator from Illinois proposes that the court adjourn until three o'clock.

Mr. JOHNSON. What for?

The CHIEF JUSTICE. The senator from Illinois will state the object of the adjournment.

Mr. JOHNSON. I think the honorable member did state the purpose, but I did not hear him.

The CHIEF JUSTICE. The senator from Illinois states that he desires an adjournment for the purpose of taking up a rule in legislative session. You who are in favor of adjourning until three o'clock will say ay; the contrary opinion, no.

The motion was not agreed to.

The CHIEF JUSTICE. The question now is on the motion of the senator from Nebraska, (Mr. Tipton.)

Mr. DRAKE. I suggest an amendment to the motion of the senator from Nebraska, that we take a recess for 20 minutes.

The CHIEF JUSTICE. The Chair will put the question on the longest time first. The motion is to take a recess for 20 minutes.

The motion was not agreed to.

The CHIEF JUSTICE. The question now recurs on the motion of the senator from Nebraska, to take a recess for 15 minutes.

The motion was agreed to; and at the expiration of 15 minutes the Chief Justice resumed the chair, and called the Senate to order at two o'clock and 45 minutes p. m.

Mr. GRIMES. I move that this court stand adjourned until Monday at 12 o'clock.

Mr. CONNESS. I hope not.

Mr. DRAKE. I ask for the yeas and nays upon that motion.

The CHIEF JUSTICE. It is moved that the Senate adjourn until Monday at 12 o'clock, and on this question the yeas and nays are demanded.

The yeas and nays were not ordered.

Mr. DRAKE. The rule requires us to sit every day.

Mr. JOHNSON. No, it does not. It is "unless otherwise ordered."

The CHIEF JUSTICE. The question is on the motion to adjourn.

Mr. SUMNER. The yeas and nays have been called for.

The CHIEF JUSTICE. There was not a sufficient number rising to demand the yeas and nays, and they were not ordered.

Mr. SUMNER. Then there was a misapprehension, if the Chair will pardon me.

The CHIEF JUSTICE. The Chief Justice will put the question again on ordering the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 19, nays 28, as follows:

YEAS—Messrs. Buckalew, Corbett, Davis, Dixon, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Norton, Patterson of Tennessee, Ramsey, Saulsbury, Trumbull, Van Winkle, Vickers, and Wilson—19.

NAYS—Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy, Ross, Sprague, Stewart, Sumner, Thayer, Tipton, Willey, and Williams—28.

NOT VOTING—Messrs. Bayard, Doolittle, Harlan, Morton, Sherman, Wade, and Yates—7.

So the motion was not agreed to.

Mr. Manager BUTLER. I now offer the version of the speech sworn to by Mr. Smith:

Speech of the President of the United States, August 18, 1866.

The President said:

Mr. Chairman, and Gentlemen of the Committee: Language is inadequate to express the emotions and feelings of this occasion; and perhaps I could express more by remaining silent and letting silence speak what I would and what I ought to say. I confess, though,

having had some experience in public life, having been before many public audiences—I confess the present occasion and audience is well calculated, and not only well calculated, but has, in fact, partially overwhelmed me. I have not language to express, or to convey, as I have said, in an adequate manner, the feelings and emotions produced by the present occasion. In listening to the address that your distinguished and eloquent chairman has just delivered, the proceedings of the convention, as they transpired, recur to my mind, and seemingly, that I partook here of the enthusiasm which seemed to prevail there. And upon the reception of the despatch, sent by two distinguished members of that convention, conveying in terms the scenes that have just been described, of South Carolina and Massachusetts arm in arm, marching into that convention, giving evidence that the two extremes could come together, that they could peril in future, for the preservation of the Union, as they had in the past, when the accompanying statement that in that vast assembly of distinguished, eloquent, and intellectual persons that were there, every face was suffused with tears—when I undertook to read the despatch to one associated with me in office, I could not give utterance to the feelings it produced. [Applause.]

I think we may justly conclude we are moving under proper inspirations; I think I cannot be mistaken that an unerring Providence is in this matter. The nation is imperilled; it has just passed through a mighty, bloody, and momentous ordeal: and while we have passed through that we do not find ourselves free from difficulties and dangers that surround us. While our brave men have performed their duties in the field—officers and men—while they have won laurels that are imperishable, there are still greater and more important duties yet to perform; and while we have had their co-operation in the field we want their support out of the field when we are trying to bring about peace.

Every effort has been made, so far as the executive department of the government was concerned, to restore the Union; to heal the breach; to pour oil into the wound which had been inflicted, and—to speak in common phrase—to prepare, as the learned and wise physician would, a plaster that was coextensive with the wound, and that was healing in its character. [Applause.]

We think, or thought, we had partially succeeded; but as the work progressed, as reconciliation seemed to be restored and the country become united, we found a disturbing and marring element of opposition thrown in; and in making any allusion to that, I shall make no more allusion than has been in the convention and by the distinguished gentleman who has placed the proceedings of the convention before me—I shall make no more allusion than I think the times justify. We have witnessed in one department of the government every effort, as it were, to prevent the restoration of peace, harmony, and union: we have seen, as it were, hanging upon the verge of the government, as it were, a body, calling or assuming to be the Congress of the United States, when it was but a Congress of a part of the States; we have seen Congress assuming to be for the Union when every step they took was to perpetuate dissolution, and make disruption permanent. We have seen every step that has been taken, instead of bringing about reconciliation and harmony, has been legislation that took the character of penalties, retaliation, and revenge. This has been the course; this has been the policy of one department of your government. The humble individual who has been addressed here to-day, and now stands here before you, has been occupying another department of the government. The manner of his getting there I shall not allude to now—suffice it to say, I was there by the Constitution of my country, [applause,] and being there by the Constitution of my country, I placed my foot upon the Constitution as the great rampart of civil and religious liberty, [applause,] having been taught in early life, and having practiced through my whole career to venerate, respect, and make the Constitution of my fathers my guide through my public life. [Applause.]

I know it has been said, and I must be permitted to indulge in this line, that the executive department of the government has been despotic and tyrannical. Why, let me ask this audience here to-day, and the distinguished gentlemen who stand around me, where is the vote I ever gave, where is the speech I ever made, where is a single act of my whole public life but what has been arrayed against tyranny and against despotism? [Applause.] What position have I ever occupied, what ground have I ever stood upon, when I failed to advocate the amelioration and elevation of the great mass of my countrymen? [Applause.]

So far as charges of that kind is concerned, it is simply intended to deceive and delude the public mind, that there is some one in power who is seeking to trample upon and pervert the principles of the Constitution by endeavoring to cover and delude the people so far as their own public acts are concerned. I have felt it my duty, in vindication of the principles of the Constitution of my country, to call their attention to these proceedings; but when we go forward and examine who has been playing tyrant, and where has been the tyranny and despotism exercised, the elements of my nature, and the pursuits of my life, has not made me in my practice aggressive, nor in my feelings; but, my nature, rather on the contrary, is defensive; and having placed my feet, or taken my stand upon the broad principles of liberty and the Constitution, there is not enough power on earth to drive me from it. [Great applause.]

Upon that broad platform I have taken my stand. I have not been awed, or dismayed, or intimidated by their words or encroachments; but I have stood there, in conjunction with patriotic spirits, sounding the tocsin of alarm that the citadel of liberty was encroached upon. [Applause.]

I said on one occasion before, and I repeat now, that all that was necessary in this great struggle was here, in the contest with tyranny and despotism, was for the struggle to be sufficiently audible that the great mass of the American people could hear the struggle that was going on, and when they understood and heard the struggle going on, and came up and looked in and saw who the contestants were, and understood about what that contest was, they would settle that question upon the side of the Constitution and principle. ["Good."]

It has been said here to-day, my faith is abiding in the great mass of the people. It is, and in the darkest moment of the struggle, when the clouds seemed to be most lowering, my faith, instead of giving way, loomed up as from the gloom of the cloud, through which I saw that all would be safe in the end.

But tyranny and despotism! We all know that tyranny and despotism even, in the language of Thomas Jefferson, can be exercised, and exercised more effectually by many than one. We have seen Congress organized; we have seen Congress in its advance, step by step, has gradually been encroaching upon constitutional rights and violating the fundamental principles of the government, day after day, and month after month. We have seen a Congress that seemed to forget that there was a Constitution of the United States, that there was limits, that there was boundaries to the sphere or scope of legislation. We have seen Congress in a minority assume to exercise, and have exercised powers, if carried out and consummated, will result in despotism or monarchy itself. This is truth, and because I and others have seen proper to appeal to the country, to the patriotism and republican feeling of the country, I have been denounced; slander after slander, vituperation after vituperation of the most virulent character, has made its way through the press. What, then, has been my sin? What has been your sin? What has been the cause of your offending? Because you dare stand by the Constitution of our fathers. [Applause.]

I look upon the proceedings of this convention as being more important than any convention that ever sat in the United States. [Applause.] When I look at that collection of citizens coming together voluntarily and sitting in council, with ideas, with principles and views, commensurate with all the States and coextensive with the whole people; and when I contrast it with a collection of gentlemen who were trying to destroy the country, I look upon it as more important than any convention that has sat, at least, since 1787; and I think I may say here, too, that in the declarations that it has made, which are equally important with the Declaration of Independence itself; and I here, to-day, pronounce it a second declaration of independence. [Great applause.]

In this connection, I may remark, when you talk about declarations of independence, there are a great many people in the United States who want to be free, that cannot claim, exactly, and in fact, that they are free at this time. I may say that your address and the declarations made are nothing more nor less than a reaffirmation of the Constitution of the United States. [Great applause.] Yes, I will go further, and say that the declarations that you have there made, and the principles enunciated in that address, is a second proclamation of emancipation to the people of the United States; [applause;] for in the promulgation, in the proclamation reaffirming these great truths, you have laid down a platform, a constitutional platform, upon which all can make common cause, and stand, rallying for the restoration of the States and the restoration of the Union, without reference to whether they belong to this association, or this party, or that party; but the theory is, my country rises above party. Upon this common ground they can stand. [Applause.]

How many are there in the United States that now require to be free? They have got shackles upon their limbs and are bound as tight as though they were, in fact, in slavery. Then, I repeat, it is a second proclamation of emancipation to the people of the United States, and fixes a common ground upon which all may stand.

I have said more now, Mr. Chairman, and gentlemen of the committee, than I intended to have said; but, in this connection, and in conclusion, let me ask this intelligent audience and committee here to-day, what have I or you to do other than the promotion or advancement of the common weal? I am opposed to egotism—as much as any one—but here, in a conversational manner, and in the reception of the proceedings of this convention, I must add, what have I to gain, consulting human ambition, more than I have gained, excepting one thing? My race is run. I have been placed here by the Constitution of the country, and I may say here, from the lowest to the highest position in the government I have occupied. I passed through every single position from alderman in a village to the Presidency of the United States; and now, in standing before you, don't you think that all reasonable ambition should be gratified? If I wanted power, if I wanted to perpetuate my own power and that of those who are around me, how easy it would have been for me to have held the power placed in my hands.

With the bill called the Freedmen's Bureau, and the army placed at my discretion, [laughter and applause,] I could have remained at the capital with fifty or sixty millions of appropriations, with the machinery to be worked by my own hands, with my satraps and dependants in every township and civil district in the United States, where it might be necessary, with the civil rights bill coming along as an auxiliary [laughter] and all the other patronage of the government, I could have proclaimed myself dictator. ["That's a fact."] My pride and my power is, if I have any, to occupy that position which retains the power in the hands of the people. ["Good" and applause.] It is upon them I have always

relied; it is upon them I now rely. ["And they will not desert you, either"—applause.] And I repeat, neither the taunts nor jeers of Congress, nor of a subsidized and calumniating press, can drive me from my purpose. [Applause.]

I acknowledge no superior but two—my God, the author of my existence, and the people of the United States. [Applause.] The one, I try to obey all his commands as best I can, compatible with mortal man; the other, in a political and representative sense, the high behest of the people has always been in strict respect, has always been obeyed by me. [Applause.]

Mr. Chairman, I have said more than I intended to say. For the kind allusions made in the address and in the resolutions or propositions adopted by your convention, I want to say to you that in this crisis, in this period of my public life, I prize that last resolution more than all that has come to me. To have the indorsement of a convention, constituted as that was, emanating spontaneously from the great mass of the people, I prize it above consideration, and I trust and hope my future conduct will not cause the convention that adopted that to have regretted the assurance they have given. ["Very sure of it."]

Before separating, and leaving you, gentlemen, one and all, committee and strangers, please accept my thanks for this kind manifestation of regard and respect that you have manifested, on this occasion, and to one that feels so little entitled to it, except upon the simple consideration of having performed his duty.

I repeat again, as I have said in substance, that I have, and shall always continue to be guided by a conscientious conviction. That always gives me courage. The Constitution I have made my guide. Then, accept my sincere thanks for this manifestation of your approbation and regard.

Mr. Manager BUTLER, having concluded the reading, continued:

I do not propose, gentlemen, to read any more of these versions, but to leave them here for any correction that may be desired.

Mr. ANTHONY. I offered an order in legislative session, and I do not know that it is proper to call it up at this time. If not, I should like to repeat it.

The CHIEF JUSTICE. The Chief Justice thinks it is not in order to call up any business transacted in legislative session.

Mr. CONKLING, (to Mr. Anthony.) Offer it originally now.

Mr. ANTHONY. Then I move that the presiding officer be authorized to assign a place upon the floor to the reporter of the Associated Press.

Mr. CONKLING. A single reporter.

The CHIEF JUSTICE. The Chief Justice thinks it not in order to interrupt the business of the trial with such a motion.

Mr. EVARTS. General Butler, will you allow us to ask what copies or versions of the speech of August 18, 1866, you consider included in the testimony received? One has been read.

Mr. Manager BUTLER. I consider the two copies, one that Mr. Smith made, which has been read, and the corrected version, as the substantial copies.

Mr. EVARTS. And no others?

Mr. Manager BUTLER. I do not offer the Chronicle, not because it is not evidence, but because I have the same thing in Mr. Smith's report.

Mr. EVARTS. Then it is only those two, and they will both be printed as part of the evidence in the case?

Mr. Manager BUTLER. For aught I care.

The other report offered in evidence—the one revised by Colonel Moore and published—is as follows:

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: Language is inadequate to express the emotions and feelings produced by this occasion. Perhaps I could express more by permitting silence to speak and you to infer what I ought to say. I confess that, notwithstanding the experience I have had in public life, and the audiences I have addressed, this occasion and this assembly are well calculated to, and do overwhelm me. As I have said, I have not language to convey adequately my present feelings and emotions. In listening to the address which your eloquent and distinguished chairman has just delivered, the proceedings of the convention, as they transpired, recurred to my mind. Seemingly I partook of the inspiration that prevailed in the convention when I received a despatch sent by two of its distinguished members, conveying in terms the scene which has just been described of South Carolina and Massachusetts, arm in arm, marching into that vast assemblage, and thus giving evidence that the two extremes had come together again, and that for the future they were united as they had been in the past, for the preservation of the Union. When the despatch informed me that in that vast body of men, distinguished for intellect and wisdom,

every eye was suffused with tears on beholding the scene, I could not finish reading the despatch to one associated with me in the office, for my own feelings overcame me. [Applause.]

I think we may justly conclude that we are moving under a proper inspiration, and that we need not be mistaken that the finger of an overruling and unerring Providence is in this matter. The nation is in peril. We have just passed through a mighty, a bloody, a momentous ordeal, yet do not find ourselves free from the difficulties and dangers that at first surrounded us. While our brave men have performed their duties, both officers and men, (turing to General Grant, who stood at his right,) while they have won laurels imperishable, there are still greater and more important duties to perform; and while we have had their co-operation in the field, we now need their support in our efforts to perpetuate peace. [Applause.] So far as the executive department of the government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and, to speak in common phrase, to prepare, as the learned and wise physician would, a plaster, healing in character and coextensive with the wound. [Applause.] We thought, and yet think, that we had partially succeeded, but as the work progressed, as reconciliation seemed to be taking place, and the country becoming united, we found a disturbing and marring element opposing us.

In alluding to that element I shall go no further than did your convention and the distinguished gentleman who has delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and the occasion justify. We have witnessed in one department of the government every effort, as it were, to prevent the restoration of peace and harmony in the Union. We have seen hanging upon the verge of the government, as it were, a body called, or which assumes to be, the Congress of the United States--but, in fact, a Congress of only part of the States. We have seen this Congress assume and pretend to be for the Union, when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable. Instead of promoting reconciliation and harmony, its legislation has partaken of the character of penalties, retaliation, and revenge. This has been the course and the policy of one department of your government. The humble individual who is now addressing you stands the representative of another department of the government. The manner in which he was called upon to occupy that position I shall not allude to on this occasion; suffice it to say that he is here under the Constitution of the country, and being here by virtue of its provisions, he takes his stand upon that charter of our liberties as the great rampart of civil and religious liberty. [Prolonged cheering.] Having been taught in my early life to hold it sacred, and having practiced upon it during my whole public career, I shall ever continue to reverence the Constitution of my fathers and to make it my guide. [Hearty applause.] I know it has been said--and I must be permitted to indulge in this remark--that the executive department of the government has been despotic and tyrannical. Let me ask this audience of distinguished gentlemen around me here to-day to point to a vote I ever gave, to a speech I ever made, to a single act of my whole public life, that has not been against tyranny and despotism. What position have I ever occupied, what ground have I ever assumed, where it can be truthfully charged that I failed to advocate the amelioration and elevation of the great masses of my countrymen? [Cries of "Never," and great applause.]

So far as charges of that kind are concerned, I will say that they are simply intended to deceive and delude the public mind into the belief that there is some one in power who is usurping and trampling upon the rights and perverting the principles of the Constitution. It is done by those who make such charges for the purpose ot covering their own acts. ["That's so," and applause.] I have felt it my duty, in vindication of principle and the Constitution of my country, to call the attention of my countrymen to these proceedings. When we come to examine who has been playing the tyrant, by whom do we find that despotism has been exercised? As to myself, the elements of my nature, the pursuits of my life, have not made me, either in my feelings or in my practice, aggressive. My nature, on the contrary, is rather defensive in its character; but I will say that, having taken my stand upon the broad principles of liberty and the Constitution, there is not power enough on earth to drive me from it. [Loud and prolonged applause.] Having placed myself upon that broad platform, I have not been awed, dismayed, or intimidated by either threats or encroachments, but have stood there, in conjunction with patriotic spirits, sounding the tocsin of alarm when I deemed the citadel of liberty in danger. [Great applause.] I said on a previous occasion, and repeat now, that all that was necessary in this great struggle against tyranny and despotism was, that the struggle should be sufficiently audible for the American people to hear and properly understand. They did hear, and looking on and seeing who the contestants were and what that struggle was about, they determined that they would settle this question on the side of the Constitution and of principle. [Cries of "That's so," and applause.]

I proclaim here to-day, as I have on other occasions, that my faith is abiding in the great mass of the people. In the darkest moment of this struggle, when the clouds seemed to be most lowering, my faith, instead of giving away, loomed up through the dark cloud far beyond—I saw that all would be safe in the end. My countrymen, we all know that, in the language of Thomas Jefferson, "tyranny and despotism even can be exercised and exerted more effectually by the many than the one." We have seen a Congress gradually

encroach, step by step, upon constitutional rights, and violate, day after day and month after month, the fundamental principles of the government. [Cries of "That's so!" and applause.] We have seen a Congress that seemed to forget that there was a Constitution of the United States, and that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise powers which, if allowed to be carried out, would result in despotism or monarchy itself. [Enthusiastic applause.] This is truth; and because others as well as myself have seen proper to appeal to the patriotism and republican feeling of the country we have been denounced in the severest terms. Slander upon slander, vituperation upon vituperation, of the most villanous character, has made its way through the press.

What, gentlemen, has been your and my sin? What has been the cause of our offending? I will tell you—daring to stand by the Constitution of our fathers.

[Approaching Senator Johnson.] I consider the proceedings of this convention, sir, as more important than those of any convention that ever assembled in the United States. (Great applause.) When I look with my mind's eye upon that collection of citizens, coming together voluntarily, and sitting in council with ideas, with principles and views commensurate with all the States, and coextensive with the whole people, and contrast it with the collection of gentlemen who are trying to destroy the country, I regard it as more important than any convention that has sat at least since 1787. (Renewed applause.) I think I may say also that the declarations that were there made are equal with the Declaration of Independence itself, and I here to-day pronounce it a second Declaration of Independence. (Cries of "Glorious," and most enthusiastic and prolonged applause.) Your address and declarations are nothing more nor less than a reaffirmation of the Constitution of the United States. (Cries of "Good!" and applause.) Yes, I will go further, and say that the declarations you have made, that the principles you have enunciated in your address, are a second proclamation of emancipation to the people of the United States—(renewed applause)—for in proclaiming and reproclaiming these great truths you have laid down a constitutional platform upon which all can make common cause, and stand united together for the restoration of the States and the preservation of the government without reference to party. The query only is the salvation of the country, for our country rises above all party considerations or influences. (Cries of "Good!" and applause.) How many are there in the United States that now require to be free?—they have the shackles upon their limbs, and are bound as rigidly as though they were in fact in slavery? I repeat, then, that your declaration is the second proclamation of emancipation to the people of the United States, and offers a common ground upon which all patriots can stand. (Applause.)

Mr. Chairman and Gentlemen: Let me, in this connection, ask you what have I to gain more than the advancement of the public welfare? I am as much opposed to the indulgence of egotism as any one; but here, in a conversational manner, while formally receiving the proceedings of this convention, I may be permitted again to ask, what have I to gain, consulting human ambition, more than I have gained, except in one thing? My race is nearly run. I have been placed in the high office which I occupy under the Constitution of the country, and I may say that I have held, from lowest to highest, almost every position to which a man may attain in our government. I have passed through every position, from an alderman of a village to the presidency of the United States; and surely, gentlemen, this should be enough to gratify a reasonable ambition. If I wanted authority, or if I wished to perpetuate my power, how easy would it have been to hold and wield that which was placed in my hands by the measure called the "Freedmen's Bureau bill." (Laughter and applause.) With an army which it placed at my discretion I could have remained at the capital of the nation, and with fifty or sixty millions of appropriations at my disposal, with the machinery to be worked by my own hands, with my satraps and dependents in every town and village, and then with the "Civil Rights bill" following as an auxiliary—(laughter)—in connection with all the other appliances of the government, I could have proclaimed myself Dictator! ("That's true," and applause.)

But, gentlemen, my pride and ambition have been to occupy that position which retains all power in the hands of the people. (Great cheering.) It is upon that I have always relied; it is upon that I rely now. (A voice—"And the people will not disappoint you.") And I repeat, that neither the taunts nor jeers of Congress, nor of a subsidized, calumniating press, can drive me from my purpose. (Great applause.) I acknowledge no superior except my God, the author of my existence, and the people of the United States. (Prolonged and enthusiastic cheering.) For the one, I try to obey all his commands as best I can compatible with my poor humanity; for the other, in a political and representative sense, the high behests of the people have always been respected and obeyed by me. (Applause.) Mr. Chairman, I have said more than I intended to say. For the kind allusions to myself contained in your address, and in the resolutions adopted by the convention, let me remark that, in this crisis, and at this period of my public life, I hold above all price, and shall ever recur with feelings of profound gratification to the last resolution containing the indorsement of a convention emanating spontaneously from the great mass of the people. I trust and hope that my future action may be such that you and the convention that you represent may not regret the assurance of confidence you have expressed. ("We are sure of it.") Before separating, my friends, one and all, committee and strangers, please accept my sincere thanks

for the kind manifestations of regard and respect you have exhibited on this occasion. I repeat, that I shall always continue to be guided by a conscientious conviction of duty. and that always gives me courage, under the Constitution, which I have made my guide.

WILLIAM N. HUDSON sworn and examined.

By Mr. Manager BUTLER:

Q. What is your business?
A. I am a journalist by occupation.
Q. Where is your home?
A. In Cleveland, Ohio.
Q. What paper do you have charge of?
A. The Cleveland Leader.
Q. Where were you about the 3d or 4th of September, 1866?
A. I was in Cleveland.
Q. What was your business then?
A. I was then one of the editors of the Leader.
Q. Did you hear the speech that President Johnson made there from the balcony of a hotel?
A. I did.
Q. Did you report it?
A. I did, with the assistance of another reporter.
Q. Who is he?
A. His name is Johnson.
Q. Was your report published in the paper the next day?
A. It was.
Q. Have you a copy?
A. I have.
Q. Will you produce it?
The witness produced a copy of the Cleveland Leader of September 4, 1866.
Q. Have you your original notes?
A. I have not.
Q. Where are they?
A. I cannot tell. They are probably destroyed.
Q. Have you the report in the paper of which you are the editor, which was published the next day?
A. I have the report which I have submitted.
Q. What can you say as to the accuracy of that report?
A. It is not a *verbatim* report, except in portions. There are parts of it which are *verbatim*, and parts are synopses.
Q. Does the report distinguish the parts which are not *verbatim* from those which are?
A. It does.
Q. Is all put in that Mr. Johnson did say?
Mr. EVARTS. He says not.

By Mr. Manager BUTLER:

Q. Is anything left out which Johnson said?
A. Yes.
Mr. EVARTS. Do you mean the President or reporter Johnson?
Mr. STANBERY. Whom do you mean by Johnson?
Mr. EVARTS. There was another Johnson mentioned.
Mr. Manager BUTLER. Not on this occasion.
Mr. EVARTS. Yes, reporter Johnson.
Mr. Manager BUTLER. I mean Andrew Johnson "last aforesaid."
A. The report leaves out some portions of Mr. Johnson's speech; states them in synoptical form.

Q. Is there anything put in there that he did not say?

A. There are words used which he did not use, in stating the substance of what he said. There is nothing substantially stated that he did not state.

Q. When was that report prepared by yourself?

A. It was prepared on the evening of the delivery of the speech.

Q. Did you see it after it was printed?

A. I did.

Q. Did you examine it?

A. I did.

Q. Now, sir, what can you say as to the accuracy of the report wherever the words are professed to be given?

A. To the best of my remembrance it is accurate.

Q. You now believe it to be accurate?

A. I do.

Q. How far do you say it is accurate where substance is professed to be given?

A. It gives the substance—the sense without the words.

Q. Taking the synoptical part and the *verbatim* part, does the whole give the substance of what he said on that occasion?

A. It does.

Q. By way of illustration of what I mean, take this part: "Haven't you got the court? Haven't you got the Attorney General? Who is your Chief Justice?" Is that the synoptical part or is that the *verbatim* part?

A. That is part of the *verbatim* report.

Mr. Manager BUTLER, (to the counsel for the respondent.) I propose, now, gentlemen, to put this in evidence.

Mr. EVARTS. We will cross-examine him before you put the paper in evidence.

Mr. Manager BUTLER. Yes, sir.

Cross-examined by Mr. EVARTS:

Q. Mr. Hudson, was this newspaper that you edited and for which you reported of the politics of the President or of the opposite opinion?

A. It was republican in politics.

Q. Opposite to the views of the President, as you understood them?

A. It was.

Q. At what time was this speech made?

A. On the 3d of September, 1866.

Q. At what hour of the day?

A. About nine in the evening.

Q. It commenced then?

A. It commenced.

Q. When did it conclude?

A. I think about a quarter before ten.

Q. And was there a large crowd there?

A. There was.

Q. Of the people of Cleveland?

A. Of the people of Cleveland and surrounding towns.

Q. Was this balcony from which the President spoke also crowded?

A. Yes.

Q. And where were you?

A. I was upon the balcony.

Q. What convenience or arrangement had you for taking notes?

A. I took my notes upon my knee as I sat.

Q. Where did you get light from?

A. From the gas above.

Q. At what time that evening did you begin to write out your notes?

A. To the best of my remembrance about 11 o'clock.
Q. And when did you finish?
A. Between twelve and one.
Q. And when did it go to press?
A. About three o'clock in the morning—between three and four.
Q. Did you write the synoptical parts from your notes, or from your recollection of the drift of the speech?
A. From my notes.
Q. You added nothing, you think, to the notes?
A. Nothing.
Q. But you did not produce all that was in the notes? Is that it?
A. I did not.
Q You omitted wholly some parts that were in your notes, did you not?
A. I endeavored to give the substance of all the President said.
Q. You mean the meaning, do you not?
A. The meaning.
Q. As you understood it?
A. As I understood it.
Q. That is the drift of it?
A. Exactly.
Q. That is what you mean exactly. You think you meant to give the drift of the whole that you did not report *verbatim?*
A. Yes.
Q. Did you not leave out any of the drift?
A. Not intentionally.
Q. But actually?
A. Not to my remembrance.
Q. Have you ever looked to see?
A. I have not compared the speech with any full report of it.
Q. Nor with your notes?
A. I did subsequently compare the speech with my notes.
Q. Do you mean this drift part?
A. I mean to say that I compared the speech as reported here with my notes.
Q. I mean the part that is synoptical; did you compare that with your notes?
A. I did.
Q. When?
A. On the next day, and I have had occasion to refer to it several times since.
Q. When did your notes disappear?
A. In the course of a few weeks. They were not preserved at all.
Q. Are you sure, then, that you ever compared it with your notes after the immediately following day?
A. I am.
Q. Did you destroy your notes intentionally?
A. I did not.
Q. Where are they?
A. I cannot tell.
Q. In regard to the part of the speech which you say you reported *verbatim*, did you at any time, after writing it out that night, compare the transcript with the notes?
A. I did.
Q. For the purpose of seeing that it was accurate?
A. I did.
Q. When was that?
A. That was on the next day.
Q. With whose assistance?
A. I think without asssistance, to the best of my remembrance.

Q. Did you find any changes necessary?

A. There were typographical errors in the reading of the proof. There were no material errors.

Q. But were there no errors in your transcript from the notes?

A. I may have misapprehended the question. I did not compare my manuscript transcript; I compared the speech as printed.

Q. With what?

A. With my notes.

Q. That was not my question; but you say you did compare the speech as printed with your notes, and not with your transcript?

A. Not with the transcript.

Q. Did you find that there were no errors in the print as compared with the original notes?

A. There were some typographical errors.

Q. No others?

A. No others to the best of my remembrance.

Q. Not a word?

A. I remember no others.

Q. Were there any others?

A. Not that I remember.

Q. Are you prepared to say that you observed in comparing your printed paper of that morning with your phonographic notes that the printed paper was absolutely accurate?

A. My notes were not phonographic.

Q. What are they?

A. They were made in writing.

Q. Written out in long hand?

A. Yes.

Q. Do you mean to say, sir, that you can write out in long hand, word for word, a speech as it comes from the mouth of a speaker?

A. I mean to say that in this instance I did parts of the speech.

Q. Then you did not even have notes that were *verbatim* except for part of the speech?

A. That was all.

Q. And then you made your synopsis or drift as it went along?

A. Yes.

Q. How, and upon what rule did you select the parts that you should report accurately and those of which you should give "the drift?"

A. When ever it was possible to report accurately and fully, I did so. When I was unable to keep up with the speaker I gave the substance as I could give it. There were times during the speech when, owing to the slowness with which the speaker spoke and the interruptions, a reporter was able to keep up writing long hand with the remarks of the President.

Q. Then that is your report of the speech?

A. It is.

Q. Not by the aid of phonopraghy or short-hand?

A. No.

Q. Did you abbreviate or write in full the words that you did write?

A. I abbreviated in many instances.

Q. Do you remember that?

A. I do.

Q. Can you give us an instance of one of your abbreviations that is now written out here in full?

A. I cannot.

Q. You cannot recall one?

A. I cannot.

Q. Now, sir, without any printed paper before you, how much of President

Johnson's speech, as made at Cleveland on the third of September, can you repeat?

A. I can repeat none of it.

Q. None, whatever?

A. *Verbatim*, none.

Q. Do you think you could give "the drift" of some of it?

A. I think I might.

Q. As you understand it and remember it?

A. Yes, sir.

Q. Do you mean to be understood that you wrote down one single sentence of the President's speech, word for word, as it came from his mouth?

A. I do.

Q. Will you point out anywhere any such sentence?

A. The sentences which were read by the manager were written out word for word.

Q. Those three questions which he read? Now, do you mean to say that any ten consecutive lines of the printed report of your newspaper you wrote down in long hand, word for word, as they came from the President's mouth?

A. I cannot tell how much of it I wrote down at this distance of time. It is my impression, however, that there were as much as that and more.

Q. Can you say anything more than this, that you intended to report as nearly as you could and as well, under the circumstances, without the aid of short-hand faculty, what the President said?

A. I can say, in addition to that, that there are parts of this speech which were reported as he said them.

Q. From present memory?

A. From memory of the method in which those notes were taken.

Q. What parts can you so state? As to all that purports to be *verbatim* are you ready so to swear?

A. I cannot swear that it is the absolute language in all cases. I can swear that it is an accurate report.

Q. What do you mean by an accurate report, and not an absolute report?

A. I mean to say a report which gives the general form of each sentence as it was uttered, perhaps varying in one or two words occasionally?

Q. I asked you just now if you could say any more than that you intended to report as well as you could under the circumstances in which you were placed and without the aid of short-hand faculty?

A. I can say, in addition to that, that there are portions of this which are reported *verbatim*.

Q. Now, I want you to tell me whether all that purports to be *verbatim* is, in your memory and knowledge, accurately reported?

A. It is accurately reported; I should not say with absolute accuracy.

Q. The whole?

A. Yes, sir.

Q. Now, in regard to the portion of the speech that you did not profess to report *verbatim*, what assurance have you that you did not omit some part of the speech?

A. There are portions which are not given with entire fullness; but the substance and meaning in all cases I intended to give.

Q. What assurance have you that some portions of the speech are not omitted entirely from your synoptical view?

A. I was able to take notes of nearly every sentence uttered by the President, and I am confident that I did not fail to take notes of at least any paragraph of the report.

Q. Any paragraph of the speech. That is to say, you are confident that nothing that would have been a paragraph after it was printed was left out by you?

A. Yes, sir.

Q. He did not speak in paragraphs, did he?

A. Of course not.

Q You are sure you did not leave out what would be the whole of a paragraph; did you leave out what would be half of a paragraph?

A. I endeavored to state the substance of the President's remarks on each subject which he took up.

Q. That is the result; that you intended to state the substance of his remarks on each subject that he took up?

A. Yes, sir.

Q. And you supposed that you did so?

A. Yes, sir.

Q. Now, was this synoptical report that you wrote out anything but your original notes that you wrote out that night?

A. Condensed from them.

Q. Condensed from your original notes?

A. Yes, sir.

Q. That is to say, your original synoptical view, as written down, was again reduced in a shorter compend by you that night?

A. The part of the speech so reported.

Q. And still you think that in this last analysis you had the whole of the President's speech?

A. I endeavored to state his meaning.

Q. Now, can you pretend to say, sir, that in respect to any of that portion of your report it is presented in a shape in which any man should be judged as coming from his own mouth?

Mr. Manager BUTLER. Stop a moment. I object to the question.

Mr. EVARTS. It is as a test of his accuracy.

Mr. Manager BUTLER. You may ask him how accurate; I do not object to that; but whether he thinks the man should be judged upon it is not a proper question.

Mr. EVARTS. I ask him if he professes to state in this synoptical portion of the printed speech made by him it is so produced as to be properly judged as having come from the mouth of the speaker?

The WITNESS. I can only say that it gives, to the best of my belief, a fair report of what was seen.

Q. In your estimate?

A. In my estimate.

Q. And view?

A. And belief.

Q. You spoke of a reporter Johnson, who took part, as I understand you, in this business; what part did he take?

A. He also took notes of the speech.

Q. But independently from you?

A. Independently of me.

Q. But the speech as printed in your paper was made from your notes not from his?

A. From mine with the assistance of his.

Q. Then you brought his in also?

A. Yes, sir.

Q. You condensed and mingled the reporter Johnson's report and your own, and produced this printed result?

A. I did.

Q. What plan did Johnson proceed with in giving the drift or effect of the President's speech? Do you know?

A. Johnson took as full notes as possible.

Q. As possible for him?

A. As full notes as possible for him of the President's speech.

Q. How much of this report, or how much of this analysis or estimate of what the President said, was made out of your notes, and how much out of Johnson's?

A. The substance of the report was made from my notes, the main portion of it.

Q. What as to the rest?

A. Whenever Mr. Johnson's notes were fuller than mine I used them to correct mine.

Q. Was that so in many instances?

A. That was not so in a majority of instances.

Q. But in a minority?

A. In a minority.

Q. A considerable minority?

A. Considerable.

Q. Did Johnson write long-hand too?

A. Yes.

Q. What connection had Johnson with you or the paper?

A. He was the reporter of the paper.

Q. Was there no phonographic reporter to take down this speech?

A. There was none for our paper. There were reporters present, I believe, for other papers; but I cannot swear to that of my own knowledge.

Mr. EVARTS. We submit upon this, Mr. Chief Justice——

Mr. Manager BUTLER. Wait for a moment. I have not yet got through with the witness.

Mr. EVARTS. Go on, sir.

Re-examined by Mr. Manager BUTLER:

Q. You have been asked, Mr. Hudson, about the crowd and about the manner in which you took the speech; were there considerable interruptions?

A. There were.

Q. Were there considerable pauses by the President from step to step in his speech?

A. There were; and necessary pauses.

Q. Why "necessary?"

A. Because of the interruptions of the crowd.

Q. Was the crowd a noisy one?

A. It was.

Q. Were they bandying back and forth epithets with the President?

Mr. EVARTS. We object to that. The question is, What was said?

Mr. Manager BUTLER. I do not adopt that question. I will repeat my question, Whether epithets were thrown back and forward between the President and the crowd?

Mr. EVARTS and Mr. CURTIS. We object to the question. The proper question is, What was said?

Mr. Manager BUTLER. That is your question.

Mr. EVARTS. The question, as put, is leading and assuming a state of facts. It is asking if they bandied epithets. Nobody knows what "bandying" is or what "epithets" are.

Mr. Manager BUTLER, (to the witness.) Do you know what "bandying" means, Mr. Witness? Do you not know the meaning of the word?

Mr. CURTIS. I suppose our objection is first to be disposed of, Mr. Chief Justice?

Mr. Manager BUTLER. I wanted to see whether, in the first place, I had got an intelligible English word. However, I withdraw the question. [A pause.] My proposition is this, sir: it is not to give language——

Mr. EVARTS. There is no objection if you have withdrawn your question.

Mr. Manager BUTLER. I have not. I have only withdrawn the question as to the meaning of a word which one of the counsel for the President did not understand. I was about, sir, stating the question. In Lord George Gordon's case, when he was upon trial, as your honor will remember, the cries of the crowd were allowed to be put in evidence as cries, though it was objected that they could not be put in evidence. But that question precisely is not raised here, because I am now upon the point, not of showing what was said, not repeating language, but of showing what was said and done by way of interruption. I am following the line of cross-examination which was opened to me. It was asked what interruptions there were; whether there was a crowd there; how far he was interrupted; how far he was disturbed; if the President stopped in the midst of a speech to put back an epithet which was thrown to him from the crowd, and if the crowd was answering back and he replying; if they were answering backward and forward, a man could very well write down in longhand what he had just said.

Mr. EVARTS. The witness stated that there were interruptions.

Mr. Manager BUTLER. And I am following that up.

Mr. EVARTS. That is the only point of your inquiry.

Mr. Manager BUTLER. I asked the nature of them to know whether they would be likely to disturb a speaker and make him pause.

Mr. EVARTS. The question to which we objected was, "Was there a bandying of epithets backward and forward between the President and the crowd?"

The CHIEF JUSTICE. The honorable manager will be good enough to reduce his question to writing.

Mr. Manager BUTLER. I will not stop to do it in that form, but I will put it in another shape. (To the witness.) What was said by the crowd to the President, and what was said by the President to the crowd?

A. The President was frequently interrupted by cheers, by hisses, and by cries, apparently from those opposed to him in the crowd.

Mr. Manager BUTLER, (to the witness.) You have the right to refresh your memory by any memorandum which you have, or copy of memorandum made at the time.

Mr. EVARTS. Not a copy.

Mr. Manager BUTLER. Yes, sir; any copy of a memorandum which you know is a copy made at the time; and state, if you please, what kind of epithets passed.

The witness, placing a newspaper before him, was about to read therefrom.

Mr. EVARTS. We do not regard the newspaper as a memorandum made at the time.

Mr. Manager BUTLER. He may refer to it.

Mr. EVARTS. Our objection is that it is not a memorandum.

Mr. Manager BUTLER. We may as well have that settled at once, if it is to be done. When a man says, "I wrote down the best I could, and put it in type within four hours of that time, and I know it was correct, for I examined it," I insist that on every rule of law in every court where any man ever practiced that it is a memorandum by which the witness may refresh his recollection.

The CHIEF JUSTICE. Do the counsel for the President object to the proof of the loss of the original notes?

Mr EVARTS. We do not on this question. This witness is to speak by his recollection if he can; if he cannot he is allowed to refresh it by the presence of a memorandum which he made at the time.

Mr. Manager BUTLER. We deny that to be the rule of law. It may be by any memorandum which was correct at the time to his knowledge. On this point I am not without authority. In Starkie on Evidence is a reference to a case, 2 Adolphus and Ellis, 210, where it was said:

> In many cases, such as where an agent has been employed to make a plan or map and has lost the items of actual admeasurement, all he can state is that the plan or map is correct, and has been constructed from materials which he knew at the time to be true.

He has then a right to use the map or plan which he made afterward having lost his field-notes, to refresh his memory, saying he knew them to be true. If the witness puts down these cries at the time and these interruptions and these epithets, and he is willing to state that he knows them to be true, because he copied them off from his original notes, which he has not now, he has a right to refresh his memory by that copy. I read again from Starkie:

If the witness be correct in that which he positively states from present recollection, namely, that at a prior time he had a perfect recollection, and having that recollection, truly stated it in the document produced in writing, though its contents are thus but mediately proved, must be true.

Mr. EVARTS. If he presently recollects.

Mr. Manager BUTLER. The question now is upon his using that memorandum to refresh that recollection. We cannot be drawn from the point.

The CHIEF JUSTICE. The honorable manager will please reduce his question to writing.

Mr. Manager BUTLER having reduced the question to writing, read it as follows:

Q. I desire you to refresh your recollection from any memorandum made by you at or near the time which you have, which you know to be correct, and from that state what was said by the crowd to the President, and what he said to the crowd?

Mr. EVARTS. That question I do not object to.

Mr. Manager BUTLER, (to the witness.) Look at the memorandum and go on.

Mr. EVARTS. That is not a memorandum; it is a newspaper.

The CHIEF JUSTICE, (to the witness.) Is that a memorandum made by you at the time?

The WITNESS. This is a copy of the memorandum made by me at the time.

The CHIEF JUSTICE. Are the notes from which you made that memorandum lost?

The WITNESS. They are.

The CHIEF JUSTICE. You may look at it unless there is some objection on the part of some senator.

Mr. JOHNSON. Mr. Chief Justice, I do not understand the question asked by the manager.

Mr. Manager BUTLER. I do not understand the counsel for the President as objecting.

Mr. JOHNSON. I am not objecting at all; I only want to know what the question is.

The CHIEF JUSTICE. It is inquired on the part of the managers what interruptions there were, and the witness is requested to look at a memorandum made at the time in order to refresh his memory. Of that memorandum he has no copy, but he made one at the time, and it is lost. The Chief Justice rules that he is entitled to look at a paper which he knows to be a true copy of that memorandum. If there is any objection to that ruling, the question will be put to the Senate.

Mr. Manager BUTLER, (to the witness.) Go on now, sir, beginning at the beginning.

The WITNESS, (with a newspaper before him.) The first interruption of the President by the crowd occurred on his referring to——

Mr. EVARTS. Mr. Chief Justice, we understand the ruling of the court, to which of course we submit, to be that the witness is allowed to refresh himself by looking at a memorandum made at the time, which this is considered equivalent to, and thereupon state from his memory, thus refreshed, what occurred. He must swear from memory refreshed by the memorandum, and not by reading the memorandum.

Mr. Manager BUTLER. He may read the memorandum to refresh his memory, and then testify.

Mr. EVARTS. Yes, sir; but not to read it aloud to us.

The CHIEF JUSTICE, (to the witness.) Look at the memorandum and then testify.

Mr. Manager BUTLER. You may read it if you please.

The WITNESS. The first interruption of the President occurred when he referred to the name of General Grant. He said that a large number in the crowd desired to see General Grant, and to hear what he had to say, whereupon there were three cheers given for General Grant. The President went on, and the next interruption occurred when he spoke of his visit, and alluded to the name of Stephen A. Douglas, at which there were cheers. The next serious interruption occurred at the time that the President used this language: "I was placed upon that ticket," the ticket for the Presidency, "with a distinguished citizen now no more;" whereupon there were cries, "It's a pity;" "Too bad;" "Unfortunate." The President proceeded to say, "Yes, I know there are some who say 'unfortunate'"

Mr. EVARTS and Mr. CURTIS. That will not do.

Mr. Manager BUTLER. What was then done by the crowd?

The WITNESS, (consulting the newspaper.) The President went on to say that it was unfortunate for some that God rules on high and deals in justice, and there were then cheers.

Mr. EVARTS. Mr. Chief Justice, the point made by the learned manager was this, that in following his examination of this witness, in order to prove that he had times and chances to write out in long-hand what the President had said, he could show that there were interruptions of space. That is the whole matter as I understand it, and now he is reading the President's speech, which is not yet in evidence, nor permitted to be given in evidence, as a part of the question whether there were interruptions or not to allow him to write it out.

Mr. Manager BUTLER He is, I understand, not giving the President's speech, but he is giving such portions only as show where the interruptions come in, because he has skipped long passages. Now, when we compare these interruptions with that which he took accurately, we shall see how he had time to take *verbatim* certain portions of the speech. We go on unless stopped.

The CHIEF JUSTICE, (to the witness.) The witness will look at the memorandum, and testify as well as he can from his present recollection.

Mr Manager BUTLER, (to the witness.) Go on, sir, from where you left off.

The WITNESS. The next interruption occurred where the President remarked that if his predecessor had lived——

Mr. EVARTS. The question is of the interruption and its duration and form, not of its being when the President said this or that, or what he said.

Mr. Manager BUTLER. I beg your pardon. I put the question, and it was expressly said there was no objection to it, "What did the President say to the crowd and what did the crowd say to the President?" That was not objected to, but it was said, "That is what we want." I put it in writing and the writing is on the desk, that I want what the crowd said to the President, and what the President said to the crowd. That was not objected to. (To the witness.) Go on, sir.

The WITNESS. When this remark was made the crowd responded "Never," "Never," and gave three cheers for the Congress of the United States. The President went on: "I came here as I was passing along, and having been called upon for the purpose of exchanging views and ascertaining if we could"——

The CHIEF JUSTICE. Mr. Manager, do we understand that the witness is to read the speech?

Mr. Manager BUTLER. No, sir; he is not reading the speech; he is skipping whole paragraphs, whole pages of it almost; it is only where the interruptions come in. (To the witness.) Now just read the last words before the interruptions come in, if you please, which will bring out all we want, and that will save all trouble.

The WITNESS. When the President remarked that he came here for the purpose of ascertaining, if he could, who was wrong and responsible, the crowd said, "You are," and there were long-continued cries. The President inquired later in his speech, who could place his finger upon any act of the President's deviating from right, whereupon there were cheers and counter-cries of "New Orleans" long continued; and that cry was repeated, frequently breaking the sentences of the President into clauses, and at the close of each sentence it was of some length. At the same time there were cries, "Why don't you hang Jeff. Davis?" The President responded, "Hang Jeff. Davis!" Then there were shouts and cries of "Down with him," and there were other cries of "Hang Wendell Phillips." The President asked, "Why don't you hang him?" There were answers given, "Give us an opportunity." The President went on to ask: "Haven't you got the court? Haven't you got the Attorney General? Who is your Chief Justice who has refused to sit on his trial?" He was then interrupted by "groans and cheers." He went on to speak of calling upon Congress, "that is trying to break up the government"——

Mr. STANBERY Stop.

Mr. Manager BUTLER, (to the witness.) Well, sir, state what took place then.

The WITNESS. When he said, "I called upon your Congress that is trying to break up the government," there were cries of "A lie!" from the crowd, hisses, and voices cried "Don't get mad;" and the President responded, "I am not mad." There were then hisses. After a sentence or two there were three more cheers given for Congress. Then, after another sentence, voices cried, "How about Moses?"

Q. What next?

A. The next interruption I find noted here——

Mr. EVARTS. That is not what you are to testify to; not what you find there, but what you remember.

Mr. Manager BUTLER. The question is whether, after seeing it, you can remember it to tell it to us?

The next interruption, I remember, was a cry of "Yes," when the President inquired, "Will you hear me?" These cries were taken up and were repeated, sometimes for several minutes. There was all this time great confusion; cheers by the friends of the President, and counter-cries by those opposed to him. The President repeated his question, asking if the people would hear him for his cause, and for the Constitution of his country, and there were again cries, "Yes, yes," "Go on." He proceeded in the next sentence to inquire whether, in any circumstances, he ever violated the Constitution of his country, to which there were cries in response of "Never, never," and counter-cries. The interruptions continued. When Mr. Seward's name was mentioned, there was a voice, "God bless him," and cheers for Mr Seward. He said that he would bring Mr. Seward before the people, show them his gaping wounds and bloody garments, and ask who was the traitor. There were cries of "Thad. Stevens," when the President asked, "Why don't you hang Thad. Stevens and Wendell Phillips?" and there were cheers and hisses. The President proceeded to say that, having fought traitors at the south, he would fight them at the north, when there were cheers and hisses; and there were also cries, when the President said that he would do this with the help of the people, "We won't give it." The interruptions continued in the shape of cheers and hisses and cries of the same sort throughout the speech.

Q. Were those cries and cheers and hisses continued so as to make the interruption go on for some time?

A. Frequently for several minutes.

Q. In what time would you be enabled to get up with him and get your report out?

A. I was able to make, during most of these, a *verbatim* report of what the President said.

Re-cross-examined by Mr. EVARTS:

Q. You made a memorandum at the time of these interruptions?

A. I did.

Q. Of these cries and hisses?

A. I did.

Q. And while you were doing that, you could catch up with reporting the President's speech, could you?

A. Yes, sir.

Q. Now, sir, have you not in every statement that you have made of these interruptions read from that newspaper before you?

A. I have read from the newspaper some. I think that every one was in the newspaper.

Q. Are you not quite sure of it?

A. I will not be positive.

Q. Not positive but that you remember some that are not in the newspaper?

A. Possibly.

Q. Have you forgotten any that were in the newspaper?

A. No. I have not given all that occurred in the newspaper.

Q. Without that newspaper, do you recollect any of those interruptions?

A. I do.

Q. All of them.

A. I should not be able to give all of them without the aid of the memorandum.

Q. Did you not make a full report of these interruptions on your notes?

A. I did.

Q. Of all that the crowd said?

A. Not of all that they said.

Q. Why not of all that they said?

A. Of all that I was able to catch.

Q .All that you could put down?

A. Yes.

Q. You got all that you could put down, and you left out some of what they said because you had not time to put it down; and yet you were catching up with the President?

A. I gave my first attention to reporting the President. Whatever time I had for putting down cries besides that I did so.

By Mr. Senator GRIMES:

Q. I desire the witness to specify the particular part of the report, as published, which was supplied by the reporter Johnson?

A. It is impossible for me to do that at this time.

Mr. Manager BUTLER. If the senator will allow me, I will ask the witness whether any special part of the report itself was supplied by Johnson, or whether it was only corrected by Johnson's notes

The WITNESS. The report was made out from my notes, corrected by Mr. Johnson's notes. I cannot say whether there were entire sentences from Mr. Johnson's notes or not.

Mr. Manager BUTLER:

Q. I will ask you whether there can be such practice in reporting as to enable a person by long-hand to make out a substantially accurate report?

Mr. EVARTS. To that we object. You can ask whether this witness by his practice can do it, not whether other people can do it.

Mr. Manager BUTLER, (to the witness.) Have you had such practice?

A. I have had considerable practice in reporting in this way, and can make out a substantially accurate report.

[The witness, at the request of the honorable manager, put his initials on the newspaper to which he had referred, the Cleveland Leader of September 4, 1866.]

DANIEL C. MCEWEN sworn and examined.

By Mr. Manager BUTLER:

Q. What is your profession?
A. Short-hand writer.
Q. How long has that been your profession?
A. For about four or five years, I should judge.
Q. Were you employed in September, 1866, in reporting for any paper?
A. I was.
Q. What paper?
A. The New York World.
Q. Did you accompany Mr. Johnson and the presidential party when they went to lay the corner-stone of a monument in honor of Mr. Douglas?
A. I did.
Q. Where did you join the party?
A. I joined the party at West Point, New York.
Q. How long did you continue with the party?
A. I continued with them till they arrived at Cincinnati on their return.
Q. Did you go professionally as a reporter?
A. I did.
Q. Had you accommodation on the train as such?
A. I had.
Q. The *entrée* of the President's car?
A. I had.
Q. Were you at Cleveland?
A. I was.
Q. Did you make a report of his speech at Cleveland from the balcony?
A. I did.
Q. How, phonographically or stenographically?
A. Stenographically.
Q. Have you your notes?
A. I have.
Q. Here?
A. Yes, sir.
Q. Produce them. [The witness produced a memorandum-book.] Have you, at my request, copied out those notes since you have been here?
A. I have.
Q. (Exhibiting a manuscript to the witness.) Is that the copy of them?
A. It appears to be.
Q. Is that an accurate copy of your notes?
A. It is.
Q. How accurate a report of the speech are your notes?
A. My notes are, I consider, very accurate so far as I took them. Some few sentences in the speech were interrupted by confusion in the crowd, which I have indicated in making the transcript, and the parts about which I am uncertain I enclose in brackets.
Q. Where you have not enclosed in brackets, how is the transcript?
A. Correct.
Q. Was your report published?
A. I cannot say. I took notes of the speech, but owing to the lateness of the hour—it was eleven o'clock or after—it was impossible for me to write out a report of the speech and send it to the paper which I represented. Therefore I went to the telegraph office after the speech was given, and dictated some of my notes to other reporters and correspondents, and we made a report which we gave to the agent of the Associated Press, Mr. Gobright.
Q. Did the agent of the Associated Press accompany the presidential party for a purpose?

A. Yes, sir.
Q. Was it his business and duty to forward reports of speeches?
A I supposed it to be.
Q. Did you so deal with him?
A. I did.
Q. Have you put down the cheers and interruptions of the crowd or any portion of them?
A. I have put down a portion of them. It was impossible to take them all.
Q. State whether there was a good deal of confusion and noise there?
A. There was a great deal of it.
Q. Exhibition of ill-feeling and temper?
A. I thought there was.
Q. On the part of the crowd?
A. On the part of the crowd.
Q. How on the part of the President?
A. He seemed a little excited.
Q. Do you remember anything said there to him by the crowd about keeping his dignity?
A. I have not it in my notes.
Q. Do you remember it?
A. I do not remember it from hearing.
Q. Was anything said about not getting mad?
A. Yes, sir.
Q. Did the crowd caution him not to get mad?
A. The words used were, "Don't get mad, Andy."
Q. Was he then speaking in considerable excitement, or otherwise? Did he appear considerably excited at that moment when they told him not to get mad?

Mr. EVARTS. That is not any part of the present inquiry, which is to verify these notes, to see whether they shall be in evidence or not.

Mr. Manager BUTLER. I understand; but I want to get as much as I can from memory, and as much as I can from notes, and both together will make a perfect transcript of the scene.

Mr. EVARTS. But the present inquiry, I understand, is a verification of notes. Whenever that is abandoned and you go by memory let us know it.

Mr. Manager BUTLER. The allegation is that it was a scandalous and disgraceful scene. The difference between us is that the counsel for the President claim the freedom of speech and we claim the decency of speech. We are now trying to show the indecency of the occasion. That is the point between us, and the surroundings are as much part of the occasion as what was said.

Mr. EVARTS. I understand you regard the freedom of speech in this country to be limited to the right of speaking properly and discreetly.

Mr. Manager BUTLER. Oh, no. I regard freedom of speech in this country the freedom to say anything by a private citizen in a decent manner.

Mr. EVARTS. That is the same thing.

Mr. Manager BUTLER. Oh, no.

Mr. EVARTS. And who is the judge of the decency?

Mr. Manager BUTLER. The court before whom the man is tried for breaking the laws of decency.

Mr. EVARTS. Did you ever hear of a man being tried for freedom of speech in this country?

Mr. Manager BUTLER. No; but I have seen two or three women tried; I never heard of a man being tried for it before. [Laughter.] (To the witness.) I was asking you whether there was considerable excitement in the manner of the President at the time he was cautioned by the crowd not to get mad?

A. I was not standing where I could see the President. I did not notice his manner; I only heard his tone of voice.

Q. Judging from what you saw and heard?

A. I did not see the President

Q. What you heard?

A. He seemed excited; I do not know what his manner is from personal acquaintance when he is angry.

Mr. Manager BUTLER, (to the counsel for the respondent.) The witness is yours, gentlemen.

Mr. EVARTS Do you propose to offer this report of the speech?

Mr. Manager BUTLER. I do.

Mr. EVARTS. Very well; then I will cross-examine the witness.

Cross-examined by Mr. EVARTS:

Q. Did you report the whole of the President's speech?

A. No, sir. The hour was late and I left shortly before the close; I do not know how long before he closed his speech.

Q. So your report does not profess to be of the whole of the speech?

A. No, sir.

Q. From the time that he commenced, till the point at which you left off did you report the whole of the speech?

A. No, sir. Certain sentences were broken off by the interruption of the crowd, as I before stated.

Q. But aside from the interruption, did you continue through the whole tenor of the speech till the point at which you left?

A. I did.

Q. Did you make a report of it word for word, as you supposed?

A. Yes, sir; as I understood the speech.

Q. And did you attempt to include, word for word, the interruptions of the assemblage?

A. I did. I took what appeared to be the principal exclamations of the crowd; I could not hear all of them.

Q. When did you make the copy or transcript that you produce here?

A. I made that about two weeks since, after I was summoned before the managers of the impeachment, and gave evidence concerning the speech there.

Q. Can you be as accurate or as confident in a transcript made after a lapse of two years as if it had been made presently, when the speech was fresh?

A. I generally find that when a speech is fresh in my mind I read the notes with more readiness than when they become old; but as to the accuracy of the report, I think I can make as accurate a transcript of the notes now as at that time.

Q. When you transcribe after the lapse of time you have nothing to help you except the figures that are before you in your notes?

A. That is all, with me.

Q. Are you not aware that in phonographic reporting there is frequent obscurity in the haste and brevity of the notation?

A. There sometimes is.

By Mr. Manager BUTLER:

Q. I observe that the counsel on the other side asked for the politics of the Leader. May I ask you for the politics of the World?

A. I have understood them to be democratic.

EVERETT D. STARK sworn and examined.

By Mr. Manager BUTLER:

Question. What is your profession?

Answer. I practice law now.

Q. What was your profession in September, 1866?

A. I practiced law then.

Q. Where?

A. In Cleveland. I may say I was formerly a short-hand reporter, and do more or less of it now in law business.

Q. Did you report the speech of Andrew Johnson, President of the United States, from the balcony of the Cleveland hotel on the night of the 3d of September, 1866?

A. Yes, sir.

Q. For what paper?

A. For the Cleveland Herald.

Q. Did you take it in short-hand?

A. I did.

Q. Was it written out by you and published?

A. It was.

Q. Was it published as written out by you?

A. Yes, sir.

Q. Have you your short-hand notes?

A. I have not.

Q. Are they in existence?

A. I suppose not. I paid no attention to them. I suppose they were thrown in the chip basket.

Q. Did you ever compare the printed speech in the Herald with your notes for any purpose, or with the manuscript?

A. I did with the manuscript that night. That is, I compared the slips of proofs that were furnished with the copy as I took it from the original notes.

Q. How did it compare?

A. It was the same.

Q. Were the slips of proofs the same as the paper published the next day?

A. Just the same, with such typographical corrections as were made there.

Q. Have you a copy of the paper?

A. I have.

Q. Will you produce it? [The witness produced a copy of the Cleveland Herald, of September 4, 1866.] Can you now state whether this is a substantially accurate report in this paper of what Andrew Johnson said the night before?

A. Yes, sir; it is generally. There are some portions there that were cut down, and I can point out just where those places are.

Q. By being "cut down" do you mean the substance given instead of the words?

A. Yes, sir.

Q. Does it appear in the report which are substantial and which are the *verbatim* parts?

A. Not to any other person than myself, as I can tell from my recollection.

Q. Can you point out that which is substantial and that which is accurate in the report?

The WITNESS. Do you wish me to go over the whole speech for that purpose?

Mr. Manager BUTLER. I will, for the present, confine myself to such portions as are in the articles. If my learned friends want you to go over the rest they will ask you.

The WITNESS. Commencing a little before where the specification in the articles of impeachment begins, I can read just what Mr. Johnson said at that point.

Q. Do so.

A. (Reading) "Where is the man living, or the woman, in the community, that I have wronged, or where is the person that can place their finger upon one single hairbreadth of deviation from one single pledge I have made, or one

single violation of the Constitution of the country? What tongue does he speak? What religion does he profess? Let him come forward and place his finger upon one pledge I have violated." There was some interruption by the crowd, and various remarks were made, of which I have noticed one, because only one did Mr. Johnson pay any attention to, and that was a voice that cried "Hang Jeff. Davis." The President said, "Hang Jeff. Davis? hang Jeff. Davis? Why don't you?" There was then some applause and interruption, and he repeated, "Why don't you?" and there was again applause and interruption; and the President went on, "Have not you got the court? Have not you got the court?" repeating it twice. "Have not you got the Attorney General? Who is your Chief Justice—and that refused to sit upon the trial?" There was then interruption and applause, and he went on to say: "I am not the prosecuting attorney; I am not the jury; but I will tell you what I did do: I called upon your Congress that is trying to break up the government"——. At that point there was interruption and confusion, and there may have been words there uttered by the President that I did not hear, but I think not. "Yes, did your Congress order hanging Jeff. Davis?" and then there was confusion and applause. And then the President went on to say, "but let prejudices pass," and so on.

Q. Will you now come toward the conclusion of the other point mentioned in the specifications, and state whether you reported that accurately?

A. Commencing a little before where the specification is of the speech, he said: "In bidding you farewell here to-night, I would ask you, with all the pains Congress has taken to calumniate and malign me, what has Congress done? Has it done anything to restore the Union of the States? But, on the contrary, has it not done everything to prevent it? And because I stand now as I did when the rebellion commenced I have been denounced as a traitor. My countrymen, here to-night, who has suffered more than I? Who has run greater risk? Who has borne more than I? But Congress, factious, domineering, tyrannical Congress, has undertaken to poison the minds of the American people and create a feeling against me"—so far Mr. Johnson's words, and I concluded the sentence here in this fashion—"in consequence of the manner in which I have distributed the public patronage." These were not Mr. Johnson's words, but contained in a summary way the reasons that he gave just at that point for his action.

Mr. EVARTS, (to the managers.) Do you propose to offer this report of the Cleveland speech also?

Mr. Manager BUTLER. I propose to read one and offer all, so that the President may have the privilege of collating them in order to have no injustice done him as to what he said.

Mr. EVARTS. We do not claim any privileges of that kind; on the contrary, we propose to object to all of them that they are not properly proved.

Mr. Manager BUTLER. Certainly. I observed that the President objected in his answer that we did not put in all he said, and I mean to do the best I can in that regard now.

Mr. EVARTS. That is exactly what we desire, if anything is to come in. Now, I will proceed with the witness.

Cross-examined by Mr. EVARTS:

Q. You have a newspaper report here?
A. I have.
Q. And that is all you have?
A. That is all the memorandum I have.
Q. The only memorandum is the newspaper report?
A. The newspaper report.
Q. What is the date of the newspaper?
A. September 4, 1866.

Q. Did you make a stenographic report of the whole of the President's speech?

A. I did with one exception.

Q. What exception is that?

A. It was a part of what he said about the Freedmen's Bureau. Somewhere about the commencement of, I should say, the latter half of his speech by time, he went somewhat into details and figures which I omitted to take down.

Q. Did you write out your notes in full?

A. No, sir.

Q. You never did that?

A. I never did that.

Q. And you have not now either the notes or any transcript of them?

A. Only this.

Q. You have got a newspaper; I understand that. Now, did you prepare for the newspaper the report that is there contained?

A. I did.

Q. And you prepared it on the plan of some part verbatim and some part condensed?

A. Yes, sir.

Q. What was your rule of condensation and the motive of it?

A. I had no definite rule that I can give. The reason why I left out a part of what he said of the Freedmen's Bureau was——

Q. That was not condensed at all, was it?

A. That part was not taken. That I did take was somewhat condensed.

Q. I am only asking about what you did take, not what you did not take. What was your rule in respect to what you put verbatim into your report and what you condensed? How did you determine which parts you would treat in one way or the other?

A. Well, sir, perhaps I was influenced somewhat by what I considered would be a little more spicy or entertaining to the reader.

Q. In which interest, that of the President or his opponents?

A. Well, I do not know that.

Q. Which side were you on?

A. I was opposed to the President.

Q. But you do not know which you thought the interest was you selected the spicy part for?

A. I was very careful of those parts that occasioned considerable excitement or interest in the crowd, in his hearers, to take them down carefully, as he said them.

Q. The parts that the crowd were most interested in you thought you would take down carefully?

A. With more particularity.

Q. And the parts that they were interested in, as you observed, were those that they made the most outcry about? Was it not so?

A. Yes, sir; partially so.

Q. That was your judgment and guide?

A. Considerably.

Q. Now, in regard to the condensed part of your report, are you able to say that there is a single expression in that portion of your report which was used by the President, so that the words as they came from his mouth were there set down?

A. No, sir; I think it is not the case in those particular points that I condensed. I did so by the use, in some part, of my own words.

Q. And for compression of space, did you not?

A. Yes, sir; primarily.

Q. Was not your rule for condensation partly when you had got tired of writing out?

A. No, sir.

Q. Not at all?

A. One reason was it was getting on between three and four o'clock, and I was directed to cut down toward the last, and I did so more toward the last than I did in the earlier parts of the speech.

Q. In order to be ready for the press?

A. In order to be ready for the morning press.

Mr. EVARTS. We object to this report as a report of the President's speech.

Mr. Manager BUTLER, (to the witness.) Mark it with your initials and leave it on the table. [The witness marked with his initials "E. D. S." the copy of the Cleveland Herald referred to by him.] I forgot to ask you what are the politics of the Herald.

The WITNESS. It was at that time what we called "Johnson Republican." Some called it "Post Office Republican." The editor of the Herald had the post office at that time.

Mr. Manager BUTLER. I propose now, sir, to offer as the foundation, as the one upon which I rely, the Leader's report as sworn to by Mr. Hudson, the first witness as to this speech.

Mr. EVARTS. That we object to; and the grounds of objection, made manifest doubtless to the observation of the Chief Justice and the senators, are greatly enhanced when I find that the managers are in possession of the original minutes of a short-hand reporter of the whole speech, and his transcript made therefrom and sworn to by him. We submit that to substitute for this evidence of the whole speech, upon this mode of authentication, the statement of Mr. Hudson, upon the plan and theory as testified to by him, is contrary to the first principles of justice in evidence. He has not said how much is his and how much is the reporter Johnson's, and it is in considerable part condensed, a statement of "drift," determined by circumstances, not of the President's utterance. The same objection will be made if this second or Cleveland Herald report is presented.

Mr. Manager BUTLER. I do not propose to argue the question. Suppose we were trying any other case for substantive words; would not this be a sufficient proof? I do not propose to withdraw the other report of Mr. McEwen. I propose to put it in, subject to comment, to be read if these gentlemen desire it read, and the other report, so that we may have all three reports: the Post Office report, the Republican report, and the Democratic report. A natural leaning makes me lean to this particular report as the one which I mean shall be the standard report, because it is sworn to expressly by the party as having been written down by himself, published by himself, and corrected by himself, and I am only surprised that there should be objection to it.

Mr. EVARTS. Nothing can better manifest, Mr. Chief Justice, the soundness of our objection than the statement of the manager. He selects by preference a report made by and through the agency of political hostility, and on the plan of condensation, and on the method of condensing another man's notes, the amount and quality relatively not being discerned, instead of a sworn report by a phonographer who took every word and brings his original notes transcribed, and brings his transcription, and swears to their accuracy; and here deliberately, in the face of this testimony as to what was said, thus authentically taken and authentically preserved and brought into court to be verified, the honorable manager proposes to present, as of the speech in its production, the notes framed and published in the motive, and with the feeling and under the influence and in the method, that has been stated. We object to it as evidence of the words spoken.

Mr. Manager BUTLER. If, Mr. President and Senators, I had not lived too

long in this world to be astonished at anything, I should have been surprised at the tone in which this proposition is argued. Do I keep back from these gentlemen anybody's report? Do I not give them all reports—everything I can lay my hand on? Am I obliged to go into the enemy's camp? Shall I not use the report of my friends and not of my enemies, and then give them an opportunity of having the reports of my enemies to correct that of my friends? Is all virtue, all propriety in the democratic report? Can that never be wrong? At one time I think President Johnson, if I remember, would not like to have me put in the "World's" report of him; and when they changed exactly I do not know. I have offered this report—why? Because this is the fullest complete report. The reason why I did not rely upon Mr. McEwen's report is that he testified on the stand that he got tired and went away and did not report the whole speech; but this is a report of the whole speech, and the only report which purports to be a report of the whole speech. Mr. Stark's report, as he says, left out a portion. Mr. McEwen expressly swears he left out a portion. Hence I cannot put them in, or if I offered to do so I should be met with the objection, "You do not put in the whole speech." I do choose the report which the witness swears is a complete report of the speech except so far as he synopsized; and then, so far as the other two reports go, I bring them in here to correct it, so that the President shall take no detriment. Oh, how he stickles now for exactness! The President was willing that Mr. Moore should make a speech for him on the 18th of August, and that went out. Now, then, here are three reports, representing the three unfortunate divisions of opinion on this question; and we offer them all to the counsel. We say which we prefer, and then he almost berates us, as much as his courtesy will allow him to do, because we choose our friends, and I am glad to say not his. The question is not of competency but of weight of evidence, and has simply been argued so. [Mr. Evarts rose.] I ask that there may be a decision. I think I have the close some time, sir.

Mr. EVARTS. Not on our objection.

Mr. Manager BUTLER. I beg your pardon; it is on my offer.

Mr. EVARTS. Our objection.

Mr. Manager BUTLER. No; my offer.

The CHIEF JUSTICE. Do the counsel desire to be heard further?

Mr. Manager BUTLER. Does not the presiding officer think we have the close?

The CHIEF JUSTICE. The counsel for the respondent have not exhausted their hour.

Mr. Manager BUTLER. Have we got to keep on, in order to get the close, until we occupy our whole hour?

The CHIEF JUSTICE. The rule of the Senate is that each side shall have an hour.

Mr. Manager BUTLER. Be it so. I can even get on with that rule.

Mr. EVARTS. Discredit is now thrown upon the most authentic report, first by an observation that it omits a part of the speech, and secondly by a suggestion that it has but democratic responsibility. There you have it fairly and squarely, that it is not on the accuracy of phonography nor on the honesty of transcription, but on the color of the mind through which the President's speech is to be run, and by double condensation reproduced to the tone and the temper of a party print. There is precisely that condensation in the first original notes of Mr. Hudson, and condensation then from those notes into the space that the newspaper takes, and is offered confessedly on the principle of selection which the learned managers have adopted of preferring what they consider a friendly report. Mr. Chief Justice and senators, I have read neither of them. I did not know before that the question of whether the authenticity of stenography was reliable depended upon the political opinions of the stenographer. We submit that there is no proper evidence; there is no living witness that by mem-

ory can produce the President's speech, and there is no such authentication of notes in any case but Mr. McEwen's that makes the published speeches evidence.

Mr. Manager BUTLER. I shall not debate the matter further. I rise simply to say that I have made no such proposition. I think this is an accurate report so far as we have put it into the articles. It is an accurate report, a sworn accurate report, and by a man whom we can trust and do trust. The others, we think, are just as accurate perhaps; that we do not go into; we simply put them forward, so that if there is any change the President may have the benefit of it. He comes in here in his answer and says that we will not give him the full benefit of all he said; and then, when we take great pains here to bring everybody that made a report that we can hear of in this case and we offer them all, he says we must take a given one. To that we answer we take the one that has the whole speech. And now I will test the question: if the gentlemen will agree not to object to McEwen's report because it is not a report of the whole speech, I will take that.

Mr. EVARTS. We will not make that objection.

Mr. Manager BUTLER. Very good; put it in then.

The CHIEF JUSTICE The honorable manager then withdraws his proposition to read the Cleveland Leader?

Mr. Manager BUTLER. No, sir; I am going to read this and put in both the others as evidence, with your leave. I will take this as the standard copy.

Mr. HOWARD. Mr. President, if the managers have no objection to it, I desire to move that the trial be postponed until to-morrow at the usual hour, for the purpose of enabling the Senate to transact some business.

Mr. CONKLING and others. Let us finish this matter.

Mr. HOWARD. I withdraw my motion for the present.

Mr. Manager BUTLER. Mr. Clerk, will you have the kindness to read this? (Handing to the chief clerk the Cleveland Leader of September 4, 1866.)

Mr. EVARTS. The honorable managers will correct us if we are in error in supposing that when I had made manifest our objections to the imperfect reports, as matter of lawful right on our part to object, the managers said that if we would not object to McEwen's for incompleteness they would put that in as the report of the speech. Now, it seems, they propose to put the others in also.

Mr. Manager BUTLER. We want to be fully understood, so that we shall have no mistake. We put this in as the standard. We put in the other two, so that if the President comes in here with witnesses to say it is not true, (because all things are possible,) then we shall have the additional authentication of the other two reports.

Mr. EVARTS. The learned manager is familiar enough with the course of trials to know that it will be time enough for him to bring forth these additional copies to contradict this movement of ours when we make it.

Mr. Manager BUTLER. I never knew that was the way. Will you allow this to be read, or do you still make any objection? I claim that they shall all go in.

Mr. EVARTS. We object to the two copies from newspapers.

Mr. Manager BUTLER. Very good. I ask that that question be decided, then. We say they all go in.

The CHIEF JUSTICE, (to the managers.) You offer the Cleveland Leader first?

Mr. Manager BUTLER. I offer the whole three at once.

The CHIEF JUSTICE. The Chief Justice will not put the question upon all three at once unless so directed by the Senate.

Mr. Manager BUTLER. Under the direction of the presiding officer, I will offer first the Leader, and ask a vote on that.

The CHIEF JUSTICE. The managers offer a report made in the Leader news-

paper of Cleveland as evidence in the cause. It appears from the statement of the witness, Hudson, that the report was not made by him wholly from his own notes, but from his own notes and the notes of another person whose notes are not produced, nor is that person himself produced for examination. Under these circumstances the Chief Justice thinks that that paper is inadmissible. Does any senator desire a vote of the Senate on the question?

Mr. DRAKE. I ask for a vote on the question, sir.

Mr. Manager BUTLER. I supposed this question was to be decided without debate.

The CHIEF JUSTICE. It is. Senators, you who are of opinion that the Leader newspaper is admissible in evidence——

Mr. CONNESS and Mr. SUMNER called for the yeas and nays; and they were ordered.

The CHIEF JUSTICE. Senators, you who are of opinion that the Leader newspaper is admissible in evidence will, as your names are called, answer "yea;" those of the contrary opinion, "nay."

The question being taken by yeas and nays, resulted—yeas, 35; nays, 11; as follows:

YEAS—Messrs. Anthony, Cameron, Cattel, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Henderson, Howard, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Van Winkle, Willey, and Williams—35.

NAYS—Messrs. Buckalew, Davis, Dixon, Doolittle, Fowler, Hendricks, Howe, McCreery, Patterson of Tennessee, Trumbull, and Vickers—11.

NOT VOTING—Messrs. Bayard, Grimes, Harlan, Morton, Saulsbury, Wade, Wilson, and Yates—8.

The CHIEF JUSTICE. On this question the yeas are 35, and the nays are 11. So the report of the Leader is admitted in evidence.

Mr. Manager BUTLER. I now offer also the report of Mr. McEwen. Is that objected to?

Mr. EVARTS. Our former objection. We make no additional objection.

Mr. Manager BUTLER. Then I understand that is in evidence. I now offer the report of Mr. Stark, in the Cleveland Herald. Is there any objection to that?

Mr. EVARTS. The same, I suppose.

Mr. Manager BUTLER. Now I will read the report in the Leader, as it is a short one.

Mr. HOWARD. I understand that the honorable managers are about to read these speeches from the reports.

Mr. Manager BUTLER. Unless the reading may be dispensed with and they be put in print.

Mr. JOHNSON. Let them be considered as read.

Mr. STANBERY. We do not want them read.

Mr. Manager BUTLER. Very well, then, I do not want the reading. They will be taken as read, and printed. ["Agreed."]

The reports thus put in evidence are as follows:

[From the Cleveland Leader.]

President Johnson's speech.

FELLOW-CITIZENS: It is not for the purpose of making a speech that I now appear before you. I am aware of the great curiosity which prevails to see strangers who have notoriety and distinction in the country. I know a large number of you desire to see General Grant, and to hear what he has to say. [A voice: "Three cheers for Grant."] But you cannot see him to-night. He is extremely ill. I repeat I am not before you now to make a speech, but simply to make your acquaintance—to say how are you and bid you good-bye. We are on our way to Chicago, to participate in or witness the laying of the corner-stone of a monument to the memory of a distinguished fellow-citizen who is now no more. It is not necessary for me to mention the name of Stephen A. Douglas to the people of Ohio. [Applause.] I am free to say I am flattered by the demonstrations I have witnessed, and being flattered,

I don't mean to think it personal, but as an evidence of what is pervading the public mind, and this demonstration is nothing more nor less than an indication of the latent sentiment or feeling of the great mass of the people with regard to this great question.

I come before you as an American citizen simply, and not as the Chief Magistrate clothed in the insignia and paraphernalia of state, being an inhabitant of a State in this Union. I know it has been said that I was an alien, (laughter,) and that I did not reside in one of the States of the Union, and therefore I could not be the Chief Magistrate, though the Constitution declares that I must be a citizen to occupy that office. Therefore, all that was necessary to depose its occupant was to declare the office vacant, or under a pretext to prefer articles of impeachment. And thus the individual who occupies the Chief Magistracy was to be disposed of and driven from power.

There was, two years ago, a ticket before you for the presidency. I was placed upon that ticket with a distinguished citizen, now no more. [Voices—"It's a pity;" "Too bad;" "Unfortunate."] Yes, I know there are some who say, "Unfortunate." Yes, unfortunate for some that God rules on high and deals in justice. [Cheers.] Yes, unfortunate! The ways of Providence are mysterious and incomprehensible, controlling all those who exclaim, "Unfortunate." ["Bully for you."] I was going to say, my countrymen, a short time since I was elected and placed upon the ticket. There was a platform proclaimed and adopted by those who placed me upon it. Notwithstanding a mendacious press; notwithstanding a subsidized gang of hirelings who have not ceased to traduce me, I have discharged all my official duties, and fulfilled my pledges. And I say here to-night that if my predecessor had lived, the vials of wrath would have poured out upon him. [Cries, "Never!" "Never!" and three cheers for the Congress of the United States.] I came here as I was passing along, and having been called upon for the purpose of exchanging views, and ascertaining, if we could, who was wrong. [Cries, "You are!"] That was my object in appearing before you to-night. I want to say that I have lived among the American people, and have represented them in some public capacity for the last twenty-five years. Where is the man or the woman who can place his finger upon one single act of mine, deviating from any pledges of mine or in violation of the Constitution of the country? [Cheers and cries of "New Orleans!"]

Who is he—what language does he speak—what religion does he profess—that can come and place his finger upon one pledge I ever violated, or one principle I ever proved false to? [Voice, "New Orleans!" Another, "Why don't you hang Jeff. Davis?"] Hang Jeff. Davis? [Shouts and cries of "Down with him!"] Hang Jeff. Davis? [Voice, "Hang Wendell Phillips!"] Why don't *you* hang him? [Cries of "Give us an opportunity!"] Haven't you got the court? Haven't you got the Attorney General? Who is your Chief Justice, who has refused to sit on his trial? [Groans and cheers.] I am not the Chief Justice! I am not the Attorney General! I am no jury! But I'll tell you what I did do. I called upon your Congress, that is trying to break up the government. [Hisses and cries of "A lie!" Great confusion. Voice, "Don't get mad!"] I am not mad. [Hisses] I will tell you who is mad. "Whom the gods want to destroy they first make mad." Did your Congress order any of them to be tried? [Three cheers for Congress.] Then, fellow-citizens, we might as well allay our passion and permit reason to resume her empire and prevail. In presenting the few remarks that I designed to make, my intention was to address myself to your common sense, your judgment, your better feelings, not to the passion and malignancy of your hearts. [Voice, "How about Moses?"] This was my object in presenting myself on this occasion, and to say "how d'ye" and "good-bye." In the assembly here to-night the remark has been made "traitor!" Traitor, my countrymen! Will you hear me? [Cries, "Yes!"] And will you hear me for my cause and for the Constitution of my country? ["Yes! Yes! Go on!"]

I want to know when or where or under what circumstances Andrew Johnson, not as Executive, but in any capacity, ever deserted any principle, or violated the Constitution of this country. [Never! never!] Let me ask this large and intelligent audience if your Secretary of State, who served four years under Mr. Lincoln and who was placed upon the butcher's block as it were and hacked and gashed all to pieces, scarred by the assassin's knife—when he turned traitor? [Cries of "Never!"] If I were disposed to play the orator and deal in declamation, even to-night I would imitate one of the ancient tragedies, and would take Mr. Seward, bring him before you, and point you to the hacks and scars upon his person. [Voice, "God bless him!"] I would exhibit the bloody garments saturated with gore from his gaping wounds. Then I would ask you, who is the traitor? [Voice: "Thad. Stevens!"] Why don't you hang Thad. Stevens and Wendell Phillips? [Cheers.] I have been fighting traitors in the south. They have been whipped and crushed. They acknowledge their defeat and accept the terms of the Constitution. And now, as I go round the circle, having fought traitors at the south, I am prepared to fight them at the north, [Cheers,] God being willing, with your help. [Cries, "We won't give it."] They will be crushed north and this glorious Union of ours will be preserved. [Cheers.] I do not come here as the Chief Magistrate of twenty-five States out of thirty-six. [Cheers.]

I come here to night with the flag of my country and the constellation of thirty-six stars untarnished. Are you for dividing this country? [Cries, "No."] Then I am President, and President of the whole United States. [Cheers.] I will tell you another thing. I

understand he discordant notes in this crowd to-night. He who is opposed to the restoration of the government and the Union of the States is a greater traitor than Jeff Davis or Wendell Phillips. [Loud cheers.] I am against both of them. [Cries, "Give it to them."] Some of you talk about traitors in the south, who have not courage to go away from your homes to fight them. [Laughter and cheers.] The courageous men, Grant, Sherman, Farragut, and the long list of the distinguished sons of the Union, were in the field, and led on their gallant hosts to conquest and to victory, while you remained cowardly at home. [Applause; bully.] Now when these brave men have returned home, many of whom have left an arm or a leg or their blood upon many a battle-field, they found you at home speculating and committing frauds upon the government. [Laughter and cheers.] You pretend now to have great respect and sympathy for the poor, brave fellow who has left an arm on the battle-field. [Cries, "Is this dignified?"] I understand you. You may talk about the dignity of the President. [Cries, "How was it about his making a speech on the 22d of February?"] I have been with you on the battle-fields of this country, and I can tell you furthermore to-night, who have to pay these brave men who shed their blood. You speculated, and now the great mass of the people have got to work it out. [Cheers.]

It is time that the great mass of the American people should understand what your designs are. [A voice, "What did General Butler say?"] What did General Butler say? [Hisses.] What did Grant say? [cheers] and what does General Grant say about General Butler? [Laughter and cheers.] What does General Sherman say? [A voice, "What does Sheridan say? New Orleans! New Orleans!"] General Sheridan says that he is for the restoration of the government that General Sheridan fought for. [Bully.] But, fellow-citizens, let this all pass. I care not for my dignity. There is a certain portion of our countrymen will respect a citizen wherever he is entitled to respect. [A voice, "That's so."] There is another class, that have no respect for themselves, and consequently they cannot respect any one else. [Laughter and cheers.] I know a man and a gentleman whenever I meet him. I have only to look in his face; and if I was to see yours by the light of day I do not doubt but that I should see cowardice and treachery written upon it. [Laughter and cheers.] Come out here where I can see you. [Cheers.] If you ever shoot a man you will do it in the dark, and pull the trigger when no one is by to see. [Cheers.] I understand traitors. I have been fighting them at the southern end of the line, and we are now fighting them in the other direction. [Laughter and cheers.] I came here neither to criminate nor recriminate, but when attacked, my plan is to defend myself. [Cheers.]

When encroached upon, I care not from what quarter it comes, it will meet with resistance. As Chief Magistrate, I felt, after taking the oath to support the Constitution, and when I saw encroachments upon your constitutional rights, I dared to sound the toesin of alarm. [Three cheers for Andrew Johnson.] Then, if this be right, the head and front of my offending is in telling when the Constitution of our country was trampled upon. Let me say to those who thirst for more blood, who are still willing to sacrifice human life, if you want a victim, and the country requires it, erect your altar and lay me upon it to pour the last libation to human freedom. [Loud applause.] I love my country. Every public act of my life testifies that it is so. Where is the man that can put his finger upon any one act of mine that goes to prove to the contrary? And what is my offending? [Voice, "Because you are not a radical," and cries of "Veto!"] Somebody says "Veto!" Veto of what——is called the Freedmen's Bureau bill? I can tell you what it is. Before the rebellion commenced, there were 4,000,000 of slaves and about 340,000 white people living in the south. These latter paid expenses, bought the lands and cultivated them, and, after the crops were gathered, pocketed the profits. That's the way the thing stood up to the rebellion. The rebellion commenced, the slaves were liberated, and then came up the Freedmen's Bureau bill. This provides for the appointment of agents and sub-agents in all States, counties, and school districts, who have power to make contracts for the freedmen and to hire them out, and to use the military power to carry them into execution. The cost of this to the people was $12,000,000 at the beginning. The further expense would be greater, and you are to be taxed for it. That is why I vetoed it. I might refer to the civil-rights bill, which is even more atrocious. I tell you, my countrymen, that though the powers of hell and Thad. Stevens and his gang were by, they could not turn me from my purpose. There is no power that could turn me except you and the God who spoke me into existence.

In conclusion, he said that Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the Union of these States? No; on the contrary, they had done everything to prevent it; and, because he stood now where he did when the rebellion commenced, he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had taken to poisoning the minds of the American people. It was with them a question of power. Every friend of theirs who holds an office as assessor, collector, or postmaster, [A voice—"Turn Benedict out!"] wanted to retain his place. Rotation in office used to be thought a good doctrine by Washington, Jefferson, and Adams; and Andrew Jackson, God bless him, thought so. [Applause.] This gang of office-holders—these blood-suckers and cormorants—had got fat on the country. You have got them over your district. Hence you see a system of legislation proposed that these men shall not be turned out; and

the President, the only channel through which they can be reached, is called a tyrant. He thought the time had come when those who had enjoyed fat offices for four years should give way for those who had fought for the country. Hence it was seen why he was assailed and traduced. He had stood by them in the field, and, God willing, he would continue to stand by them. He had turned aside from the thread of his remarks to notice the insult sought to be given him. When an insult offered he would resent it in a proper manner. But he was free to say he had no revengeful or resentful feelings. All he wanted when the war was over and peace had come was for patriotic and Christian men to rally round the flag of the country in a fraternal hug, and resolved that all shall perish rather than that the Union shall not be restored. While referring to the question of suffrage, some one in the crowd asked him, "How about Louisana?" To which he responded, "Let the negroes vote in Ohio before you talk about their voting in Louisiana." [Laughter and cries of "Good!"] "Take the beam out of your own eye before you see the mote in your brother's." [Renewed laughter.] In conclusion, after some further remarks, he invoked God's best blessings on his hearers. [Applause.]

[D. C. McEwen's report of the Cleveland speech.]

FELLOW-CITIZENS OF THE CITY OF CLEVELAND: In being presented here to-night, not for the purpose of making a speech, I am well aware of the great curiosity that exists on the part of strangers in reference to seeing individuals who are here amongst them who have a notoriety and distinction in the country. Most of the persons here to-night—[A voice, "Louder!"] Well, you must remember there are a good many people here to-night, and it requires a pretty strong voice to reach the utmost verge of this audience to-night, and especially one who, from speaking for the last two or three days, has to some extent marred or destroyed what little voice he had. But for the time I consume, if you will bear with me, I will try and make myself heard, notwithstanding the hoarseness under which I labor. What I was going to say, though, is, I know that a large number are here who would desire to see General Grant, and to hear what he might say. [A voice, "That's so."] But the fact is that General Grant is extremely ill. His health will not permit of his appearing before this audience here to-night. It would be much more pleasure to me to hear him here before you, and to hear what he might have to say, than to give a speech of my own, or to give the reasons of his absence on this occasion. So then it will not be expected he will be here. He will not address you to-night. You cannot see him to-night, so far as that goes, on account of his extreme indisposition.

Fellow-citizens, in being before you to-night it is not for the purpose of making a speech, but simply to make your acquaintance, and while I am telling you "How do you do," at the very same time to tell you "Good bye." We are here to-day on our tour to a visit for the purpose of participating in or witnessing the laying of the chief corner-stone to a monument to be erected to one of our distinguished fellow-citizens, who is no more. It is not necessary for me to mention the name of Stephen A. Douglas to the people of Ohio. [Cheers.] It is a name familiar to all; and, being on a tour to participate in the ceremonies, passing through this city and section of country, and witnessing the demonstration or manifestations of regard and respect which have been made, I am free to say to you that so far as I am concerned—and I think I may speak for all those who accompany me—that we feel extremely flattered and gratified at the demonstrations that have been made by the people of the country through which we have passed. And in being flattered I want at the same time to state that I don't consider that entirely personal, but as an evidence of what is pervading the public mind, that there is a great issue before the country that is not yet settled, and these demonstrations are nothing more nor less than an indication of a latent sentiment of the feeling of the great mass of the people which is being developed in reference to the proper settlement of those great questions. [Cheers.]

And in coming before you to-night, I come before you an American citizen. Not simply as the Chief Magistrate receiving, and going along as an officer with the insignia and paraphernalia of State, but appear before you as a fellow-citizen, being an individual of one of the States of this Union. I know that it has been said and contended for on the part of some that I was an alien—[laughter, and cries of "Shame"]—that I did not reside in one of the States of the Union, and therefore I could not be Chief Magistrate, though the Constitution declared that I was. And all that was necessary was simply to introduce a resolution declaring the office vacant or deposing the occupant or under pretext to prefer articles of impeachment, and that the individual who occupied the Chief Magistracy was to be disposed of and driven from power. [Cries of "Never."] But, fellow-citizens, but a short time since you had a ticket before you for the Presidency and Vice-Presidency. I was placed upon that ticket with a distinguished fellow-citizen who is now no more. Yes, I know there are some that will complain. Unfortunate! Yes, unfortunate for some that God rules on high and deals in right. Yes, unfortunate that the ways of Providence are mysterious and incomprehensible, controlling all those who exclaim "unfortunate." [Voices, "Bully for you."] I was going to say, my countrymen, but a short time since I was selected and placed upon the ticket; and there was a platform proclaimed and adopted by those who placed me upon it.

And now, notwithstanding [?] a subsidized gang of hirelings (Cheers) [and traducers] I

[have discharged all my official duties.] And I say here, if my predecessor had lived, the vials of wrath would have been poured out upon him. [Cheers. Cries of "Never;" three cheers for the Congress of the United States?] I came here to-night in passing along, and being called upon for the purpose of exchanging, to the extent that the time would permit, of opinions and views, and to ascertain, if we could, who was in the wrong. (Laughter and cries of "Oh, oh.") That was my object in appearing before you to-night, and I want to say this, that I have lived with and been among the American people and have represented them in some capacity for the last 25 years; and where is the man living, or the woman, in the community where I have lived and had the confidence of the people, that can place his finger upon one single [?] deviating from any pledge I ever made—in violation of the laws of my country? [Cheers. A voice, "How about New Orleans?"] Where is he? What language does he speak, what religion does he profess that can come forward and place his finger upon one pledge I have violated or one principle I (ever) [?] [A voice, "New Orleans."] New Orleans. [Hang Jeff. Davis.] Just upon that subject—Hang Jeff Davis? [Voices, "No," and "Down with him."] ["Hang Wendell Phillips."] Hang Jeff. Davis? ["No."] ["Yes."] Why don't you? Why don't you? [A voice, "Give us the opportunity."] Haven't you got the court? Haven't you got the Attorney General? [A voice, "No, he is removed."] Who is your Chief Justice and has refused to sit upon the trial? [Cheers.] I am not the Chief Justice; I am not the prosecuting attorney. ["Good," and cheers.] I am not the jury.

But I will tell you what I did do. I called up our Congress that is trying to break up the government [A voice, "You lie," and cheers. "Not so." Hisses. "Don't get mad, Andy."] Well, I will tell you who is mad. "Whom the gods intend to destroy, they first make mad." Yes, did your Congress order any of them to be tried? [Three cheers for Gen. Grant and Congress.] Then, fellow-citizens, we might as well allay our feelings and let passion subside and reason resume her empire and prevail. [Cheers.] In presenting myself in the few remarks that I intended to make, my intention was to address myself to your common sense, to your judgment, to the better feeling, not the passion and the malignancy of your hearts. (Cheers.) This was my object in presenting myself on this occasion, and to merely tell you "How do you do," and at the same time to bid you "Good bye." In this crowd here to-night the remark has been made, "Traitor," "Traitor!" My countrymen will you hear me? [Voices, "Yes."] And will you hear me for my cause and for the Constitution of my country? [Cries of "Yes." I want to know when or where or under what circumstances Andrew Johnson—not as Chief Executive but acting in any other capacity—ever deserted any principle or violated the Constitution of his country. [Cries of "Never," and "You abandoned your party."]

Let me ask this large and intelligent audience here to-night if your Secretary of State, who served four years under Mr. Lincoln, and who was placed upon the butcher's block, as it were, and chopped in pieces, hacked, and scarred all over by the assassin's knife, when he turned traitor? ["Cries of never."] But if I were disposed to play the orator and deal in declamation here to-night, I would imitate one of the ancient tragedies that we have such a graphic account of—yes, I would take William H. Seward, and I would bring him before you, and would point you to the hacks and scars upon his person. [A voice, "God bless him."] Yes, I would exhibit his bloody garments, caused by blood from wounds inflicted by the assassin's knife. [Three cheers for Seward.] Yes, I would unfold his bloody garments before you to-night, and ask who had committed treason. (A voice, Thad. Stevens.) Yes, I would ask you why Jeff. Davis was not hanged? [And I would give the reason and hang Thad. Stevens and Wendell Phillips.]

I tell you, my countrymen, I have been fighting the south. They have been whipped, they have been crushed; and they are very willing to acknowledge their error and accept the terms of the Constitution; and now, as I go around the circle, having fought traitors at the south, I am prepared to fight traitors at the North. [Cheers.] God being willing with your help [Cries "We will do it," and "We won't do it,"] they will be crushed North and South, and this glorious Union of ours will be preserved, and in coming here to-night [it] was not coming as the Chief Magistrate of twenty-five States. No. I came here to-night as the Executive of thirty-six States. [Cheers.] I come here to-night with the flag of my country in my hand, a constellation of thirty-six, not twenty-five stars. [Cheers.] I come here to-night with the constellation of my country intact—[noise and confusion]—determined to defend the Constitution of my country let the consequences be what they may. I come here to-night with the Union, the entire circle of the States [not a segment of a circle.] [A voice, "How many States made you President?] How many States made me President? Wa'n't you against secession? ["Yes."] Were you for dissolving the Union? ["No."] Were you for dividing this government? ["No."] Then I am President, and I am President of the whole United States. [Cheers.] And I will tell you another thing. I will tell you another thing. I understand the discordant notes in this crowd here to-night. And I will tell you furthermore; he that is opposed to the restoration of the government and the reunion of the States is as great a traitor as Jeff. Davis or Wendell Phillips. [Loud cheers.] I am against both of them. [A voice "Give it to them."] I am against both of them.

I fought the traitors of the south, and I will now fight them in the north. And I will tell you another thing, I have been with them down there, and when [?] men were sleeping on

their arms; [I knew who was with them and about them.] When some of you talk about traitor in the south you hadn't courage to get out of your [closets] but persuaded [somebody else] to go. [Laughter and applause.] The courageous men—while Grant, Sherman, Farragut—the long list of the distinguished sons of the United States—were in the field of battle, leading on their gallant hosts to conquest and victory, you were cowardly at home. [Cheers.] [Cries of "Bully."] And now when these brave men have returned home, many of them leaving an arm or a leg or his blood in or upon some battle-field, you were at home speculating and committing frauds upon your government. [Laughter and cheers.] You pretend now as great respect and sympathy for the poor brave fellow that left his arm on the battle-field [voices and confusion] I understand you. And you may talk about the dignity of the President [if he does not make a speech on the 22d of July or the 22d of February.]

I have been with you (A voice "That was whisky.") I have been with you in the battle of this country. And I can tell you furthermore who has to pay for it. These brave men shed their blood; you speculated and got the money, and now the great mass of people must work it out (cheers) [and all this hanging.] I care not for your prejudice; it is time for the great mass of the American people to understand what your designs are. [A voice, "That's so,"] and in addition to this, the south, in proposing to come to terms, even proposed to come forward and pay their part. (A voice, "Let them come.") I say then let them come. (A voice, "That's right,") and these brave men that conquered them, and after having prostrated them, [?] (while) these gentlemen with the heel of power upon their necks, what do they say? They do not say anything about it.—[A voice—"What did General Butler say?"] General Butler? [Hisses.] What does General Grant say? [Cheers.] And what does General Grant say about General Butler? [Laughter and applause.] What does General Sherman say? (A voice, "What did General Sheridan say?") General Sheridan says he is for a restoration of the government. General Sheridan fought for it. [Cries of "Bully."]

But, fellow-citizens, let this all pass. I care not for my dignity. There is a certain portion of our countrymen that will respect their fellow-citizen whenever he is entitled to respect, [a voice, "that's so," and cheers.] There is another portion of them that have no respect for themselves, and consequently they cannot respect anybody else, [cries of "bully" and cheers, and other exclamations in the audience.] I know a gentleman and a man whenever I can see him. And furthermore, I know [when I look a man in the face and can see him]—[the President was here understood to express a wish that he could see some one in the crowd] I will bet now if there can be a light that cowardice and treachery can be seen it. [Laughter and cheers.] Come out here where we can see you. (Cheers.) And if ever you shoot a man you will shoot in the dark, and pull your trigger when no one is by. [Cheers.] I understand traitors. I have been fighting them for five years. We (fought) it out on the southern end of the line, and now we are going to go the other direction. And this man, such a one as insulted me to-night, when you [?] you will see that he has ceased to be a man. But in ceasing to be a man he shrank into the dimensions of a reptile. [Cheers.] And having so shrank, as an honest man I will tread upon him. I came here to-night neither to criminate nor to recriminate; but when provoked, my nature is not to (advance,) but it is to defend. [Cheers.] And when encroached upon, I care not from what quarter it comes, it is entitled to resistance—[as resistance to oppression.]

As your Chief Magistrate [have I felt for taking the oath to support the Constitution of my country, after I saw the encroachments of the enemy upon your constitutional rights.] I saw the citadel of liberty encroached upon, and as an honest man, and being placed there as your sentinel, I have dared to sound the tocsin of alarm. (A voice—"God bless Andrew Johnson.") Should I have ears and not hear? Should I have a tongue and not speak? (Voices—"No, no.") Then if this be right, the head and front of my offending is in [saying] when the Constitution of my country was trampled upon. [A voice—"Bully."] And let me say to-night, though my [head] has been threatened, though it has been said that my blood is to be shed—[A voice—"I can't see it"]—let me say to those that thirst for my blood—(A voice—"There is better blood than yours shed")—let me say to those who are still willing to sacrifice human life, let me say to those, if you want a victim. and my country requires it, erect your altar (A voice—"Bully for you.") [The confusion prevented the reporter from hearing the remainder of the sentence save the words "and the individual who addresses you to-night."] Erect your altar if you still thirst for blood. (Cries of "Never.") And if you want it, take out the individual who addresses you, lay him upon your altar, and the blood that now warms and animates his existence shall be poured out as the last libation to human freedom. (Loud applause.) I love my country [over popularity] and all my life testifies that it is so. (A voice—"That is so.") Where is the man that [used to be] toiling for a home and abiding place for his children that can look Andrew Johnson in the face and say that he was not his friend? Where is the man that has participated in any and all our wars, since our war with Mexico down to the present time, that can put his finger upon any one act that goes to prove [but what he stood at all times for the country?] (A voice—"That is so.") Then what is my offending? [A voice—"Because you are not a radical."] (Cries of "Veto.")

Somebody says "veto." (A voice, "Bully for the veto;" cheers.) Veto of what? What is called the Freedmen's Bureau bill. And I can tell you what it is. (A voice, "Tell

us.") Before the rebellion commenced there were four million of persons, that were called colored persons, that were held as slaves by about 340,000 people living in the south. These 340,000 slaveholders paid the expenses, [worked the negroes,] as they are commonly called, and at the expiration of the year, [when] the rice, tobacco, and cotton were sold, after paying all the expenses, the slaveholders put the money in their pockets. In many instances there were no profits, [thus he that bought the land and the slaves came out (?)] Well, that is the way the thing stood before the rebellion. The rebellion commenced, the slaves were turned loose, and then we come up to the Freedmen's Bureau bill. What did the Freedmen's Bureau propose? It is to appoint agents and sub-agents in all the States, counties, school districts, and parishes, with power to make contracts for all the slaves, with power to control, power to hire them out, and to dispose of them; and, in addition to that, the whole military power of the government to aid the execution of the Freedmen's Bureau bill. (A voice, "Bully.") I never fear clamor. (A voice, "Good for you.") I never [have] been afraid of the people, for it is in them I relied, and upon them I always relied. Then when I got the truth, the argument, and the fact and reason on my side, neither clamor, nor frowns, nor menaces can drive me from my purpose. [Cries of "bully," and cheers.]

And now to the Freedmen's Bureau bill. What was it? Four millions of slaves were emancipated, given an equal chance, a fair start to make their own support; to work, produce, and, having worked and produced, to appropriate the product of their own labor to their own sustenance and support. But the Freedmen's Bureau comes along and says that we must take charge of four millions of slaves. (Cries of "No," never.) The Freedmen's Bureau comes along and proposes to appropriate a fraction less than $12,000,000 to sustain this Freedmen's Bureau. I want to give some facts; I want to put the nail in, and, having put it in, to clinch it on the other side. [Cheers.] Then we come along and propose at the beginning, as an initiative, to appropriate $12,000,000 to defray the expense of emancipating four million of slaves. In the first instance it has cost you three thousand million of dollars. Three million of dollars you have expended; and, after having given a full and fair opportunity to enjoy the products of his own labor, then these gentlemen that are such great philanthropists, that are such great friends to humanity—the great masses of the people who toil and labor six days in the week, and some of them not even resting on the seventh, must be taxed to pay $12,000,000 to sustain that Freedmen's Bureau. [The system so kept on the country would run up to fifty millions of dollars.] In the days of John Quincy Adams $12,000,000 was looked upon as an enormous expense—[to the existence of the government]—but here are $12,000,000 for the Freedmen's Bureau. Your attention, my countrymen; I have not got to the point yet. (Cheers.)

Your attention. I would rather speak to five hundred men who would give me attention than to ten thousand who are not willing to hear me. How does the matter stand? The whole proposition stands to transfer 4,000,000 of slaves from the original owners—as I have just told you—in the south to their new task-masters; [yes,] a worse system of slavery than ever existed before [was to transfer four million of slaves to a new set of task-masters, who were to work them, to control them, to make their contracts, and in the end, if there were any profits made, they would put them into their own pockets, instead of——[the remainder of the sentence was broken by cheers and voices, "True," "True."] But, on the other hand, if the system turned out to be unprofitable, and was losing business, you, the people, had to foot up the bill and the government pay the expense. That is the Freedmen's Bureau bill.

Now when they talk about power and usurpation, I stand to-night where I have always stood. [See this measure before you.] Before this Congress came up or this rebellion commenced; and because I opposed it, exercising one of the most conservative powers in the constitutions of the country. What could I do by the veto power? [A voice, "Send it over your head."] Can you [present anything?] No. But all that the Executive can do, who was the representative of the people, the people's tribune, is to say when a measure is unconstitutional, is to say when it is extravagant and improvident and [?] let the people consider of it. (Cheers.) Was there any tyranny in stopping the measure until you can get the people to consider it? [A voice, "No."] Then as your tribune, as your representative, I said when this bill was [passed]—and a bill, too, if I had been disposed and with plenty of power, I could have taken it into my hands, with thousands of satraps and from 12 to 50 millions of expenditure, I could have declared myself dictator. I said no; that the power is where the Constitution placed it—in the hands of the people. (Cheers.) So much for the Freedmen's Bureau bill.

And if I was disposed to [come] along, in connection with this [and] call your attention to the civil-rights bill, it is only more enormous than the other. [Confused voices, mingled with cheers.] And let me say to you, all the threats and menaces emanating from what is called the extreme men, your Stevenses, your Sumners, and your Phillipses, and from all that class, I care not; as they have once talked about forming a league with hell and a covenant with the devil. [Laughter and cries of "bully."] I tell you, my countrymen here to-night, that though the powers of hell and Thad. Stevens and his gang [were by,] they could not turn me from my purpose. There is no power to control me save you and the God who spoke me into existence. ["Three cheers."]

In bidding you farewell [I would be willing] that this Congress which has been in session and which has taken so much pains to poison the minds of their constituents against me—what has this Congress done? [A voice, "Nothing."] Has it done anything to restore the Union of these States? [A voice, "No."] But, on the contrary, they have done everything in their power to prevent it. [A voice, "That is so."] But because I stand now where I did when this rebellion commenced, I have been denounced as a traitor and recreant to the cause of my country. [Cries of "Never."] My countrymen here to-night, who has suffered more than I? [Cries of "No one."] Who has run greater risks—who has done more than I that address you here to-night? [Cries of "No one," and "God bless you, old man."] But this factious, domineering, tyrannical party in Congress has undertaken to poison the minds of the American people. [Voices, "That's so," and cheers.] It is just a question of power; and the attempt has been (?) every man that held a place in their districts. The President cannot control it; oh, no—[my] Congressmen control it. [Laughter.] Yes, your assessors and collectors and postmasters——[A voice, "Hit 'em again."] Why, they used to have an axiom in old times, that rotation in office was a good thing. Washington used to think so, Jefferson thought so, Monroe thought so, Jackson (God bless him!) thought so. [Cheers; a voice, "Here's a second Jackson."] But now, when we talk about—— (The sentence was interrupted by confusion in the assembly.) Your attention. I would rather have your attention [than to listen to you.]

Now how does the matter stand? Why, this gang, this gang of cormorants and blood-suckers, that have lived at home and fattened upon the country the last four or five years, never going into the field—oh, they are great patriots and everybody [wants to turn them out (?) Look at them (?).] Everybody are traitors that are against us. Hence you hear a system of legislation proposed to do what? Why that these men shall not be turned out. ["We have got our particular friends in power in the districts (?),"] and the President, the tribune of the people, the only channel through which you can reach and vacate these places and bring honest men in, is denounced as a tyrant because he stands [in vindication of the people.] [Cheers.] All it wants is for the country to [understand.] I think the time has come when those who have staid at home and enjoyed all the fat offices four or five years, got rich—I think it is nothing more than right that a few of those who have fought the battles of the country [as well as] others who have staid at home [should join in] the benefits of the victory. [How is it with Tennessee? Why, it is that [I mean to say that I stood up with these men at home] and in the field, and God being willing, I intend to stand by them again. [Cries of "Good," "Bully," and cheers.]

Then, my countrymen—I have been drawn into this. I intended simply to make my acknowledgments for the cordial welcome that you have given me. But even in going along, passing the civilities of life, if I am insulted while the civilities are going on I will resent it in a proper manner. [Cries of "Good," and cheers.] Then in parting with you here to-night, if I know the feelings of my own heart, there is no anger. I have no revengeful feelings to gratify. [A voice, "Everybody loves you."] All that I want is—now that peace has come, now when the war is over—is for all patriotic and Christian men to rally round the standard of their country, and unite in one [eternal, patriotic oath,] and swear by the altar and their God that all shall sink together but what this Union shall be restored. [Cheers.] Then in parting with you here to-night, I hand over to you this flag, not with 25 but with 36 stars; I hand over to you the Constitution of my country unimpaired, though breaches have been made upon it, with the confident hope that you will repair the breaches and preserve the Constitution intact. I hand it over to you, in whom I have always trusted, and upon whom I have always relied, and so far I have never deserted. And I feel confident, though speaking here to-night for heart that responds to heart—men that agree in principle, men that agree in some great doctrine, [that compare ideas or notions, when they come to the hour of acting in harmony and concert.] Then in parting with you to-night I hand over the flag, the Constitution, and the Union into hands that I know will preserve it, and at the proper time will render the proper (?).

Then farewell; and the little ill-feeling that has been [stricken out;] if some man who has been morose and felt malignant under the influence of some party leader and that don't feel that he is free, let me say just in conclusion, and in this connection I tell you there are a good many white men in this country need emancipating. And let the work of emancipation go on. Strike the shackles from the white man's limbs and let him stand erect. You free your folks at home before you go to the negroes. You let the negroes vote in Ohio before you talk about negroes voting in Louisiana. [A voice, "Never."] Take the beam out of your own eye before you see the mote that is in your neighbor's. You are very much disturbed about New Orleans, but you wont let a negro [go] to the ballot-box to vote in Ohio. [Then, my countrymen, this is my claim.] We understand these questions.

Then in parting with you—[The speech is not concluded in my notes—D. C. McEwen.]

[Cleveland Herald report.]

Prest. Johnson then stepped forward and spoke as follows.

PREST. JOHNSON'S SPEECH.

FELLOW-CITIZENS OF CLEVELAND: It is not for the purpose of making a speech that I came here to-night. I am aware of the great curiosity that exists on the part of strangers in reference to seeing individuals who are here amongst us. (Louder.) You must remember there are a good many people here to-night, and it requires a great voice to reach the utmost verge of this vast audience. I have used my voice so constantly for some days past that I do not know as I shall be able to make you all hear, but I will do my best to make myself heard.

What I am going to say is: There is a large number here who would like to see General Grant, and hear him speak, and hear what he would have to say; but the fact is General Grant is not here. He is extremely ill. His health will not permit of his appearing before this audience to-night. It would be a greater pleasure to me to see him here and have him speak than to make a speech of my own. So then it will not be expected that he will be here to-night, and you cannot see him on account of his extreme indisposition.

Fellow-citizens, in being before you to-night it is not for the purpose of making a speech, but simply to make your acquaintance, and while I am telling you how to do, and at the same time tell you good-bye. We are here to-night on our tour towards a sister State for the purpose of participating in and witnessing the laying of the chief corner stone over a monument to one of our fellow-citizens who is no more. It is not necessary for me to mention the name of Stephen A. Douglas to the citizens of Ohio. It is a name familiar to you all, and being on a tour to participate in the ceremonies, and passing through your State and section of country and witnessing the demonstration and manifestation of regard and respect which has been paid me, I am free to say to you that so far as I am concerned, and I think I am I speaking for all the company, when I say we feel extremely gratified and flattered at the demonstration made by the country through which we have passed, and in being flattered, I want to state at the same time that I don't consider that entirely personal, but as evidence of what is pervading the public mind, that there is a greater issue before the country, and that this demonstration of feeling is more than anything else an indication of a deep interest among the great mass of the people in regard to all these great questions that agitate the public mind. In coming before you to-night, I come before you as an American citizen, and not simply as your Chief Magistrate. I claim to be a citizen of the southern States, and an inhabitant of one of the States of this Union. I know that it has been said, and contended for on the part of some, that I was an alien, for I did not reside in any one of the States of the Union, and therefore I could not be Chief Magistrate, though the States declared I was.

But all that was necessary was simply to introduce a resolution declaring the office vacant or depose the occupant, or under some pretext to prefer articles of impeachment, and the individual who occupies the Chief Magistracy would be deposed and deprived of power.

But, fellow-citizens, a short time since you had a ticket before you for the Presidency and Vice Presidency; I was placed upon that ticket, in conjunction with a distinguished fellow-citizen who is now no more. (Voice, "A great misfortune too.") I know there are some who will exclaim, "Unfortunate." I admit the ways of Providence are mysterious and unfortunate but uncontrollable by those who would exclaim unfortunate. I was going to say, my countrymen, but a short time since I was selected and placed upon a ticket. There was a platform prepared and adopted by those who placed me upon it, and now, notwithstanding all kinds of misrepresentation; notwithstanding since after the sluice of misrepresentation has been poured out; notwithstanding a subsidized gang of hirelings have traduced me and maligned me ever since I have entered upon the discharge of my official duties, yet I will say had my predecessor have lived, the vials of wrath would have been poured out on him. (Cries of "Never, never, never.") I come here to-night in passing along, and being called upon, for the purpose of exchanging opinions and views as time would permit, and to ascertain if we could who was in the wrong.

I appear before you to-night and I want to say this: that I have lived and been among all American people, and have represented them in some capacity for the last twenty-five years. And where is the man living, or the woman in the community, that I have wronged, or where is the person that can place their finger upon one single hairbreadth of deviation from one single pledge I have made, or one single violation of the Constitution of our country? What tongue does he speak? What religion does he profess? Let him come forward and place his finger upon one pledge I have violated. (A voice, "Hang Jeff Davis.") (Mr. President resumes.) Hang Jeff Davis? Hang Jeff Davis? Why don't you? (Applause.) Why don't you? (Applause.) Have you not got the court? Have you not got the court? Have not you got the Attorney General? Who is your Chief Justice, and that refused to sit upon the trial? (Applause.) I am not the prosecuting attorney. I am not the jury. But I will tell you what I did do; I called upon your Congress that is trying to break up the government. (Immense applause.) Yes, did your Congress order hanging Jeff Davis? (Prolonged applause, mingled with hisses.)

But, fellow-citizens, we had as well let feelings and prejudices pass; let passion subside,

let reason resume her empire. In presenting myself to you in the few remarks I intended to make, my intention was to address myself to your judgment and to your good sense, and not to your anger or the malignity of your hearts. This was my object in presenting myself on this occasion, and at the same time to tell you good-bye. I have heard the remark made in this crowd to-night, "Traitor, traitor!" (Prolonged confusion.) My countrymen, will you hear me for my cause? For the Constitution of my country? I want to know when, where and under what circumstances Andrew Johnson, either as Chief Executive, or in any other capacity, ever violated the Constitution of his country. Let me ask this large and intelligent audience here to-night, if your Secretary of State, who served four years under Mr. Lincoln, who was placed under the butcher's blow and exposed to the assassin's knife, when he turned traitor. If I were disposed to play orator, and deal in declamation, here to-night, I would imitate one of the ancient tragedies we have such account of—I would take William H. Seward and open to you the scars he has received. I would exhibit his bloody garment and show the rent caused by the assassin's knife. [Three cheers for Seward.] Yes, I would unfold his bloody garments here to-night and ask who had committed treason. I would ask why Jeff. Davis was not hung? Why don't you hang Thad. Stevens and Wendell Phillips? I can tell you, my countrymen, I have been fighting traitors in the south, [prolonged applause,] and they have been whipped, and say they were wrong, acknowledge their error and accept the terms of the Constitution.

And now as I pass around the circle, having fought traitors at the south, I am prepared to fight traitors at the north, God being willing with your help ["You can't have it," and prolonged confusion,] they would be crushed worse than the traitors of the south, and this glorious Union of ours will be preserved. In coming here to-night, it was not coming as Chief Magistrate of twenty-five States. but I come here as the Chief Magistrate of thirty-six States. I came here to-night with the flag of my country in my hand, with a constellation of thirty-six, and not twenty-five stars. I came here to-night with the Constitution of my country intact, determined to defend the Constitution let the consequences be what they may. I came here to-night for the Union; the entire circle of these States. [A voice, "How many States made you President?"] How many States made me President? Was you against secession? Do you want to dissolve the Union? [A voice, "No."] Then I am President of the whole United States, and I will tell you one thing. I understand the discordant notes in this audience here to-night. And I will tell you, furthermore, that he that is opposed to the restoration of the government and the Union of the States, is as great a traitor as Jeff. Davis, and I am against both of them. I fought traitors at the south; now I fight them at the north. (Immense applause.)

I will tell you another thing; I know all about those boys that have fought for their country. I have been with them down there when cities were besieged. I know who was with them when some of you, that talk about traitors, had not courage to come out of your closets, but persuaded somebody else to go.

Very courageous men! While Grant, Sherman, Farragut, and a long host of the distinguished sons of the United States were in the field of battle you were cowards at home; and now when these brave men have returned, many of them having left an arm or leg on some battle-field while you were at home speculating and committing frauds upon your government, you pretend now to have great respect and sympathy for the poor fellow who left his arm on the battle-field. I understand you, who talk about the duty of the President, and object to his speech of the 22d of July, [voice, "22d of February,"]—22d of February. I know who have fought the battles of the country, and I know who is to pay for it. Those brave men shed their blood and you speculated, got money, and now the great mass of the people must work it out. [Applause and confusion.] I care not for your prejudices. It is time for the great mass of the American people to understand what your designs are in not admitting the southern States when they have come to terms and even proposed to pay their part of the national debt. I say, let them come; and those brave men, having conquered them, and having prostrated them in the dust with the heel of power upon them, what do they say? [Voice, "What does General Butler say?"] General Butler? What does General Grant say? And what does General Grant say of General Butler? What does General Sherman say? He says he is for restoration of the government; and General Sherman fought for it.

But fellow-citizens, let this all pass. I care not for malignity. There is a certain portion of our countrymen that will respect their fellow-citizen whenever he is entitled to respect. and there is another portion that have no respect for themselves, and consequently have none for anybody else. I know a gentleman when I see him. And furthermore, I know when I look a man in the face—[Voice, "Which you can't do."] I wish I could see you; I will bet now, if there could be a light reflected upon your face, that cowardice and treachery could be seen in it. Show yourself. Come out here where we can see you. If ever you shoot a man, you will stand in the dark and pull your trigger. I understand traitors; I have been fighting them for five years. We fought it out on the southern end of the line; now we are fighting in the other direction. And those men—such a one as insulted me to-night—you may say, has ceased to be a man, and in ceasing to be a man shrunk into the denomination of a reptile, and having so shrunken, as an honest man, I tread upon him. I came here to-night not to criminate or recriminate. but when provoked my nature is. not to advance

but to defend, and when encroached upon, I care not from what quarter it comes, it will find resistance, and resistance at the threshold. As your Chief Magistrate I have felt, after taking an oath to support the Constitution of my country, that I saw the encroachments of the enemy upon your sovereign rights. I saw the citadel of liberty intrenched upon and, as an honest man, being placed there as a sentinel, I have dared to sound the tocsin of alarm. Should I have ears and not hear; have a tongue and not speak when the enemy approaches?

And let me say to-night that my head has been threatened. It has been said that my blood was to be shed. Let me say to those who are still willing to sacrifice my life [derisive laughter and cheers], if you want a victim and my country requires it, erect your altar, and the individual who addresses you to-night, while here a visitor, ["No," "No," and laughter,] erect your altar if you still thirst for blood, and, if you want it, take out the individual who now addresses you and lay him upon your altar, and the blood that now courses his veins and warms his existence shall be poured out as a last libation to Freedom. I love my country, and I defy any man to put his finger upon anything to the contrary. Then what is my offence? [Voices, "You aint't a radical," "New Orleans," "Veto."] Somebody says "Veto." Veto of what? What is called the Freedmen's Bureau bill, and in fine, not to go into any argument here to-night, if you do not understand what the Freedmen's Bureau bill is, I can tell you. [Voice, "Tell us."] Before the rebellion there were 4,000,000 called colored persons held as slaves by about 340,000 people living in the South. That is, 340,000 slave owners paid expenses, bought land, and worked the negroes, and at the expiration of the year when cotton, tobacco, and rice was gathered and sold, after all paying expenses, these slave owners put the money in their pocket—[slight interruption]—your attention—they put the property in their pocket. In many instances there was no profit, and many come out in debt. Well that is the way things stood before the rebellion. The rebellion commenced and the slaves were turned loose. Then we come to the Freedmen's Bureau bill. And what did the bill propose? It proposed to appoint agents and subagents in all the cities, counties, school districts, and parishes, with power to make contracts for all the slaves, power to control, and power to hire them out—dispose of them, and in addition to that the whole military power of the government applied to carry it into execution.

Now [clamor and confusion] I never feared clamor. I have never been afraid of the people, for by them I have always been sustained. And when I have all the truth, argument, fact and reason on my side, clamor nor affront, nor animosities can drive me from my purpose.

Now to the Freedman's Bureau. What was it? Four million slaves were emancipated and given an equal chance and fair start to make their own support—to work and produce; and having worked and produced, to have their own property and apply it to their own support. But the Freedmen's Bureau comes and says we must take charge of these 4,000,000 slaves. The bureau comes along and proposes, at an expense of a fraction less than $12,000,000 a year, to take charge of these slaves. You had already expended $3,000,000,000 to set them free and give them a fair opportunity to take care of themselves—then these gentlemen, who are such great friends of the people, tell us they must be taxed $12,000,000 to sustain the Freedman's Bureau. [Great confusion.] I would rather speak to 500 men that would give me their attention than to 100,000 that would not. [With all this mass of patronage he said he could have declared himself dictator.]

The Civil Rights bill was more enormous than the other. I have exercised the veto power, they say. Let me say to you of the threats from your Stevenses, Sumners, Phillipses and all that class, I care not for them. As they once talked about forming a "league with hell and a covenant with the devil," I tell you, my countrymen, here to night, through the power of hell, death and Stevens with all his powers combined, there is no power than can control me save you the people and the God that spoke me into existence. In bidding you farewell here to-night, I would ask you with all the pains Congress has taken to calumniate and malign me, what has Congress done? Has it done anything to restore the Union of the States? But, on the contrary, has it not done everything to prevent it?

And because I stand now as I did when the rebellion commenced, I have been denounced as a traitor. My countrymen here to-night, who has suffered more than I? Who has run greater risk? Who has borne more than I? But Congress, factious, domineering, tyrannical Congress has undertaken to poison the minds of the American people, and create a feeling against me in consequence of the manner in which I have distributed the public patronage.

While this gang—this common gang of cormorants and bloodsuckers, have been fattening upon the country for the past four or five years—men never going into the field, who growl at being removed from their fat offices, they are great patriots! Look at them all over your district? Everybody is a traitor that is against them. I think the time has come when those who stayed at home and enjoyed fat offices for the last four or five years—I think it would be no more than right for them to give way and let others participate in the benefits of office. Hence you can see why it is that I am traduced and assaulted. I stood up by these men who were in the field, and I stand by them now.

I have been drawn into this long speech, while I intended simply to make acknowledgments for the cordial welcome; but if I am insulted while civilities are going on I will resent it in a proper manner, and in parting here to-night I have no anger nor revengeful

feelings to gratify. All I want now, peace has come and the war is over, is for all patriotic men to rally round the standard of their country, and swear by their altars and their God, that all shall sink together but what this Union shall be supported. Then in parting with you to-night, I hang over you this flag, not of 25 but of 36 stars; I hand over to you the Constitution of my country, though imprisoned, though breaches have been made upon it, with confidence hoping that you will repair the breaches; I hand it over to you, in whom I have always trusted and relied, and, so far, I have never deserted—and I feel confident, while speaking here to-night, for heart respondsto heart of man, that you agree to the same great doctrine.

Then farewell! The little ill-feelings aroused here to-night—for some men have felt a little ill—let us not cherish them. Let me say, in this connection, there are many white people in this country that need emancipation. Let the work of emancipation go on. Let white men stand erect and free. [A voice, "What about New Orleans?"] You complain of the disfranchisement of the negroes in the southern States, while you would not give them the right of suffrage in Ohio to-day. Let your negroes vote in Ohio before you talk about negroes voting. Take the beam out of your own eye before you see the mote in your neighbor's eye. You are very much disturbed about New Orleans; but you will not allow the negro to vote in Ohio.

This is all plain; we understand this all. And in parting with you to-night, let me invoke the blessing of God upon you, expressing my sincere thanks for the cordial manner in which you have received me.

Mr. EDMUNDS. I move that the Senate sitting for this trial stand adjourned until to-morrow at 12 o'clock.

Mr. FESSENDEN. I wish to make a motion that takes precedence of that, that when the court adjourns it adjourn to meet on Monday next.

Mr. DRAKE. That has been decided against.

Mr. FESSENDEN. It can be considered again, because other business has been done in the mean time.

Mr. EDMUNDS. I rise to a point of order, that under the rules the motion to adjourn takes precedence.

The CHIEF JUSTICE. The Chair is of opinion that the motion to adjourn takes precedence of every other motion if it is not withdrawn.

Mr. EDMUNDS. I will withdraw it at the request of the senator from Maine.

Mr. FESSENDEN. I can afterward renew the motion to adjourn.

The CHIEF JUSTICE. The senator from Maine moves that when the Senate sitting as a court of impeachment adjourns, it adjourn to meet at 12 o'clock on Monday.

Mr. FERRY called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 16, nays 29; as follows:

YEAS—Messrs. Buckalew, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Henderson, Johnson, McCreery, Norton, Nye, Patterson of Tennessee, Trumbull, Van Winkle, and Vickers—16.

NAYS—Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Hendricks, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Willey, and Williams—29.

NOT VOTING—Messrs. Bayard, Grimes, Harlan, Morton, Ramsey, Saulsbury, Tipton, Wade, and Yates—9.

So the motion was not agreed to.

Mr. EDMUNDS. I move that the Senate sitting for this trial adjourn.

The CHIEF JUSTICE. The senator from Vermont moves that the Senate sitting as a court of impeachment adjourn until to-morrow at 12 o'clock.

The motion was agreed to.

SATURDAY, *April* 4, 1868.

The Chief Justice of the United States entered the Senate chamber at 12 o'clock and took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives appeared and took the seats assigned them.

The counsel for the respondent also appeared and took their seats.

The presence of the House of Representatives was next announced, and the members of the House, as in Committee of the Whole, headed by Mr. E. B. Washburne, the chairman of that committee, and accompanied by the Speaker and Clerk, entered the Senate chamber, and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the minutes of the last day's proceedings.

The Secretary read the journal of the proceedings of the Senate yesterday sitting for the trial of the impeachment.

The CHIEF JUSTICE. Gentlemen Managers, you will please to proceed with your evidence. The senators will please to give their attention.

L. L. WALBRIDGE sworn and examined.

By Mr. Manager BUTLER:

Q. What is your business?
A. Short-hand writer.
Q. How long have you been engaged in that business?
A. Nearly ten years.
Q. Have you had during that time any considerable experience; and if so, how much in that business?
A. Yes, sir; I have had experience during the whole of that time in connection with newspaper reporting and outside.
Q. Reporting for courts?
A. Yes, sir.
Q. With what papers have you been lately connected?
A. More recently with the Missouri Democrat; previous to that time with the Missouri Republican.
Q. Do the names of those papers indicate their party proclivities, or are they reversed?
A. They are the reverse.
Q. The Democrat means republican, and the Republican means democrat?
A. Exactly.
Q. To what paper were you attached on or about the 8th of September, 1866?
A. The Missouri Democrat.
Q. Did you report a speech delivered from the balcony of the Southern Hotel in St. Louis by Andrew Johnson?
A. I did.
Q. What time in the day was that speech delivered?
A. Between eight and nine o'clock in the evening.
Q. Was there a crowd in the streets?
A. Yes, sir, there was, and on the balcony also.
Q. Where were you?
A. I was on the balcony, within two or three feet of the President while he was speaking.
Q. Where were the rest of the presidential party?
A. I cannot tell you.
Q. Were they there?

A. I have no recollection of seeing any of the party on the balcony.

Q. Did the President come out to answer a call from the crowd in the street apparently?

A. Yes, sir, I judge so; I know there was a very large crowd in the street in front of the hotel, and there were continuous cries for the President, and in response to those cries I supposed he came forward.

Q. Had he been received in the city by a procession of the various charitable societies?

A. He had during the afternoon been received by the municipal authorities.

Q. Had the mayor made him an address of welcome?

A. He had.

Q Had he answered that address?

A. He had.

Q. Did you take a report of that speech?

A. I did.

Q. How fully?

A. I took every word.

Q. After it was taken, how soon was it written out?

A. Immediately.

Q. How was it written out?

A. At my dictation.

Q. By whom?

A. The first part of the speech previous to the banquet was written out in one of the rooms of the Southern Hotel. That occupied about half an hour, I think. We then attended the banquet, at which other speeches were made. Immediately after the conclusion of the banquet we went to the Republican office and there I dictated the speech to Mr. Monahan and Mr. McHenry, two attachés of the Republican.

Q. You have spoken of a banquet; was there a banquet given to the President and his suite by the city?

A. There was, at the Southern Hotel, immediately after the speech on the balcony.

Q. At that banquet did the President speak?

A. He made a very short address.

Q. And there was other speaking there, I presume?

A. Yes, sir.

Q. After that speech was written out was it published?

A. It was.

Q. When?

A. On the very next morning, in the Sunday Republican.

Q. After it was published did you revise the publication by your notes?

A. I did.

Q. How soon?

A. Immediately after the speech was printed in the Sunday morning Republican I went to the Democrat office in company with my associate, Mr. Edmund T. Allen, and we very carefully revised the speech for the Monday morning Democrat.

Q. Then it was on the same Sunday that you made the revision?

A. Yes, sir; the Sunday after the speech.

Q. When you made the revision had you your notes?

A. I had.

Q. State whether you compared the speech as printed with those notes?

A. Yes, sir; I did at that time, and since.

Q. When you compared it, did you make any corrections that were needed, if any were needed?

A. My recollection is that there were one or two simple corrections—errors

either in transcribing or on the part of the printer. That is all that I remember in the way of corrections of the speech.

Q. Did you afterward have occasion to revise that speech with your notes?

A. I had.

Q. When was that?

A. I think that was little over a year ago.

Q. What occasion called you to revise it with your notes a little over a year ago?

A. I was summoned here by the Committee on the New Orleans Riots, and immediately after receiving the summons I hunted up my notes and again made a comparison with them of the printed speech.

Q. How far did that second comparison assure you of corrections?

A. It was perfectly correct.

Q. Now, in regard to particularity of reporting; were you enabled to report so correctly as to give inaccuracies of pronunciation even?

A. Yes, sir. I did so in that instance.

Q. Where are your original notes now?

A. I cannot tell you, sir. I searched for them immediately after I was summoned here, but failed to find them.

Q. You had them up to the time you were examined before the Committee on the New Orleans Riot?

A. I had, and brought them with me here, but I have no recollection of them since that time.

Q. Have you a copy of that paper?

A. I have.

Q. Will you produce it?

(The witness produced a newspaper, being the Missouri Democrat of Monday, September 10, 1866.)

Q. Is this it?

A. It is.

Q. From your knowledge of the manner in which you took the speech, and from your knowledge of the manner in which you corrected it, state whether you are now enabled to say that this paper which I hold in my hand contains an accurate report of the speech of the President delivered on that occasion?

A. Yes, sir; I am enabled to say it is an accurate report.

Mr. Manager BUTLER. I propose, if there is no objection, to offer this in evidence, and also if there is objection.

Mr. EVARTS. Before that is done let us cross-examine this witness.

Mr. Manager BUTLER. Certainly.

Cross-examined by Mr. EVARTS:

Q. I understand that you took down, as from the President's mouth, the entire speech, word for word as he delivered it?

A. Yes, sir.

Q. In the transcript from your notes and in this publication did you preserve that form and degree of accuracy and completeness? Is it all the speech?

A. It is the whole speech.

Q. No part of it is condensed or paraphrased?

A. No, sir; the whole speech is there in complete form.

Q. You say that, beside the revision of the speech which you made on the Sunday following its delivery, you made a revision a year ago?

A. Yes, sir.

Q. For what reason and upon what occasion?

A. As I said, it was owing to my having been summoned before the Committee on the New Orleans Riot.

Q. A committee of Congress?

A. Yes, sir.
Q. At Washington?
A. Yes, sir.
Q. When was that?
A. I should say a little over a year ago. I cannot fix the date precisely.
Q. Were you then inquired of in regard to that speech?
A. I was.
Q. And did you produce it then to that committee?
A. I did.
Q. Were you examined before any other committee than that?
A. No, sir.
Q. Was your testimony reduced to writing?
A. I believe so.
Q. And signed by you?
A. No, sir; not signed.

Mr. EVARTS. We suppose, if the court please, that this report is within the competency of proof.

Mr. Manager BUTLER, (to the witness.) Was your testimony published?

The WITNESS. The testimony I gave last winter?

Mr. Manager BUTLER. Yes, sir; before the New Orleans riot committee.

A. I am not aware whether it was or not.

Mr. Manager BUTLER. Will the Secretary have the kindness to read this speech?

The Chief Clerk read as follows, from the Missouri Democrat of Monday, September 10, 1866:

Speech of President Johnson.

Being set down at the Southern, a large crowd collected in Walnut street, and called loudly for the President. He answered their summons by the following address:

Fellow-citizens of St. Louis: In being introduced to you to-night it is not for the purpose of making a speech. It is true I am proud to meet so many of my fellow-citizens here on this occasion, and under the favorable circumstances that I do. [Cry, "How about British subjects?"] We will attend to John Bull after a while, so far as that is concerned. [Laughter and loud cheers.] I have just stated that I was not here for the purpose of making a speech, but after being introduced simply to tender my cordial thanks for the welcome you have given me in your midst. [A voice: "Ten thousand welcomes;" hurrahs and cheers.] Thank you, sir; I wish it was in my power to address you under favorable circumstances upon some of the questions that agitate and distract the public mind at this time—questions that have grown out of a fiery ordeal we have just passed through, and which I think as important as those we have just passed by. The time has come when it seems to me that all ought to be prepared for peace. The rebellion being suppressed, and the shedding of blood being stopped, the sacrifice of life being suspended and stayed, it seems that the time has arrived when we should have peace; when the bleeding arteries should be tied up. [A voice, "New Orleans;" "Go on."]

Perhaps if you had a word or two on the subject of New Orleans, you might understand more about it than you do. [Laughter and cheers.] And if you will go back—[Cries for Seward]—if you will go back and ascertain the cause of the riot at New Orleans, perhaps you would not be so prompt in calling out New Orleans. If you will take up the riot at New Orleans, and trace it back to its source, or to its immediate cause, you will find out who was responsible for the blood that was shed there.

If you will take up the riot at New Orleans, and trace it back to the radical Congress [great cheering, and cries of "bully"] you will find that the riot at New Orleans was substantially planned—if you will take up the proceedings in their caucuses you will understand that they there knew [cheers] that a convention was to be called which was extinct, by its powers having expired; that it was said, and the intention was, that a new government was to be organized; and in the organization of that government the intention was to enfranchise one portion of the population called the colored population, who had just been emancipated, and at the same time disfranchise white men. [Great cheering.] When you begin to talk about New Orleans [confusion] you ought to understand what you are talking about.

When you read the speeches that were made or take up the facts—on Friday and Saturday before that convention sat—you will there find that speeches were made incendiary in their character, exciting that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. [A voice, "That's so," and cheers.] You will also

find that that convention did assemble in violation of law, and the intent of that convention was to supersede the recognized authorities in the State government of Louisiana, which had been recognized by the government of the United States, and every man engaged in that rebellion—in that convention, with the intention of superseding and upturning the civil government which had been recognized by the government of the United States—I say that he was a traitor to the Constitution of the United States, [cheers,] and hence you find that another rebellion was commenced, having its origin in the radical Congress. These men were to go there; a government was to be organized, and the one in existence in Louisiana was to be superseded, set aside, and overthrown. You talk to me about New Orleans! And then the question was to come up, when they had established their government—a question of political power—which of the two governments was to be recognized—a new government inaugurated under this defunct convention—set up in violation of law and without the consent of the people. And then when they had established their government and extended universal or impartial franchise, as they called it, to this colored population, then this radical Congress was to determine that a government established on negro votes was to be the government of Louisiana. [Voices, "Never," and cheers and "Hurrah for Andy."]

So much for the New Orleans riot—and there was the cause of the origin of the blood that was shed, and every drop of blood that was shed is upon their skirts, and they are responsible for it. [Cheers.] I could trace this thing a little closer, but I will not do it here to-night. But when you talk about New Orleans, and talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been introduced here, and you have provoked questions of this kind, though it don't provoke me, I will tell you a few wholesome things that *has* been done by this radical Congress. [Cheers.]

In connection with New Orleans and the extension of the elective franchise, I know that I have been traduced and abused. I know it has come in advance of me here, as it has elsewhere, and that I have attempted to exercise an arbitrary power in resisting laws that *was* intended to be enforced on the government. [Cheers and cries of "Hear.]

Yes, that I had exercised the veto power, ["Bully for you,"] that I had abandoned the power that elected me, and that I was a t-r-ai-tor [cheers] because I exercised the veto power in attempting to, and did arrest for a time, a bill that was called a Freedmen s Bureau bill. [Cheers] Yes, that I was a t-r-ai-t-o-r! And I have been traduced, I have been slandered, I have been maligned, I have been called Judas—Judas Iscariot, and all that. Now, my countrymen here to-night, it is very easy to indulge in epithets, it is very easy to call a man Judas, and cry out t-r-ai-tor, but when he is called upon to give arguments & facts he is very often found wanting.

Judaas, Judas Iscariot, Judaas! There was a Judas once, one of the twelve apostles. Oh! yes, and these twelve apostles had a Christ. [A voice, "And a Moses, too." Great laughter.] The twelve apostles had a Christ, and he could not have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? [Hisses and cheers.] Are these the men that set up and compare themselves with the Savior of men. and everybody that differs with them in opinion, and try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas. ["Hurrah for Andy," and cheers.]

In the days when there ware twelve apostles, and when there ware a Christ, while there ware Judases, there ware unbelievers, too. Y-a-s; while there were Judases, there ware unbelievers. [Voices, "Hear," "Three groans for Fletcher."] Yes, oh! yes! unbelievers in Christ: men who persecuted and slandered and brought him before Pontius Pilate, and preferred charges and condemned and put him to death on the cross to satisfy unbelievers. And this same persecuting, diabolical, and nefarious clan to-day would persecute and shed the blood of innocent men to carry out their purposes. [Cheers.] But let me tell you—let me give you a few words here to-night—and but a short time since I heard some one say in the crowd that we had a Moses. [Laughter and cheers.] Yes, there was a Moses. And I know sometimes it has been said that I have said that I would be the Moses of the colored man. ["Never," and cheers.] Why, I have labored as much in the cause of emancipation as any other mortal man living. But while I have strived to emancipate the colored man, I have felt, and now feel, that we have a great many white men that want emancipation. [Laughter and cheers.] There is a set amongst you that have got shackles on their limbs, and are as much under the heel and control of their masters as the colored man that was emancipated. [Cheers.]

I call upon you here to-night as freemen—as men who favor the emancipation of the white man as well as the colored ones. I have been in favor of emancipation; I have nothing to disguise about that—I have tried to do as much, and have done as much, and when they talk about Moses and the colored man being led into the promised land, where is the land that this clan proposes to lead them? [Cheers.] When we talk about taking them out from among the white population and sending them to other climes, what is it they propose? Why, it is to give us a Freedmen's Bureau. And after giving us a Freedmen's Bureau, what then? Why, here in the south it is not necessary for me to talk to you, where I have lived and you have lived, and understand the whole system, and how it operates; we know how the slaves have been worked heretofore. Their original owners bought the land and raised the negroes, or purchased them, as the case might be; paid all the expenses of carrying on the

farm, and, in the end, after producing tobacco, cotton, hemp, and flax, and all the various products of the south, bringing them into the market without any profit to them, while these owners put it all into their own pockets. This was their condition before the emancipation. This was their condition before we——about their "Moses." [Cheers and laughter.]

Now what is the plan? I ask your attention. Come, as we have got to talking on this subject, give me your attention for a few minutes. I am addressing myself to your brains, and not to your prejudices; to your reason, and not to your passions. And when reason and argument again resume their empire, this mist, this prejudice that has been incrusted upon the public mind, must give way and reason become triumphant. [Cheers.] Now, my countrymen, let me call your attention to a single fact, the Freedmen's Bureau. [Laughter and hisses.] Yes; slavery was an accursed institution till emancipation took place. It was an accursed institution while one set of men worked them and got the profits. But after emancipation took place they gave us the Freedmen's Bureau. They gave us these agents to go into every county, every township, and into every school district throughout the United States, and especially the southern States. They gave us commissioners. They gave us $12,000,000, and placed the power in the hands of the Executive, who was to work this machinery, with the army brought to its aid, and to sustain it. Then let us run it, on the $12,000,000 as a beginning, and, in the end, receive $50,000,000 or $60,000,000, as the case may be, and let us work the 4,000,000 of slaves. In fine, the Freedmen's Bureau was a simple proposition to transfer 4,000,000 of slaves in the United States from their original owners to a new set of taskmasters. [Voice, "Never," and cheers.] I have been laboring four years to emancipate them; and then I was opposed to seeing them transferred to a new set of taskmasters, to be worked with more rigor than they had been heretofore. [Cheers.] Yes, under this new system they would work the slaves, and call on the government to bear all the expense, and if there was any profits left, why, they would pocket them, [laughter and cheers,] while you, the people, must pay the expense of running the machine out of your pockets, while they got the profits of it. So much for this question.

I simply intended to-night to tender you my sincere thanks. But as I go along, as we are talking about this Congress and these respected gentlemen, who contend that the President is wrong, because he vetoed the Freedmen's Bureau bill, and all this; because he chose to exercise the veto power, he committed a high offence, and therefore ought to be impeached. [Voice, "Never."] *Y-a-s, y-a-s*, they are ready to impeach him. [Voice, "Let them try it."] And if they were satisfied they had the next Congress, by as decided a majority as this, upon some pretext or other—violating the Constitution, neglect of duty, or omitting to enforce some act of law—upon some pretext or other, they would vacate the Executive department of the United States. [A voice, "Too bad they don't impeach him."] *Wha-t?* As we talk about this Congress, let me call the soldiers' attention to this immaculate Congress—let me call your attention. Oh! this Congress, that could make war upon the Executive because he stands upon the Constitution and vindicates the rights of the people, exercising the veto power in their behalf—because he dared to do this, they can clamor and talk about impeachment. And by way of elevating themselves and increasing confidence with the soldiers throughout the country, they talk about impeachment.

So far as the Fenians are concerned; upon this subject of Fenians let me ask you very plainly here to-night to go back into my history of legislation, and even when governor of a State—let me ask if there is a man here to night, who, in the dark days of Know-nothingism, stood and sacrificed more for their rights? [Voice, "Good," and cheers.]

It has been my peculiar misfortune always to have fierce opposition, because I have always struck my blows direct, and fought with right and the Constitution on my side. [Cheers.] Yes, I will come back to the soldiers again in a moment. Yes, here was a neutrality law. I was sworn to support the Constitution and see that that law was faithfully executed.

And because it was executed, then they raised a clamor & tried to make an appeal to the foreigners, and especially the Fenians. And what did they do? They introduced a bill to tickle and play with the fancy, pretending to repeal the law, and at the same time making it worse, and then left the law just where it is. [Voice, "That's so."] They knew that whenever a law was presented to me, proper in its provisions, ameliorating and softening the rigors of the present law, that it would meet my hearty approbation; but as they were pretty well broken down and losing public confidence, at the heels of the session they found they must do something. And hence, what did they do? They pretended to do something for the soldiers. Who has done more for the soldiers than I have? Who has perilled more in this struggle than I have? [Cheers.] But then, to make them their peculiar friends and favorites of the soldiers, they came forward with a proposition to do what? Why, we will give the soldier $50 bounty—$50 bounty—your attention to this—if he has served two years; and $100 if he has served three years.

Now, mark you, the colored man that served two years can get his $100 bounty. But the white man must serve *three* before he can get his. [Cheers.] But that is not the point. While they were tickling and attempting to please the soldiers, by giving them $50 bounty for two years' service, they took it into their heads to vote somebody else a bounty, [laughter,] and they voted themselves not $50 for two years' service; your attention—I want to make a lodgment in your minds of the facts because I want to put the nail in, and having put it in, I

want to clinch it on the other side. [Cheers.] The brave boys, the patriotic young men who followed his gallant officers, slept in the tented field, and perilled his life, and shed his blood, and left his limbs behind him and came home mangled and maimed, can get $50 bounty, if he has served two years. But the members of Congress, who never smelt gunpowder, can get $4,000 extra pay. [Loud cheering.]

This is a faint picture, my countrymen, of what has transpired. [A voice, "Stick to that question."] Fellow-citizens, you are all familiar with the work of restoration. You know that since the rebellion collapsed, since the armies were suppressed on the field, that everything that could be done has been done by the executive department of the government for the restoration of the government. Everything has been done with the exception of one thing, and that is the admission of members from the eleven States that went into the rebellion. And after having accepted the terms of the government, having abolished slavery, having repudiated their debt, and sent loyal representatives, everything has been done, excepting the admission of representatives which all the States are constitutionally entitled to. [Cheers.] When you turn and examine the Constitution of the United States, you find that you cannot even amend that Constitution so as to deprive any State of its equal suffrage in the Senate. [A voice, "They have never been out."] It is said before me, "They have never been out." I say so too, and they cannot go out. [Cheers.] That being the fact, under the Constitution they are entitled to equal suffrage in the Senate of the United States, and no power has the right to deprive them of it, without violating the Constitution. [Cheers.] And the same argument applies to the House of Representatives.

How then does the matter stand? It used to be one of the arguments that if the States withdrew their representatives and senators that that was secession—a peaceable breaking up of the government. Now, the radical power in this government turn around and assume that the States are out of the Union, that they are not entitled to representation in Congress. [Cheers.] That is to say, they are dissolutionists, and their position now is to perpetuate a disruption of the government, and that, too, while they are denying the States the right of representation, they impose taxation upon them, a principle upon which, in the Revolution, you resisted the power of Great Britain. We deny the right of taxation without representation. That is one of our great principles. Let the government be restored. I have labored for it. Now, I deny this doctrine of secession, come from what quarter it may, whether from the north or from the south. I am opposed to it. I am for the Union of the States. [Voices, "That's right," and cheers.] I am for thirty-six States, remaining where they are, under the Constitution, as your fathers made it, and handed it down to you; and if it is altered, or amended, let it be done in the mode and manner pointed by that instrument itself, and in no other. [Cheers.]

I am for the restoration of peace. Let me ask this people here to-night if we have not shed enough blood? Let me ask are you prepared to go into another civil war? Let me ask this people here to-night are they prepared to set man upon man, and, in the name of God, lift his hand against the throat of his fellow? [Voice, "Never."] Are you prepared to see our fields laid waste again, our business and commerce suspended, and all trade stopped? Are you prepared to see this land again drenched in our brothers' blood? Heaven avert it, is my prayer. [Cheers.] I am one of those who believe that man does sin, and having sinned, I believe he must repent; and, sometimes, having sinned and having repented makes him a better man than he was before. [Cheers.] I know it has been said that I have exercised the pardoning power. *Y-a-s*, I have. [Cheers and "What about Drake's constitution?"] *Y-a-s*, I have, and don't you think it is to prevail? I reckon I have pardoned more men, turned more men loose and set them at liberty that were imprisoned, I imagine, than any other living man on God's habitable globe. [Voice, "Bully for you," and cheers.] Yes, I turned 47,000 of our men who engaged in this struggle, with the arms they captured with them, and who were then in prison, I turned them loose. [Voice, "Bully for you, old fellow," and laughter.]

Large numbers have applied for pardon, and I have granted them pardon. Yet there are some who condemn and hold me responsible for so doing wrong. Yes, there are some who stayed at home, who did not go into the field on the other side, that can talk about others being traitors and being treacherous. There are some who can talk about blood, and vengeance, and crime, and everything to "make treason odious," and all that, who never smelt gunpowder on either side. [Cheers.] Yes, they can condemn others and recommend hanging and torture, and all that. If I have erred, I have erred on the side of mercy. Some of these croakers have dared to assume that they are better than was the Saviour of men himself—a kind of over righteousness—better than everybody else, and always wanting to do Deity's work, thinking he cannot do it as well as they can. [Laughter and cheers.] Yes, the Saviour of man came on the earth and found the human race condemned and sentenced under the law. But when they repented and believed, he said, "Let them live." Instead of executing and putting the world to death he went upon the cross, and there was painfully nailed by these unbelievers that I have spoken of here to-night, and there shed his blood that you and I might live. [Cheers.] Think of it! To execute and hang and put to death eight millions of people. [Voices, "Never."] It is an absurdity, and such a thing is impracticable even if it were right. But it is the violation of all law, human and divine. [Voice, "Hang Jeff. Davis."] You call on Judge Chase to hang Jeff. Davis, will you?

[Great cheering.] I am not the court, I am not the jury, nor the judge. [Voice, "Nor the Moses."] Before the case comes to me, and all other cases, it would have to come on application as a case for pardon. That is the only way the case can get to me. Why don't Judge Chase—Judge Chase, the Chief Justice of the United States, in whose district he is—why don't he try him? [Loud cheers.] But, perhaps, I could answer the question, as sometimes persons want to be facetious and indulge in repartee, I might ask you a question, why don't you hang Thad. Stevens and Wendell Phillips? [Great cheering.] A traitor at one end of the line is as bad as a traitor at the other.

I know that there are some who have got their little pieces and sayings to repeat on public occasions, like parrots, that have been placed in their mouths by their superiors, who have not the courage and the manhood to come forward and tell them themselves, but have their understrappers to do their work for them. [Cheers.] I know there is some that talk about this universal elective franchise upon which they wanted to upturn the government of Louisiana and institute another; who contended that we must send men there to control, govern, and manage their slave population, because they are incompetent to do it themselves. And yet they turn round when they get there and say they are competent to go to Congress and manage the affairs of State. [Cheers.] Before you commence throwing your stones you ought to be sure you don't live in a glass house. Then, why all this clamor? Don't you see, my countrymen, it is a question of power, and being in power as they are, their object is to perpetuate their power? Hence, when you talk about turning any of them out of office, oh, they talk about "bread and butter." [Laughter.] Yes, these men are the most perfect and complete "bread and butter party" that has ever appeared in this government. [Great cheering.] When you make an effort or struggle to take the nipple out of their mouths, how they clamor! They have staid at home here five or six years, held the offices, grown fat, and enjoyed all the emoluments of position, and now, when you talk about turning one of them out, "Oh, it is proscription," and hence they come forward and propose in Congress to do what? To pass laws to prevent the Executive from turning anybody out. [Voice, "Put 'em out."] Hence, don't you see what the policy was to be? I believe in the good old doctrine advocated by Washington, Jefferson and Madison, of rotation in office.

These people who have been enjoying these offices seem to have lost sight of this doctrine. I believe that when one set of men have enjoyed the emoluments of office long enough, they should let another portion of the people have a chance. [Cheers.] How are these men to be got out—[Voice, "Kick 'em out;" cheers and laughter] unless your Executive can put them, unless you can reach them through the President? Congress says he shall not turn them out, and they are trying to pass laws to prevent it being done. Well, let me say to you if you will stand by me in this action, [Cheers,] if you will stand by me in trying to give the people a fair chance, soldiers and citizens, to participate in those offices, God being willing, I *will* "kick them out" just as fast as I can. [Great cheering.] Let me say to you in concluding, what I have said, and I intended to say but little, but was provoked into this rather than otherwise, I care not for the menaces, the taunts and jeers, I care not for the threats; I do not intend to be bullied by my enemies nor overawed by my friends; [cheers;] but God willing, with your help, I will veto their measures whenever they come to me. [Cheers.] I place myself upon the ramparts of the Constitution, and when I see the enemy approaching, so long as I have eyes to see, or ears to hear, or a tongue to sound the alarm, so help me God I will do it, and call upon the people to be my judges. [Cheers.] I tell you here to-night that the Constitution of the country is being encroached upon. I tell you here to-night that the citadel of liberty is being endangered. [A voice—"Go it, Andy."]

I say to you then, go to work; take the Constitution as your palladium of civil and religious liberty; take it as our chief ark of safety. Just let me ask you here to-night to cling to the Constitution in this great struggle for freedom and for its preservation, as the shipwrecked mariner clings to the mast when the midnight tempest closes around him. [Cheers.] So far as my public life has been advanced, the people of Missouri, as well as of other States, know that my efforts have been devoted in that direction which would ameliorate and elevate the interests of the great mass of the people. [Voice, "That's so."] Why, where's the speech, where's the vote to be got of mine, but what has always had a tendency to elevate the great working classes of the people? [Cheers.] When they talk about tyranny and despotism, where's one act of Andrew Johnson's that ever encroached upon the rights of a free man in this land? But because I have stood as a faithful sentinel upon the watch-tower of freedom to sound the alarm, hence all this traduction and detraction that has been heaped upon me. ["Bully for Andy Johnson."]

I now, then, in conclusion, my countrymen, hand over to you the flag of your country with thirty-six stars upon it. I hand over to you your Constitution with the charge and responsibility of preserving it intact. I hand over to you to-night the Union of these States, the great magic circle which embraces them all. I hand them all over to you, the people, in whom I have always trusted in all great emergencies—questions which are of such vital interest—I hand them over to you as men who can rise above party, who can stand around the altar of a common country with their faces upturned to heaven, swearing by Him that lives forever and ever, that the altar and all shall sink in the dust, but that the Constitution and the Union shall be preserved. Let us stand by the Union of these States—let us fight

enemies of the government come from what quarter they may. My stand has been taken. You understand what my position is, and in parting with you now, leave the government in your hands with the confidence I have always had that the people will ultimately redress all wrongs and set the government right. Then, gentlemen, in conclusion, for the cordial welcome you have given me in this great city of the northwest, whose destiny no one can foretell—now, [voice, "Three cheers for Johnson,"] then, in bidding you good night, I leave all in your charge, and thank you for the cordial welcome you have given me in this spontaneous outpouring of the people of your city.

JOSEPH A. DEAR sworn and examined.

By Mr. Manager BUTLER:

Question. What is your business?

Answer. Journalist.

Q. How long has that been your business?

A. Five years.

Q. Can you report speeches made?

A. I am a short-hand writer as well.

Q. Did you join the presidential party when it went to St. Louis, via Cleveland?

A. I did at Chicago on the 6th of September, 1866, I believe.

Q. Were you with the presidential party at St. Louis?

A. I was.

Q. Did you take a report of any of the speeches made there?

A. I reported all the speeches made there.

Q. For what paper were you reporting?

A. I was with the party as the correspondent of the Chicago Republican. I made the reports for the St. Louis Times.

Q. Have you your notes of that report?

A. I have part of them.

Q. Was there speaking on the steamboat?

A. There was.

Q. Did you report that speech?

A. I did; part of it. Yes, I reported that speech on the steamboat.

Q. Was that in answer to an address of welcome by the mayor?

A. I think that was a speech in answer to an address of welcome by Captain Eads.

Q. Who was he? Whom did he represent?

A. I believe he represented a committee of citizens which met the party at Alton.

Q. How did you make this report?

A. By short-hand writing.

Q. How soon did you write it out?

A. That evening.

Q. How accurate is it where it purports to be accurate?

A. It is a report made for the St. Louis Times; and, as a matter of course, reporting for a paper of strong democratic politics, I corrected inaccuracies of grammar. That is all.

Q. Have you since written that out from your notes, so far as you have the notes?

A. I have.

Q. (Handing a manuscript to the witness.) Look there and see if that is your writing out from your notes?

A. (Examining the manuscript.) This is.

Q. An exact transcript?

A. An exact transcript.

Q. So far as it goes, is it an accurate report of the speech as delivered by Andrew Johnson?

A. With the exception I have mentioned.

Q. With the exception of inaccuracies of grammar——

Mr. STANBERY. Is that the speech at the steamboat or the hotel?

Mr. Manager BUTLER. At the Southern Hotel, on the balcony. They are both here; but I am now asking for the one at the balcony.

The WITNESS. The first is the speech at the Lindell Hotel.

Q. The other, the one we are inquiring about, was at the Southern Hotel?

A. At the Southern Hotel.

Mr. Manager BUTLER. I mistook. I saw the memorandum "steamboat" there. (To the witness.) Now take the speech at the Southern Hotel. So far as your report goes, as I understand, it is an accurate report of the speech?

A. It is.

Q. Why is it not all there?

A. I have lost part of my notes.

Q. Whereabouts does it commence?

A. The speech in my notes commences abruptly in the middle of a sentence, "who have got the shackles upon their limbs, and which are as much under control and will of the master as the colored men who were emancipated."

Mr. HOWARD. Where was this speech made?

Mr. Manager BUTLER. At the Southern Hotel, St. Louis. It is the same speech that has been read. (To the witness.) Will you read, sir, where your report begins?

A. (reading.) "Who have got the shackles upon their limbs, and which are as much under control and will of the master as the colored men who were emancipated. [Hisses and cheers.] And I call upon you as freemen to advocate the freedom"——

Q. That will do for the present. Does the speech then go through?

A. It goes through to the end.

Mr. Manager BUTLER, (to the counsel for the respondent.) Gentlemen, you will see that this report begins at about the top of the first full column of the previous report after the speech commences. (To the witness.) Have you ever compared that with this paper?

A. I do not know what "this paper" is.

Q. This paper is the St. Louis Democrat.

A. No, sir; I never have.

Mr. Manager BUTLER. We offer this paper now in evidence; I do not care to read it. The variations are not remarkable.

Mr. STANBERY. We will first cross-examine the witness.

Mr. Manager BUTLER. Certainly.

Cross-examined by Mr. STANBERY:

Q. Was this copy of yours published anywhere?

A. Yes.

Q. In what paper?

A. In the St. Louis Times.

Q. What date?

A. The Sunday following; I think the 9th.

Q. State how much time it requires a short-hand writer to write out his notes in what is called long-hand, compared with that which is required in taking down the notation.

A. We generally reckon the difference between the rates of speed in writing long-hand and short-hand as about one-sixth or one-seventh.

Q. That is, it takes six or seven times as long to write out the speech as it does to take the notes?

A. No, sir.

Q. How then?

A. There are frequently interruptions in the course of a speech; there are frequent pauses of a speaker, and a great many things.

Q. But suppose there are no pauses, but you are merely taking down the speech?

A. If a man talks steadily for two or three minutes together, it will take from twelve to twenty minutes to write out what he may say in three minutes' time, ordinarily.

Q. That is, four times as long?

A. Yes.

Q. Suppose he speaks rapidly and excitedly?

A. If he is a very fluent speaker it may take longer.

Q. Of course there is a difference between speakers as to that?

A. A very great deal of difference.

Q. In a rapid speaker what is the proportion of time?

A. My last answer covers it: I cannot say more precisely than that.

Q. Does the standard you give of four times as long apply to those who speak deliberately?

A. Yes, I think that would. A man could easily write out the remarks of a deliberate speaker in four times the length of time.

Q. What, then, is the proportion of time in the case of a rapid speaker?

A. Some men speak about as high as two hundred and thirty words a minute. A long-hand writer can write out about twenty-eight or thirty words a minute steadily, if he is a rapid penman and has no difficulty in reading his notes.

Q. Then it ought to be from eight to ten times as long for a rapid speaker?

A. About seven times as long.

Q. Twenty-eight to two hundred?

A. That is about seven times.

Q. Then the long-hand writer who is reporting will get, in case of a rapid speaker, one word in seven?

A. If he attempts to write out in full.

Re-examined by Mr. Manager BUTLER:

Q. Do I understand you that the whole of your report of the speech was published in the Times from all your notes?

A. Not the whole of it.

Q. Was it condensed for that publication?

A. It was considerably condensed.

Q. Was Andrew Johnson a rapid speaker in the manner that he spoke?

A. Mr. Johnson is a very fluent speaker and a very incoherent one.

Q. Repeating frequently his words?

A. Very frequently; very tautological, very verbose.

Q. Does that enable him to be taken with more ease?

A. It enables him to be taken with more ease.

Q. Is it not within your experience that there are men who by practice in long-hand by abbreviations can follow very accurately or quite accurately a speaker who spoke as Andrew Johnson spoke?

A. I think they could give the sense of his speech without doing him any injustice.

Q. How was it, taking into consideration the interruptions, supposing such a writer had been taking him from the balcony?

A. He would have to indicate the interruptions; he could not write them out.

Q. But could he get the sense of what the speaker was saying?

A. Of the speaker or the interruptions?

Q. Of the speaker.

A. Yes he could.

By Mr. STANBERY:

Q. A long-hand writer may take the sense and substance of a speech; that is, he may take the sense and substance as to his ideas of what are the sense and substance?

A. Undoubtedly; he must rely on his own view of what was intended to be said.

By Mr. Manager BUTLER:

Q. By dictating a report from the notes, with another person to write out, it can be much more rapidly written out, can it not?

A. Yes, sir; at least one-fourth.

Mr. Manager BUTLER. I put this report in evidence. I do not propose to read it.

Mr. STANBERY. Let it be printed.

Mr. Manager BUTLER. Certainly.

The report made by the witness, Joseph A. Dear, is as follows:

Speech from balcony of Southern Hotel.

After a few words of thanks Mr. Johnson was interrupted with inquiries "about New Orleans," and in reply he charged the responsibility of that riot on Congress, saying it was certainly planned and that every drop of blood shed in it rested on the skirts of the radical Congress, defended himself from the charge of having been a traitor, asked had he played "Judas" to Thaddeus Stevens Wendell Phillips or Charles Sumner, spoke of the majority in Congress as "this same persecuting nefarious and diabolical clan" and referring to an interruption about "Moses" said that there were other men in the country who claimed their sympathy besides colored men.

(*Transcript of notes resumed.*) * * * * * * *

who have got the shackles upon their limbs and which are as much under control and will of the master as the colored men who were emancipated (hisses and cheers) and I call upon you as freemen to advocate the freedom of the white man as well as the colored man. I have nothing to complain about emancipation. I tried to do as much and have done as much as—and when they talk about Moses and the promised land—where is the promised land that these people propose to lead them to when they talk about taking them out of America and sending them to other climes what is it they propose? Why it is to give them a Freedmen's Bureau and then what? Why here in the south it is not necessary for me to talk to you about the system and how it operates. We know slaves have been worked here before. Their original owners bought the land and bought the negroes, paid all the expenses of carrying on the farm and in the end after bringing the products to the market, if there was any profit on them these men put it into their pocket.

I am not addressing myself to your passions, and when reason and argument again resume their sway on the public mind this prejudice must give way and reason and argument become triumphant. Now let me call your attention to a single fact, the bureau. This slavery was an accursed institution but after emancipation took place the Congress here gave us our commissioners, gave us twelve millions of dollars, placed the power in the hands of the President or the Executive, who was to work this machinery with the army to sustain it, and let us work the four millions of slaves. In fine the Freedmen's Bureau was a simple proposition to transfer the four million of slaves in the United States from their original owners to a new set of taskmasters. I had been laboring for years to try and get them freed and I was opposed to seeing them transferred to a new set of taskmasters to be worked with more rigor than before. Yes, under this new system they would work the slaves, the government was to bear all the expense and if there was any profits left they would pocket them. So much for this question. I merely intended to tender you here tonight my thanks tonight as we go along and not to talk about this Congress that says the President is wrong because he vetoed the freedmen's Bureau Bill, and because the President exercised the veto power, he has committed a high offence and therefore he ought to be impeached. (No.) Yes they are ready to impeach him and if they were satisfied of having as large a majority in the next Congress as this, they would upon some pretext of violating some law or some provision of the Constitution they would vacate the Executive of the United States. As they talking about the soldiers let me call the attention of the soldiers to this immaculate Congress, this Congress which can make war upon

upon the }

the President because he stands by the } Constitution and exercises the veto power in behalf of the people they dared to talk about impeachment

By way of immortalizing themselves and increasing the confidence of the soldiers, throughout this country at one time they talked about impeachment. (How about the Fenians?) (Laughter) So far as the Fenians are concerned let me ask any Fenians, if there are any here to-night, to go back to my history and say who in the dark days of Know-nothingism, stood and made more sacrifice for their rights. It has been my peculiar misfortune always to have fierce opposition because I have always struck my blows direct and fought with the right, and Constitution on my side. Yes here was the law of neutrality and I was sworn to support the Constitution and see that law faithfully executed ("Why didn't you do it?") The law was executed, and because it was executed they raised a clamor and made an appeal to the Fenians and they pretended to repeal the law, but left it just as it was. They knew that whenever a law was presented to me proper in its character and softening the provisions of the present law it would meet my hearty approbation. But, to return to the soldier, as they were pretty well broken down and losing confidence at the end of secession, they thought they must do something for the soldier. What did they do? Who has done more for the soldier than I have? who has sacrificed more for the soldier than I have? But they to make them the friends of the soldier they come forward with a proposition—to do what? To give to the soldier fifty dollars ($50) bounty if he has served two (2) years, one hundred dollars ($100) if he has served three (3) years. Now mark this. The colored man that served two years can get his one hundred ($100) dollars bounty, but the white man must serve three for his.

But that is not the point. While they were tickling and attempting to please the soldier by giving him fifty ($50) dollars for two (2) years services they took it into their head to give somebody else a bounty, not of fifty ($50) dollars for two years services—now, attention! as I want to make an impression on your minds of the facts—When, the brave boy who has followed his gallant Officer, who slept on the tented field, who perilled his life, shed his blood and left his limbs behind him, he can get fifty ($50) dollars bounty if he has served two years, but the Member of Congress who never smelt gunpowder can get four thousand dollars ($4,000) extra pay (Loud cheers) That is a true picture my countrymen of what has transpired in the past. Fellow-citizens you are all familiar with the work of restoration: you know that ever since the rebellion collapsed everything has been done that could be done by the Executive department of the Government—in fact, all has been done except the admission of the members of the eleven States that went into rebellion, but having laid down their alms, abolished slavery, repudiated their debts and sent loyal representatives, everything has been done except the admission of the representatives which all the States are constitutionally entitled to. When you examine the Constitution of the United states you will find that you cannot refuse to any state its suffrage in the Senate (They have never been out) That's so! and I have always said they could not go out (cheers) and that being so they are entitled to their equal suffrage in the United States Senate, and no power has the right or can deprive them of it without violating the Constitution of the United States. And the same argument applies to the representatives in the House. It used to be said that when the states refused to send their representatives that that was secession, a breaking up of the Union.

Now the Radical party have turned round and say that the States are not entitled to representation in Congress. That is to say they are dissolutionists and their position now is to perpetuate the dissolution of the Union and that too while they deny the right of representation they impose on them taxation—a principle upon which in the revolution your fathers resisted the power of Great Britain. We deny the right of taxation without representation—this is one of the great principles of our government. (Cheers.) Let the government be restored, let peace be restored. Many years I have labored for and I am for it now. I deny this doctrine of secession come from whatever quarter it may, whether from the North or South. I am opposed to it. I am for the Union of these states for the thirty-six stars representing thirty-six states remaining where they are. I am for the Constitution as our fathers have made it and handed it down to us and if it is altered or amended let it be done in the mode appointed for it by that instrument itself and in no other. I am for the restoration of peace. Let me ask this people here tonight if we have not shed enough blood. Let me ask this people here tonight, are you prepared to go into, to go into, another civil war? (No.) Let me ask this people here tonight: are they prepared to set Man upon man and in the name of God lift up his hand against the throat of his brother? Are you prepared to see our fields again laid waste our commerce and business suspended and all trade stopped? Are we prepared to see this land that gave a brother birth, drenched in a brother's blood? I am one of those who believe that a man May sin and that a man May repent and sometimes that having sinned & having repented it makes him a better man than before, (Cheers.)

I know it has been said that I have exercised the pardoning power. Yes, I have (cheers) And I reckon I have pardoned more men than any other man living on the habitable globe. Yes, I turned forty-seven thousand of our men, who were engaged in this struggle, who were in prison with the arms we captured—I turned them loose. Large numbers have applied for pardons and thus I have granted pardons to some. But by some I am attempted to be held responsible for doing wrong. Yes, there are some who stayed at home and did not go into the field who call out about blood and punishment and making treason odious and all that (Laughter) who never smelled gunpowder on the other side. Yes they would condemn and they would hang and torture and all that and they that make the comparison—but if I have

erred I have erred on mercy's side and some of these croakers assume to set up that they are better than the Saviour of mankind, himself—a kind of over righteousness—thinking they are better than anybody-else and are always wanting to do the Deity's work, thinking they can do better than he can. Yes, the Saviour came and found man sentenced and under the law but when they repented he said, "let them live." Instead of putting them to death he went upon and was there painfully nailed by those unbelievers that I have spoken of and there shed his blood and died that you and I might live. Will you execute and put to death eight million of people? It is an absurdity and is impracticable even if it were right, but it is a violation of all law, human and divine. (Hang Jeff Davis.)

You call on Judge Chase to hang Jeff. Davis; will you? (Laughter.) I am not the court, I am not the Jury nor the Judge. Before the case comes to me, and all other cases, it would have to come as a case or application for pardon. That is the only way cases can come before me. Why don't Judge Chase, Chief Justice of the United States—in whose district he is—why don't he try him? But perhaps I can answer the question, and as sometimes people will be facetious and indulge in repartee, I might ask you a question—why dont you hang Thad Stevens and Wendell Phillips? [Hisses, Laughter, and Cheers.] I say that a traitor at one end of the line is as bad as a traitor at the other. I know men on some occasions who repeat sayings that have been placed in their mouths by their superiors, who have not the courage to come forward and say themselves, but have their understrappers come forward. I know there are some who talk about the elective franchise for which they wanted to overturn the government of Louisiana, who say, "We must make contracts and send men to these colored people and manage their affairs for them, and yet say they are competent to go to Congress and and manage affairs of state. Before you commence throwing your stones you ought to be able to say that you dont live in glass houses. Then why all this clamor? Dont you see, my countrymen, it is a question of power and being in power it is their object to perpetuate their power. Hence when you turn any of them out of Office they talk about "bread and butter." Yes, it is the most perfect and complete bread and butter party that has ever appeared in this government, and hence when you make an offer to take a single piece out of their mouths how they clamor. The man who has stayed at home four or five or six years and grown fat and indulged in all the emoluments of office and grown rich, when you talk about turning one of them out it is "proscription," and hence it is one of the objects of the Congress of the United States to pass a law preventing the Executive from turning any one out. (Turn them all out.) Hence, dont you see what the policy was to be.

How were the people to get hold of the offices. The idea of rotation in office of the days of Madison and Jefferson seems to be lost sight of; but my belief is that when one set of men have been in long enough it is time somebody else should have a turn. How are these men to be turned out? (Kick them out) How is this to be done unless you can reach them through the Executive. Congress proposes to pass laws to keep them in. How is this to be done unless it is by the President of the United States, Well let me say to you, if you will stand by me in vindication of the constitution of the United States in trying to give the soldiers and people a chance, I will kick them out as fast as I can (Loud cheers.) I care not for the menaces, for the taunts, the jeers, the threats. I don't intend to be bullied by my enemies or even overawed by my friends but God being willing with your help I will veto every measure of theirs whenever they come before me. I place myself on the ramparts of the Constitution and when I see the enemy approaching so long as I have eyes to see or ears to hear or a tongue to sound the alarm so help me God I will do it and call for you to the rescue (Loud cheers.) I tell you here to-night that the constitution of the country has been encroached upon, the citadal of liberty is being endangered (Go in Andy!) Come up to the work and protect your Constitution as the palladium of our civil and religious liberty for it is the ark of our safety. Yes let me ask you to cling to the Constitution in this great struggle for freedom as the shipwrecked mariner clings to the plank in the night when the tempest flows around him. So far as my public life is concerned the people of Missouri know that my efforts have been in that direction which would elevate the great masses of the people. Where is the speech or vote of mine but what has always had a tendency to elevate the great masses of the people and when they talk about tyranny or despotism where is one act of Andrew Johnson's that has encroached upon the rights of a freeman.

But because I have stood upon the outworks of freedom and have sounded an alarm hence all this detraction that has been heaped upon me. Then in conclusion here to-night I hand over the flag of your country with thirty-six stars upon it. I hand over the Constitution of your country with the charge and responsibility of preserving it intact. I hand over to you to-night the great circle of these states. I hand them over to you, the people; I must I have always trusted the people. The great questions which pertain to your interest I hand them over to you with the charge to preserve them as men who can rise above party & come around the altar of a common country & with faces upturned to heaven swear by him and all shall sink into the dust but that the constitution shall be preserved. Let us stand up for the Union of these States, let us fight the enemies of the government come from whatever quarter they may. You understand what my position is—no tyranny—and with you to-night, I leave the Union in your hands with the confidence I have always had that the people will redress all wrongs and set the government right. Then gentlemen of this

great city of the Western States in bidding you farewell I leave all in your charge and thank you greatly for the cordial welcome you have given me to your city (Loud cheers.)

JOSEPH A. DEAR.

ROBERT S. CHEW sworn and examined.

By Mr. Manager BUTLER:

Question. You are employed in the State Department?

Answer. I am.

Q. In what capacity?

A. Chief clerk.

Q. Is it part of your duty to supervise and know the commissions issued?

A. The duty devolves particularly upon the commission clerk of the department to prepare all commissions. The commission is first made out by a clerk who is called the commission clerk of the department. It is brought to me, and by me sent to the President. When returned with the President's signature it is submitted by me to the Secretary of State, who countersigns it. It then goes to the commission clerk for the seal to be affixed.

Q. Then, when it does not belong to your department, where does it go, when it is not a commission of an officer in your department?

A. To the Treasury.

Q. That is to say, if I understand, the commissions of officers in the Treasury are prepared at your department?

A. Yes, sir; of a portion of the officers of the Treasury.

Q. Such as whom?

A. Such as comptrollers, auditors, treasurers, assistant treasurers, officers of the mint, commissioners of the revenue.

Q. Secretary and assistant secretary?

A. Yes, sir.

A. Then, after being prepared, they are sent to the Treasury?

A. Yes, sir.

Q. Those that belong there?

A. Yes, sir.

Q. Those belonging to your office are issued from your office?

A. From the Department of State.

Q. Now, will you have the kindness to tell us whether, after the passage of the civil-tenure act, any change was made in the commissions of the officers of your department to conform to that act?

A. There was.

Q. What was that change? Tell us how the commission ran in that regard before and how it has been since.

A. (Referring to forms.) The form of the old commission was "during the pleasure of the President of the United States for the time being." Those words have been stricken out, and the words "subject to the conditions prescribed by law" inserted.

Q. Does that apply to all commissions?

A. That applies to all commissions.

Q. When was that done?

A. Shortly after the passage of the tenure-of-office act.

Q. About how soon, if you can tell us, one month or ten days?

A. I cannot say exactly, but when the first case came up, making it necessary for the commission clerk to prepare a commission, he applied for instructions under that act.

Q. Was the subject then examined in the department?

A. It was.

Q. Was this change made after that examination or before?

A. After the examination.

Q. Was it made by the direction of the Secretary or not?

A. The case was submitted by the Secretary to the legal examiner, and upon his opinion the change was made.

Q. By order of the Secretary?

A. I think so.

Q. You print the form of your commissions on parchment by copper-plate, do you not?

A. Yes, sir.

Q. Was the copper-plate then changed to make all forms?

A. It was.

Q. For the various kinds of commissions?

A. Yes, sir.

Q. Have you blank forms of the various kinds of commissions issued by your department?

A. I have. [Producing a number of blank forms.]

Q. Prior to the passage of the act of the 2d of March, 1867, being the tenure-of-civil-office act, were all the commissions issued to hold office "during the pleasure of the President for the time being?" Were they all issued in that form?

A. They were all issued in that form.

Q. Since this change have all commissions been issued in the changed form?

A. They have been.

Q. Have such changed commissions been signed by the President?

A. They have been.

Q. Has there been, down to to-day, any other change than the one you have stated?

A. None at all, that I am aware of.

Q. Has any commission whatever for any officer been sent out from your department since the passage of the act, except in this changed form?

A. I am not aware of any.

Q. Could there have been, except by accident, without your knowing it?

A. Not unless by accident.

Mr. Manager BUTLER, (to the counsel for the respondent.) I now propose, gentlemen, to offer these forms in evidence, but I will not read them unless you desire.

Mr. STANBERY. You will allow us to ask some questions first, I suppose.

Mr. Manager BUTLER. Certainly.

Cross-examined by Mr. STANBERY:

Q. Mr. Chew, as I understand you, the old form contained this clause, "said officer to hold and exercise the office during the pleasure of the President of the United States for the time being." That was the old form?

A. Yes, sir.

Q. And I understand you that the words "during the pleasure of the President of the United States for the time being" are now left out, and the words "subject to the conditions prescribed by law" are inserted?

A. Yes, sir.

Q. Have you ever changed one of your plates or forms so as to introduce in place of what was there before these words, "to hold until removed by the President, with the consent of the Senate?"

A. No, sir.

Q. You never have?

A. We never have.

Q. Let me ask you if any commission has been issued to a head of Department different from those that you issued before the tenure-of-office act? Has any commission since that act been issued to a head of department?

A. I am not aware of any. I brought no forms of commission to a head of Department, and did not examine that question.

Q. Have you a separate plate for the commission of a head of department?

A. I cannot answer that question.

Q. But you recollect no instance in which any change has been made there?

A. I do not.

By Mr. Manager BUTLER:

Q. Has there been any commission issued to a head of department since March 2, 1867?

A. I do not recollect at this moment.

Mr. Manager BUTLER. Then, of course, there is no change.

Mr. STANBERY. Of course not; that is what we have proved.

Mr. Manager BUTLER, (to the witness.) Hand to the clerk all the forms you have brought with you. We offer them in evidence.

The forms offered in evidence are as follows:

Temporary commission of deputy postmaster--Old form. In the form now used, the words in brackets are omitted, and the words "subject to the conditions prescribed by law" inserted.

——— ———, *President of the United States of America, to all who shall see these presents, greeting:*

Know ye, that, reposing special trust and confidence in the integrity, ability, and punctuality of ——— ———, I do appoint ——— deputy postmaster ———, and do authorize and empower him to execute and fulfil the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him the said ——— ——— [during the pleasure of the President of the United States for the time being, and] until the end of the next session of the Senate of the United States, and no longer.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington the — day of ——, in the year of our Lord one thousand eight hundred and ——, and of the independence of the United States of America the ——.

[L. S.] ——— ———.

By the President:

———— ————,

Secretary of State.

New form permanent postmaster.—No form of old commission in the department.

——— ———, *President of the United States of America, to all who shall see these presents, greeting:*

Know ye, that, reposing special trust and confidence in the integrity, ability, and punctuality of ——— ———, I have nominated, and by and with the advice and consent of the Senate, do appoint —— deputy postmaster ——, and do authorize and empower him to execute and fulfil the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said ——— ———, for the term of ———, subject to the conditions prescribed by law.

In testimony whereof, I have caused these letters to be made patent and the seal of the United States hereunto affixed.

Given under my hand, at the city of Washington, the —— day of ——, in the year of our Lord one thousand eight hundred and ——, and of the independence of the United States of America the ——.

[L. S.] ——— ———.

By the President:

———— ————,

Secretary of State.

[Postmasters are appointed for four years. The words "unless the President of the United States for the time being should be pleased sooner to revoke and determine this commission" are now omitted, and the words "subject to the conditions prescribed by law" inserted.]

New form, temporary commission of marshal and attorney. In commissions of marshal "diligence" is used instead of "learning."

——— ———, *President of the United States of America, to all who shall see these presents, greeting:*

Know ye, that reposing special trust and confidence in the integrity, ability, and learning of —— ——, I do appoint him to be attorney of the United States for the ——, and do authorize and empower him to execute and fulfil the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges, and emoluments thereunto legally appertaining unto him, the said —— ——, [until the end of the next session of the Senate of the United States, and no longer;] subject to the conditions prescribed by law.

In testimony whereof, I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the —— day of ——, in the year of our Lord one thousand eight hundred and ——, and of the independence of the United States of America the ——.

[L. S.] ——— ———.

By the President:

———,
Secretary of State.

Old form.

["During the pleasure of the President of the United States for the time being, and until the end of the next session of the Senate of the United States, and no longer," instead of the words in brackets in the above form.]

New form, permanent marshals and attorneys.

——— ———, *President of the United States of America, to all who shall see these presents, greeting:*

Know ye, that reposing special trust and confidence in the integrity, ability, and learning of —— ——, I have nominated, and, by and with the advice and consent of the Senate, do appoint him ——— ——— of the United States in and for the ——— ———, and do authorize and empower him to execute and fulfil the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said ——— ———, for the term of ——— ———, subject to the conditions prescribed by law.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the —— day of ——, in the year of our Lord one thousand eight hundred and ——, and of the independence of the United States of America the ——.

[L. S.] ——— ———.

By the President:

———,
Secretary of State.

[This commission is used for attorneys and marshals. The term of service is four years. The words "unless the President of the United States for the time being should be pleased to revoke and determine this commission" are now stricken out, and the words "subject to the conditions prescribed by law" are inserted.]

Form of commission for judges. Answers for permanent or temporary.

——— ———, *President of the United States of America, to all who shall see these presents, greeting:*

Know ye, that reposing special trust and confidence in the wisdom, uprightness, and learning of ——— ———, I have nominated, and, by and with the advice and consent of the Senate, do appoint him ——— ——— of the United States in and for the ——— ———, and I do authorize and empower him to execute and fulfil the duties of that office according to the Constitution and laws of the United States. and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said ——— ———.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the — day of ——, in the year of our Lord ——, and of the independence of the United States of America the ———.

[L. S.] ——— ———.

By the President:

———— ————,

Secretary of State.

[In cases of judges of territories the words "subject to the conditions prescribed by law" are inserted. This commission is used for judges of the Supreme Court of the United States, judges of district courts and Territories, and is temporary or permanent, as the case may be.]

Form of new commission of secretaries of legation used either in the recess or session of the Senate.

———— ————, *President of the United States of America, to* ——— ———, *greeting:*

Reposing special trust and confidence in your integrity, prudence, and ability, I do appoint (or nominate) ——— ——— secretary of the legation of the United States of America ———, authorizing you hereby to do and perform all such matters and things as to the said place or office doth appertain, or as may be given you in charge hereafter, and the same to hold and exercise, subject to the conditions prescribed by law.

In testimony whereof I have caused the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the — day of ——, in the year of our Lord one thousand eight hundred and ——, and of the independence of the United States of America the ———.

[L. S.] ——— ———.

By the President:

———— ————,

Secretary of State.

[The words "during the pleasure of the President of the United States for the time being" were formerly used.]

Old temporary consular commission.

The President of the United States of America to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the abilities and integrity of ———— ————, I do appoint him consul of the United States of America ——— and such other parts as shall be nearer thereto than to the residence of any other consul or vice-consul of the United States, within the same allegiance; and do authorize and empower him to have and to hold the said office, and to exercise and enjoy all the rights, pre-eminences, privileges, and authorities to the same of right appertaining. [during the pleasure of the President of the United States for the time being, and] until the end of the next session of the Senate of the United States, and no longer, he demanding and receiving no fees or perquisites of office whatever which shall not be expressly established by some law of the United States. And I do hereby enjoin all captains, masters, and commanders of ships and other vessels, armed or unarmed, sailing under the flag of the said States, as well as all other of their citizens, to acknowledge and consider him, the said ——— ———, accordingly. And I do hereby pray and request ———, governors and officers, to permit the said ——— ——— fully and peaceably to enjoy and exercise the said office without giving, or suffering to be given unto him, any molestation or trouble: but, on the contrary, to afford him all proper countenance and assistance; I offering to do the same for all those who shall, in like manner, be recommended to me by ———.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the —— day of ——, in the year of our Lord one thousand eight hundred and ———, and of the independence of the United States of America the ———.

[L. S.] ——— ———.

By the President:

———— ————,

Secretary of State.

[The words in brackets have been omitted since the passage of the tenure-of-office act.]

New permanent consular commissions.

The President of the United States of America to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the abilities and integrity of ——— ———, I have nominated, and by and with the advice and consent of the Senate do appoint him ——— ——— of the United States of America ——— and such other parts as shall be nearer thereto than to the residence of any other consul or vice-consul of the United States within the same allegiance; and do authorize and empower him to have and to hold the said office, and to exercise and enjoy all the rights, pre-eminences, privileges, and authorities to the same of right appertaining, subject to the conditions prescribed by law; the said ——— ——— demanding and receiving no fees or perquisites of office whatever which shall not be expressly established by some law of the United States. And I do hereby enjoin all captains, masters, and commanders of ships and other vessels, armed or unarmed, sailing under the flag of the said States, as well as all other of their citizens, to acknowledge and consider him the said ——— accordingly. And I do hereby pray and request ———, governors and officers, to permit the said ——— fully and peaceably to enjoy and exercise the said office without giving, or suffering to be given unto him, any molestation or trouble; but, on the contrary, to afford him all proper countenance and assistance; I offering to do the same for all those who shall in like manner be recommended to me by ———.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, and of the independence of the United States of America the ———.

[L. S.] ——— ———.

By the President:

——— ———,

Secretary of State.

[Heretofore this commission read "during the pleasure of the President of the United States for the time being."]

Forms of commissions used for governors, secretaries of Territories, and officers under the supervision of other departments, &c., either permanent or temporary, as the case may be.

——— ———, *President of the United States of America, to all who shall see these presents, greeting:*

Know ye, that reposing special trust and confidence in the integrity and ability of ——— ———, I do appoint him ———, and do authorize and empower him to execute and fulfil the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges and emoluments thereunto of right appertaining, unto him, the said ——— ———.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the —— day of ——, in the year of our Lord one thousand eight hundred and ——, and of the independence of the United States of America the ——.

[L. S.] ——— ———.

By the President:

——— ———,

Secretary of State.

Form of old commission of permanent ministers plenipotentiary issued as far back as 1790.

——— ———, *President of the United States of America, to* ——— ———, *greeting:*

Reposing special trust and confidence in your integrity, prudence, and ability, I have nominated, and by and with the advice and consent of the Senate do appoint, you envoy extraordinary and minister plenipotentiary of the United States of America ———, authorizing you hereby to do and perform all such matters and things as to the said place or office doth appertain, or as may be duly given in charge hereafter, and the said office to hold and exercise during the pleasure of the President of the United States for the time being.

In testimony whereof I have caused the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the —— day of ——, in the year of our Lord one thousand eight hundred and ——, and of the independence of the United States of America the ——.

[L. S.] ——— ———.

By the President:

——— ———,

Secretary of State.

[The words "during the pleasure of the President of the United States for the time being" are now stricken out, and the words "subject to the conditions prescribed by law" inserted. The same with commissions for ministers resident and secretaries of legation.]

Form of old commission of ministers resident, permanent or temporary, and is used for temporary commissions of envoys extraordinary and ministers plenipotentiary.

—— ——, *President of the United States of America to* ——— ———, *greeting:*

Reposing special trust and confidence in your integrity, prudence, and ability, I have nominated, and, by and with the advice and consent of the Senate, do appoint you ——— ———, of the United States of America, ——— ———, authorizing you hereby to do and perform all such matters and things as to the said place or office doth appertain or as may be given you in charge hereafter, and the said office to hold and exercise [during the pleasure of the President of the United States for the time being.]

In testimony whereof I have caused the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, the —— day of ——, in the year of our Lord one thousand eight hundred and ——, and of the independence of the United States of America the ——.

[S. L.] ——— ———.

By the President:

——— ———,

Secretary of State.

[If used as a temporary commission, the words used in place of those in brackets are "until the end of the next session of the Senate of the United States, and no longer."]

Examination of ROBERT S. CHEW resumed.

By Mr. STANBERY:

Question. Mr. Chew, how long have you been chief clerk?

Answer. Since July, 1866.

Q. How long have you been in the Department of State?

A. Since July, 1834.

Q. That is, you have been there thirty-four years?

A. Yes, sir.

Q. In all that time before this change did commissions run in this way: "during the pleasure of the President?"

A. They did.

By Mr. Manager BUTLER:

Q. (Handing a written paper to the witness.) I suppose you know Mr. Seward's handwriting?

A. I do.

Q. Is the letter I have just shown you signed by him?

A. It is.

Mr. Manager BUTLER, (to the counsel for the respondent.) I offer now, gentlemen, a list prepared by the Secretary of State, Mr. Seward, and sent to the managers, of all the appointments and removals as they appear in the State Department of officers from the beginning of the government.

Mr. STANBERY and Mr. CURTIS. Of all officers?

Mr. Manager BUTLER. Of heads of departments. It is accompanied with a letter simply describing the list, which I will read, as mere inducements.

Mr. CURTIS. We have no objection.

Mr. Manager BUTLER. I will read it:

DEPARTMENT OF STATE,
Washington, March 26, 1868.

SIR: In reply to the note which you addressed to me on the 23d instant, in behalf of the House of Representatives in the matter of the impeachment of the President, I have the honor to submit herewith two schedules, A and B.

Schedule A presents a statement of all removals of the heads of departments made by the President of the United States during the session of the Senate, so far as the same can be ascertained from the records of this department.

Schedule B contains a statement of all appointments of heads of departments at any time made by the President without the advice and consent of the Senate, and while the Senate was in session, so far as the same appears upon the records of the Department of State.

I have the honor to be, very respectfully, your obedient servant,

WILLIAM H. SEWARD.

Hon. JOHN A. BINGHAM, *Chairman.*

SCHEDULE A.

List of removals of heads of departments made by the President at any time during the session of the Senate.

Timothy Pickering, Secretary of State, removed May 13, 1800.

That is the whole of schedule A. Then comes

SCHEDULE B.

List of appointments of heads of departments made by the President at any time during the session of the Senate.

Timothy Pickering, Postmaster General, June 1, 1794.
Samuel L. Southard, Acting Secretary of the Treasury, January 26, 1829.
Asbury Dickins, Acting Secretary of the Treasury, March 17, 1832.
John Robb, Acting Secretary of War, June 8, 1832, and July 16, 1832.
McClintock Young, Acting Secretary of the Treasury, June 25, 1834.
Mahlon Dickerson, Acting Secretary of War, January 19, 1835.
C. A. Harris, Acting Secretary of War, April 29, 1836.
Asbury Dickins, Acting Secretary of State, May 19, 1836.
C. A. Harris, Acting Secretary of War, May 27, 1836.
McClintock Young, Acting Secretary of the Treasury, May 14, 1842, and June 30, 1842, and March 1, 1843.
John Nelson, Acting Secretary of State *ad interim*, February 29, 1844.
McClintock Young, Acting Secretary of the Treasury, May 2, 1844.
Nicholas P. Trist, Acting Secretary of State, March 31, 1846.
McClintock Young, Acting Secretary of the Treasury, December 9, 1847.
John Appleton, Acting Secretary of State, April 10, 1848.
Archibald Campbell, Acting Secretary of War, May 26, 1848.
John McGinnis, Acting Secretary of the Treasury, June 20, 1850.
Winfield Scott, Acting Secretary of War *ad interim*, July 23, 1850.
William S. Derrick, Acting Secretary of State, December 23, 1850, and February 20, 1852.
William L. Hodge, Acting Secretary of the Treasury, February 21, 1852.
William Hunter, Acting Secretary of State, March 19, 1852.
William L. Hodge, Acting Secretary of the Treasury, April 26, 1852.
William Hunter, Acting Secretary of State, May 1, 1852.
William L. Hodge, Acting Secretary of the Treasury, May 24, 1852, and June 10, 1852.
William Hunter, Acting Secretary of State, July 6, 1852.
John P. Kennedy, Acting Secretary of War, August 19, 1852.
William L. Hodge, Acting Secretary of the Treasury, August 27, 1852, and December 31, 1852, and January 15, 1853.
William Hunter, Acting Secretary of State, March 3, 1853.
Archibald Campbell, Acting Secretary of War, January 19, 1857.
Samuel Cooper, Acting Secretary of War, March 3, 1857.
Philip Clayton, Acting Secretary of the Treasury, May 30, 1860.
Isaac Toucey, Acting Secretary of the Treasury, December 10, 1860.
Thomas A. Scott, Acting Secretary of War, August 2, 1861.
George Harrington, Acting Secretary of the Treasury, December 18, 1861.
F. W. Seward, Acting Secretary of State, January 4, 1862, and January 25, 1862, and February 6, 1862, and April 9, 1862.
George Harrington, Acting Secretary of the Treasury, April 11, 1862, and May 5, 1862.
William Hunter, Acting Secretary of State, May 14, 1862.
George Harrington, Acting Secretary of the Treasury, May 19, 1862.
F. W. Seward, Acting Secretary of State, June 11, 1862, and June 30, 1862.
George Harrington, Acting Secretary of the Treasury, January 8, 1863.
F. W. Seward, Acting Secretary of State, December 23, 1863, and April 11, 1864.
George Harrington, Acting Secretary of the Treasury, April 14, 1864, and April 27, 1864, and June 7, 1864, and June 30, 1864.
F. W. Seward, Acting Secretary of State, January 4, 1865, and February 1, 1865.
Gerge Harrington, Acting Secretary of the Treasury, March 4, 1865.
William E. Chandler, Acting Secretary of the Treasury, December 20, 1866.
F. W. Seward, Acting Secretary of State, May 15, 1866.
William E. Chandler, Acting Secretary of the Treasury, December 20, 1866.
John T. Hartley, Acting Secretary of the Treasury, September 16, 1867, and November 13, 1867.
F. W. Seward, Acting Secretary of State, March 11, 1868.

Mr. CONKLING. I beg to ask what is the title of the last schedule which has just been read. Will the manager read it again?

Mr. Manager BUTLER. "List of appointments of heads of departments made by the President at any time during the session of the Senate." (To the witness.) You told us, Mr. Chew, how long you had been in the State Department. How long was that?

A. I was appointed in July, 1834.

Q. We see by the list that there have been certain appointments of Acting Secretaries of State; tell us under what circumstances they were made.

Mr. STANBERY. We must ask that that question be repeated.

Mr. Manager BUTLER. I will repeat the question. (To the witness.) There are in the list certain acting appointments, like those of Mr. Hunter, Mr. Appleton, and Mr. F. W. Seward. I do not ask the authority under which they were made; but I ask the circumstances under which they were made. What was the necessity for making them—the absence of the Secretary or otherwise?

A. The absence of the Secretary.

Q. Since 1834, in the thirty-four years you have been there, has there been any appointment of Acting Secretary except on account of the temporary absence of the Secretary, to your knowledge?

A. I do not recall any at this time.

Q. By whom were those acting appointments made?

A. They were made by the President or by his order.

Q. That is exactly what I want to know. Did the letter of authority in most of these cases—take Hunter's case and Appleton's case, for example—proceed from the head of the department or from the President?

Mr. EVARTS. We object that the papers must be produced if their form is to be considered as material.

Mr. Manager BUTLER. I am not asking for form, I am asking for fact.

Mr. EVARTS. That is the fact, as we suppose, what the authority or the form of authority was.

Mr. Manager BUTLER. I am asking now from whence and by whom issued; whether the letter, whatever may be its form, came directly from the head of the department to the chief clerk, Mr. Hunter, or to Mr. Appleton, who was the chief clerk, I believe—whether it came directly from the head of the department or from the President.

Mr. EVARTS. The objection we make is that the letter of authority shows from whom it came, and is the best evidence from whom it came.

Mr. Manager BUTLER. Suppose it should happen to turn out that there was not any letter?

Mr. EVARTS. Then you would be in a situation where you could prove it by some other evidence. The question is in regard to letters of authority.

Mr. Manager BUTLER. I am asking from whom the authority proceeded, because I do not know now to whom to send to ask to produce the letter until I find out who wrote it.

The CHIEF JUSTICE, (to the witness.) Were any authorities given except in writing and by letter?

The WITNESS. Only in writing.

Mr. Manager BUTLER. I again say, sir, that I am not able to know whom to send to until I can ask from whom those letters came. That is competent always.

The CHIEF JUSTICE. You can ask where the papers are? Where these writings are preserved?

Mr. Manager BUTLER. Well, I am inclined, may it please your honor, to put this question, with the leave of the presiding officer. (To the witness.) From whom did these letters of which you speak come?

Mr. CURTIS and Mr. EVARTS. That we object to.

The CHIEF JUSTICE. The honorable manager will reduce his question to writing.

Mr. Manager BUTLER. What I propose to ask is whether any of the letters of authority this witness has mentioned came from the Secretary of State or from any other officer. If he says they all came from the President, that will end the inquiry. If he says they all came from the Secretary of State, then I may want to send for them. I really cannot understand the objection.

The CHIEF JUSTICE. Do the counsel for the President object to that question?

Mr. EVARTS. We object to proof of the authority sought to be proved, except by the production of the writing by which the witness has stated that in all cases it is evidenced. If it is sought to be proved who made a manual delivery of a paper where manual delivery was made to this witness, this witness can speak concerning that, and give such information as pertains to that; but he can go no further.

Mr. Manager BUTLER. I am not now proving the authority, I am proving the source of authority. I am endeavoring to find out from which source of authority these letters came. If they came from the President, that is one thing, and then I can apply there, if I choose, for them; whereas, if they came from the Secretary of State, that is another thing, and then I can apply there. I am asking, in the usual course of examination, as I understand the examinations of witnesses, whence certain papers came; were they the papers of the Secretary of State, or were they the papers of the President? That does not put in their effect.

Mr. CURTIS. Do you mean to inquire who signed the letters of authority; is that your inquiry?

Mr. Manager BUTLER. I mean to inquire precisely whether the letter of authority came from the Secretary or from the President.

Mr. CURTIS. Do you mean by that who signed the letter, or do you mean out of whose manual possession it came into this gentleman's?

Mr. Manager BUTLER. I mean, sir, who signed the letter, if you put it in that form.

Mr. CURTIS. That we object to.

Mr. Manager BUTLER. I do not do that for the purpose of proving the contents of the letter, but for the purpose of identification of the letter.

Mr. CURTIS. The signature is as much a part of the letter and its contents as anything else.

Mr. EVARTS. Is this offered to prove who signed the letter? We say the paper itself will show who signed it.

Mr. Manager BUTLER. The difficulty is that unless I talk an hour these gentlemen are determined that I never shall have the reply on my proposition. My proposition is not to prove the authority, nor to prove the signature, but it is to prove the identity of the paper; and it is not to prove that it was a letter of authority, because Mr. Seward signed it, for instance, but it is to prove whether I am to look for my evidence in a given direction or in another direction. If the witness says that Mr. Seward signed it, for example, I should have no right to argue to the Senate that, therefore, it was the authority of Mr. Seward; but I am desirous, if I can, to ascertain whether it is worth while for me to go any further than to argue this question; and the objection seems to me over-sensitiveness.

The CHIEF JUSTICE. The Secretary will read the question propounded by the honorable manager.

The Secretary read as follows:

Question. State whether any of the letters of authority which you have mentioned came from the Secretary of State, or from what other officer?

The CHIEF JUSTICE. "Came from the Secretary of State." Do I understand you to mean signed by him?

Mr. Manager BUTLER. I am not anxious upon that part of it, sir. I am content with the question as it stands.

The CHIEF JUSTICE. The Chief Justice conceives that the question in the form in which it is put is not objectionable——

Mr. Manager BUTLER. I will put it, then, with the leave of the Chief Justice.

The CHIEF JUSTICE. The Chief Justice was about to proceed to say that if it is intended to ask the question whether these documents, of which a list is furnished, were signed by the Secretary, then he thinks it is clearly incompetent without producing them.

Mr. Manager BUTLER. Under favor, Mr. President, I have no list of these documents; none has been furnished.

The CHIEF JUSTICE. Does not the question relate to the list which has been furnished?

Mr. Manager BUTLER. It relates to the people whose names have been put upon the list; but I have no list of the documents at all. I have only a list of the facts that such appointments were made, but I have no list of the letters, whether they came from the President or from the Secretary, or from anybody else.

The CHIEF JUSTICE. In the form in which the question is put the Chief Justice thinks it is not objectionable. If any senator desires to have the question taken by the Senate, he will put it to the Senate. (To the managers, no senator speaking.) You can put the question in the form proposed.

Mr. Manager BUTLER, (to the witness.) State whether any of the letters of authority which you have mentioned, came from the Secretary of State, or from what other officer.

Mr. CURTIS. I understand the witness is not to answer by whom they were sent.

Mr. Manager BUTLER. I believe I have this witness.

The CHIEF JUSTICE. The Chief Justice will instruct the witness. (To the witness.) You are not to answer at present by whom these documents were signed. You may say from whom they came.

The WITNESS. They came from the President.

By Mr. Manager BUTLER:

Q. All of them?

A. Such is the usual course. I know of no exception.

Q. Do you know of any letter of authority for the chief clerk, acting as Secretary of State, which did not come from the President?

A. I do not.

Q. Will you, upon your return to the office, examine if there is any, and report to me?

A. I will.

By Mr. STANBERY:

Q. Mr. Chew, I see by this list only one instance of the removal by the President of a head of department during the session of the Senate, and that was an early one, May 13, 1800. You know nothing yourself about the circumstances of that removal?

A. Not at all.

Q. You do not know whether that officer had refused to resign when requested or not?

A. I do not.

Q. In your knowledge since you have been in the Department of State in the last thirty-four years, do you know of any instance in which a head of a department when he has received a request from the President to resign has refused to resign?

Mr. Manager BUTLER. Stop a moment; I object to that.
The CHIEF JUSTICE. Do the counsel for the President press the question?
Mr. STANBERY. Not now, sir. We have the records.

By Mr. STANBERY:

Q. Have you examined the records of the department to ascertain under what circumstances it was that President Adams removed Mr. Pickering from the head of the State Department in 1800, while the Senate was in session?
A. I have not.

By Mr. Manager BUTLER:

Q. Do you know that he was removed while the Senate was in session of your own knowledge?
A. I do not.
Mr. STANBERY (to the managers.) You have proved it, gentlemen, yourselves.
Mr. Manager BUTLER. I now offer, sir, from the ninth volume of the works of John Adams——
Mr. STANBERY. There you will find it, I guess.
Mr. Manager BUTLER. I offer from the ninth volume of Little & Brown's edition of 1854 of the works of John Adams, by his grandson, Charles Francis Adams, what purport to be official letters from Timothy Pickering, Secretary of State, to John Adams, President, and from John Adams to him. Is there any objection to my reading them?
Mr. JOHNSON. Will you state the page, Mr. Manager?
Mr. Manager BUTLER. Pages 53, 54, 55. I offer these printed copies as the best evidence of official letters of that date, it is so long ago. We have not been able to find any record of them thus far, but we are still in search. Is there any objection?
Mr. STANBERY. Not at all.
Mr. Manager BUTLER. Then I will read them:

SIR: As I perceive a necessity of introducing a change in the administration of the office of State, I think it proper to make this communication of it to the present Secretary of State, that he may have an opportunity of resigning, if he chooses. I should wish the day on which his resignation is to take place to be named by himself. I wish for an answer to this letter on or before Monday morning, because the nomination of a successor must be sent to the Senate as soon as they sit.
With esteem, I am, sir, your most obedient and humble servant,

JOHN ADAMS.

To T. PICKERING, *Secretary of State.*

[*T. Pickering, Secretary of State, to John Adams.*]

DEPARTMENT OF STATE, *Philadelphia*, 12 *May*, 1800.

SIR: I have to acknowledge the receipt of your letter, dated last Saturday, stating that, "as you perceive a necessity of introducing a change in the administration of the office of State, you think it proper to make this communication of it to the present Secretary of State, that he may have an opportunity of resigning if he chooses;" and that "you would wish the day on which his resignation is to take place to be named by himself."
Several matters of importance in the office, in which my agency will be useful, will require my diligent attention until about the close of the present quarter. I had, indeed, contemplated a continuance in office until the 4th of March next, when, if Mr. Jefferson was elected President, (an event which, in your conversation with me last week, you considered as certain,) I expected to go out, of course. An apprehension of that event first led me to determine not to remove my family this year to the city of Washington; because to establish them there would oblige me to incur an extraordinary expense which I had not the means of defraying; whereas, by separating myself from my family, and living there eight or nine months with strict economy, I hoped to save enough to meet that expense, should the occasion occur. Or, if I then went out of office, that saving would enable me to subsist my family a few months

longer, and perhaps aid me in transporting them into the woods, where I had land, though all wild and unproductive, and where, like my first ancestor in New England, I expected to commence a settlement on bare creation. I am happy that I now have this resource, and that those most dear to me have fortitude enough to look at the scene without dismay, and even without regret. Nevertheless, after deliberately reflecting on the overture you have been pleased to make to me, I do not feel it to be my duty to resign.

I have the honor to be, &c.,

TIMOTHY PICKERING.

PHILADELPHIA, 12 *May*, 1800.

SIR: Divers causes and considerations, essential to the administration of the government, in my judgment, requiring a change in the Department of State, you are hereby discharged from any further service as Secretary of State.

JOHN ADAMS,
President of the United States.

TO TIMOTHY PICKERING.

Now, will the Senate allow the executive journal of the Senate, of May 12, 1800, to be brought up, by which we propose to show that at the same hour, on the same day, Mr. Adams, the President, sent a nomination to the Senate?

Mr. STANBERY. Do I understand the manager to say, "the same hour?" Do you expect to prove it?

Mr. Manager BUTLER. I should think, when we come to look at the correspondence, that I am wrong; I think the sending to the Senate was a little previous. [Laughter.]

Mr. STANBERY. You do?

Mr. Manager BUTLER. I do.

Mr. STANBERY. And you expect to prove that?

Mr. Manager BUTLER. I do. [After a pause.] I have not yet heard a decision upon the question whether I am to have the journal.

Mr. STANBERY. Certainly; we have no objection.

Mr. Manager BUTLER. It is the executive journal, and I suppose it cannot be brought in unless the Senate directs it. I will say it is not printed.

Mr. SHERMAN. Mr. President, I move that the journal be furnished for that purpose. I suppose there will be no objection.

The motion was agreed to.

CHARLES E. CREECY recalled.

By Mr. Manager BUTLER:

Q. You have been sworn once in this case?

A. Yes, sir.

Q. [Handing a paper to the witness,] You have told us that you were appointment clerk in the Treasury. Are you familiar with the handwriting of Andrew Johnson?

A. I am.

Q. Is that his handwriting?

A. It is.

Q. Did you produce this letter from the archives of the Treasury to-day in obedience to a summons?

A. I did.

Mr. Manager BUTLER. Mr. President and Senators, it will be remembered that the answer of the President to the first article says, in words:

And this has ever since remained, and was the opinion of the respondent at the time when he was forced as aforesaid to consider and decide what act or acts should and might lawfully be done by this respondent, as President of the United States, to cause the said Stanton to surrender the said office.

* * * * * * * *

This respondent was also aware that this act—

The tenure-of-civil-office act—

Was understood and intended to be an expression of the opinion of the Congress by which that act was passed; that the power to remove executive officers for cause might, by law, be

taken from the President and vested in him and the Senate jointly; and although this respondent had arrived at and still retained the opinion above expressed, and verily believed, as he still believes, that the said first section of the last-mentioned act was and is wholly inoperative and void by reason of its conflict with the Constitution of the United States.

* * * * * * * *

And this respondent, further answering, says, that it is provided in and by the second section of "An act to regulate the tenure of certain civil offices," that the President may suspend an officer from the performance of the duties of the office held by him, for certain causes therein designated, until the next meeting of the Senate, and until the case shall be acted on by the Senate; that this respondent, as President of the United States, was advised, and he verily believed and still believes, that the executive power of removal from office confided to him by the Constitution as aforesaid includes the power of suspension from office at the pleasure of the President; and this respondent, by the order aforesaid, did suspend the said Stanton from office, not until the next meeting of the Senate, or until the Senate should have acted upon the case, but by force of the power and authority vested in him by the Constitution and laws of the United States, indefinitely and at the pleasure of the President.

Now, the second section of the act regulating the tenure of certain civil offices provides:

That when any officer appointed as aforesaid. excepting judges of the United States courts, shall, during a recess of the Senate, be shown by evidence satisfactory to the President to be guilty of misconduct in office or crime, or for any reason shall become incapable or legally disqualified to perform its duties, in such case, and in no other, the President may suspend such officer and designate some suitable person to perform temporarily the duties of such office until the next meeting of the Senate, and until the case shall be acted upon by the Senate.

The eighth section provides:

That whenever the President shall, without the advice and consent of the Senate, designate, authorize, or employ any person to perform the duties of any office, he shall forthwith notify the Secretary of the Treasury thereof.

It will be seen, therefore, Mr. President and senators, that the President of the United States says in his answer that he suspended Mr. Stanton, under the Constitution, indefinitely and at his pleasure. I propose, now, unless it be objected to, to show that that is false under his own hand, and I have his letter to that effect, which, if there is no objection, I will read, the signature of which was identified by C. E. Creecy.

[The letter was handed to the counsel for the respondent.]

Mr. STANBERY. We see no inconsistency with that part of the act, certainly.

Mr. Manager BUTLER. That was a question I did not put to you. I asked you if you had any objection.

Mr. STANBERY. I tell you we see no inconsistency, much less falsehood, in that letter.

Mr. Manager BUTLER. To that I answer the falsehood is not in the letter, but in the answer.

Mr. Manager BUTLER thereupon read the letter, as follows:

EXECUTIVE MANSION, WASHINGTON, D. C.,
August 14, 1867.

SIR: In compliance with the requirements of the eighth section of the act of Congress of March 2, 1867, entitled "An act regulating the tenure of certain civil offices," you are hereby notified that on the 12th instant Hon. Edwin M. Stanton was suspended from office as Secretary of War, and General Ulysses S. Grant authorized and empowered to act as Secretary of War *ad interim*.

I am, sir, very respectfully, yours,

ANDREW JOHNSON.

Hon. HUGH MCCULLOCH,
Secretary of the Treasury.

I wish to call attention again, because it may have escaped the attention of some senators——

Mr. CURTIS. We object to the gentleman arguing the question.

Mr. STANBERY. It is time certainly we should know what all this discussion means. What question is now before the Senate? What is your question?

Let us know whether we have any objection; how it is that this statement is made.

Mr. Manager BUTLER. I am endeavoring to show, sir, that while the President says he did not suspend Mr. Stanton under the tenure-of-office act, and that he had come to the conclusion that he had a right to suspend him before August 12, 1867, without leave of the tenure-of-office act, and without leave of the Senate, yet, acting under the eighth section of the act to which he refers in his letter, he expressly says in that letter that he did suspend him under this act.

Mr. STANBERY. We understand all that.

Mr. CURTIS. He does not say any such thing. We do not object to the honorable manager offering his evidence; we object to his arguing upon the effect of the evidence at this stage.

Mr. Manager BUTLER. I have argued nothing, sir, except to read the law.

The CHIEF JUSTICE. Gentlemen Managers, the executive journal is now here.

Mr. Manager BUTLER. I now produce the executive journal of the Senate.

Mr. JOHNSON. Of what date?

Mr. Manager BUTLER. Monday, May 12, 1800. May 9 is the last previous date of executive session:

MONDAY, *May* 12, 1800.

The following written messages were received from the President of the United States by Mr. Shaw, his secretary:

Gentlemen of the Senate:

I nominate the honorable John Marshall, esq., of Virginia, to be Secretary of State, in place of the honorable Timothy Pickering, esq., removed.

The honorable Samuel Dexter, esq., of Massachusetts, to be Secretary of the Department of War, in the place of the honorable John Marshall, nominated for promotion to the office of State.

JOHN ADAMS.

UNITED STATES, *May* 12, 1800.

Gentlemen of the Senate:

I nominate William H. Harrison, of the Northwestern Territory, to be governor of the Indiana Territory.

JOHN ADAMS.

UNITED STATES, *May* 12, 1800.

Gentlemen of the Senate:

I nominate Israel Ludlow, of the Northwestern Territory, to be register of the land office at Cincinnati.

JAMES FINDLEY, &c.

Then follows a long list of nominations:

Gentlemen of the Senate:

I nominate Seth Lewis, esq., of Tennessee, to be chief justice of the Mississippi Territory, in the place of William McGuire, esq., resigned.

JOHN ADAMS.

UNITED STATES, *May* 12, 1800.

The messages were read.

Ordered, That they lie for consideration.

TUESDAY, *May* 13, 1800.

The Senate proceeded to consider the message of the President of the United States of the 12th instant, and the nominations contained therein, of John Marshall and Samuel Dexter, to office, whereupon,

Resolved, That they do advise and consent to the appointments agreeably to the nomination.

Ordered, That the Secretary lay this resolution before the President of the United States.

Mr. STANBERY. Will you please to read where it appears there, at what hour, what time of day, that was done?

Mr. Manager BUTLER. I have not undertaken to state the hour. I stated directly to the Senate, in answer to you, that I thought that the letter went to

the Senate with the nomination, and I believed it would appear from an examination of the whole case that the nomination of a successor went to the Senate prior to the letter going to Mr. Pickering.

Mr. STANBERY. The honorable manager will allow me to say he said he expected to prove it.

Mr. Manager BUTLER. The Senate heard what I said. I said I expected it would appear from the whole matter, exactly using that phrase. I am quite sure I know what I said. But, however, as it was the duty of John Adams to send it first to the Senate, I presume he did his duty and sent it first to the Senate before he sent it to Pickering. I mean to say further, that it being all done on the same day, it must be taken to be at the same time in law. But another piece of evidence I adduce is, that he asked Pickering to send in his resignation because it was necessary to send a successor to the Senate as soon as they sat, which he did.

The CHIEF JUSTICE. Do the honorable managers require the executive journal any further?

Mr. Manager BUTLER. No further.

Mr. STANBERY. We have a certified copy of it.

[The journal was returned to the Secretary's office.]

CHARLES E. CREECY recalled.

By Mr. Manager BUTLER:

Q. [Submitting papers to witness.] Upon receipt of that notification by the President of the United States that he had suspended Mr. Stanton according to the provisions of the civil tenure-of-office act, what was done?

A. A copy of the executive communication was sent to the Treasurer, First Comptroller, First Auditor, Second Auditor, and Third Auditor.

Q. Have you the letters of transmittal there?

A. I have.

Q. Will you have the kindness to read them?

A. Here is one:

TREASURY DEPARTMENT, *August* 15, 1867.

SIR: In accordance with the requirements of the eighth section of an act entitled "An act regulating the tenure of certain civil offices," I transmit herewith a copy of a letter from the President, notifying this department of the suspension of Hon. E. M. Stanton from the office of Secretary of War, and the authorizing of General Ulysses S. Grant to act as Secretary of War *ad interim*.

I am, very respectfully,

HUGH McCULLOCH,
Secretary of the Treasury.

R. W. TAYLOR, Esq., *First Comptroller, &c.*

The same letter was sent to the others.

Q. Are those officers the proper accounting and disbursing officers of the department?

A. They are for the War Department.

Q. Then, if I understand you, all the disbursing officers of the Treasury for the War Department were notified in pursuance of the act?

Mr. CURTIS. We object to that.

Mr. EVARTS. That is a question of law.

Mr. Manager BUTLER. Were thereupon notified?

A. Yes, sir.

Q. Were you there to know of this transmission?

A. Yes, sir.

Q. Did you prepare the papers?

A. Yes, sir.

Q. Did you prepare them in pursuance of any other act of Congress except the civil tenure-of-office act?

A. No, sir.

Mr. Manager BUTLER. That is all. [A pause.]

Mr. CONNESS. I was going to move a recess; but if the witness is to be cross-examined now——

Mr. STANBERY. That will answer. I can wait until the recess.

Mr. HOWARD. Let the examination of this witness be finished.

Mr. Manager BUTLER. I can say to the Senate that we shall reach within a few minutes a place to rest.

The CHIEF JUSTICE. Does the senator from California withdraw his motion?

Mr. CONNESS. I understand the counsel to wish a recess at this time. I move a recess for fifteen minutes.

The CHIEF JUSTICE. The honorable manager informs the Senate that he expects to close his evidence within a short time.

Mr. Manager BUTLER. I expect to close it with certain exceptions which I shall name.

Mr. CONNESS. There appears to be a difference of opinion; I only desire to represent the wishes of the body. I think we had better have a recess.

The CHIEF JUSTICE. How long?

Mr. CONNESS. I move that the Senate take a recess for fifteen minutes.

The motion was agreed to; and the Chief Justice resumed the chair at fifteen minutes to three o'clock, and called the Senate to order.

Mr. CONNESS. There seem to be but few senators present, and I move that the Senate adjourn.

Mr. SUMNER. No; I hope not.

Mr. CONNESS. If there is any chance of getting them in, I will withdraw the motion.

Mr. SUMNER. The better motion would be a call of the Senate.

Mr. CONNESS. That is not in order.

Mr. CURTIS. Mr. Chief Justice, it is suggested to me by my colleagues——

The CHIEF JUSTICE. Is the motion withdrawn?

Mr. CONNESS. I will withdraw it at present.

Mr. CURTIS. It is suggested now by my colleagues that I should make known to the senators that it is our intention, if the testimony on the part of the prosecution should be closed to-day, as we suppose it will be, to ask the senators to grant to the President's counsel three days in which to prepare and arrange their proofs, and enable themselves to proceed with the defence. We find ourselves in a condition in which it is absolutely necessary to make this request, and I think, and my colleagues agree with me in that ——

The CHIEF JUSTICE. The Chief Justice suggests to the counsel that it would be better to postpone that matter until the Senate is full.

Mr. CURTIS. The reason why I thought of making it known at this moment, Mr. Chief Justice, was that I was under the apprehension that there might be some motion for an adjournment, which might in some way interfere with this application, when it would not be in order for me to present it after such a motion to adjourn.

Mr. Manager BOUTWELL. Mr. President and Senators, in the schedule "B," offered a short time since from the State Department, the first name that appears among those appointed during the session of the Senate is that of Timothy Pickering, who from that record appears to have been appointed Postmaster General on the 1st day of June, 1794. We think it a proper time to call the attention of counsel for the respondent to the statutes which we suppose explain the nature of that proceeding. This is the only appointment of the head of a department which appears from this record as having been made during the session of the Senate. The statutes are first a statute of the 22d of September, 1789, in which it is provided "that there shall be appointed a Postmaster General; his powers and salary, and the compensation to the assistant or clerk and

deputies which he may appoint, and the regulations of the Post Office shall be the same as they last were under the resolutions and ordinances of the late Congress." And it was provided in the second section "that this act shall continue in force until the end of the next session of Congress, and no longer." Showing that it was merely a continuance of the post office system that existed under the Continental Congress.

Mr JOHNSON. Will the manager give the date of the act?

Mr. Manager BOUTWELL. That act was passed on the 22d of September, 1789. On the 4th day of August, 1790, the Congress passed a supplementary brief act in these words:

That the act passed the last session of Congress intituled an act for the temporary establishment of the Post Office be, and the same hereby is, continued in force until the end of the next session of Congress, and no longer.

Which was a continuance of the continental system of post office arrangement. On the 3d day of March, 1791, Congress passed another act:

That the act passed the first session of Congress intituled "an act for the temporary establishment of the Post Office," be, and the same is hereby, continued in full force until the end of the next session of Congress, and no longer.

On the 20th day of February, 1792, Congress passed an act making various arrangements in regard to the administration of the Post Office and establishing certain post routes; and it is provided in that act:

That the act passed the last session of Congress intituled "an act to continue in force for a limited time an act entitled 'An act for the temporary establishment of the Post Office,'" be, and the same is hereby, continued in full force until the 1st day of June next, and no longer.

This act from which I now read did not contain any provision for the establishment of a post office department as a branch of the government, but the last section provided:

That this act shall be in force for the term of two years from the said first day of June next, and no longer.

Which would continue this provisional post office system until the first day of June, 1794.

On the 8th day of May, 1794, the Congress passed an act covering the whole ground of the post office system, and in that act they provided for the establishment, at the seat of the government of the United States, of a general Post Office, and that there should be one Postmaster General, which is the first act which provides for the appointment of a Postmaster General; and then there were all the provisions in regard to the details of the office. The last section of this act, which was passed on the 8th day of May, 1794, declared:

That this act shall be in force from the 1st day of June next.

Which was the day on which the provisional post office department which was the continuance of the continental system terminated. That day was Sunday; but on that day General Washington, who was then President, thought fit, although the Senate was nominally in session, and although it was Sunday, to make the appointment of Timothy Pickering, as Postmaster General. I suppose it will appear from the journal of the Senate that he was immediately nominated to the Senate and confirmed. This fully explains the nature of the appointment of Mr. Pickering, who is, as appears from this record, the only person who was made the head of a department by an appointment during the session of the Senate.

Mr. Manager WILSON. Mr. President, I wish to call the attention of counsel for the respondent to an entry on the executive journal of the Senate of the 10th of May, 1800, also of the 12th of May, 1800, and the 13th, showing that the Senate at that time met at an earlier hour than 12 o'clock. On page 93 of the journal of the Senate for May 10, 1800, it is entered:

The Senate adjourned to 11 o'clock on Monday morning.

On Monday morning, May 12, 1800, the Senate met, and the manner of adjournment is as follows:

After the consideration of the executive business, the Senate adjourned to 11 o'clock to-morrow morning. (Page 94.)

TUESDAY, May 13, 1800.

The Senate met in pursuance of said adjournment at 11 o'clock.

Mr. Manager BINGHAM. Mr. President and gentlemen of the Senate, we offer in evidence several executive messages of the President of the United States, of dates respectively December 16, 1867; December 17, 1867; again, December 16, 1867; the fourth, January 13, 1868; and the fifth, December 19, 1867.

[The messages communicate information of the suspension of John H. Patterson from the office of assessor of internal revenue for the fourth district of Virginia; of Charles Lee Moses from the duties of counsel at Brunai, Borneo; of John H. Anderson from the office of collector of internal revenue for the fourth district of Virginia; of Charles H. Hopkins, assessor of internal revenue for the first district of Georgia, and of John B. Lowry, postmaster at Danville, Virginia.]

Mr. Manager BINGHAM. I also offer in evidence, Mr. President and Senators, the communication of the Secretary of State accompanying one of the messages just presented, in which, under date of December 19, 1867, he thus addresses the President of the United States:

SIR: In compliance with the provisions of section two of the act regulating the tenure of certain civil offices, passed March 2, 1867, I have the honor to report that Charles Lee Moses, United States consul at Brunai, Borneo, was, during the recess of the Senate, suspended from the functions of his office, and that Oliver B. Bradford, consular clerk at Shanghae, was appointed to fill the place temporarily.

I suppose I need not read all the details. We offer in evidence all these messages, with the accompanying papers, as received by the Senate from the President.

Mr. Manager BUTLER. I believe now, sir, that I may inform the Senate that the case on the part of the House of Representatives is substantially closed. There may be a witness or two, who are on their way here, which we shall ask on Monday morning leave to put in. Their testimony is substantially cumulative, not very material; and it is possible that we may have left out a piece or two of documentary evidence in the nature of public documents. Until we can examine carefully all the testimony to see that we have omitted nothing, we should not like to preclude ourselves from offering that. But with these immaterial exceptions, and I trust they will turn out to be no exceptions at all, we have closed the case on the part of the House of Representatives.

Mr. CURTIS. Mr. Chief Justice, the counsel for the President take no exception to what is now proposed by the honorable managers. It seems to us quite reasonable that they should have opportunity to look over the ground and ascertain whether anything has been omitted, and also if they find that witnesses come here before the next session, whose testimony will be in the nature of cumulative evidence, we shall take no exception to that.

I now desire to submit, Mr. Chief Justice, to the Senate a motion on behalf of the President's counsel that when this court adjourns it adjourn until Thursday next, to allow to the counsel of the President three working days to enable them to collect, collate, and arrange their proofs so as to present the defence to the Senate with as little delay as practicable, and so as to make that consecutive and proper impression which really belongs to it.

We have been wholly unable to do this during the progress of the trial, and before the trial was begun we had no time whatever to apply to this purpose. We think we can assure the Senate that it will very little, if at all, protract the trial, because certainly those gentlemen of the Senate who have been in the habit of practicing law are quite aware of the fact that more time is frequently

consumed in the introduction of evidence for the want of having it properly arranged and presented than would have been consumed if the proper efforts had been made outside before the trial was begun. We think, therefore, that we can assure the Senate that a large part, and perhaps all, of this time will be saved if this indulgence can be granted to the President's counsel.

We do not expect to adduce a large amount of oral testimony or a great number of witnesses, but we have a very considerable amount of documentary evidence which we have thus far not been able to collate and arrange, and some portions which we have reason to suppose exist we have not yet been able to search out or find. We request, therefore, that this postponement may take place.

Mr. CONNESS. The rules forbid senators to make any explanations in the nature of debate. I therefore submit a motion, which is that when the Senate adjourn, or rather that the Senate, sitting as a court of impeachment, shall adjourn until Wednesday next at twelve o'clock, which is the time that, in my judgment, should meet the wants of the counsel for the respondent.

Mr. JOHNSON. Mr. Chief Justice, if it is in order, I move to amend the motion made by the honorable member from California by inserting "Thursday" instead of "Wednesday."

Mr. Manager BUTLER. Is that motion debatable by the managers?

The CHIEF JUSTICE. It is not.

Mr. HOWARD. Mr. President, may I inquire what is the question?

The CHIEF JUSTICE. The senator from California moves that the Senate sitting as a court of impeachment adjourn until Wednesday next. The senator from Maryland moves to amend by substituting "Thursday" for "Wednesday." Senators, you who are in favor of agreeing to that motion will say "ay;" those of the contrary opinion "no." [The question being taken.] The ayes have it.

Mr. CAMERON. I call for the yeas and nays. [No, no.]

Mr. Manager BUTLER. I understood, Mr. Chief Justice, and I desire to——

The CHIEF JUSTICE. The question recurs upon the motion of the senator from California as amended by the motion of the senator from Maryland, that the Senate adjourn until Thursday next, and upon this question no debate is in order.

Mr. Manager BUTLER. That question is not debatable by the managers?

The CHIEF JUSTICE. The Chief Justice thinks not.

Mr. SUMNER. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. CONKLING. I rise for information. I wish to inquire whether the managers want to submit some remarks upon this motion for delay?

The CHIEF JUSTICE. The question is upon the motion to adjourn.

Mr. CONKLING. Yes, sir. My purpose is to find out, as influencing my vote, whether they wish the motion disposed of, to the end that they may make some remarks, or not. I presume the senator from California does not intend to cut them off.

Mr. Manager BUTLER. I had, Mr. President, desired to make a remark or two, and understood it was in order.

Mr. ANTHONY. I understand that the motion is not that the Senate shall now adjourn, but that when the Senate does adjourn it shall adjourn to meet on Thursday.

Several SENATORS. That is it.

Mr. CONKLING. That is certainly debatable.

The CHIEF JUSTICE. Will the senator from California be good enough to state his motion?

Mr. CONNESS. If the Chair will allow me to state it I will do so. The Chair submitted the question on the amendment before I was aware of it; also I desired to accept the suggestion of senators around me to make it Thursday

in place of Wednesday. What I desired, in other words, was to meet the concurrence of the Senate generally.

The CHIEF JUSTICE. Will the senator from California allow the Chief Justice to ask is his motion a motion that the Senate, when it adjourns——

Mr. CONNESS. That was not the form of the motion. I began to make it in that way, but subsequently gave it the other form.

Mr. CAMERON. Now I desire——

The CHIEF JUSTICE. No debate is in order on the motion to adjourn.

Mr. CAMERON. I am not going to debate it. I want to ask the gentlemen managers whether they will not be prepared to go on with this case on Monday? I can see no reason why the other side should not be as well prepared.

Messrs. Managers BINGHAM and BUTLER. We are ready.

The CHIEF JUSTICE. Order.

Mr. CAMERON. Mr. President, my question is——

The CHIEF JUSTICE. No debate is in order. The senator from Pennsylvania is out of order.

Mr. CAMERON. I think if you will allow me——

The CHIEF JUSTICE. No debate is in order on a motion to adjourn.

Mr. CAMERON. I am not going to debate it, your Honor; but I have risen to ask the question whether the managers will be ready to go on with this case on Monday?

Mr. Manager BINGHAM and other managers. We will be.

Mr. SUMNER. I wish to ask a question also. I wish to know if the honorable managers have any views to present to the Senate sitting now on the trial of this impeachment to aid the Senate in determining this question of time? On that I wish to know the views of the honorable managers.

The CHIEF JUSTICE. The Chief Justice is of opinion that, pending the question of adjournment, no debate is in order from any quarter. It is a question exclusively for the Senate. Senators, you who are in favor of the adjournment of the Senate sitting as a court of impeachment until Thursday next will, as your names are called, answer "yea;" those of the contrary opinion "nay." The Secretary will call the roll.

The question being taken by yeas and nays, resulted—yeas 37, nays 10; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Cattell, Conness, Corbett, Cragin, Davis, Dixon, Edmunds, Ferry, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howard, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Norton, Nye, Patterson of New Hampshire, Patterson of Tennessee, Ramsey, Ross, Saulsbury, Sherman, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey, and Williams—37.

NAYS—Messrs. Cameron, Chandler, Cole, Conkling, Drake, Morgan, Pomeroy, Stewart, Sumner, and Thayer—10.

NOT VOTING—Messrs. Doolittle, Fessenden, Harlan, Morton, Wade, Wilson, and Yates—7.

The CHIEF JUSTICE. On this question the yeas are 37 and the nays are 10. So the Senate, sitting as a court of impeachment, stands adjourned until Thursday next at 12 o'clock.

Mr. Manager BUTLER. I should like to give notice that all the witnesses may be discharged who have been summoned here on the part of the House of Representatives.

THURSDAY, *April* 9, 1868.

The Chief Justice of the United States entered the Senate chamber at 12 o'clock and took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives appeared and took the seats assigned them.

The counsel for the respondent also appeared and took their seats.

The presence of the House of Representatives was next announced, and the members of the House, as in the Committee of the Whole, headed by Mr. E. B. Washburne, the chairman of that committee, and accompanied by the Speaker and Clerk, entered the Senate chamber, and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the minutes of the last day's proceedings.

The Secretary proceeded to read the journal of the proceedings of the Senate, sitting for the trial of the impeachment, on Saturday, April 4, 1866, but was interrupted by

Mr. JOHNSON. Mr. Chief Justice, I move that the further reading of the journal be dispensed with.

The CHIEF JUSTICE. If there be no objection the further reading of the journal with be dispensed with. The Chair hears no objection.

Gentlemen Managers on the part of the House of Representatives, have you any further evidence to introduce?

Mr. Manager BUTLER. We have a single witness, I believe.

The CHIEF JUSTICE. The managers will proceed with their evidence.

M. H. WOOD sworn and examined.

By Mr. Manager BUTLER:

Question. Where was your place of residence before the war?

Answer. Tuscaloosa, Alabama.

Q. Did you serve in the Union army during the war?

A. I did.

Q. From what time to what time?

A. From July, 1861, to July, 1865.

Q. Some time in September, 1866, did you call upon President Johnson, presenting him testimonials for employment in the government service?

A. I did.

Q. What time was it in 1866?

A. The 20th or 21st day of September.

Q. How do you fix the time?

A. Partially from memory, and partially from the journal of the Ebbitt House.

Q. How long before that had he returned from his trip to Chicago, to the tomb of Douglas?

A. My recollection is that he returned on the 15th or 16th. I awaited his return in this city.

Q. Did you present your testimonials to him?

A. I did.

Q. Did he examine them?

A. Part of them.

Q. What then took place between you?

Mr. STANBERY. What do you propose to prove, Mr. Manager?

Mr. Manager BUTLER. What took place between the President and this witness.

Mr. STANBERY. Has it anything to do with this case?

Mr. Manager BUTLER. Yes, sir.

Mr. STANBERY. Under what article?

Mr. Manager BUTLER. As to the intent of the President in the several articles.

Mr. STANBERY. To do what?

Mr. Manager BUTLER. To oppose Congress. (To the witness) Will you go on, sir? What did he say?

A. He said my claims for government employment were good, or worthy of attention; I will not fix the words.

Q. What next?

A. He inquired about my political sentiments somewhat, noticing that I was not a political man or not a politician. I told him I was a Union man, a loyal man, and in favor of the administration; that I had confidence in Congress and in the Chief Executive. He then asked me if I knew of any differences between himself and Congress I told him I did; that I knew some differences on minor points. He then said: "They are not minor points."

Q. Go on, sir.

A. And the "influence" or "patronage"—I am not sure which—"of these offices shall be in my favor." That was the meaning.

Q. Were those the words?

A. I will not swear that they were the words.

Q. "Shall be in my favor;" what did you say to that?

A. I remarked that under those conditions I could not accept an appointment of any kind, if my influence was to be used for him in contradistinction to Congress, and retired.

Cross-examined by Mr. STANBERY:

Q. Do you know a gentleman in this city by the name of Koppel?

A. I do, sir.

Q. Have you talked with him since you have been in the city?

A. I have called on him when I first came in the city; I have seen him frequently.

Q. Did you tell Mr. Koppel yesterday morning that all you could say about the President was more in his favor than against him?

A. I did not, sir.

Q. Did you tell Mr. Koppel that when you were brought up to be examined, since you arrived in this city, there was an attempt to make you say things which you would not say?

A. I did not, sir. I might, in explanation of that question, say that there was a misunderstanding between the managers and a gentleman in Boston in regard to an expression that they supposed I could testify to, but that I could not.

Q. Have you been examined before this time since you came into this city?

A. By whom?

Q. Have you been examined before, by any one?

A. I have.

Q. Under oath?

A. Yes, sir.

Q. Who first by?

A. By the managers of the impeachment.

Q. Was your testimony taken down?

A. It was.

Q. Were you examined or talked to by any one of them before your examination under oath?

A. I had an informal interview with two of them before I was examined. I could hardly call it an examination.

Q. Which two of them, and where?

A. By Governor Boutwell and General Butler.

Q. When?

A. Monday of this week.

Q. Did you say to Mr. Koppel that since you have been in the city a proposition was made to you that in case you would give certain testimony it would be for your benefit?

A. I did not, sir.

Re-examined by Mr. Manager BUTLER:

Q. Who is Mr. Koppel?

A. Mr. Koppel is an acquaintance of mine on the avenue—a merchant.

Q. What sort of merchandise, please?

A. He is a manufacturer of garments—a tailor. [Laughter.]

Q. Do you know of any sympathy between him and the President?

A. I have always supposed that Mr. Koppel was a southern man in spirit. He came from Charleston, South Carolina, here—ran the blockade.

Q. Do you mean that as an answer to my question of sympathy between the President and him?

A. Yes, sir.

Q. The counsel for the President has asked you if you told Mr. Koppel that you had been asked to say things which you could not say, or words to that effect. In explanation or answer of the question you said there was a misunderstanding which you explained to Mr. Koppel. Will you have the kindness to tell us what that misunderstanding was which you explained to Mr. Koppel?

Mr. STANBERY. We do not care about that.

Mr. Manager BUTLER, (to the counsel for the respondent.) You put in a part of the conversation. I have a right to the whole of it.

Mr. STANBERY. We did not put it in at all—only a certain declaration.

Mr. Manager BUTLER. A certain declaration out of it, that is a part of the conversation.

Mr. STANBERY. Go on in your own way.

Mr. Manager BUTLER, (to the witness.) I will ask, in the first place, did you explain the matter to him?

A. I did.

Q. Tell us what the misunderstanding was which you explained to him in that conversation?

A. I think, sir, a gentleman from Boston wrote you that the President asked me if I would give twenty-five per cent. of the proceeds of any office for political purposes. I told you that I did not say so; the gentleman in Boston misunderstood me. The President said nothing of the kind to me. I explained that to Mr. Koppel, he probably having misunderstood it.

Q. Did you explain where the misunderstanding arose?

A. I told him that I supposed it must have occurred in a conversation between the gentleman in Boston and myself

Q. In regard to what?

A. In regard to the twenty-five per cent.

Q. Where did that arise?

Mr. STANBERY. What about all that?

Mr. Manager BUTLER. I am getting this conversation between Mr. Koppel and this man.

Mr. STANBERY. Not at all. You are speaking about another transaction.

Mr. Manager BUTLER. No; I am asking you if you explained to Mr. Koppel where the idea came from that you were to give twenty-five per cent.

Mr. EVARTS. We object, Mr. Chief Justice. The witness has stated distinctly that nothing occurred between the President and himself, and it is certainly quite unimportant to this court what occurred between this witness and another gentleman in Boston.

Mr. Manager BUTLER. I pray judgment again upon this. The other side seek to put in the conversation between a tailor down in Pennsylvania avenue, or somewhere else, and this witness. I want the whole of that conversation. I supposed, from the eminence of the gentleman who asked the question, that the conversation between Mr. Koppel, the tailor, and this witness was put in for some good purpose, and if it was I want the whole of it.

Mr. EVARTS. The fact is not exactly as is stated by the learned manager. In the privilege of cross-examination the counsel for the President asked this witness distinctly whether he had said so and so to a Mr. Koppel. The witness said that he had not, and then volunteered a statement that there might have been some misunderstanding between Mr. Koppel and himself upon that subject, or some misunderstanding somewhere. Our inquiries did not reach or ask for or bring out the misunderstanding; but, passing that point, we stand here distinctly to say that everything which relates to any conversation or interview between the President and this witness, whether as understood or misunderstood, has been gone through, and the present point of inquiry and further testimony is as to the ground of misunderstanding between this witness and some interlocutor in Boston, and we object to its being heard.

Mr. Manager BUTLER. Which he explained to Mr. Koppel is the point.

Mr. EVARTS. That makes no difference.

Mr, Manager BUTLER. Having put in a part of Mr. Koppel's conversation, whether voluntary or not, I have the right to the whole of it. I will explain to the gentlemen that I wish to show that the misunderstanding was not that the President said the twenty-five per cent. was to be given, but one of his friends. There is where the misunderstanding arose. Do the gentlemen still object?

Mr. STANBERY and Mr. EVARTS. Of course we object. It has nothing to do with the case.

Mr. Manager BUTLER. I will not press it further. That is all, Mr. Wood.

FOSTER BLODGETT sworn and examined.

By Mr. Manager BUTLER:

Question. Were you an officer of the United States at any time?

Answer. Yes, sir.

Q. Where?

A. In Augusta, Georgia.

Q. Holding what office?

A. Postmaster.

Q. When did you go into the exercise of the duties of that office?

A. I was appointed on the 25th day of July, 1865.

Q. Have you your commission or appointment?

A. I have. (Producing it.) I took charge on the 16th day of September, 1865.

Q. Did you receive another commission?

A. Yes, sir.

Q. Have you that here?

A. Yes, sir. (Producing it.)

Mr. Manager BUTLER, (to the counsel for the respondent, handing them the first commission.) Gentlemen, here is the appointment of Mr. Blodgett from the President in the recess of the Senate. (To the witness.) Is this your other commission?

A. Yes, sir.

Q. After you were confirmed by the Senate?

A. Yes, sir.

Mr. Manager BUTLER. "To have and to hold for the term of four years from the day of the date hereof, unless the President of the United States for the time

being shall be pleased sooner to revoke, to determine the commission." This was on the 27th day of July, 1866, issued by the President.

(The commission was handed to the counsel for the President.)

Q. Were you suspended from office?

A. Yes, sir.

Q. Have you a copy of the letter of suspension?

A. No, sir; I have not a copy of it. It is down with the Committee on Post Offices.

Q. Among the records of the Senate?

A. Yes, sir.

Q. When was that?

A. On the 3d of January, 1868.

Q. Have you examined to see whether your suspension and the reasons therefor have been sent to the Senate?

A. It has been reported to me by the chairman of the Post Office Committee that it had not been sent in.

Q. Can you learn that it has been sent in?

A. I have learned that it has not been sent in.

Mr. Manager BUTLER. I suppose senators can make this certain from their own records, to which we have not access.

Mr. STANBERY. Of course, we know all about it.

Mr. Manager BUTLER. I supposed, sir, you did know all about it. (To witness.) Has any action been taken on your suspension, except simply that you were suspended?

A. None that I know of.

No cross-examination.

Mr. Manager BUTLER. I ask counsel for the President if they desire to be served with notice to produce the original of that letter? (Handing to the counsel a copy of a letter.)

Mr. STANBERY, (having examined the papers.) I see no objection to that. We do not want to put you to the necessity of mere formal proof. Read it.

Mr. Manager BUTLER read as follows:

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, February 21, 1868.

SIR: I have the honor to report that I have delivered the communication addressed by you to Hon. Edwin M. Stanton, removing him from office of Secretary of the War Department, and also to acknowledge the receipt of your letter of this date authorizing and empowering me to act as Secretary of War *ad interim*. I accept this appointment with gratitude for the confidence reposed in me, and will endeavor to discharge the duties to the best of my ability.

I have the honor to be, your obedient servant,

L. THOMAS, *Adjutant General.*

His Excellency ANDREW JOHNSON,
President of the United States.

Mr. Manager BUTLER. I am instructed, Mr. President, by the managers, to give notice that we will ask of the Senate to allow to be put in this case proper certificates from the records of the Senate to show that no report of the reasons for the suspension of Mr. Blodgett has ever been sent to the Senate, in conformity with the law.

The CHIEF JUSTICE. Those can be put in at any time.

Mr. Manager BUTLER. Yes, sir. We close here.

Mr. STANBERY. I will ask the honorable manager under what article this case of Mr. Blodgett comes?

Mr. Manager BUTLER. In the final discussion I have no doubt the gentlemen who close the case will answer that question to the entire satisfaction of the learned gentleman.

Mr. STANBERY. I have no doubt of that myself, but the question is whether

we are to be put to the trouble of answering it. That is the point I want to understand.

The CHIEF JUSTICE. The counsel for the President must know that when the Senate has made an order for furnishing to the managers the certificates which they desire, and they are presented, the introduction of them can then be objected to. At present there is no question before the court.

Mr. STANBERY. My question is to the gentleman under what article this case of Mr. Blodgett comes?

The CHIEF JUSTICE. The managers of the House of Representatives state that the evidence on their part, with the exception just indicated, is closed. Gentlemen of counsel for the President, you will proceed with the defence.

Mr. CURTIS, of counsel for the respondent, rose and said: Mr. Chief Justice, I am here to speak to the Senate of the United States sitting in its judicial capacity as a court of impeachment, presided over by the Chief Justice of the United States, for the trial of the President of the United States. This statement sufficiently characterizes what I have to say. Here party spirit, political schemes, foregone conclusions, outrageous biases can have no fit operation. The Constitution requires that here should be a "trial," and as in that trial the oath which each one of you has taken is to adminster "impartial justice according to the Constitution and the laws," the only appeal which I can make in behalf of the President is an appeal to the conscience and the reason of each judge who sits before me. Upon the law and the facts, upon the judicial merits of the case, upon the duties incumbent on that high officer by virtue of his office, and his honest endeavor to discharge those duties, the President rests his defence. And I pray each one of you to listen to me with that patience which belongs to a judge for his own sake, which I cannot expect to command by any efforts of mine, while I open to you what that defence is.

The honorable managers, through their associate who has addressed you, (Mr. Butler,) has informed you that this is not a court, and that, whatever may be the character of this body, it is bound by no law. Upon those subjects I shall have something hereafter to say. The honorable manager did not tell you, in terms at least, that here are no articles before you, because a statement of that fact would be in substance to say that here are no honorable managers before you; inasmuch as the only authority with which the honorable managers are clothed by the House of Representatives is an authority to present here at your bar certain articles, and, within their limits, conduct this prosecution; and, therefore, I shall make no apology, senators, for asking your close attention to these articles, one after the other, in manner and form as they are here presented, to ascertain, in the first place, what are the substantial allegations in each of them, what is the legal operation and effect of those allegations, and what proof is necessary to be adduced in order to sustain them; and I shall begin with the first, not merely because the House of Representatives, in arranging these articles, have placed that first in order, but because the subject-matter of that article is of such a character that it forms the foundation of the first eight articles in the series, and enters materially into two of the remaining three.

What, then, is the substance of this first article? What, as the lawyers say, are the *gravamenina* contained in it? There is a great deal of verbiage—I do not mean by that unnecessary verbiage—in the description of the substantive matters set down in this article. Stripped of that verbiage it amounts exactly to these things: first, that the order set out in the article for the removal of Mr. Stanton, if executed, would be a violation of the tenure-of-office act; second, that it was a violation of the tenure-of-office act; third, that it was an intentional violation of the tenure-of-office act; fourth, that it was a violation of the Constitution of the United States; and fifth, was by the President intended to be so. Or, to draw all this into one sentence which yet may be intelligible and clear enough, I suppose the substance of this first article is that the order for

the removal of Mr. Stanton was, and was intended to be, a violation of the tenure-of-office act, and was intended to be a violation of the Constitution of the United States. These are the allegations which it is necessary for the honorable managers to make out in proof to support that article.

Now, there is a question involved here which enters deeply, as I have already intimated, into the first eight articles in this series, and materially touches two of the others; and to that question I desire in the first place to invite the attention of the court. That question is, whether Mr. Stanton's case comes under the tenure-of-office act. If it does not, if the true construction and effect of the tenure-of-office act when applied to the facts of his case excludes it, then it will be found by honorable senators when they come to examine this and the other articles that a mortal wound has been inflicted upon them by that decision. I must, therefore, ask your attention to the construction and application of the first section of the tenure-of-office act. It is, as senators know, but dry work; it requires close, careful attention and reflection; no doubt it will receive them. Allow me, in the first place, to read that section:

> That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in a like manner appointed and duly qualified, except as herein otherwise provided.

Then comes what is "otherwise provided:"

> *Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate.

Here is a section, then, the body of which applies to all civil officers, as well to those then in office as to those who should thereafter be appointed. The body of that section contains a declaration that every such officer "is," that is, if he is now in office, "and shall be," that is, if he shall hereafter be appointed to office, entitled to hold until a successor is appointed and qualified in his place. That is the body of the section. But out of this body of the section it is explicitly declared that there is to be excepted a particular class of officers "except as herein otherwise provided." There is to be excepted out of this general description of all civil officers a particular class of officers as to whom something is "otherwise provided;" that is, a different rule is to be announced for them.

The Senate will perceive that in the body of the section all officers, as well those then holding office as those thereafter to be appointed, are included. The language is:

> Every person holding any civil office to which he has been appointed, * * and every person who shall hereafter be appointed, * * * is and shall be entitled, &c.

It affects the present; it sweeps over all who are in office and come within the body of the section; it includes by its terms as well all those now in office as those who may be hereafter appointed. But when you come to the proviso the first noticeable thing is that this language is changed; it is not that "every Secretary who now is, and hereafter may be, in office shall be entitled to hold that office" by a certain rule which is here prescribed; but the proviso, while it fixes a rule for the future only, makes no declaration of the present right of one of this class of officers, and the question whether any particular Secretary comes within that rule depends on another question, whether his case comes within the description contained in the proviso. There is no language which expressly brings him within the proviso; there is no express declaration, as in the body of the section, that "he is, and hereafter shall be, entitled" merely

because he holds the office of Secretary at the time of the passage of the law. There is nothing to bring him within the proviso, I repeat, unless the description which the proviso contains applies to and includes his case. Now, let us see if it does:

> That the Secretaries of State, &c., shall hold their offices respectively for and during the term of the President by whom they may have been appointed.

The first inquiry which arises on this language is as to the meaning of the words "for and during the term of the President." Mr. Stanton, as appears by the commission which has been put into the case by the honorable managers, was appointed in January, 1862, during the first term of President Lincoln. Are these words "during the term of the President," applicable to Mr. Stanton's case? That depends upon whether an expounder of this law judicially, who finds set down in it as a part of the descriptive words "during the term of the President," has any right to add "and any other term for which he may afterward be elected." By what authority short of legislative power can those words be put into the statute so that "during the term of the President" shall be held to mean "and any other term or terms for which the President may be elected?" I respectfully submit no such judicial interpretation can be put on the words.

Then, if you please, take the next step. "During the term of the President by whom he was appointed." At the time when this order was issued for the removal of Mr. Stanton was he holding "during the term of the President by whom he was appointed?" The honorable managers say yes, because, as they say, Mr. Johnson is merely serving out the residue of Mr. Lincoln's term. But is that so under the provisions of the Constitution of the United States? I pray you to allow me to read two clauses which are applicable to this question The first is the first section of the second article:

> The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of your years, and, together with the Vice-President, chosen for the same term, be elected as follows.

There is a declaration that the President and the Vice-President is each respectively to hold his office for the term of four years; but that does not stand alone; here is its qualification:

> In case of the removal of the President from office, or of his death. resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President.

So that, although the President, like the Vice-President, is elected for a term of four years, and each is elected for the same term, the President is not to hold his office absolutely during four years. The limit of four years is not an absolute limit. Death is a limit. A "conditional limitation," as the lawyers call it, is imposed on his tenure of office. And when, according to this second passage which I have read, the President dies, his term of four years for which he was elected, and during which he was to hold, provided he should so long live, terminates, and the office devolves on the Vice-President. For what period of time? For the remainder of the term for which the Vice-President was elected. And there is no more propriety, under these provisions of the Constitution of the United States, in calling the time during which Mr. Johnson holds the office of President after it was devolved upon him a part of Mr. Lincoln's term, than there would be propriety in saying that one sovereign who succeeded to another sovereign by death holds a part of his predecessor's term. The term assigned to Mr. Lincoln by the Constitution was conditionally assigned to him. It was to last four years, if not sooner ended; but if sooner ended by his death, then the office was devolved on the Vice-President, and the term of the Vice-President to hold the office then began.

I submit, then, that upon this language of the act it is apparent that Mr.

Stanton's case cannot be considered as within it. This law, however, as senators very well know, had a purpose; there was a practical object in the view of Congress; and, however clear it might seem that the language of the law when applied to Mr. Stanton's case would exclude that case, however clear that might seem on the mere words of the law, if the purpose of the law could be discerned, and that purpose plainly required a different interpretation, that different interpretation should be given. But, on the other hand, if the purpose in view was one requiring that interpretation to which I have been drawing your attention, then it greatly strengthens the argument; because not only the language of the act itself, but the practical object which the legislature had in view in using that language, demands that interpretation.

Now, there can be no dispute concerning what that purpose was, as I suppose. Here is a peculiar class of officers singled out from all others and brought within this provision. Why is this? It is because the Constitution has provided that these principal officers in the several executive departments may be called upon by the President for advice "respecting"—for that is the language of the Constitution—"their several duties"—not, as I read the Constitution, that he may call upon the Secretary of War for advice concerning questions arising in the Department of War. He may call upon him for advice concerning questions which are a part of the duty of the President, as well as questions which belong only to the Department of War. Allow me to read that clause of the Constitution, and see if this be not its true interpretation. The language of the Constitution is that—

> He [the President] may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices.

As I read it, relating to the duties of the offices of these principal officers, or relating to the duties of the President himself. At all events, such was the practical interpretation put upon the Constitution from the beginning of the government; and every gentleman who listens to me who is familiar, as you all are, with the political history of the country, knows that from an early period of the administration of General Washington, his Secretaries were called upon for advice concerning matters not within their respective departments, and so the practice has continued from that time to this. This is one thing which distinguishes this class of officers from any other embraced within the body of the law.

But there is another. The Constitution undoubtedly contemplated that there should be executive departments created, the heads of which were to assist the President in the administration of the laws as well as by their advice. They were to be the hands and the voice of the President; and accordingly that has been so practiced from the beginning, and the legislation of Congress has been framed on this assumption in the organization of the departments, and emphatically in the act which constituted the Department of War. That provides, as senators well remember, in so many words, that the Secretary of War is to discharge such duties of a general description there given as shall be assigned to him by the President, and that he is to perform them under the President's instructions and directions.

Let me repeat, that the Secretary of War and the other Secretaries, the Postmaster General, and the Attorney General, are deemed to be the assistants of the President in the performance of his great duty to take care that the laws are faithfully executed; that they speak for and act for him. Now, do not these two views furnish the reasons why this class of officers was excepted out of the law? They were to be the advisers of the President; they were to be the immediate confidential assistants of the President, for whom he was to be responsible, but in whom he was expected to repose a great amount of trust and confidence; and therefore it was that this act has connected the tenure of office of

these Secretaries to which it applies with the President by whom they were appointed. It says, in the description which the act gives of the future tenure of office of Secretaries, that a controlling regard is to be had to the fact that the Secretary whose tenure is to be regulated was appointed by some particular President; and during the term of that President he shall continue to hold his office; but as for Secretaries who are in office, not appointed by the President, we have nothing to say; we leave them as they heretofore have been. I submit to senators that this is the natural, and, having regard to the character of these officers, the necessary conclusion, that the tenure of the office of a Secretary here described is a tenure during the term of service of the President by whom he was appointed; that it was not the intention of Congress to compel a President of the United States to continue in office a Secretary not appointed by himself

We have, however, fortunately, not only the means of interpreting this law which I have alluded to, namely, the language of the act, the evident character and purpose of the act, but we have decisive evidence of what was intended and understood to be the meaning and effect of this law in each branch of Congress at the time when it was passed. In order to make this more apparent, and its just weight more evident, allow me to state what is very familiar, no doubt, to senators, but which I wish to recall to their minds, the history of this proviso, this exception.

The bill, as senators will recollect, originally excluded these officers altogether. It made no attempt—indeed, it rejected all attempts to prescribe a tenure of office for them as inappropriate to the necessities of the government. So the bill went to the House of Representatives. It was there amended by putting the Secretaries on the same footing as all other civil officers appointed with the advice and consent of the Senate, and, thus amended, came back to this body. This body disagreed to the amendment. Thereupon a committee of conference was appointed, and that committee, on the part of the House, had for its chairman Hon. Mr. Schenck, of Ohio, and on the part of this body Hon. Mr. Williams, of Oregon, and Hon. Mr. Sherman, of Ohio. The committee of conference came to an agreement to alter the bill by striking these Secretaries out of the body of the bill and inserting them in the proviso containing the matter now under consideration. Of course when this report was made to the House of Representatives and to this body, it was incumbent on the committee charged with looking after its intentions and estimates of the public necessities in reference to that conference—it was expected that they would explain what had been agreed to, with a view that the body itself, thus understanding what had been agreed to be done, could proceed to act intelligently on the matter.

Now, I wish to read to the Senate the explanation given by Hon. Mr. Schenck, the chairman of this conference on the part of the House, when he made his report to the House concerning this proviso. After the reading of the report, Mr. Schenck said:

> I propose to demand the previous question upon the question of agreeing to the report of the committee of conference. But before doing so, I will explain to the House the condition of the bill, and the decision of the conference committee upon it. It will be remembered that by the bill as it passed the Senate it was provided that the concurrence of the Senate should be required in all removals from office, except in the case of the heads of departments. The House amended the bill of the Senate so as to extend this requirement to the heads of departments as well as to other officers.
>
> The committee of conference have agreed that the Senate shall accept the amendment of the House. But, inasmuch as this would compel the President to keep around him heads of departments until the end of his term, who would hold over to another term, a compromise was made by which a further amendment is added to this portion of the bill, so that the term of office of the heads of departments shall expire with the term of the President who appointed them, allowing those heads of departments one month longer, in which, in case of death or otherwise, other heads of departments can be named. This is the whole effect of the proposition reported by the committee of conference; it is, in fact, an acceptance by the Senate of the position taken by the House. (Congressional Globe, thirty-ninth Congress, second session, p. 1340.)

Then a question was asked, whether it would be necessary that the Senate should concur in all other appointments, &c.; in reply to which Mr. Schenck said:

> That is the case. But their terms of office—

That is, the Secretaries' terms of office—

> are limited, as they are not now limited by law, so that they expire with the term of service of the President who appoints them, and one month after, in case of death or other accident, until others can be substituted for them by the incoming President. (*Ibid.*)

Allow me to repeat that sentence:

> They expire with the term of service of the President who appoints them, and one month after, in case of death or other accident.

In this body, on the report being made, the chairman, Hon. Mr. Williams, made an explanation. That explanation was, in substance, the same as that made by Mr. Schenck in the House, and thereupon a considerable debate sprang up, which was not the case in the House, for this explanation of Mr. Schenck was accepted by the House as correct, and unquestionably was acted upon by the House as giving the true sense, meaning, and effect of this bill. In this body, as I have said, a considerable debate sprang up. It would take too much of your time and too much of my strength to undertake to read this debate, and there is not a great deal of it which I can select so as to present it fairly and intelligibly without reading the accompanying parts; but I think the whole of it may fairly be summed up in this statement: that it was charged by one of the honorable senators from Wisconsin that it was the intention of those who favored this bill to keep in office Mr. Stanton and certain other Secretaries. That was directly met by the honorable senator from Ohio, one of the members of the committee of conference, by this statement:

> I do not understand the logic of the senator from Wisconsin. He first attributes a purpose to the committee of conference which I say is not true. I say that the Senate have not legislated with a view to any persons or any President, and therefore he commences by asserting what is not true. We do not legislate in order to keep in the Secretary of War, the Secretary of the Navy, or the Secretary of State.—Ibid., p. 1516.

Then a conversation arose between the honorable senator from Ohio and another honorable senator, and the honorable senator from Ohio continued thus:

> That the Senate had no such purpose is shown by its vote twice to make this exception. That this provision does not apply to the present case is shown by the fact that its language is so framed as not to apply to the present President. The senator shows that himself, and argues truly that it would not prevent the present President from removing the Secretary of War, the Secretary of the Navy, and the Secretary of State. And if I supposed that either of these gentlemen was so wanting in manhood, in honor, as to hold his place after the politest intimation by the President of the United States that his services were no longer needed, I certainly, as a senator, would consent to his removal at any time, and so would we all.—Ibid., p. 1516.

I read this, senators, not as expressing the opinion of an individual senator concerning the meaning of a law which was under discussion and was about to pass into legislation. I read it as the report; for it is that in effect—the explanation, rather, of the report of the committee of conference appointed by this body to see whether this body could agree with the House of Representatives in the frame of this bill, which committee came back here with a report that a certain alteration had been made and agreed upon by the committee of conference, and that its effect was what is above stated. And now I ask the Senate, looking at the language of this law, looking at its purpose, looking at the circumstances under which it was passed, the meaning thus attached to it by each of the bodies which consented to it, whether it is possible to hold that Mr. Stanton's case is within the scope of that tenure-of-office act? I submit it is not possible.

I now return to the allegations in this first article; and the first allegation, as senators will remember, is that the issuing of the order which is set out in the article was a violation of the tenure-of-office act. It is perfectly clear that is

not true. The tenure-of-office act in the sixth section enacts "that every removal, appointment, or employment, made, had, or exercised, contrary to the provisions of this act," &c., shall be deemed a high misdemeanor. "Every removal contrary to the provisions of this act." In the first place no removal has taken place. They set out an order. If Mr. Stanton had obeyed that order there would have been a removal; but, inasmuch as Mr. Stanton disobeyed that order, there was no removal. So it is quite clear that, looking to this sixth section of the act, they have made out no case of a removal within its terms; and, therefore, no case of violation of the act by a removal. But it must not only be a removal, it must be "contrary to the provisions of this act;" and, therefore, if you could hold the order to be in effect a removal, unless Mr. Stanton's case was within this act, unless this act gave Mr. Stanton a tenure of office and protected it, of course the removal, even if it had been actual instead of attempted merely, would not have been "contrary to the provisions of the act," for the act had nothing to do with it.

But this article, as senators will perceive on looking at it, does not allege simply that the order for the removal of Mr. Stanton was a violation of the tenure-of-office act. The honorable House of Representatives have not, by this article, attempted to erect a mistake into a crime. I have been arguing to you at considerable length, no doubt trying your patience thereby, the construction of that tenure-of-office law. I have a clear idea of what its construction ought to be. Senators, more or less of them who have listened to me, may have a different view of its construction, but I think they will in all candor admit that there is a question of construction; there is a question of what the meaning of this law was; a question whether it was applicable to Mr. Stanton's case; a very honest and solid question which any man could entertain, and therefore I repeat it is important to observe that the honorable House of Representatives have not, by this article, endeavored to charge the President with a high misdemeanor because he had been honestly mistaken in construing that law. They go further and take the necessary step. They charge him with intentionally misconstruing it; they say, "Which order was unlawfully issued with intention then and there to violate said act." S that, in order to maintain the substance of this article, without which it was not designed by the House of Representatives to stand and cannot stand, it is necessary for them to show that the President wilfully misconstrued this law; that having reason to believe, and actually believing, after the use of due inquiry, that Mr. Stanton's case was within the law, he acted as if it was not within the law. That is the substance of the charge.

What of the proof in support of that allegation offered by the honorable managers? Senators must undoubtedly be familiar with the fact that the office of President of the United States, as well as many other executive offices, and to some extent legislative offices, call upon those who hold them for the exercise of judgment and skill in the construction and application of laws. It is true that the strictly judicial power of the country, technically speaking, is vested in the Supreme Court and such inferior courts as Congress from time to time have established or may establish. But there is a great mass of work to be performed by executive officers in the discharge of their duties, which is of a judicial character. Take, for instance, all that is done in the auditing of accounts; that is judicial whether it be done by an auditor or a comptroller, or whether it be done by a chancellor; and the work has the same character whether done by one or by the other. They must construe and apply the laws; they must investigate and ascertain facts; they must come to some results compounded of the law and of the facts.

Now, this class of duties the President of the United States has to perform. A case is brought before him, which, in his judgment, calls for action; his first inquiry must be, What is the law on the subject? He encounters, among other things, this tenure-of-office law in the course of his inquiry. His first duty is

to construe that law; to see whether it applies to the case; to use, of course, in doing so, all those means and appliances which the Constitution and the laws of the country have put into his hands to enable him to come to a correct decision. But after all he must decide in order either to act or to refrain from action.

That process the President in this case was obliged to go through, and did go through; and he came to the conclusion that the case of Mr. Stanton was not within this law. He came to that conclusion, not merely by an examination of this law himself, but by resorting to the advice which the Constitution and laws of the country enable him to call for to assist him in coming to a correct conclusion. Having done so, are the Senate prepared to say that the conclusion he reached must have been a wilful misconstruction—so wilful, so wrong, that it can justly and properly, and for the purpose of this prosecution, effectively be termed a high misdemeanor? How does the law read? What are its purposes and objects? How was it understood here at the time when it was passed? How is it possible for this body to convict the President of the United States of a high misdemeanor for construing a law as those who made it construed it at the time when it was made?

I submit to the Senate that thus far no great advance has been made toward the conclusion either that the allegation in this article that this order was a violation of the tenure-of-office act is true, or that there was an intent on the part of the President thus to violate it. And although we have not yet gone over all the allegations in this article, we have met its "head and front," and what remains will be found to be nothing but incidental and circumstantial, and not the principal subject. If Mr. Stanton was not within this act, if he held the office of Secretary for the Department of War at the pleasure of President Johnson as he held it at the pleasure of President Lincoln, if he was bound by law to obey that order which was given to him, and quit the place instead of being sustained by law in resisting that order, I think the honorable managers will find it extremely difficult to construct out of the broken fragments of this article anything which will amount to a high misdemeanor. What are they? They are, in the first place, that the President did violate, and intended to violate, the Constitution of the United States by giving this order. Why? They say, as I understand it, because the order of removal was made during the session of the Senate; that for that reason the order was a violation of the Constitution of the United States.

I desire to be understood on this subject. If I can make my own ideas of it plain, I think nothing is left of this allegation. In the first place, the case, as senators will observe, which is now under consideration, is the case of a Secretary of War holding during the pleasure of the President by the terms of his commission; holding under the act of 1789, which created that department, which, although it does not affect to confer on the President the power to remove the Secretary, does clearly imply that he has that power by making a provision for what shall happen in case he exercises it. That is the case which is under consideration, and the question is this: Whether under the law of 1789 and the tenure of office created by that law, designedly created by that law, after the great debate of 1789, and whether under a commission which conforms to it, holding during the pleasure of the President, the President could remove such a Secretary during the session of the Senate. Why not? Certainly there is nothing in the Constitution of the United States to prohibit it. The Constitution has made two distinct provisions for filling offices. One is by nomination to the Senate and confirmation by them and a commission by the President upon that confirmation; the other is by commissioning an officer when a vacancy happens during the recess of the Senate. But the question now before you is not a question how vacancies shall be filled; that the Constitution has thus provided for; it is a question how they may be created, and when they may be created—a totally distinct question.

Whatever may be thought of the soundness of the conclusion arrived at upon the great debate in 1789 concerning the tenure of office, or concerning the power of removal from office, no one, I suppose, will question that a conclusion was arrived at; and that conclusion was that the Constitution had lodged with the President the power of removal from office independently of the Senate. This may be a decision proper to be reversed; it may have been now reversed; of that I say nothing at present; but that it was made, and that the legislation of Congress of 1789 and so on down during the whole period of legislation to 1867 proceeded upon the assumption, express or implied, that that decision had been made, nobody who understands the history of the legislation of the country will deny.

Consider, if you please, what this decision was. It was that the Constitution had lodged this power in the President; that he alone was to exercise it; that the Senate had not and could not have any control whatever over it. If that be so, of what materiality is it whether the Senate is in session or not? If the Senate is not in session, and the President has this power, a vacancy is created, and the Constitution has made provision for filling that vacancy by commission until the end of the next session of the Senate. If the Senate is in session, then the Constitution has made provision for filling a vacancy which is created by a nomination to the Senate; and the laws of the country, as I am presently going to show you somewhat in detail, have made provisions for filling it *ad interim* without any nomination, if the President is not prepared to make a nomination at the moment when he finds the public service requires the removal of an officer. So that if this be a case within the scope of the decision made by Congress in 1789, and within the scope of the legislation which followed upon that decision, it is a case where, either by force of the Constitution the President had the power of removal without consulting the Senate, or else the legislation of Congress had given it to him; and either way neither the Constitution nor the legislation of Congress had made it incumbent on him to consult the Senate on the subject.

I submit, then, that if you look at this matter of Mr. Stanton's removal just as it stands on the decision in 1789, or on the legislation of Congress following upon that decision, and in accordance with which are the terms of the commission under which Mr. Stanton held office, you must come to the conclusion, without any further evidence on the subject, that the Senate had nothing whatever to do with the removal of Mr. Stanton, either to advise for it or to advise against it; that it came either under the constitutional power of the President as it had been interpreted in 1789, or it came under the grant made by the legislature to the President in regard to all those secretaries not included within the tenure-of-office bill. This, however, does not rest simply upon this application of the Constitution and of the legislation of Congress. There has been, and we shall bring it before you, a practice by the government, going back to a very early day, and coming down to a recent period, for the President to make removals from office when the case called for them, without regard to the fact whether the Senate was in session or not. The instances, of course, would not be numerous. If the Senate was in session the President would send a nomination to the Senate saying, "A B, in place of C D, removed;" but then there were occasions, not frequent, I agree, but there were occasions, as you will see might naturally happen, when the President, perhaps, had not had time to select a person whom he would nominate, and when he could not trust the officer then in possession of the office to continue in it, when it was necessary for him by a special order to remove him from the office wholly independent of any nomination sent in to the Senate. Let me bring before your consideration for a moment a very striking case which happened recently enough to be within the knowledge of many of you. We were on the eve of a civil war; the War

Department was in the hands of a man who was disloyal and unfaithful to his trust. His chief clerk, who on his removal or resignation would come into the place, was belived to be in the same category with his master. Under those circumstances the President of the United States said to Mr. Floyd, "I must have possession of this office;" and Mr. Floyd had too much good sense or good manners, or something else, to do anything but resign, and instantly the President put into the place General Holt, the Postmaster General of the United States at the time, without the delay of an hour. It was a time when a delay of twenty-four hours might have been of vast practical consequence to the country. There are classes of cases arising in all the departments of that character followed by that action, and we shall bring before you evidence showing what those cases have been, so that it will appear that so long as officers held at the pleasure of the President and wholly independent of the advice which he might receive in regard to their removal from the Senate, so long, whenever there was an occasion, the President used the power, whether the Senate was in session or not.

I have now gone over, senators, the considerations which seem to me to be applicable to the tenure-of-office bill, and to this allegation which is made that the President knowingly violated the Constitution of the United States in the order for the removal of Mr. Stanton from office while the Senate was in session; and the counsel for the President feel that it is not essential to his vindication from this charge to go further upon this subject. Nevertheless, there is a broader view upon this matter, which is an actual part of the case, and it is due to the President it should be brought before you, that I now propose to open to your consideration.

The Constitution requires the President to take care that the laws be faithfully executed. It also requires of him, as a qualification for his office, to swear that he will faithfully execute the laws, and that, to the best of his ability, he will preserve, protect, and defend the Constitution of the United States. I suppose every one will agree that so long as the President of the United States, in good faith, is endeavoring to take care that the laws be faithfully executed, and in good faith, and to the best of his ability, is preserving, protecting, and defending the Constitution of the United States, although he may be making mistakes, he is not committing high crimes or misdemeanors.

In the execution of these duties, the President found, for reasons which it is not my province at this time to enter upon, but which will be exhibited to you hereafter, that it was impossible to allow Mr. Stanton to continue to hold the office of one of his advisers, and to be responsible for his conduct in the manner he was required by the Constitution and laws to be responsible, any longer. This was intimated to Mr. Stantion, and did not produce the effect which, according to the general judgment of well-informed men, such intimations usually produce. Thereupon the President first suspended Mr. Stanton and reported that to the Senate. Certain proceedings took place which will be adverted to more particularly presently. They resulted in the return of Mr. Stanton to the occupation by him of this office. Then it became necessary for the President to consider, first, whether this tenure-of office law applied to the case of Mr. Stanton; secondly, if it did apply to the case of Mr. Stanton, whether the law itself was the law of the land, or was merely inoperative because it exceeded the constitutional power of the legislature.

I am aware that it is asserted to be the civil and moral duty of all men to obey those laws which have been passed through all the forms of legislation until they shall have been decreed by judicial authority not to be binding; but this is too broad a statment of the civil and moral duty incumbent either upon private citizens or public officers. If this is the measure of duty there never could be a judicial decision that a law is unconstitutional, inasmuch as it is only by disregarding a law that any question can be raised judicially under it.

I submit to senators that not only is there no such rule of civil or moral duty, but that it may be and has been a high and patriotic duty of a citizen to raise a question whether a law is within the Constitution of the country. Will any man question the patriotism or the propriety of John Hampden's act when he brought the question whether "ship money" was within the Constitution of England before the courts of England? Not only is there no such rule incumbent upon private citizens which forbids them to raise such questions, but, let me repeat, there may be, as there not unfrequently have been, instances in which the highest patriotism and the purest civil and moral duty require it to be done. Let me ask any of you, if you were a trustee for the rights of third persons, and those rights of third persons, which they could not defend themselves by reason, perhaps, of sex or age, should be attacked by an unconstitutional law, should you not deem it to be your sacred duty to resist it and have the question tried? And if a private trustee may be subject to such a duty, and impelled by it to such action, how is it possible to maintain that he who is a trustee for the people of powers confided to him for their protection, for their security, for their benefit, may not in that character of trustee defend what has thus been confided to him?

Do not let me be misunderstood on this subject. I am not intending to advance upon or occupy any extreme ground, because no such extreme ground has been advanced upon or occupied by the President of the United States. He is to take care that the laws are faithfully executed. When a law has been passed through the forms of legislation, either with his assent or without his assent, it is his duty to see that that law is faithfully executed so long as nothing is required of him but ministerial action. He is not to erect himself into a judicial court and decide that the law is unconstitutional, and that therefore he will not execute it; for, if that were done, manifestly there never could be a judicial decision. He would not only veto a law, but he would refuse all action under the law after it had been passed, and thus prevent any judicial decision from being made. He asserts no such power. He has no such idea of his duty. His idea of his duty is, that if a law is passed over his veto which he believes to be unconstitutional, and that law affects the interests of third persons, those whose interests are affected must take care of them, vindicate them, raise questions concerning them, if they should be so advised. If such a law affects the general and public interests of the people, the people must take care at the polls that it is remedied in a constitutional way.

But when, senators, a question arises whether a particular law has cut off a power confided to him by the people, through the Constitution, and he alone can raise that question, and he alone can cause a judicial decision to come between the two branches of the government to say which of them is right, and after due deliberation, with the advice of those who are his proper advisers, he settles down firmly upon the opinion that such is the character of the law, it remains to be decided by you whether there is any violation of his duty when he takes the needful steps to raise that question and have it peacefully decided.

Where shall the line be drawn? Suppose a law should provide that the President of the United States should not make a treaty with England or with any other country. It would be a plain infraction of his constitutional power, and if an occasion arose when such a treaty was in his judgment expedient and necessary it would be his duty to make it; and the fact that it should be declared to be a high misdemeanor if he made it would no more relieve him from the responsibility of acting through the fear of that law than he would be relieved of that responsibility by a bribe not to act.

Suppose a law that he shall not be Commander-in-chief in part or in whole—a plain case, I will suppose, of an infraction of that provision of the Constitution which has confided to him that command; the Constitution intending that the head of all the military power of the country should be a civil magistrate, to the end that the law may always be superior to arms. Suppose he should resist

a statute of that kind in the manner I have spoken of by bringing it to a judicial decision?

It may be said these are plain cases of express infractions of the Constitution; but what is the difference between a power conferred upon the President by the express words of the Constitution and a power conferred upon the President by a clear and sufficient implication in the Constitution? Where does the power to make banks come from? Where does the power come from to limit Congress in assigning original jurisdiction to the Supreme Court of the United States, one of the cases referred to the other day? Where do a multitude of powers upon which Congress acts come from in the Constitution except by fair implications? Whence do you derive the power, while you are limiting the tenure of office, to confer on the Senate the right to prevent removals without their consent? Is that expressly given in the Constitution, or is it an implication which is made from some of its provisions?

I submit it is impossible to draw any line of duty for the President simply because a power is derived from an implication in the Constitution instead of from an express provision. One thing unquestionably is to be expected of the President on all such occasions, that is, that he should carefully consider the question; that he should ascertain that it necessarily arises; that he should be of opinion that it is necessary to the public service that it should be decided; that he should take all competent and proper advice on the subject. When he has done all this, if he finds that he cannot allow the law to operate in the particular case without abandoning a power which he believes has been confided to him by the people, it is his solemn conviction that it is his duty to assert the power and obtain a judicial decision thereon. And although he does not perceive, nor do his counsel perceive, that it is essential to his defence in this case to maintain this part of the argument, nevertheless, if this tribunal should be of that opinion, then before this tribunal, before all the people of the United States, and before the civilized world, he asserts the truth of this position.

I am compelled now to ask your attention, quite briefly, however, to some considerations which weighed upon the mind of the President and led him to the conclusion that this was one of the powers of his office which it was his duty, in the manner I have indicated, to endeavor to preserve.

The question whether the Constitution has lodged the power of removal with the President alone, with the President and Senate, or left it to Congress to be determined at its will in fixing the tenure of offices, was, as all senators know, debated in 1789 with surpassing ability and knowledge of the frame and necessities of our government.

Now, it is a rule long settled, existing, I suppose, in all civilized countries, certainly in every system of law that I have any acquaintance with, that a contemporary exposition of a law made by those who were competent to give it a construction is of very great weight; and that when such contemporary exposition has been made of a law, and it has been followed by an actual and practical construction in accordance with that contemporary exposition, continued during a long period of time and applied to great numbers of cases, it is afterward too late to call in question the correctness of such a construction. The rule is laid down, in the quaint language of Lord Coke, in this form:

> Great regard ought, in construing a law, to be paid to the construction which the sages who lived about the time or soon after it was made put upon it, because they were best able to judge of the intention of the makers at the time when the law was made. *Contemporanea expositio est fortissima in lege.*

I desire to bring before the Senate in this connection, inasmuch as I think the subject has been frequently misunderstood, the form taken by that debate of 1789 and the result which was attained. In order to do so, and at the same time to avoid fatiguing your attention by looking minutely into the debate itself, I beg leave to read a passage from Chief Justice Marshall's Life of Washington,

where he has summed up the whole. The writer says, on page 162 of the second volume of the Philadelphia edition:

After an ardent discussion, which consumed several days, the committee divided, and the amendment was negatived by a majority of thirty-four to twenty. The opinion thus expressed by the House of Representatives did not explicitly convey their sense of the Constitution. Indeed, the express grant of the power to the President rather implied a right in the legislature to give or withhold it at their discretion. To obviate any misunderstanding of the principle on which the question had been decided, Mr. Benson moved in the House, when the report of the Committee of the Whole was taken up, to amend the second clause in the bill so as clearly to imply the power of removal to be solely in the President. He gave notice that if he should succeed in this he would move to strike out the words which had been the subject of debate. If those words continued, he said, the power of removal by the President might hereafter appear to be exercised by virtue of a legislative grant only, and consequently be subjected to legislative instability; when he was well satisfied in his own mind that it was by fair construction fixed in the Constitution. The motion was seconded by Mr. Madison, and both amendments were adopted. As the bill passed into a law, it has ever been considered as a full expression of the sense of the legislature on this important part of the American Constitution.

Some allusion has been made to the fact that this law was passed in the Senate only by the casting vote of the Vice-President; and upon that subject I beg leave to refer to the life of Mr. Adams by his grandson, volume one of his works, pages 448 to 450. He here gives an account, so far as could be ascertained from the papers of President Adams, of what that debate was, and finally terminates the subject in this way:

"These reasons," that is, the reasons of Vice-President Adams—

Were not committed to paper, however, and can therefore never be known. But in their soundness it is certain that he never had the shadow of a doubt.

I desire leave, also, to refer on this subject to the first volume of Story's Commentaries on the Constitution, section four hundred and eight, in support of the rule of interpretation which I have stated to the Senate. It will there be found that it is stated by the learned commentator that a contemporaneous construction of the Constitution made under certain circumstances, which he describes, is of very great weight in determining its meaning. He says:

After all the most unexceptionable source of collateral interpretation is from the practical exposition of the government itself in its various departments upon particular questions discussed and settled upon their own single merits. These approach the nearest in their own nature to judicial expositions, and have the same general recommendation that belongs to the latter. They are decided upon solid argument, *pro re nata*, upon a doubt raised, upon a *lis mota*, upon a deep sense of their importance and difficulty, in the face of the nation, with a view to present action in the midst of jealous interests, and by men capable of urging or repelling the grounds of argument from their exquisite genius, their comprehensive learning, or their deep meditation upon the absorbing topic. How light, compared with these means of instruction, are the private lucubrations of the closet or the retired speculations of ingenious minds, intent on theory or general views, and unused to encounter a practical difficulty at every step!

On comparing the decision made in 1789 with the tests which are here suggested by the learned commentator, it will be found, in the first place, that the precise question was under discussion; secondly, that there was a deep sense of its importance, for it was seen that the decision was not to affect a few cases lying here and there in the course of the government, but that it would enter deeply into its practical and daily administration; and in the next place the determination was, so far as such determination could be entertained, thereby to fix a system for the future; and in the last place the men who participated in it must be admitted to have been exceedingly well qualified for their work.

There is another rule to be added to this which is also one of very frequent application, and it is that a long-continued practical application of a decision of this character by those to whom the execution of a law is confided is of decisive weight. To borrow again from Lord Coke on this subject, "*Optimus legum interpres consuetudo*"—"practice is the best interpreter of law." Now, what followed this original decision? From 1789 down to 1867, every President and

every Congress participated in and acted under the construction given in 1789. Not only did the government so conduct, but it was a subject sufficiently discussed among the people to bring to their consideration that such a question had existed, had been started, had been settled in this manner, had been raised again from time to time, and yet, as everybody knows, so far from the people interfering with this decision, so far from ever expressing in any manner their disapprobation of the practice which had grown up under it, not one party nor two parties, but all parties favored and acted upon this system of government.

Mr. EDMUNDS, (at 2 o'clock and 25 minutes p. m.) Mr. President, if agreeable to the honorable counsel, I will move that the Senate take a recess for fifteen minutes.

The motion was agreed to.

The Chief Justice resumed the chair at 15 minutes to 3 o'clock, and called the Senate to order.

Mr. MORRILL, of Vermont, (after a pause.) I move that the Senate do now adjourn—I see that most of the senators are away—and on that motion I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. CONKLING. What is the motion? I did not hear it.

The CHIEF JUSTICE. The motion is to adjourn until to-morrow at 12 o'clock, and upon that motion the yeas and nays are ordered.

The question being taken by yeas and nays, resulted—yeas 2, nays 35; as follows:

YEAS—Messrs. McCreery, and Patterson of Tennessee—2.

NAYS—Messrs. Buckalew, Cattell, Chandler, Cole, Conkling, Corbett, Cragin, Davis, Dixon, Doolittle, Drake, Ferry, Fessenden, Frelinghuysen, Grimes, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Pomeroy, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Van Winkle, Vickers, Willey, and Yates—35.

NOT VOTING—Messrs. Anthony, Bayard, Cameron, Conness, Edmunds, Fowler, Harlan, Norton, Nye, Patterson of New Hampshire, Ramsey, Saulsbury, Sprague, Trumbull, Wade, Williams, and Wilson—17.

So the Senate refused to adjourn.

The CHIEF JUSTICE. The counsel for the President will proceed with the argument.

Mr. CURTIS. Mr. Chief Justice and Senators, when the Senate adjourned I was asking attention to the fact that this practical interpretation was put upon the Constitution in 1789, and that it had been continued with the concurrence of the legislative and executive branches of the government down to 1867, affecting so great a variety of interests, embracing so many offices, so well known, not merely to the members of the government themselves, but to the people of the country, that it was impossible to doubt that it had received their sanction, as well as the sanction of the executive and the legislative branches of the government.

This is a subject which has been heretofore examined and passed upon judicially in very numerous cases. I do not speak now, of course, of judicial decisions of this particular question which is under consideration, whether the Constitution has lodged the power of removal in the President alone, or in the President and Senate, or has left it to be a part of the legislative power; but I speak of the judicial exposition of the effect of such a practical construction of the Constitution of the United States, originated in the way in which this was originated, continued in the way in which this was continued, and sanctioned in the way in which this has been sanctioned.

There was a very early case that arose soon after the organization of the government, and which is reported under the name of Stuart *vs.* Laird, in 1 Cranch's Reports, 299. It was a question concerning the interpretation of the Constitution concerning the power which the Congress had to assign to the

judges of the Supreme Court circuit duties. From that time down to the decision in the case of Cooley *vs.* The Port Wardens of Philadelphia, reported in 12 Howard, 315, a period of more than half a century, there has been a series of decisions upon the effect of such a contemporaneous construction of the Constitution, followed by such a practice in accordance with it; and it is now a fixed and settled rule, which I think no lawyer will undertake to controvert, that the effect of such a construction is not merely to give weight to an argument, but to fix an interpretation. And accordingly it will be found by looking into the books written by those who were conversant with this subject, that they have so considered and received it. I beg leave to refer to the most eminent of all the commentators on American law, and to read a line or two from Chancellor Kent's Lectures, found in the first volume, page 310, marginal paging. After considering this subject, and, it should be noted in reference to this very learned and experienced jurist, considering it in an unfavorable light, because he himself thought that as an original question it had better have been settled the other way; that it would have been more logical, more in conformity with his views of what the practical needs of the government were, that the Senate should participate with the President in the power of removal; nevertheless he sums it all up in these words:

> This amounted to a legislative construction of the Constitution, and it has ever since been acquiesced in and acted upon as of decisive authority in the case. It applies equally to every other officer of the government appointed by the President and Senate, whose term of duration is not specially declared. It is supported by the weighty reason that the subordinate officers in the executive department ought to hold at the pleasure of the head of that department, because he is invested generally with the executive authority, and every participation in that authority by the Senate was an exception to a general principle, and ought to be taken strictly. The President is the great responsible officer for the faithful execution of the law, and the power of removal was incidental to that duty, and might often be requisite to fulfil it.

This, I believe, will be found to be a fair expression of the opinions of those who have had occasion to examine this subject in their closets as a matter of speculation.

In this case, however, the President of the United States had to consider not merely the general question where this power was lodged, not merely the effect of this decision made in 1789, and the practice of the government under it since, but he had to consider a particular law, the provisions of which were before him, and might have an application to the case upon which he felt called upon to act; and it is necessary, in order to do justice to the President in reference to this matter, to see what the theory of that law is and what its operation is or must be, if any, upon the case which he had before him; namely, the case of Mr. Stanton.

During the debate in 1789 there were three distinct theories held by different persons in the House of Representatives. One was that the Constitution had lodged the power of removal with the President alone; another was that the Constitution had lodged that power with the President, acting with the advice and consent of the Senate; the third was that the Constitution had lodged it nowhere, but had left it to the legislative power, to be acted upon in connection with the prescription of the tenure of office. The last of these theories was at that day held by comparatively few persons. The first two received not only much the greater number of votes, but much the greater weight of reasoning in the course of that debate; so much so that when this subject came under the consideration of the Supreme Court of the United States, in the case of *ex parte* Hennan, collaterally only, Mr. Justice Thompson, who delivered the opinion of the court on that occasion, says that it has never been doubted that the Constitution had lodged the power either in the President alone or in the President and Senate—certainly an inaccuracy; but then it required a very close scrutiny of the debates and a careful examination of the few individual

opinions expressed in that debate, in that direction, to ascertain that it ever had been doubted that, one way or the other, the Constitution settled the question.

Nevertheless, as I understand it—I may be mistaken in this—but, as I understand it, it is the theory of this law which the President had before him, that both these opinions were wrong; that the Constitution has not lodged the power anywhere; that it has left it as an incident to the legislative power, which incident may be controlled, of course, by the legislature itself, according to its own will; because, as Chief Justice Marshall somewhere remarks, (and it is one of those profound remarks which will be found to have been carried by him into many of his decisions,) when it comes to a question whether a power exists the particular mode in which it may be exercised must be left to the will of the body that possesses it; and, therefore, if this be a legislative power, it was very apparent to the President of the United States, as it had been very apparent to Mr. Madison, as was declared by him in the course of his correspondence with Mr. Coles, which is, no doubt, familiar to senators, that if this be a legislative power the legislature may lodge it in the Senate, may retain it in the whole body of Congress, or may give it to the House of Representatives. I repeat, the President had to consider this particular law; and that, as I understand it, is the theory of that law. I do not undertake to say it is an unfounded theory; I do not undertake to say that it may not be maintained successfully; but I do undertake to say that it is one which was originally rejected by the ablest minds that had this subject under consideration in 1789; that whenever the question has been started since, it has had, to a recent period, very few advocates; and that no fair and candid mind can deny that it is capable of being doubted and disbelieved after examination. It may be the truth, after all; but it is not a truth which shines with such clear and certain light that a man is guilty of a crime because he does not see it.

The President not only had to consider this particular law, but he had to consider its constitutional application to this particular case, supposing the case of Mr. Stanton to be, what I have endeavored to argue it was not, within its terms. Let us assume, then, that his case was within its terms; let us assume that this proviso, in describing the cases of Secretaries, described the case of Mr. Stanton; that Mr. Stanton, having been appointed by President Lincoln in January, 1862, and commissioned to hold during the pleasure of the President, by force of this law acquired a right to hold this office against the will of the President down to April, 1869. Now, there is one thing which has never been doubted under the Constitution, is incapable of being doubted, allow me to say, and that is, that the President is to make the choice of officers. Whether having made the choice, and they being inducted into office, they can be removed by him alone, is another question. But to the President alone is confided the power of choice. In the first place, he alone can nominate. When the Senate has advised the nomination, consented to the nomination, he is not bound to commission the officer. He has a second opportunity for consideration, and acceptance or rejection of the choice he had originally made. On this subject allow me to read from the opinion of Chief Justice Marshall in the case of Marbury *vs.* Madison, where it is expressed more clearly than I can express it. After enumerating the different clauses of the Constitution which bear upon this subject, he says:

> These are the clauses of the Constitution and laws of the United States which affect this part of the case. They seem to contemplate three distinct operations:
>
> 1. The nomination. This is the sole act of the President, and is completely voluntary.
>
> 2. The appointment. This is also the act of the President, and is also a voluntary act, though it can only be performed by and with the advice and consent of the Senate.
>
> 3. The commission. To grant a commission to a person appointed might, perhaps, be deemed a duty enjoined by the Constitution. "He shall," says that instrument, "commission all the officers of the United States." (1 Cranch, 155.)

He then goes into various considerations to show that it is not a duty en-

joined by the Constitution; that it is optional with him whether he will commission even after an appointment has been confirmed, and he says:

> The last act to be done by the President is the signature of the commission. He has then acted on the advice and consent of the Senate to his own nomination. The time for deliberation has then passed. He has decided. His judgment, on the advice and consent of the Senate concurring with his nomination, has been made, and the officer is appointed. (*Ibid.*, 157.)

The choice, then, is with the President. The action of the Senate upon that choice is an advisory action only at a particular stage after the nomination, before the appointment or the commission. Now, as I have said before, Mr. Stanton was appointed under the law of 1789, constituting the War Department, and in accordance with that law he was commissioned to hold during the pleasure of the President. President Lincoln had said to the Senate, "I nominate Mr. Stanton to hold the office of Secretary for the Department of War during the pleasure of the President." The Senate had said, "we assent to Mr. Stanton's holding the office of Secretary for the Department of War during the pleasure of the President." What does this tenure-of-office law say, if it operates on the case of Mr. Stanton? It says Mr. Stanton shall hold office against the will of the President, contrary to the terms of his commission, contrary to the law under which he was appointed, down to the 4th of April, 1869. For this new, fixed, and extended term, where is Mr. Stanton's commission? Who has made the appointment? Who has assented to it? It is a legislative commission; is is a legislative appointment; it is assented to by Congress acting in its legislative capacity. The President has had no voice in the matter. The Senate, as the advisers of the President, have had no voice in the matter. If he holds at all, he holds by force of legislation, and not by any choice made by the President, or assented to by the Senate. And this was the case, and the only case, which the President had before him, and on which he was called to act.

Now, I ask senators to consider whether, for having formed an opinion that the Constitution of the United States had lodged this power with the President—an opinion which he shares with every President who has preceded him, with every Congress which has preceded the last; an opinion formed on the grounds which I have imperfectly indicated; an opinion which, when applied to this particular case, raises the difficulties which I have indicated here, arising out of the fact that this law does not pursue either of the opinions which were originally held in this government, and have occasionally been started and maintained by those who are restless under its administration; an opinion thus supported by the practice of the government from its origin down to his own day—is he to be impeached for holding that opinion? If not, if he might honestly and properly form such an opinion under the lights which he had, and with the aid of the advice which we shall show you he received, then is he to be impeached for acting upon it to the extent of obtaining a judicial decision whether the executive department of the government was right in its opinion, or the legislative department was right in its opinion? Strangely enough, as it struck me, the honorable managers themselves say, "No; he is not to be impeached for that." I beg leave to read a passage from the argument of the honorable manager by whom the prosecution was opened:

> If the President had really desired solely to test the constitutionality of the law or his legal right to remove Mr. Stanton, instead of his defiant message to the Senate of the 21st of February, informing them of the removal, but not suggesting this purpose, which is thus shown to be an afterthought, he would have said, in substance: "Gentlemen of the Senate, in order to test the constitutionality of the law entitled 'An act regulating the tenure of certain civil offices,' which I verily believe to be unconstitutional and void, I have issued an order of removal of E. M. Stanton from the office of Secretary of the Department of War. I felt myself constrained to make this removal lest Mr. Stanton should answer the information in the nature of a *quo warranto*, which I intend the Attorney General shall file

at an early day, by saying that he holds the office of Secretary of War by the appointment and authority of Mr. Lincoln, which has never been revoked. Anxious that there shall be no collision or disagreement between the several departments of the government and the Executive, I lay before the Senate this message, that the reasons for my action, as well as the action itself, for the purpose indicated, may meet your concurrence."

Thus far are marks of quotation showing the communication which the President should have obtained from the honorable manager and sent to the Senate in order to make this matter exactly right. Then follows this:

> Had the Senate received such a message the representatives of the people might never have deemed it necessary to impeach the President for such an act to insure the safety of the country, even if they had denied the accuracy of his legal positions.

So that it seems that it is, after all, not the removal of Mr. Stanton, but the manner in which the President communicated the fact of that removal to the Senate after it was made. That manner is here called the "defiant message" of the 21st of February. That is a question of taste. I have read the message as you all have read it. If you can find anything in it but what is decorous and respectful to this body and to all concerned your taste will differ from mine. But whether it be a point of manners well or ill taken, one thing seems to be quite clear: that the President is not impeached here because he entertained an opinion that this law was unconstitutional; he is not impeached here because he acted on that opinion and removed Mr. Stanton; but he is impeached here because the House of Representatives considers that this honorable body was addressed by a "defiant message," when they should have been addressed in the terms which the honorable manager has dictated.

I now come, Mr. Chief Justice and senators, to another topic connected with this matter of the removal of Mr. Stanton and the action of the President under this law. The honorable managers take the ground, among others, that whether upon a true construction of this tenure-of-office act Mr. Stanton be within it, or even if you should believe that the President thought the law unconstitutional and had a right, if not trammelled in some way, to try that question, still by his own conduct and declarations the President, as they phrase it, is estopped. He is not to be permitted here to assert the true interpretation of this law; he is not to be permitted to allege that his purpose was to raise a question concerning its constitutionality; and the reason is that he has done and said certain things. All of us who have read law-books know that there is in the common law a doctrine called rules of estoppel, founded, undoubtedly, on good reason, although, as they are called from the time of Lord Coke, or even earlier, down to the present day, odious, because they shut out the truth. Nevertheless, there are circumstances when it is proper that the truth should be shut out. What are the circumstances? They are where a question of private right is involved, where on a matter of fact that private right depends, and where one of the parties to the controversy has so conducted himself that he ought not in good conscience to be allowed either to assert or deny that matter of fact.

But did any one ever hear of an estoppel on a matter of law? Did any one ever hear that a party had put himself into such a condition that when he came into a court of justice even to claim a private right, he could not ask the judge correctly to construe a statute, and insist on the construction when it was arrived at in his favor? Did anybody ever hear, last of all, that a man was convicted of crime by reason of an estoppel under any system of law that ever prevailed in any civilized State? That the President of the United States should be impeached and removed from office, not by reason of the truth of his case, but because he is estopped from telling it, would be a spectacle for gods and men. Undoubtedly it would have a place in history which it is not necessary for me to attempt to foreshadow.

There is no matter of fact here. They have themselves put in Mr. Stanton's commission, which shows the date of the commission and the terms of the commission; and that is the whole matter of fact which is involved. The rest is

the construction of the tenure-of-office act and the application of it to the case, which they have thus made themselves; and also the construction of the Constitution of the United States, and the abstract public question whether that has lodged the power of removal with the President alone, or with the President and Senate, or left it to Congress. I respectfully submit, therefore, that the ground is untenable that there can be an estoppel by any conduct of the President, who comes here to assert, not a private right, but a great public right confided to the office by the people, in which, if anybody is estopped, the people will be estopped. The President never could do or say anything which would put this great public right into that extraordinary predicament.

But what has he done? What are the facts upon which they rely, out of which to work this estoppel, as they call it? In the first place, he sent a message to the Senate on the 12th of December, 1867, in which he informed the Senate that he had suspended Mr. Stanton by a certain order, a copy of which he gave; that he had appointed General Grant to exercise the duties of the office *ad interim* by a certain other order, a copy of which he gave; and then he entered into a discussion in which he showed the existence of this question, whether Mr. Stanton was within the tenure-of-office bill; the existence of the other question, whether this was or was not a constitutional law; and then he invoked the action of the Senate. There was nothing misrepresented. There was nothing concealed which he was bound to state. It is complained of by the honorable managers that he did not tell the Senate that if their action should be such as to restore Mr. Stanton practically to the possession of the office he should go to law about it. That is the complaint: that he did not tell that to the Senate. It may have been a possible omission, though I rather think not. I rather think that that good taste which is so prevalent among the managers, and which they so insist upon here, would hardly dictate that the President should have held out to the Senate something which might possibly have been construed into a threat upon that subject. He laid the case before the Senate for their action; and now, forsooth, they say he was too deferential to this law, both by reason of this conduct of his, and also what he did upon other occasions, to which I shall presently advert.

Senators, there is no inconsistency in the President's position or conduct in reference to this matter. Suppose this case: a party who has a private right in question submits to the same tribunal in the same proceeding these questions: first, I deny the constitutionality of the law under which the right is claimed against me; second, I assert that the true interpretation of that law will not affect this right which is claimed against me; third, I insist that, even if it is within the law, I make a case within the law—is there any inconsistency in that? Is not that done every day, or something analogous to it, in courts of justice? And where was the inconsistency on this occasion? Suppose the President had summed up the message which he sent to the Senate in this way: "Gentlemen of the Senate, I insist, in the first place, that this law is unconstitutional; I insist, in the second place, that Mr. Stanton is not within it; I respectfully submit for your consideration whether, if it be a constitutional law and Mr. Stanton's case be within it, the facts which I present to you do not make such a case that you will not advise me to receive him back into office." Suppose he had summed up in that way, would there have been any inconsistency then? And why is not the substance of that found in this message? Here it is pointed out that the question existed whether the law was unconstitutional; here it is pointed out that the question existed whether Mr. Stanton was within the law; and then the President goes on to submit for the consideration of the Senate, whom he had reason to believe, and did believe, thought the law was constitutional, though he had no reason to believe that they thought Mr. Stanton was within the law, the facts to be acted upon within the law, if the case was there. It seems the President has not only been thus anxious to

avoid a collision with this law; he has not only on this occasion taken this means to avoid it, but it seems that he has actually in some particulars obeyed the law; he has made changes in the commissions, or rather they have been made in the departments, and, as he has signed the commissions, I suppose they must be taken, although his attention does not appear to have been called to the subject at all, to have been made with his sanction, just so far, and because he sanctions that which is done by his Secretaries, if he does not interfere actively to prevent it.

He has done not merely this, but he has also in several cases—four cases, three collectors and one consul, I think they are—sent into the Senate notice of suspension, notice that he had acted under this law and suspended these officers. This objection proceeds upon an entire misapprehension of the position of the President and of the views which he has of his own duty. It assumes that because when the emergency comes, as it did come in the case of Mr. Stanton, when he must act or else abandon a power which he finds in the particular instance it is necessary for him to insist upon in order to carry on the government—that because he holds that opinion he must run a muck against the law, and take every possible opportunity to give it a blow, if he can. He holds no such opinion.

So long as it is a question of administrative duty merely, he holds that he is bound to obey the law. It is only when the emergency arises, when the question is put to him so that he must answer it, "Can you carry on this department of the government any longer in this way?" "No." "Have you power to carry it on as the public service demands?" "I believe I have." Then comes the question how he shall act. But whether a consul is to be suspended or removed, whether a defaulting collector is to be suspended or removed, does not involve the execution of the great powers of the government. It may be carried on; he may be of opinion with less advantage; he may be of opinion not in accordance with the requirements of the Constitution, but it may be carried on without serious embarrassment or difficulty. Until that question is settled he does not find it necessary to make it—settled in some way, by some person who has an interest to raise and have it settled.

I wish to observe, also, (the correctness of which observation I think the Senate will agree with,) that these changes which have been made in the forms of the commissions really have nothing to do with this subject; for instance, the change is made in the Department of State, "subject to the conditions prescribed by law." That is the tenure on which I think all commissions should originally have run, and ought to continue to run. It is general enough to embrace all. If it is a condition prescribed by law that the Senate must consent to the removal of the incumbent before he is rightfully out of office, it covers that case. If the tenure-of-office bill be not a law of the land because it is not in accordance with the Constitution, it covers that case. It covers every case necessarily from its terms, for every officer does, and should, and must hold subject to the conditions prescribed by law—not necessarily a law of Congress but a law of the land—the Constitution being supreme in that particular.

There is another observation, also, and that is, that the change that was made in the Department of the Treasury—"until a successor be appointed and qualified"—has manifestly nothing whatever to do with the subject of removal. Whether the power of removal be vested in the President alone, or vested in the President by and with the advice and consent of the Senate, this clause does not touch it. It is just as inconsistent with removal by the President with the consent of the Senate as it is inconsistent with the removal by the President alone. In other words, it is the general tenure of the office which is described, according to which the officer is to continue to hold; but he and all other officers hold subject to some power of removal vested somewhere, and this change

which has been made in the commission does not declare where it is vested, nor has it any influence on the question in whom it is vested.

I wish to add to this, that there is nothing, so far as I see, on this subject of estoppel, growing out of the action of the President, either in sending the message to the Senate of the 12th of December, or in the changes in the commissions, or in his sending to the Senate notices of suspensions of different officers, which has any bearing whatever upon the tenure-of-office act as affecting the case of Mr. Stanton. That is a case that stands by itself. The law may be a constitutional law; it may not only be a law under which the President has acted in this instance, but under which he is bound to act, and is willing to act, if you please, in every instance; still, if Mr. Stanton is not within that law, the case remains as it was originally presented, and that case is, that, not being within that law, the first article is entirely without foundation.

I now, Mr. Chief Justice, have arrived at a point in my argument when, if it be within the pleasure of the Senate to allow me to suspend it, it will be a boon to me to do so. I am unaccustomed to speak in so large a room, and it is fatiguing to me. Still, I would not trespass at all upon the wishes of the Senate if they desire me to proceed further.

Mr. JOHNSON. I move that the court adjourn until to-morrow at 12 o'clock.

The motion was agreed to; and the Senate, sitting for the trial of the impeachment, adjourned.

FRIDAY, *April* 10, 1868.

The Chief Justice of the United States entered the Senate chamber at 12 o'clock and took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives appeared and took the seats assigned them.

The counsel for the respondent also appeared and took their seats.

The presence of the House of Representatives was next announced, and the members of the House, as in Committee of the Whole, headed by Mr. E. B. Washburne, the chairman of that committee, and accompanied by the Speaker and Clerk, entered the Senate chamber, and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the minutes of the last day's proceedings.

The Secretary read the journal of yesterday's proceedings of the Senate sitting for the trial of the impeachment.

The CHIEF JUSTICE. Senators will please to give their attention. The counsel for the President will proceed with the argument.

Mr. CURTIS. Mr. Chief Justice and Senators, among the points which I accidentally omitted to notice yesterday was one which seems to me of sufficient importance to return, and for a few moments to ask the attention of the Senate, to it. It will best be exhibited by reading from Saturday's proceedings a short passage. In the course of those proceedings Mr. Manager BUTLER said:

> It will be seen, therefore, Mr. President and Senators, that the President of the United States says in his answer that he suspended Mr. Stanton under the Constitution, indefinitely and at his pleasure. I propose, now, unless it be objected to, to show that that is false under his own hand, and I have his letter to that effect, which, if there is no objection, I will read, the signature of which was identified by C. E. Creecy.

Then followed the reading of the letter, which was this:

> EXECUTIVE MANSION,
> *Washington, D. C., August* 14, 1867.
>
> SIR: In compliance with the requirements of the eighth section of the act of Congress of March 2, 1867, entitled "An act regulating the tenure of certain civil offices," you are hereby

notified that on the 12th instant, Hon. Edwin M. Stanton was suspended from office as Secretary of War, and General Ulysses S. Grant authorized and empowered to act as Secretary of War *ad interim*.

I am, sir, very respectfully, yours,

ANDREW JOHNSON.

This is the letter which was to show, under the hand of the President, that when he said in his answer he did not suspend Mr. Stanton by virtue of the tenure-of-office act, that statement was a falsehood. Allow me now to read the eighth section of that act:

That whenever the President shall, without the advice and consent of the Senate, designate, authorize, or employ any person to perform the duties of any office, he shall forthwith notify the Secretary of the Treasury thereof; and it shall be the duty of the Secretary of the Treasury thereupon to communicate such notice to all the proper accounting and disbursing officers of his department.

The Senate will perceive that this section has nothing to do with the suspension of an officer, and no description of what suspensions are to take place; but the purpose of the section is that if in any case the President, without the advice and consent of the Senate, shall, under any circumstances, designate a third person to perform temporarily the duties of an office, he is to make a report of that designation to the Secretary of the Treasury, and that officer is to give the necessary information of the event to his subordinate officers. The section applies in terms to and includes all cases. It applies to and includes cases of designation on account of sickness, or absence or resignation, or any cause of vacancy, whether temporary or permanent, and whether occurring by reason of a suspension or of a removal from office; and, therefore, when the President says to the Secretary of the Treasury, "I give you notice that I have designated General Grant to perform the duties *ad interim* of Secretary of War," he makes no allusion, by force of that letter, to the manner in which that vacancy has occurred, or the authority by which it has been created; and hence, instead of this letter showing, under the President's own hand, that he had stated a falsehood, it has no reference to the subject-matter of the power or the occasion of Mr. Stanton's removal.

Mr. Manager BUTLER. Read the second section, please; the first clause of it.

Mr. CURTIS. What did the manager call for?

Mr. Manager BUTLER. Read the first clause of the second section of the act, which says that in no other case except when he suspends shall he appoint.

Mr. CURTIS. The second section provides:

That when any officer appointed as aforesaid, excepting judges of the United States courts, shall, during a recess of the Senate, be shown by satisfactory evidence, &c.

The President is allowed to suspend such an officer. Now, the President states in his answer that he did not act under that section.

Mr. Manager BUTLER. That is not reading the section. That is not what I desired.

Mr. CURTIS. I am aware that is not reading the section, Mr. Manager. You need not point that out. It is a very long section, and I do not propose to read it.

Mr. Manager BUTLER. The first half a dozen lines.

Mr. CURTIS. This second section authorizes the President to suspend in cases of crime and other cases which are described in this section. By force of it the President may suspend an officer. This eighth section applies to all cases of temporary designations and appointments, whether resulting from suspensions under the second section, or whether arising from temporary absence, or sickness, or death, or resignation; no matter what the cause may be, if for any reason there is a temporary designation of a person to supply an office *ad interim*, notice is to be given to the Secretary of the Treasury; and therefore I repeat, senators, that the subject-matter of this eighth section, and the letter which the President wrote

in consequence of it, have no reference to the question under what authority he suspended Mr. Stanton.

I now ask the attention of the Senate to the second article in the series; and I will begin as I began before, by stating what the substance of this article is, what allegation its makes, so as to be the subjects of proof, and then the Senate will be prepared to see how far each one of these allegations is supported by what is already in the case, and I shall be enabled to state what we propose to offer by way of proof in respect to each of them. The substantive allegations of this second article are that the delivery of the letter of authority to General Thomas was without authority of law; that it was an intentional violation of the tenure-of-office act; that it was an intentional violation of the Constitution of the United States; that the delivery of this order to General Thomas was made with intent to violate both the act and the Constitution of the United States. That is the substance of the second article. The Senate will at once perceive that if the suspension of Mr. Stanton was not a violation of the tenure-of-office act in point of fact, or, to state it in other terms, if the case of Mr. Stanton is not within the act, then his removal, if he had been removed, could not be a violation of the act.

If his case is not within the act at all, if the act does not apply to the case of Mr. Stanton, of course his removal is not a violation of that act. If Mr. Stanton continued to hold under the commission which he received from President Lincoln, and his tenure continued to be under the act of 1789, and under his only commission, which was at the pleasure of the President, it was no violation of the tenure-of-office act for Mr. Johnson to remove, or attempt to remove, Mr. Stanton; and therefore the Senate will perceive that it is necessary to come back again, to recur under this article, as it will be necessary to recur under the whole of the first eight articles, to the inquiries, first, whether Mr. Stanton's case was within the tenure-of-office act; and secondly, whether it was so clearly and plainly within that act that it can be attributed to the President as a high misdemeanor that he construed it not to include his case. But suppose the case of Mr. Stanton is within the tenure-of-office act, still the inquiry arises whether what was done in delivering this letter of authority to General Thomas was a violation of that act; and that renders it necessary that I should ask your careful attention to the general subjects-matter of this act, and the particular provisions which are inserted in it in reference to each of those subjects.

Senators will recollect undoubtedly that this law, as it was finally passed, differs from the bill as it was originally introduced. The law relates to two distinct subjects. One is removal from office; the other subject is appointments of a certain character made under certain circumstances to fill offices. It seems that a practice had grown up under the government that where a person was nominated to the Senate to fill an office, and the Senate either did not act on his nomination during their session or rejected the nomination, after the adjournment of the Senate and in the recess it was considered competent for the President by a temporary commission to appoint that same person to that same office; and that was deemed by many senators, unquestionably by a majority, and I should judge from reading the debates by a large majority of the Senate, to be an abuse of power—not an intentional abuse. But it was a practice which had prevailed under the government to a very considerable extent. It was not limited to very recent times. It had been supported by the opinions of different Attorneys General given to different Presidents. But still it was considered by many senators to be a departure from the spirit of the Constitution, and a substantial derogation from the just power of the Senate in respect to nominations for office. That being so, it will be found on an examination of this law that the first and second sections of the act relate exclusively to removals from office and temporary suspensions in the recess of the Senate; while the third section and several of the following sections, to which I shall

ask your particular attention, relate exclusively to this other subject of appointments made to office after the Senate had refused to concur in the nomination of the person appointed. Allow me now to read from the third section:

That the President shall have power to fill all vacancies which may happen during the recess of the Senate, by reason of death or resignation—

I pause here to remark that this does not include all cases. It does not include any case of the expiration of a commission. It includes simply death and resignation, not cases of the expiration of a commission during the recess of the Senate. Why these were thus omitted I do not know; but it is manifest that the law does not affect to, and in point of fact does not, cover all cases which might arise belonging to this general class to which this section was designed to refer.

The law goes on to say—

That the President shall have power to fill all vacancies which may happen during the recess of the Senate, by reason of death or resignation, by granting commissions which shall expire at the end of their next session thereafter. And if no appointment, by and with the advice and consent of the Senate, shall be made to such office so vacant or temporarily filled as aforesaid during such next session of the Senate, such office shall remain in abeyance, without any salary, fees, or emoluments attached thereto, until the same shall be filled by appointment thereto, by and with the advice and consent of the Senate; and during such time all the powers and duties belonging to such office shall be exercised by such other officer as may by law exercise such powers and duties in case of a vacancy in such office.

Here all the described vacancies in office occurring during the recess of the Senate and the failure to fill those vacancies in accordance with the advice of the Senate are treated as occasioning an abeyance of such offices. That applies, as I have said, to two classes of cases, vacancies happening by reason of death or resignation. It does not apply to any other vacancies.

The next section of this law does not relate to this subject of filling offices, but to the subject of removals:

That nothing in this act contained shall be construed to extend the term of any office the duration of which is limited by law.

The fifth section is:

That if any person shall, contrary to the provisions of this act, accept any appointment to or employment in any office, or shall hold or exercise, or attempt to hold or exercise, any such office or employment, he shall be deemed, and is hereby declared to be, guilty of a high misdemeanor, and, upon trial and conviction thereof, he shall be punished therefor by a fine not exceeding $10,000, or by imprisonment, &c.

Any person who shall, "contrary to the provisions of this act," accept any appointment. What are the "provisions of this act" in respect to accepting any appointment? They are found in the third section of the act putting certain offices in abeyance under the circumstances which are described in that section. If any person does accept an office which is thus put into abeyance, or any employment or authority in respect to such office, he comes within the penal provisions of the fifth section; but outside of that there is no such thing as accepting an office contrary to the provisions of the act, because the provisions of the act, in respect to filling offices, extend no further than to these cases; and so, in the next section it is declared:

That every removal, appointment, or employment made, had, or exercised, contrary to the provisions of this act, and the making, signing, sealing, countersigning, or issuing of any commission or letter of authority for or in respect to any such appointment or employment, shall be deemed, and are hereby declared to be, high misdemeanors, &c.

Here, again, the making of a letter of authority contrary to the provisions of the act, can refer only to those cases which the act itself has described, which the act itself has prohibited; and any other cases which are outside of such prohibition, as this case manifestly is, do not come within its provisions.

The stress of this article, however, does not seem to me to depend at all upon this question of the construction of this law, but upon a totally different matter, which I agree should be fairly and carefully considered. The important allega-

tion of the article is that this letter of authority was given to General Thomas enabling him to perform the duties of Secretary of War *ad interim* without authority of law; that I conceive to be the main inquiry which arises under this article, provided the case of Mr. Stanton and his removal are within the tenure-of-office bill at all.

I wish first to bring to the attention of the Senate the act of 1795, which is found in 1 Statutes at Large, page 415. It is a short act, and I will read the whole of it:

> That in case of vacancy in the office of Secretary of State, Secretary of the Treasury, or of the Secretary of the Department of War, or of any officer of either of the said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed or such vacancies be filled: *Provided*, That no one vacancy shall be supplied, in manner aforesaid, for a longer term than six months.

This act, it has been suggested, may have been repealed by the act of February 20, 1863, which is found in 12 Statutes at Large, page 656. This also is a short act, and I will trespass on the patience of the Senate by reading it:

> That in case of the death, resignation, absence from the seat of government, or sickness of the head of any executive department of the government, or of any officer of either of the said departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize the head of any other executive department, or other officer in either of said departments whose appointment is vested in the President, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease: *Provided*, That no one vacancy shall be supplied in manner aforesaid for a longer term than six months.

These acts, as the Senate will perceive, although they may be said in some sense to relate to the same general subject-matter, contain very different provisions, and the later law contains no express repeal of the other. If, therefore, the later law operates as a repeal, it is only as a repeal by implication. It says in terms that "all acts and parts of acts inconsistent with this act are hereby repealed." That a general principle of law would say if the statute did not speak those words. The addition of those words adds nothing to its repealing power The same inquiry arises under them that would arise if they did not exist. namely, how far is this later law inconsistent with the provisions of the earlier law?

There are certain rules which I shall not fatigue the Senate by citing cases to prove, because every lawyer will recognize them as settled rules upon this subject.

In the first place there is a rule that repeals by implication are not favored by the courts. This is, as I understand it, because the courts act on the assumption or the principle that if the legislature really intended to repeal the law they would have said so; not that they necessarily must say so, because there are repeals by implication; but the presumption is that if the legislature entertained a clear and fixed purpose to repeal a former law, they would be likely at least to have said so; and, therefore, the rule is a settled one that repeals by implication are not favored by the courts. Another rule is that the repugnancy between the two statutes must be clear. It is not enough that under some circumstances one may possibly be repugnant to the other. The repugnancy, as the language of the books is, between the two must be clear, and if the two laws can stand together the latter does not impliedly repeal the former. If senators have any desire to recur to the authorities on this subject, they will find a sufficient number of them collected in Sedgwick on Statute Law, page 126.

Now, there is no repugnancy whatsoever between these two laws, that I can perceive. The act of 1795 applies to all vacancies, however created. The act

of 1863 applies only to vacancies, temporary or otherwise, occasioned by death and resignation; removals from office, expiration of commissions, are not included. The act of 1795 applies only to vacancies; the act of 1863 to temporary absences or sickness. The subject-matter, therefore, of the laws is different; there is no inconsistency between them; each may stand together and operate upon the cases to which each applies; and therefore I submit that, in the strictest view which may ultimately be taken of this subject, it is not practicable to maintain that the later law repealed altogether the act of 1795. But whether it did or not, I state again what I have had so often occasion to repeat before; is it not a fair question? is it a crime to be on one side of that question and not on the other? Is it a high misdemeanor to believe that a certain view taken of the repeal of this earlier law by the later one is a sound view? I submit that that would be altogether too stringent a rule, even for the honorable managers themselves to contend for; and they do not, and the House of Representatives does not, contend for any such rule. Their article alleges as matter of fact that there was a wilful intention on the part of the President to issue this letter to General Thomas without authority of law; not on mistaken judgment, not upon an opinion which, after due consideration, lawyers might differ about; but by reason of a wilful intention to act without authority; and that, I submit, from the nature of the case, cannot be made out.

The next allegation in this article to which I desire to invite the attention of the Senate is, that the giving of this letter to General Thomas during the session of the Senate was a violation of the Constitution of the United States. That will require your attentive consideration. The Constitution, as you are well aware, has provided for two modes of filling offices. The one is by temporary commissions, during the recess of the Senate, when the vacancy happens in the recess; the other is by appointment with the advice and consent of the Senate, followed by a commission from the President; but it very early became apparent to those who administered the government that cases must occur to which neither of those modes dictated by the Constitution would be applicable, but which must be provided for: cases of temporary absence of the head of a department the business of which, especially during the session of Congress, must, for the public interest, continue to be administered; cases of sickness; cases of resignation or removal, for the power of removal, at any rate in that day, was held to be in the President; cases of resignation or removal in reference to which the President was not, owing to the suddenness of the occurrence, in a condition immediately to make a nomination to fill the office, or even to issue a commission to fill the office, if such vacancy occurred in vacation; and therefore it became necessary by legislation to supply these administrative defects which existed and were not provided for by the Constitution. And accordingly, beginning in 1792, there will be found to be a series of acts on this subject of filling vacancies by temporary or *ad interim* authority; not appointments, not filling vacancies in offices by a commission in the recess of the Senate, nor by a commission signed by the President in consequence of the advice and consent of the Senate, but a mode of designating a particular person to perform temporarily the duties of some particular office, which otherwise, before the office can be filled in accordance with the Constitution, would remain unperformed. These acts are one of May 8, 1792, section 8, (1 Statutes at Large, p. 281;) February 17, 1795, (1 Statutes at Large, p. 415;) and last, in February 20, 1863, (12 Statutes at Large, p. 656.)

The Senate will observe what particular difficulty these laws were designed to meet. This difficulty was the occurrence of some sudden vacancy in office or some sudden inability to perform the duties of an office; and the intention of each of these laws was, each being applied to some particular class of cases, to make provision that notwithstanding there was a vacancy in the office, or notwithstanding there was a temporary disability in the officer without a vacancy,

still the duties of the office should be temporarily discharged. That was the purpose of these laws. It is entirely evident that these temporary vacancies are just as liable to occur during the session of the Senate as during the recess of the Senate; that it is just as necessary to have a set of legislative provisions to enable the President to carry on the public service in case of these vacancies and inabilities during the session of the Senate as during the recess of the Senate; and, accordingly, it will be found, by looking into these laws, that they make no distinction between the sessions of the Senate and the recesses of the Senate in reference to these temporary authorities. "Whenever a vacancy shall occur" is the language of the law—"whenever there shall be a death or a resignation or an absence or a sickness." The law applies when the event occurs that the law contemplates as an emergency; and the particular time when it occurs is of no consequence in itself, and is deemed by the law of no consequence. In accordance with this view, senators, has been the uniform and settled and frequent practice of the government from its very earliest date, as I am instructed we shall prove, not in any one or two or few instances, but in great numbers of instances. That has been the practical construction put upon these laws from the time when the earliest law was passed in 1792, and it has continued down to this day.

The honorable managers themselves read a list a few days since of temporary appointments during the session of the Senate of heads of departments, which amounted in number, if I counted them accurately, to upward of thirty; and if you add to these the cases of officers below the heads of departments, the number will be found, of course, to be much increased; and, in the course of exhibiting this evidence, it will be found that, although the instances are not numerous, for they are not very likely to occur in practice, yet instances have occurred on all fours with the one which is now before the Senate where there has been a removal or a suspension of an officer, sometimes one and sometimes the other, and the designation of a person has been made at the same time temporarily to discharge the duties of that office.

The Senate will see that in practice such things must naturally occur. Take the case, for instance, of Mr. Floyd, which I alluded to yesterday. Mr. Floyd went out of office. His chief clerk was a person believed to be in sympathy with him and under his control. If the third section of the act of 1789 was allowed to operate, the control of the office went into the hands of that clerk. The Senate was in session. The public safety did not permit the War Department to be left in that predicament for one hour, if it could be avoided, and President Buchanan sent down to the Post Office Department and brought the Postmaster General to the War Department, and put it in his charge. There was then in this body a sufficient number of persons to look after that matter. They felt an interest in it, and consequently they passed a resolve inquiring of President Buchanan by what authority he had made an appointment of a person to take charge of the War Department without their consent, without a nomination to them, and their advising and consenting to it, to which a message was sent in answer containing the facts on this subject, and showing to the Senate of that day the propriety, the necessity, and the long-continued practice under which this authority was exercised by him, and giving a schedule running through the time of General Jackson and his two immediate successors, I think, showing great numbers of *ad interim* appointments of this character, and to those, as I have said, we shall add a very considerable number of others.

I submit, then, that there can be no ground whatever for the allegation that this *ad interim* appointment was a violation of the Constitution of the United States. The legislation of Congress is a sufficient answer to that charge.

I pass, therefore, to the next article which I wish to consider, and that is not the next in number, but the eighth; and I take it in this order because the eighth article, as I have analyzed it, differs from the second only in one particu-

lar; and therefore, taking that in connection with the second, of which I have just been speaking, it will be necessary for me to say but a very few words concerning it.

It charges an attempt unlawfully to control the appropriations made by Congress for the military service, and that is all there is in it except what there is in the second article.

Upon that, certainly, at this stage of the case, I do not deem it necessary to make any observations. The Senate will remember the offer of proof on the part of the managers designed, as was stated, to connect the President of the United States, through his private secretary, with the treasury, and thus enable him to use unlawfully appropriations made for the military service. The Senate will recollect the fate of that offer, and that the evidence was not received; and therefore it seems to me quite unnecessary for me to pause to comment any further upon this eighth article.

I advance to the third article, and here the allegations are that the President appointed General Thomas; second, that he did this without the advice and consent of the Sentate; third, that he did it when no vacancy had happened in the recess of the Senate; fourth, that he did it when there was no vacancy at the time of the appointment; and fifth, that he committed a high misdemeanor by thus intentionally violating the Constitution of the United States.

I desire to say a word or two upon each of these points; and first we deny that he ever appointed General Thomas to an office. An appointment can be made to an office only by the advice and consent of the Senate, and through a commission signed by the President, and bearing the great seal of the government. That is the only mode in which an appointment can be made. The President, as I have said, may temporarily commission officers when vacancies occur during the recess of the Senate. That is not an appointment. It is not so termed in the Constitution. A clear distinction is drawn between the two. The President also may, under the acts of 1795 and 1863, designate persons who shall temporarily exercise the authority and perform the duties of a certain office when there is a vacancy; but that is not an appointment. The office is not filled by such a designation. Now, all which the President did was to issue a letter of authority to General Thomas, authorizing him *ad interim* to perform the duties of Secretary of War. In no sense was this an appointment.

It is said it was made without the advice and consent of the Senate. Certainly it was. How can the advice and consent of the Senate be obtained to an *ad interim* authority of this kind under any of these acts of Congress? It is not an appointment that is in view. It is to supply temporarily a defect in the administrative machinery of the government. If he had gone to the Senate for their advice and consent, he must have gone on a nomination made by him of General Thomas to this office, a thing he never intended to do, and never made any attempt to carry into effect.

It is said no vacancy happened in the recess. That I have already considered. Temporary appointments are not limited to the temporary supply of vacancies happening in the recess of the Senate, as I have already endeavored to show.

It is said there was no vacancy at the time the act was done. That is begging the question. If Mr. Stanton's case was not within the tenure-of-office act, if, as I have so often repeated, he held under the act of 1789, and at the pleasure of the President, the moment he received that order which General Thomas carried to him there was a vacancy in point of law, however he may have refused to perform his duty and prevented a vacancy from occurring in point of fact. But the Senate will perceive these two letters were to be delivered to General Thomas at the same time. One of them is an order to Mr. Stanton to vacate the office; the other is a direction to General Thomas to take possession when Mr. Stanton obeys the order thus given. Now, may not the President of

the United States issue a letter of authority in contemplation that a vacancy is about to occur? Is he bound to take a technical view of this subject, and have the order creating the vacancy first sent and delivered, and then sit down at his table and sign the letter of authority afterward? If he expects a vacancy, if he has done an act which in his judgment is sufficient to create a vacancy, may he not, in contemplation that that vacancy is to happen, sign the necessary paper to give the temporary authority to carry on the duties of the office?

Last of all, it is said he committed a high misdemeanor by intentionally violating the Constitution of the United States when he gave General Thomas this letter of authority. If I have been successful in the argument I have already addressed to you you will be of opinion that in point of fact there was no violation of the Constitution of the United States by delivering this letter of authority, because the Constitution of the United States makes no provision on the subject of these temporary authorities, and the law of Congress has made provision equally applicable to the recess of the Senate and to its session.

Here, also, I beg leave to remind the Senate that if Mr. Stanton's case does not fall within the tenure-of-office act, if the order which the President gave to him to vacate the office was a lawful order and one which he was bound to obey, everything which is contained in this article, as well as in the preceding articles, fails. It is impossible, I submit, for the honorable managers to construct a case of an intention on the part of the President to violate the Constitution of the United States out of anything which he did in reference to the appointment of General Thomas, provided the order to Mr. Stanton was a lawful order and Mr. Stanton was bound to obey it.

I advance, now, senators, to a different class of articles, and they may properly enough, I suppose, be called the conspiracy articles, because they rest upon charges of conspiracy between the President and General Thomas. There are four of them, the fourth, fifth, sixth, and seventh in number as they stand. The fourth and the sixth are framed under the act of July 31, 1861, which is found in 12 Statutes at Large, page 284. The fifth and seventh are framed under no act of Congress. They allege an unlawful conspiracy, but they refer to no law by which the acts charged are made unlawful. The acts charged are called unlawful, but there is no law referred to and no case made by the articles within any law of the United States that is known to the President's counsel. I shall treat these articles, therefore, the fourth and sixth together, and the fifth and seventh together, because I think they belong in that order. In the first place, let me consider the fourth and sixth, which charge a conspiracy within this act which I have just mentioned. It is necessary for me to read the substance of this law in order that you may see whether it can have any possible application to this case. It was passed on the 31st of July, 1861, as a war measure, and is entitled, "An act to define and punish certain conspiracies" It provides—

> That if two or more persons within any State or Territory of the United States shall conspire together to overthrow or to put down or to destroy by force the government of the United States, or to levy war against the United States, or to oppose by force the authority of the government of the United States, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States against the will or contrary to the authority of the United States, or by force, or intimidation, or threat to prevent any person from accepting or holding any office or trust or place of confidence under the United States.

These are the descriptions of the offences. The fourth and sixth articles contain allegations that the President and General Thomas conspired together by force, intimidation, and threats, to prevent Mr. Stanton from continuing to hold the office of Secretary for the Department of War; and also that they conspired together by force to obtain possession of property belonging to the United States. These are the two articles which I suppose are designed to be

drawn under this act; and these are the allegations which are intended to bring the articles within it.

Now, it does seem to me that the attempt to wrest this law to any bearing whatsoever upon this prosecution is one of the extraordinary things which the case contains. In the first place, so far from having been designed to apply to the President of the United States, or to any act he might do in the course of the execution of what he believed to be his duty, it does not apply to any man or any thing within the District of Columbia at all.

If two or more persons within any State or Territory of the United States.

Not within the District of Columbia. This is a highly penal law, and an indictment found in the very words of this act charging things to have been done in the District of Columbia and returned into the proper court of this District, I will undertake to say, would not bear a general demurrer, because there is locality given to those things made penal by this act of Congress. It is made applicable to certain portions of the country, but not made applicable to the District of Columbia.

But not to dwell upon that technical view of the matter, and on which we should not choose to stand, let us see what is this case. The President of the United States is of opinion that Mr. Stanton holds the office of Secretary for the Department of War at his pleasure. He thinks so, first, because he believes the case of Mr. Stanton is not provided for in the tenure-of-office act, and no tenure of office is secured to him. He thinks so, secondly, because he believes that it would be judicially decided, if the question could be raised, that a law depriving the President of the power of removing such an officer at his pleasure is not a constitutional law. He is of opinion that in this case he cannot allow this officer to continue to act as his adviser and as his agent to execute the laws if he has lawful power to remove him; and under these circumstances he gives this order to General Thomas.

I do not view this letter of authority to General Thomas as a purely military order. The service which General Thomas was invoked for is a civil service; but, at the same time, senators will perceive that the person who gave the order is the Commander-in-chief of the army; that the person to whom it was given is the Adjutant General of the army; that the subject-matter to which the order relates is the performance of services essential to carry on the military service; and, therefore, when such an order was given by the Commander-in-chief to the Adjutant General respecting a subject of this kind, is it too much to say that there was invoked that spirit of military obedience which constitutes the strength of the service? Not that it was a purely military order; not that General Thomas would have been subject to a court-martial for disobeying it; but that as a faithful Adjutant General of the army of the United States, interested personally and professionally and patriotically to have the duties of the office of Secretary for the Department of War performed in a temporary vacancy, was it not his duty to accept the appointment unless he saw and knew that it was unlawful to accept it? I do not know how, in fact, he personally considered it; there has been no proof given on the subject; but I have always assumed—I think senators will assume—that when the distinguished General of the army of the United States, on a previous occasion, accepted a similar appointment, it was under views of propriety and duty such as those which I have now been speaking of; and how and why is there to be attributed to General Thomas, as a co-conspirator, the guilty intent of designing to overthrow the laws of his country, when a fair and just view of his conduct would leave him entirely without reproach?

And when you come, senators, to the other co-conspirator, the President of the United States, is not the case still clearer? Make it a case of private right, if you please; put it as strongly as possible against the President in order to

test the question. One of you has a claim to property; it may be a disputed claim; it is a claim which he believes may prove, when judicially examined, to be sound and good. He says to A. B., "Go to C. D., who is in possession of that property; I give you this order to him to give it up to you; and if he gives it up, take possession." Did anybody ever imagine that that was a conspiracy? Does not every lawyer know that the moment you introduce into any transaction of this kind the element of a claim of right all criminal elements are purged at once; and that this is always true between man and man where it is a simple assertion of private right, the parties to which are at liberty either to assert them or forego them, as they please? But this was not such a case; this was a case of public right, of public duty, of public right claimed upon constitutional grounds and upon the interpretation of the law which had been given to it by the law-makers themselves. How can the President of the United States, under such circumstances, be looked upon by anybody, whether he may or may not be guilty or not guilty of other things, as a co-conspirator under this act?

These articles say that the conspiracy between the President and General Thomas was to employ force, threats, intimidation. What they have proved against the President is that he issued these orders, and that alone. Now, on the face of these orders, there is no apology for the assertion that it was the design of the President that anybody at any time should use force, threats, or intimidation. The order is to Mr. Stanton to deliver up possession. The order to General Thomas is to receive possession from Mr. Stanton when he delivers it up. No force is assigned to him; no authority is given to him to apply for or use any force, threats, or intimidation. There is not only no express authority, but there is no implication of any authority to apply for or obtain or use anything but the order which was given him to hand to Mr. Stanton; and we shall offer proof, senators, which we think cannot fail to be satisfactory in point of fact, that the President from the first had in view simply and solely to test this question by the law; that if this was a conspiracy it was a conspiracy to go to law, and that was the whole of it. We shall show you what advice the President received on this subject, what views in concert with his advisers he entertained, which, of course, it is not my province now to comment upon; the evidence must first be adduced, then it will be time to consider it.

The other two conspiracy articles will require very little observation from me, because they contain no new allegations of fact which are not in the fourth and sixth articles, which I have already adverted to; and the only distinction between them and the others is that they are not founded upon this conspiracy act of 1861; they simply allege an unlawful conspiracy, and leave the matter there. They do not allege sufficient facts to bring the case within the act of 1861. In other words, they do not allege force, threats, or intimidation. I shall have occasion to remark upon these articles when I come to speak of the tenth article, because these articles, as you perceive, come within that category which the honorable manager announced here at an early period of the trial; articles which require no law to support them; and when I come to speak of the tenth article, as I shall have occasion to discuss this subject, I wish that my remarks, so far as they may be deemed applicable, should be applied to these fifth and seventh articles which I have thus passed over.

I shall detain the Senate but a moment upon the ninth article, which is the one relating to the conversation with General Emory. The meaning of this article, as I read it, is that the President brought General Emory before himself as Commander-in-chief of the army for the purpose of instructing him to disobey the law, with an intent to induce General Emory to disobey it, and with intent to enable himself unlawfully, and by the use of military force through General Emory, to prevent Mr. Stanton from continuing to hold office. Now I submit that not only does this article fail of proof in its substance as thus

detailed, but that it is disproved by the witness whom they have introduced to support it. In the first place, it appears clearly from General Emory's statement that the President did not bring him there for any purpose connected with this appropriation bill affecting the command of the army, or the orders given to the army. This subject General Emory introduced himself, and when the conversation was broken off it was again recurred to by himself asking the President's permission to bring it to his attention. Whatsoever was said upon that subject was said not because the President of the United States had brought the commander of the department of Washington before him for that purpose, but because, having brought him there for another purpose, to which I shall allude in a moment, the commanding general chose himself to introduce that subject and converse upon it, and obtain the President's views upon it.

In the next place, having his attention called to the act of Congress and to the order under it, the President expressed precisely the same opinion to General Emory that he had previously publicly expressed to Congress itself at the time when the act was sent to him for his signature; and there is found set out in his answer on page 32 of the official report of these proceedings what that opinion was; that he considered that this provision interfered with his constitutional right as the commander-in-chief of the army; and that is what he said to General Emory. There is not even probable cause to believe that he said it for any other than the natural reason that General Emory had introduced the subject, had asked leave to call his attention to it, and evidently expected and desired that the President should say something on the subject; and if he said anything, was he not to tell the truth? That is exactly what he did say: I mean the truth as he apprehended it. It will appear in proof, as I am instructed, that the reason why the President sent for General Emory was not that he might endeavor to seduce that distinguished officer from his allegiance to the laws and the Constitution of his country, but because he wished to obtain information about military movements, which he was informed, upon authority which he had a right to and was bound to respect, might require his personal attention.

I pass, then, from this article, as being one upon which I ought not to detain the Senate, and I come to the last one, concerning which I shall have much to say, and that is the tenth article, which is all of and concerning the speeches of the President.

In the front of this inquiry the question presents itself: What are impeachable offences under the Constitution of the United States? Upon this question learned dissertations have been written and printed. One of them is annexed to the argument of the honorable manager who opened the cause for the prosecution. Another one on the other side of the question, written by one of the honorable managers themselves, may be found annexed to the proceedings in the House of Representatives upon the occasion of the first attempt to impeach the President. And there have been others written and published by learned jurists touching this subject. I do not propose to vex the ear of the Senate with any of the precedents drawn from the middle ages. The framers of our Constitution were quite as familiar with them as the learned authors of these treatises, and the framers of our Constitution, as I conceive, have drawn from them the lesson which I desire the Senate to receive, that these precedents are not fit to govern their conduct on this trial.

In my apprehension, the teachings, the requirements, the prohibitions of the Constitution of the United States prove all that is necessary to be attended to for the purposes of this trial. I propose, therefore, instead of a search through the precedents which were made in the times of the Plantagenets, the Tudors, and the Stuarts, and which have been repeated since, to come nearer home and see what provisions of the Constitution of the United States bear on this question, and whether they are not sufficient to settle it. If they are, it is quite immaterial what exists elsewhere.

My first position is, that when the Constitution speaks of "treason, bribery, and other high crimes and misdemeanors," it refers to, and includes only, high criminal offences against the United States, made so by some law of the United States existing when the acts complained of were done, and I say that this is plainly to be inferred from each and every provision of the Constitution on the subject of impeachment.

"Treason" and "bribery." Nobody will doubt that these are here designated high crimes and misdemeanors against the United States, made such by the laws of the United States, which the framers of the Constitution knew must be passed in the nature of the government they were about to create, because these are offences which strike at the existence of that government. "Other high crimes and misdemeanors." *Noscitur a sociis.* High crimes and misdemeanors; so high that they belong in this company with treason and bribery. That is plain on the face of the Constitution—in the very first step it takes on the subject of impeachment. "High crimes and misdemeanors" against what law? There can be no crime, there can be no misdemeanor without a law, written or unwritten, express or implied. There must be some law, otherwise there is no crime. My interpretation of it is that the language "high crimes and misdemeanors" means "offences against the laws of the United States." Let us see if the Constitution has not said so.

The first clause of the second section of the second article of the Constitution reads thus:

> The President of the United States shall have the power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

"Offences against the United States" would include "cases of impeachment," and they might be pardoned by the President if they were not excepted. Then cases of impeachment are, according to the express declaration of the Constitution itself, cases of offences against the United States.

Still, the learned manager says that this is not a court, and that, whatever may be the character of this body, it is bound by no law. Very different was the understanding of the fathers of the Constitution on this subject.

Mr. Manager BUTLER. Will you state where it was I said it was bound by no law?

Mr. STANBERY. "A law unto itself."

Mr. Manager BUTLER. "No common or statute law" was my language.

Mr. CURTIS. I desire to refer to the sixty-fourth number of the Federalist, which is found in Dawson's edition, on page 453:

> The remaining powers which the plan of the Convention allots to the Senate, in a distinct capacity, are comprised in their participation with the Executive in the appointment to offices, and in their judicial character as a court for the trial of impeachments, as in the business of appointments the Executive will be the principal agent, the provisions relating to it will most properly be discussed in the examination of that department. We will therefore conclude this head with a view of the judicial character of the Senate.

And then it is discussed. The next position to which I desire the attention of the Senate is, that there is enough written in the Constitution to prove that this is a court in which a judicial trial is now being carried on. "The Senate of the United States shall have the sole power to try all impeachments." "When the President is tried the Chief Justice shall preside." "The trial of all crimes, except in case of impeachment, shall be by jury." This, then, is the trial of a crime. You are triers, presided over by the Chief Justice of the United States in this particular case, and that on the express words of the Constitution. There is also, according to its express words, to be an acquital or a conviction on this trial for a crime. "No person shall be convicted without the concurrence of two-thirds of the members present." There is also to be a judgment in case there shall be a conviction.

> Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under the United States.

Here, then, there is the trial of a crime, a trial by a tribunal designated by the Constitution in place of court and jury; a conviction, if guilt is proved; a judgment on that conviction; a punishment inflicted by the judgment for a crime; and this on the express terms of the Constitution itself. And yet, say the honorable managers, there is no court to try the crime and no law by which the act is to be judged. The honorable manager interrupted me to say that he qualified that expression of no law; his expression was, "no common or statute law." Well, when you get out of that field you are in a limbo, a vacuum, so far as law is concerned, to the best of my knowledge and belief.

I say, then, that it is impossible not to come to the conclusion that the Constitution of the United States has designated impeachable offences as offences against the United States; that it has provided for the trial of those offences; that it has established a tribunal for the purpose of trying them; that it has directed the tribunal, in case of conviction, to pronounce a judgment upon the conviction and inflict a punishment. All this being provided for, can it be maintained that this is not a court, or that it is bound by no law?

But the argument does not rest mainly, I think, upon the provisions of the Constitution concerning impeachment. It is, at any rate, vastly strengthened by the direct prohibitions of the Constitution. "Congress shall pass no bill of attainder or *ex post facto* law." According to that prohibition of the Constitution, if every member of this body, sitting in its legislative capacity, and every member of the other body, sitting in its legislative capacity, should unite in passing a law to punish an act after the act was done, that law would be a mere nullity. Yet what is claimed by the honorable managers in behalf of members of this body? As a Congress you cannot create a law to punish these acts if no law existed at the time they were done; but sitting here as judges, not only after the fact, but while the case is on trial, you may individually, each one of you, create a law by himself to govern the case.

According to this assumption the same Constitution which has made it a bill of rights of the American citizen, not only as against Congress but as against the legislature of every State in the Union, that no *ex post facto* law shall be passed—this same Constitution has erected you into a body and empowered every one of you to say *aut inveniam aut faciam:* if I cannot find a law I will make one. Nay, it has clothed every one of you with imperial power; it has enabled you to say, *sic volo, sic jubeo, stat pro ratione voluntas:* I am a law unto myself, by which law I shall govern this case. And, more than that, when each one of you before he took his place here called God to witness that he would administer impartial justice in this case according to the Constitution and the laws, he meant such laws as he might make as he went along. The Constitution, which had prohibited anybody from making such laws, he swore to observe; but he also swore to be governed by his own will; his own individual will was the law which he thus swore to observe; and this special provision of the Constitution, that when the Senate sits in this capacity to try an impeachment the senators shall be on oath, means merely that they shall swear to follow their own individual wills! I respectfully submit, this view cannot consistently and properly be taken of the character of this body, or of the duties and powers incumbent upon it.

Look for a moment, if you please, to the other provision. The same search into the English precedents, so far from having made our ancestors who framed and adopted the Constitution in love with them, led them to put into the Constitution a positive and absolute prohibition against any bill of attainder. What is a bill of attainder? It is a case before the Parliament where the Parliament make the law for the facts they find. Each legislator—for it is in their legislative capacity they act, not in a judicial one—is, to use the phrase of the honorable managers, "a law unto himself," and according to his discretion, his views of what is politic or proper under the circumstances, he frames a law to meet

the case, and enacts it or votes in its enactment. According to the doctrine now advanced bills of attainder are not prohibited by this Constitution; they are only slightly modified. It is only necessary for the House of Representatives by a majority to vote an impeachment and send up certain articles and have two-thirds of this body vote in favor of conviction, and there is an attainder; and it is done by the same process and depends on identically the same principles as a bill of attainder in the English Parliament. The individual wills of the legislators, instead of the conscientious discharge of the duty of the judges, settle the result.

I submit, then, senators, that this view of the honorable managers of the duties and powers of this body cannot be maintained. But the attempt made by the honorable managers to obtain a conviction upon this tenth article is attended with some peculiarities which I think it is the duty of the counsel to the President to advert to. So far as regards the preceding articles, the first eight articles are framed upon allegations that the President broke a law. I suppose the honorable managers do not intend to carry their doctrine so far as to say that unless you find the President did intentionally break a law those articles are supported. As to those articles there is some law unquestionably, the very gist of the charge being that he broke a law. You must find that the law existed; you must construe it and apply it to the case; you must find his criminal intent wilfully to break the law, before the articles can be supported. But we come now to this tenth article, which depends upon no law at all, but, as I have said, is attended with some extraordinary peculiarities.

The complaint is that the President made speeches against Congress. The true statement here would be much more restricted than that; for although in those speeches the President used the word "Congress," undoubtedly he did not mean the entire constitutional body organized under the Constitution of the United States; he meant the dominant majority in Congress. Everybody so understood it; everybody must so understand it. But the complaint is that he made speeches against those who governed in Congress. Well, who are the grand jury in this case? One of the parties spoken against. And who are the triers? The other party spoken against. One would think there was some incongruity in this; some reason for giving pause before taking any very great stride in that direction. The honorable House of Representatives sends its managers here to take notice of what? That the House of Representatives has erected itself into a school of manners, selecting from its ranks those gentlemen whom it deems most competent by precept and example to teach decorum of speech; and they desire the judgment of this body whether the President has not been guilty of indecorum, whether he has spoken properly, to use the phrase of the honorable manager. Now, there used to be an old-fashioned notion that although there might be a difference of taste about oral speeches, and, no doubt, always has been and always will be many such differences, there was one very important test in reference to them, and that is whether they are true or false; but it seems that in this case that is no test at all. The honorable manager, in opening the case, finding, I suppose, that it was necessary, in some manner, to advert to that subject, has done it in terms which I will read to you:

> The words are not alleged to be either false or defamatory, because it is not within the power of any man, however high his official position, in effect to slander the Congress of the United States, in the ordinary sense of that word, so as to call on Congress to answer as to the truth of the accusation.

Considering the nature of our government, considering the experience which we have gone through on this subject, that is a pretty lofty claim. Why, if the Senate please, if you go back to the time of the Plantagenets and seek for precedents there, you will not find so lofty a claim as that. I beg leave to read from two statutes, the first being 3 Edward I, ch. 34, and the second, 2 Richard

II, ch. 1, a short passage. The statute 3 Edward I, ch. 34, after the preamble, enacts:

That from henceforth none be so hardy to tell or publish any false news or tales, whereby discord or occasion of discord or slander may grow between the King and his people, or the great men of the realm; and he that doeth so shall be taken and kept in until he hath brought him into court which was the first author of the tale.

The statute 2 Richard II, ch. 1, sec. 5, enacted with some alterations the previous statute. It commenced thus:

Of devisors of false news and of horrible and false lies of prelates, dukes, earls, barons, and other nobles and great men of the realm; and also of the chancellor, treasurer, clerk of the privy seal, steward of the King's house, justices of the one bench or of the other, and of other great officers of the realm.

The great men of the realm in the time of Richard II were protected only against "horrible and false lies," and when we arrive in the course of our national experience during the war with France and the administration of Mr. Adams to that attempt to check, not free speech, but free writing, senators will find that although it applied only to written libels it contained an express section that the truth might be given in evidence. That was a law, as senators know, making it penal by written libels to excite the hatred or contempt of the people against Congress among other offences; but the estimate of the elevation of Congress above the people was not so high but that it was thought proper to allow a defence of the truth to be given in evidence. I beg leave to read from this sedition act a part of one section and make a reference to another to support the correctness of what I have said. It is found in Statutes at Large, page 596:

That if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing any false scandalous, and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either or any of them the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, &c.

Section three provides—

That if any person shall be prosecuted under this act for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

In contrast with the views expressed here, I desire now to read from the fourth volume of Mr. Madison's works, pages 542 and 547, passages which, in my judgment, are as masterly as anything Mr. Madison ever wrote, upon the relations of the Congress of the United States to the people of the United States in contrast with the relations of the government of Great Britain to the people of that island; and the necessity which the nature of our government lays us under to preserve freedom of the press and freedom of speech:

The essential difference between the British government and the American Constitution will place this subject in the clearest light.

In the British government the danger of encroachments on the rights of the people is understood to be confined to the executive magistrate. The representatives of the people in the legislature are only exempt themselves from distrust, but are considered as sufficient guardians of the rights of their constituents against the danger from the executive. Hence it is a principle that the Parliament is unlimited in its power, or, in their own language, is omnipotent. Hence, too, all the ramparts for protecting the rights of the people—such as their Magna Charta, their Bill of Rights, &c.—are not reared against the Parliament, but against the royal prerogative. They are merely legislative precautions against executive usurpations. Under such a government as this, an exemption of the press from previous restraint, by licensers appointed by the King, is all the freedom that can be secured to it.

In the United States the case is altogether different. The people, not the government, possess the absolute sovereignty. The legislature, no less than the executive, is under limitations of power. Encroachments are regarded as possible from the one as well as from the other. Hence, in the United States, the great and essential rights of the people are secured

against legislative as well as against executive ambition. They are secured, not by laws paramount to prerogative, but by constitutions paramount to laws. This security of the freedom of the press requires that it should be exempt not only from previous restraint by the executive, as in great Britain, but from legislative restraint also; and this exemption, to be effectual, must be an exemption not only from the previous inspection of licenses, but from the subsequent penalty of laws.

One other passage, on page, 547, which has an extraordinary application to the subject now before you:

1. The Constitution supposes that the President, the Congress, and each of its houses may not discharge their trusts, either from defect of judgment or other causes. Hence they are all made responsible to their constituents at the returning periods of election; and the President, who is singly intrusted with very great powers, is, as a further guard, subjected to an intermediate impeachment.

2. Should it happen, as the Constitution supposes it may happen, that either of these branches of the government may not have duly discharged its trust, it is natural and proper that, according to the cause and degree of their faults, they should be brought into contempt or disrepute, and incur the hatred of the people.

3. Whether it has, in any case, happened that the proceedings of either or all of those branches evince such a violation of duty as to justify a contempt, a disrepute, or hatred among the people, can only be determined by a free examination thereof, and a free communication among the people thereon.

4. Whenever it may have actually happened that proceedings of this sort are chargeable on all or either of the branches of the government, it is the duty, as well as right, of intelligent and faithful citizens to discuss and promulge them freely, as well to control them by the censorship of the public opinion as to promote a remedy according to the rules of the Constitution. And it cannot be avoided that those who are to apply the remedy must feel, in some degree, a contempt or hatred against the transgressing party.

These observations of Mr. Madison were made in respect to the freedom of the press. There were two views entertained at the time when the sedition law was passed concerning the power of Congress over this subject. The one view was that when the Constitution spoke of freedom of the press it referred to the common-law definition of that freedom. That was the view which Mr. Madison was controverting in one of the passages which I have read to you. The other view was that the common-law definition could not be deemed applicable, and that the freedom provided for by the Constitution, so far as the action of Congress was concerned, was an absolute freedom of the press. But no one ever imagined that freedom of speech, in contradistinction from written libel, could be restrained by a law of Congress; for whether you treat the prohibition in the Constitution as absolute in itself, or whether you refer to the common law for a definition of its limits and meaning, the result will be the same. Under the common law no man was ever punished criminally for spoken words. If he slandered his neighbor and injured him, he must make good in damages to his neighbor the injury he had done; but there was no such thing at the common law as an indictment for spoken words. So that this prohibition in the Constitution against any legislation by Congress in restraint of the freedom of speech is necessarily an absolute prohibition; and therefore this is a case not only where there is no law made prior to the act to punish the act, but a case where Congress is expressly prohibited from making any law to operate even on subsequent acts.

What is the law to be? Suppose it is, as the honorable managers seem to think it should be, the sense of propriety of each senator appealed to. What is it to be? The only rule I have heard, the only rule which can be announced, is that you may require the speaker to speak properly. Who are to be the judges whether he speaks properly? In this case the Senate of the United States, on the presentation of the House of Representatives of the United States; and that is supposed to be the freedom of speech secured by this absolute prohibition of the Constitution. That is the same freedom of speech, senators, in consequence of which thousands of men went to the scaffold under the Tudors and the Stuarts. That is the same freedom of speech which caused thousands of heads of men and of women to roll from the guillotine in France. That is

the same freedom of speech which has caused in our day, more than once, "order to reign in Warsaw." The persons did not speak properly in the apprehension of the judges before whom they were brought. Is that the freedom of speech intended to be secured by our Constitution?

Mr. Chief Justice and Senators, I have to detain you but a very short time longer, and that is by a few observations concerning the eleventh article, and they will be very few, for the reason that the eleventh article, as I understand it, contains nothing new which needs any notice from me. It appears by the official copy of the articles which is before us, the printed copy, that this article was adopted at a later period than the preceding nine articles, and I suppose it has that appearance, that the honorable managers, looking over the work they had already performed, perhaps not feeling perfectly satisfied to leave it in the shape in which it then stood, came to the conclusion to add this eleventh article, and they have compounded it out of the materials which they had previously worked up into the others. In the first place, they said, here are the speeches; we will have something about them, and accordingly they begin by the allegation that the President, at the Executive Mansion on a certain occasion, made a speech, and without giving his words, but it is attributed to him that he had an intention to declare that this was not a Congress within the meaning of the Constitution; all of which is denied in his answer, and there is no proof to support it. The President, by his whole course of conduct, has shown that he could have entertained no such intention as that. He has explained that fully in his answer, and I do not think it necessary to repeat the explanation.

Then they come to the old matter of the removal of Mr. Stanton. They say he made this speech denying the competency of Congress to legislate, and following up its intent he endeavored to remove Mr. Stanton. I have sufficiently discussed that, and I shall not weary the patience of the Senate by doing so any further.

Then they say that he made this speech and followed up its intent by endeavoring to get possession of the money appropriated for the military service of the United States. I have said all I desire to say upon that.

Then they say that he made it with the intent to obstruct what is called the law "for the better government of the rebel States," passed in March, 1867, and in support of that they have offered a telegram to him from Governor Parsons, and an answer to that telegram from the President, upon the subject of an amendment of the Constitution, sent in January before the March when the law came into existence, and, so far as I know, that is the only evidence which they have offered upon that subject. I leave, therefore, with these remarks, that article for the consideration of the Senate.

It must be unnecessary for me to say anything concerning the importance of this case, not only now, but in the future. It must be apparent to every one, in any way connected with or concerned in this trial, that this is and will be the most conspicuous instance which ever has been or can ever be expected to be found of American justice or American injustice, of that justice which Mr. Burke says is the great standing policy of all civilized states, or of that injustice which is sure to be discovered and which makes even the wise man mad, and which, in the fixed and immutable order of God's providence, is certain to return to plague its inventors.

Mr. CONNESS, (at two o'clock and twenty minutes p. m.) Mr. President, I move that the court take a recess for fifteen minutes.

The motion was agreed to; and the Chief Justice resumed the chair at twenty-five minutes to three o'clock.

The CHIEF JUSTICE. Senators will please resume their seats and give their attention. Gentlemen of counsel for the President, you will please proceed with the defence.

Mr. STANBERY We will call General Thomas first.

LORENZO THOMAS sworn and examined.

By Mr. STANBERY:

Q. General Thomas, will you state how long you have been in the service?

A. I went to West Point in the year 1819. I entered the Military Academy in September of that year, and was graduated July 1, 1823, and appointed second lieutenant of the fourth infantry. I have been in the army since that date.

Q. What is your present rank in the army?

A. I am Adjutant General of the army, with the rank of brigadier general, and major general by brevet.

Q. When was your brevet conferred?

A. I really forget. I would have to refer to the Army Register for that.

Q. Can you recollect the year?

A. Yes, sir; it was after I returned from one of my southern trips.

Q. During the war?

A. Yes, sir.

Q. Toward the close of it?

A. Toward the close of it. I was first made a colonel, as Adjutant General, on the 7th of March, when Colonel Cooper went out.

Q. When were you first appointed Adjutant General?

A. On the 7th of March, 1861.

Q. On what service were you during the war, generally? Give us an idea of your service.

A. During the administration of the War Department by General Cameron I was on duty as Adjutant General in the office. I accompanied him on his western trip to Missouri and Kentucky, and returned with him. Then, after that, after making that report, he left the department, and Mr. Stanton was appointed. I remained in the department some time after Mr. Stanton was appointed—several months. The first duty he placed me on from the office—at any rate as one of the duties—he sent me down on the James river to make exchanges of prisoners of war under the arrangement made by General Dix with the rebels.

Mr. Manager BUTLER. To what point is this evidence?

Mr. STANBERY. To bring around the reason why there was the interruption in the Adjutant General's business, and how long it continued and when he returned. It will be through in a moment. (To witness.) What was the next service?

A. During the war I was sent once or twice, three times, perhaps, to Harrisburg to organize volunteers and to correct some irregularities there; not irregularities exactly, but in order to put regiments together, skeleton regiments. I was sent there and ordered to bring them together, once at Philadelphia and twice at Harrisburg. I was sent to Harrisburg also about the time that Lee was invading Maryland and Pennsylvania; but my principal duty was down on the Mississippi river.

Q. What was the duty there?

A. Threefold. The first was to inspect the armies on the river in that part of the country. The second was to look into cotton lands.

Mr. Manager BUTLER. Will not that appear better by the order?

The WITNESS. I have it.

Mr. STANBERY. The orders are here, but it will take a great while to introduce them.

Mr. Manager BUTLER. Very well.

Mr. STANBERY. I will ask him nothing but what he has performed. (To the witness.) What was the third duty?

A. To take charge of the negro population and organize them as troops.

Q. Were you the first officer who organized negro regiments?

A. No, sir.

Q. Who was prior to you?

A. I think that General Butler had organized some in New Orleans. Some were organized before I took charge. I was sent down on the Mississippi and in the rebellious States, and I had charge of all of them there.

Q. What number of regiments were organized under your care?

A. I organized upwards of eighty thousand colored soldiers. The particular number of regiments I do not recollect, because they were numbered some with those in New Orleans and some with those in the east.

Q. After that service was performed what was the next special duty you were detailed on?

A. I returned to this city after I heard of the surrender of Lee. I was then on my way up the river. I came to Washington. The next duty I was placed upon was to make an inspection of the Provost Marshal General's office throughout the country, first at Washington, and then throughout the loyal States. I performed that service.

Q. What next?

A. My last service was, I was ordered throughout the United States to examine the national cemeteries under a law passed by Congress. That duty I have performed; but my report is not yet in. It is very voluminous. Those are the duties that I have performed.

Q. Did those duties fall under your proper duties as Adjutant General; and in what capacity?

A. Perfectly so. As Adjutant General I am *ex officio* inspector of the army, and these duties are germane to it.

Q. This duty of inspection of the cemeteries was the last special duty that you have been called upon to perform?

A. Yes, sir.

Q. When did you return from having performed that last special duty?

A. I came to Washington on three different occasions. I would come here and then would go back.

Q. When did you return from this last duty or this last detail upon the national cemetery business?

A. I do not think I can give the precise date; but it was about the close of last year.

Q. Toward the close of the year 1867?

A. Yes, sir.

Q. You say you had then completed this last duty or service?

A. I had visited every State where the cemeteries were. The only ones I have not visited are two very small ones near this city. I left them till the last.

Q. You were then ready to make your report?

A. Yes, sir; I was writing it out, and would have had it ready if it had not been for the interruption of this court. It is nearly completed.

Q. You have not since been detailed upon any other special service except about this War Department?

A. No, sir; I was engaged in making this report, and I continued on that duty until I was placed in charge of the Adjutant General's office.

Q. At what date were you returned to your Adjutant General's office?

A. The President sent for me and gave me a note to General Grant, dated the 13th of February. General Grant's note to me in answer to that, putting me in charge, was dated the next day—the 14th.

Q. Who had occupied your office during your absence?

A. General E. D. Townsend, assistant adjutant general.

Q. Your assistant?

A. My first assistant, with the rank of colonel.

Q. Then you never lost your position as Adjutant General?

A. Never.

Q. Did you apply to the President to restore you?

A. I spoke to the President on two or three occasions, some months ago, stating that when I got through this particular business I should like to have charge of my office. He knew what my wishes were; but on this occasion I did not mention it to him.

Mr. Manager BUTLER. Stop a moment. I wish to object *in limine* to any conversation between this person and the President.

Mr. STANBERY. This is his application to the President that I am trying to prove, to be restored to his duty as Adjutant General.

Mr. Manager BUTLER. I do not object to that fact; but I do not want this conversation.

Mr. STANBERY. I do not want any conversation now. (To the witness.) You applied once or twice to him before to restore you?

A. I stated that that was my wish.

Q. On the 13th of February you received the order which you had requested before, restoring you to your position?

A. Yes, sir. It was not a note to me; it was a note to General Grant.

Q. But that note restored you to your position?

A. Yes, sir.

Q. When, after that, did you see the President, and what did he say to you or did you say to him between that time and the time you received your order on the 21st?

A. On one occasion I went over to take him some resignations——

Q. After you had been restored to your office?

A. Yes, sir; some resignations that Mr. Stanton gave me which were on his table.

Q. To take over?

A. Yes, sir.

Q. Was that the first occasion on which the President spoke to you about taking possession of the War Office?

Mr. Manager BUTLER. Stop a moment. I object to that question; it is leading, and so grossly leading, in my judgment, that it is almost intentional. "Was that the first occasion he spoke to you?"—assuming that he had spoken.

Mr. STANBERY. He did speak afterward, we know.

Mr. Manager BUTLER. How do we know?

Mr. STANBERY. We will come to it in another way. (To the witness.) Do you recollect what occurred on the 21st of February?

A. Yes, sir. I thought your question was anterior to that.

Mr. STANBERY. It was. What happened in the War Office on the morning of the 21st of February in regard to closing the office on the succeeding day, the 22d?

A. Toward twelve o'clock I went up myself and asked Mr. Stanton, then Secretary of War, if I should close the office the next day, the 22d of February, and he directed me to do it. I issued such a circular and sent it around to the different departments.

Q. Was that an order made by you as Adjutant General?

A. Yes, sir; by his order.

Q. Was that before you had seen the President that day?

A. Yes, sir.

Q. Now, what took place after you had issued that order?

A. Very soon after I had issued it I received a note from Colonel Moore, the private secretary of the President, that the President wished to see me. I immediately went over to the White House, and saw the President. He came out of his library with two communications in his hand.

Q. He came out with two papers in his hand?

A. Yes, sir. He handed them to Colonel Moore to read. They were read to me.

Q. Read aloud?

A. Read aloud. One was addressed to Mr. Stanton, dismissing him from office, and directing him to turn over the books, papers, &c., pertaining to the War Department; the other was addressed to me appointing me Secretary of War *ad interim*, and stating that Mr. Stanton had been directed to transfer the office.

Q. Was that the first time you saw those papers, or either of them?

A. The first time.

Q. You had no hand whatever in writing those papers or dictating them?

A. Nothing whatever.

Mr. Manager BUTLER. Excuse me; that is very leading again.

Mr. STANBERY. Well. (To the witness.) What was said by the President at that time to you or by you to the President?

Mr. Manager BUTLER. Do you propose to put in conversations——

Mr. STANBERY. I do.

Mr. Manager BUTLER. Between this party and the President?

Mr. STANBERY. Right there, certainly. (Handing him the papers.)

Mr. EVARTS. Which they put in evidence.

Mr. Manager BUTLER. I will not interpose the objection here, sir.

By Mr. STANBERY:

Q. What, then, was said between you and the President?

A. He said he was determined to support the Constitution and the laws, and he desired me to do the same. [Laughter.]

Mr. Manager BUTLER. I do not object.

The WITNESS. I told him I would.

By Mr. STANBERY:

Q. What further took place or was said?

A. He then directed me to deliver this paper addressed to Mr. Stanton to him.

Q. Was that all? Did you then leave?

A. I told him that I would take an officer in my department with me to see that I delivered it and note what occurred, and I stated that I would take General Williams.

Q. Who is General Williams?

A. One of the assistant adjutant generals in my department on duty there.

Q. You told the President you would take him along to witness the transaction?

A. Yes, sir.

Q. What did you do then?

A. I went over to the War Department, went into one of my rooms, and told General Williams I wished him to go with me; I did not say for what purpose. I told him I wanted him to go with me to the Secretary of War and note what occurred.

Q. Without telling him what it was you intended?

A. I did not tell him anything about it. I then went to the Secretary's room and handed him the first paper.

Q. When you say the first paper, which was that?

A. The paper addressed to him.

Q. What took place then? Did he read it?

A. He got up when I came in, and we bade good morning to each other, and I handed him that paper, and he put it down on the corner of his table and sat down. Presently he got up and opened it and read it, and he then said, "Do

you wish me to vacate the office at once, or will you give me time to remove my private property?" I said, "Act your pleasure."

Q. Did he say what time he would require?

A. No, sir; I did not ask him. I then handed him the paper addressed to me, which he read, and he asked me to give him a copy.

Q. What did you say?

A. In the mean time General Grant came in, and I handed it to him. General Grant asked me if that was for him. I said no; merely for his information. I promised a copy, and I went down.

Q. Down where? To your office?

A. Into my own room.

Q. Your own room is below that of the Secretary; on the first floor?

A. Below General Schriver's room—the one opposite the Secretary's.

Q. It is on the lower floor?

A. Yes, sir.

Q. You went down and made a copy of the order?

A. I had a copy made, which I certified as Secretary of War *ad interim*. I took that up and handed it to him. He then said, "I do not know whether I will obey your instructions or whether I will resist them." Nothing more passed of any moment, and I left.

Q. Was General Grant there at the second interview?

A. No, sir.

Q. The Secretary was alone, then?

A. He was alone. His son may have been there, because he was generally in the room.

Q. Did General Williams go up with you the second time?

A. No, sir.

Q. What time of the day was this?

A. I think it was about 12 o'clock that I went up to see the Secretary, and this was just after I came down and wrote the order—it was toward 1 o'clock, I suppose.

Q. It was immediately after you had written the order to close the office?

A. Yes; I got the note immediately after from Colonel Moore.

Q. Was that all that occurred between you and the Secretary on that day, the 21st?

A. I think it was. [After a pause.] No, no; I was confounding the 22d with the 21st.

Q. What further?

A. I went into the other room and he was there, and I said that I should issue orders as Secretary of War. He said that I should not; he would countermand them, and he turned to General Schriver and also to General Townsend, who were in the room, and directed them not to obey any orders coming from me as Secretary of War.

By Mr. Manager BUTLER:

Q. Do I understand that this was the 21st?

A. I think it was the 21st.

By Mr. STANBERY:

Q. The 22d or 21st?

A. The 21st, I think. What brings it to my mind is, he wrote a note which he handed me prohibiting me from acting on the subject.

Q. Have you got that note?

A. I think I gave it to you. I have some here; probably it may be among them. I will look. The note is dated February 21; I know that.

Q (Presenting a paper to the witness.) See if that is the order that he then gave you?

A. That is it.

Q. I see the body of it is not in Mr. Stanton's handwriting?

A. He dictated it to General Townsend. That is his handwriting. A copy was made of it, and Mr. Stanton signed it, and handed it to me.

Q. Will you read it, if you please?

A. "War Department, Washington city, February 21, 1868"——

Mr. Manager BUTLER. Stop a moment, if you please. Let us see that paper.

(The paper was thereupon handed to the managers and examined by them.)

Mr. Manager BUTLER. We have no objection.

Mr. STANBERY, (to the witness.) Now read it, if you please, general.

The witness read as follows:

WAR DEPARTMENT,
Washington City, February 21, 1868.

SIR: I am informed that you presume to issue orders as Secretary of War *ad interim*. Such conduct and orders are illegal, and you are hereby commanded to abstain from issuing any orders other than in your capacity as Adjutant General of the army.

Your obedient servant,

EDWIN M. STANTON,
Secretary of War.

Brevet Major General L. THOMAS, *Adjutant General.*

Q. Did you see the President after that interview?

A. I did.

Q. What took place?

Mr. Manager BUTLER. I object now, Mr. President and senators, to the conversation between the President and General Thomas. Up to this time I did not object, as you observed, upon reflection, to any orders or directions which the President gave, or any conversation had between the President and General Thomas at the time of issuing the commission. But now the commission has been issued; the demand has been made; it has been refused; and a peremptory order given to General Thomas to mind his own business and keep out of the War Office has been put in evidence. Now, I suppose that the President, by talking with General Thomas, or General Thomas by talking with the President, cannot put in his own declarations for the purpose of making evidence in favor of himself. The Senate has already ruled by solemn vote, and in consonance, I believe, with the opinion of the presiding officer, that there were such evidences of common intent between these two parties as to allow us to put in the acts of each to bear upon the other; but I challenge any authority that can be shown anywhere that, in trying a man for an act before any tribunal, whether a judicial court or any other body of triers, testimony can be given of what the respondent said in his own behalf, and especially to his servant, and *a fortiori* to his co-conspirator. A conspiracy being alleged, can it be that the President of the United States can call up any officer of the army, and, by talking to him after the act has been done, justify the act which has been done?

The act which we complain of was the removal of Mr. Stanton and the appointment of Mr. Thomas. That has been done; that is, if he can be removed at all. I understand the argument just presented to us by the learned counsel who is absent, after having delivered his argument, is, that there was no removal at all, and no appointment at all. Then, of course, if there was not, there has not been anything done; we might as well stop here. Assuming, however, the correctness of another part of his argument, to wit, that the only power of removal remained in the President or in the President and the Senate—assuming that to be true, and therefore that he could not be quite right in his idea that the question of removal depended upon Mr. Stanton's legs in walking out, because everything had been done but that—assuming that that portion of his argument is the better one, we insist that there was a removal, there was an

appointment, and that is the act, at any rate, which is being inquired about; for whatever the character of that act is, there is the end, be it better or worse.

But after that act I mean to say that Mr. Thomas cannot make evidence for himself by going and talking with the President, nor the President with Mr. Thomas. Even supposing that the act was as innocent a thing as a conspiracy to get up a lawsuit, after the conspiracy had taken place and it had eventuated in the act, then they could not put in their declarations. True, there is not much evidence of any such conspiracy, because I should suppose that if the President meant to conspire with anybody to get up a lawsuit he would have conspired with his Attorney General, and not his Adjutant General. He is a queer person with whom to make a conspiracy to get up a lawsuit. But even a thing so innocent as that, after it was done, could not be ameliorated, defended, altered, or changed by the declarations of the parties, one to the other. Therefore, *in limine*, I must object; and I need not go any further now than object to any evidence of what the President says, which is not a part of the thing done, a part of the *res gestæ*, any conversation which takes place after the thing done, after the act of which we complain.

Mr. STANBERY. Mr. Chief Justice, if I understand the case as the gentleman supposes it to be now, the whole case depends upon the removal of Mr. Stanton.

Mr. Manager BUTLER. I have not said any such thing. I do not know what you understand.

Mr. STANBERY. You say the transaction stops with issuing the order for his removal.

Mr. Manager BUTLER. That transaction stops.

Mr STANBERY. Does not your conspiracy stop? Does not your case stop? That is the question.

Mr. Manager BUTLER. No.

Mr. STANBERY. I agree myself that your case stops with that order, because I agree with what now seems to be the view taken by the honorable manager, that that did in fact remove Mr. Stanton *per se*. If it did, it was the law that gave it that effect; for there is no question about a removal merely in fact, no question about an actual ouster by force here; but it is a question of a legal removal, and that we are upon; and I now understand the honorable manager to say that that order, according to his judgment, effected a legal removal, and it was not necessary for Mr. Stanton's legs to move him out of office; he was already out by the order. If Mr. Stanton was out by the order, the learned managers are also out by the order, for then it must be a legal order, making a legal removal, not a forcible, illegal ouster.

But, says the learned manager, the transaction ended in giving the order and receiving the order, and you are to have no testimony of what was said by the President or General Thomas except what was said just then, because that was the transaction; that was the *res gestæ*. Does the learned gentleman forget his testimony? Does he forget how he attempted to make a case? Does he forget, not what took place in the afternoon between the President and General Thomas that we are now going into, but what took place that night? Does he forget what sort of a case he attempts to make against the President, not at the time when that order was given, nor before it was given, nor in the afternoon of the 21st, but under his conspiracy counts, the managers have undertaken to give in evidence that on the night of the 21st General Thomas declared that he was going to enter the War Office by force?

That is the matter charged as illegal; and the articles say that the conspiracy between General Thomas and the President was that the order should be executed by the exhibition of force, intimidation, and threats; and to prove that what has he got here? The declarations of General Thomas, not made under oath, as we propose to have them made, but his mere declarations, when the

President was absent and could not contradict him—not, as now, under oath, and all the conversation when the President was present and could contradict or might admit. The honorable manager has gone into all that to make a case against the President of conspiracy; and not merely that, but proves the acts and declarations of General Thomas on the 22d; and not only that, but as late as the 9th of March, at the presidential levee brings a witness, with the eyes of all Delaware upon him, [laughter,] and proves by that witness, or thinks he has proved, that on that night General Thomas also made a declaration involving the President in this conspiracy, as a party to a conspiracy still existing to keep Mr. Stanton out of office.

Now, how are we to defend against these declarations made on the night of the 21st or the 22d, and again as late as the 9th of March? Does not the transaction run through all that time? How is the President to defend himself if he is allowed to introduce no proof of what he said to General Thomas after the date of the order? May he not call General Thomas? Is General Thomas impeached here as a co-conspirator? Is his mouth shut by a prosecution? Not at all. He is free as a witness—brought here and sworn. Now, what better testimony can we have to contradict this alleged conspiracy than the testimony of one of the alleged conspirators; for if General Thomas did not conspire, certainly the President did not conspire. A man cannot conspire by himself. And now we contradict by this testimony, and have a right to contradict by this testimony, what was stated on the night of the 21st. Here is an interview on the afternoon of the 21st. We want to show that not only at twelve o'clock on the day when he received the order the President gave him no instructions, no orders, and made no agreement to use force; but that at the subsequent meeting in the afternoon of that day, when General Thomas returned to report to the President that Mr. Stanton refused to surrender the office, the President still gave no directions and entered into no conspiracy of force; and that accordingly on the night of the 21st, when General Thomas spoke of his own intentions, he had no authority to speak for the President; and he did not profess to speak for him.

It is in this point of view, if the court please, that it seems to me this is the very best testimony we can give, and the most legal and admissible. It is not after the transaction is ended; it is not after the proof on the other side is ended as to the conspiracy; but it is long before the time when, according to their proof, the conspiracy ceased. In that point of view, we claim that it is perfectly legal.

Mr. Manager BUTLER. Mr. President, I think I must have made myself very illy understood if what I said has been fairly met or attempted to be met by the learned counsel. This is my objection: not that they shall not prove by Mr. Thomas that he did not say what we proved that he said to Mr. Burleigh; he will be a bold man to say he did not say it, however; not that they shall not prove that he did not say what we proved he said to Mr. Karsner, although I should think my learned friend had had enough of Mr. Karsner; not that they shall not show any fact which is competent to be shown; but the proposition I make as a legal proposition, (and it has not been met nor touched by the argument,) is that it is not competent to show that Mr. Thomas did not say to Mr. Burleigh that he meant to use force, by proving what was said between Mr. Thomas and the President; that the President cannot put in his declaration; and I challenge again a law book to be brought in before this Senate—common law, parliamentary law, constitutional law, statute law, or "law unto ourselves"—any law that was ever heard of, in which any such proposition was ever held. It never was held, sir. Go to your own reading; tell me of the case where after we show that a man has done an act, which act is complained of, when he is on trial for that act, he can bring his servant, his co-conspirator, and show what he said to his servant and his servant to him, in order

to his justification. What thief could not defend himself by that, what murderer could not defend himself by that—show what he said, the one to the other, and the other to the one after the thing has happened, after the act has been done?

Now, it is said, as though this case was to be carried on by some little snap-catch of a word, that I said there was a removal, and, therefore, I must have said it was a legal removal. I say there never was a legal removal of Mr. Stanton. There was an act of removal so far as the President of the United States could exercise the power, so far as he could do it, so far as he is criminally responsible for it, so far as he must be held to every intendment of the consequences of it as much as though Mr. Stanton had gone out in obedience to it; because who is the President? He is the Chief Executive, and has the army and the navy, and has issued an order to one officer of the army to take possession.

But, senators, I am not now insisting that the President shall not ask Mr. Thomas, "Sir, did you conspire?" I am content they shall ask him that, and I will ask him in return, "Did you conspire with the President; did you do this, or did you do that?" But my proposition is, that they cannot put in what the President said to Thomas, or what Thomas said to the President after he had given the order. The learned counsel says, "Why these gentlemen managers have put in what Mr. Thomas said all along, and what the President said all along." I understand that; so we can. It is the commonest thing in all courts of justice where I have seen cases tried—and where I have not, the books are all one way upon that matter—it is the commonest thing on earth to put in the confession of a criminal made clear down to the time of the trial, down to the hour of the trial. Is it not? If he makes a confession the moment the officer is bringing him and putting him into the dock, it may be used against him. But who ever heard that it gave the prisoner the right to introduce what he said to his associate, what he said to his servant, what he said to his neighbor, after the act was done, be the act whatever it may?

It is said you must allow him to put this in because the President cannot defend himself otherwise. He has all the facts to defend himself with. What I mean to say is that he shall not defend himself by word of mouth. I do not claim that the conspiracy was made between the 21st of February and the 9th of March. I claim that it was made before that time; and I think we shall be able, before we get through, to convince everybody else of it. I claim that we find certain testimony of it between these two dates.

Now, understand me. I do not object to asking Mr. Thomas what he said to Mr. Burleigh, what he said to Mr. Wilkeson, what he said to Mr. Karsner, what he said to anybody, where we have put in what he said; but I do object to his putting in any more of the President's declarations after the act done. I do not want any more such exhibitions as this. When a simple order is given by the President to his subordinate, a very harmless thing, quite in common course, it is given to him with a flourish of trumpets. "Now, I want you to sustain the Constitution and laws;" and the officer says, "I will sustain the Constitution and the laws." Do we not understand what all that was done for? It was a part of the defence got up there at the time; a declaration made to be put in here before you or before some court.

Nobody can doubt what that was for. Did he ever give any other order to Thomas or any other officer and say: "Now, sir, here is a little order, and I want you to sustain the Constitution and laws; I am going to sustain the Constitution and laws, and you must sustain the Constitution and laws;" and then solemnly for that officer to say, "I will sustain the Constitution and the laws." Did you ever hear of that in any other case? Why was it done in this case? It was done for the purpose of blinding whatever court should try the case, in order that it might be put in as a justification. "Oh! I did not mean to do anything but

sustain the Constitution and the laws, and I said so at the time." That declaration was put in out of the usual and ordinary course, and it is to prevent any more of that sort of declarations, got up, manufactured by this criminal at the time when he was going into his crime and after the crime was committed, that I make the objection. Under such circumstances to give him the opportunity to manufacture testimony in this way never was heard of in any court of justice.

Mr. EVARTS. Mr. Chief Justice and Senators, if the crime, as it is called, of the President of the United States was complete when this written order was handed by him to General Thomas, and received by General Thomas, why have the managers occupied your attention with other and later proceedings in his behalf of the removal of Mr. Stanton? The first, the only act in regard to that removal, which the managers introduced, was of the 22d of February, and the presentation of General Thomas, and then with the purpose, as it was said, of forcibly ejecting Mr. Stanton from the office of Secretary of War. That is the act—that is the fact—that is the *res gesta* on which they stand; and it was by the combination of the delegate from Dakota, invited to attend and take part in that act where the force was sought to be brought into this case in the intention of the President of the United States; and then the evidence connecting the intention of the President of the United States with this act, this fact, this *res gesta* of the 22d, was drawn from the hearsay evidence of what General Thomas had said, and upon the pledge of the managers that they would connect the President with it.

And now, in the presence of a court of justice and in the Senate of the United States, the managers of the House of Representatives, speaking "in the name of all the people of the United States," object when we seek to show what did occur between the President and General Thomas up to the time of the only act and fact they introduced on the 22d by hearsay evidence of General Thomas's statements of what he meant to do. They sought to implicate the President in the intended force to be used by that hearsay testimony upon the pledge that they would connect the President with it; and we offer the evidence that we said in the first instance should have been brought here under oath of this agent or actor himself to prove what the connection of the President was. When that hearsay has been let in, secondary evidence, and we undertake to show by the oath of the actor, the agent, the officer, what really occurred between him and the President of the United States, they say that is of no consequence, that is no part of the *res gestæ*, and that is no part of evidence showing what the relation between the parties was. Why, Mr. Chief Justice and Senators, if the learned managers had objected that General Thomas was not to be received as a witness because he was a co-conspirator, a co-criminal, some of the observations of the learned manager might have some application; but that is not the aspect, and that is not the claim in which the matter is presented to your notice. It is that General Thomas being a competent witness to speak the truth here as to whatever is pertinent to this case, is not to be permitted to say what was the agency, what was the instruction, what was the concomitant observation of the President of the United States that attended every interview antecedent to the time which they have put in evidence.

So, too, they have sought to give evidence of intent, gathered from a witness who overheard what General Thomas said, pertinent, as they supposed, on the 9th of March, and that is upon the idea that General Thomas had been empowered by the President to say or do something that made his statements pertinent to commit the President. Now, if they can show, through General Thomas, by hearsay, what they claim is to implicate the President in intent, running up to the 9th of March, we can prove by General Thomas, up to any date in respect to which they offered evidence, all that did occur between the President and himself, in order that if there be connection, that may be made accurate and

precise; and if there be no connection, that the disconnection be made absolute and complete.

Mr. Manager BINGHAM. Mr. President and Senators, I desire, to the right understanding of this controversy, that the question to which my associate manager objected may be reported by the Secretary.

The CHIEF JUSTICE. The counsel will please reduce the question to writing.

The question was reduced to writing, and read as follows:

What occurred between the President and yourself at that second interview on the 21st?

Mr. Manager BINGHAM. The senators will notice that the attempt is now made for the first time in the progress of this trial, and I think is made here for the first time in the presence of any tribunal of justice in this country by respectable counsel, to introduce in the defence of an accused criminal his own declarations made after the fact. Before this second interview referred to in the question the crime charged in the first article, if crime it be, was committed and complete. The time has not yet come, senators, for the full discussion of the question, whether it was a crime for Andrew Johnson, on the 21st day of February, 1868, with intent to violate the act regulating the tenure of certain civil offices, to issue an order for the removal, as averred in the first article—not "removing" as counsel stated, but "for the removal of"—the Secretary of War from the Department of War not only in contravention of the express terms of that act itself, but in defiance of the action of the Senate then had upon the suspension under the same law, by the same President, of the same Secretary, and whereof he had notice. For myself, I stand ready, as the learned counsel has seen fit to make the challenge in this stage of the case, to say that if the tenure-of-office act be a valid act, the attempt to remove in contravention of the provisions of that act which declares a removal to be a misdemeanor, is itself a misdemeanor, not simply at common law, but by the laws of the United States. I am not surprised that this utterance was made at this stage of the case; for the learned counsel who closed his elaborate and exhaustive argument in the defence had ventured upon the bold declaration here in the presence of the Senate, that an attempt to commit a misdemeanor, made such by the laws of any sovereignty upon the earth, was not itself a crime consummated by the very attempt, and itself a misdemeanor.

I pass that question now; with all respect I say it ought not to have been referred to in this discussion. The only question before the Senate is, whether it is competent for an accused criminal, high or low, official or unofficial, President or private citizen, after the fact charged against him, to make evidence for himself by his own declarations either to a co-conspirator or to anybody else. That is all the point there is involved in this question; and I reiterate what was said, doubtless after due reflection, by my associate manager, that there is not an authority fit to be brought into a court of justice but denounces the proposition as hearsay and violative of the rules of law. Why, justice itself is impotent if evidence is to be made by every criminal violator of the law for himself, after the fact, by his own declarations.

I am amazed at the declaration of counsel that the Senate have admitted hearsay in behalf of the prosecution. Senators upon reflection can assent to no such proposition. The declaration of co-conspirators made in the prosecution of the common purposes or common design, never was held to be hearsay evidence. On the contrary, it is primary evidence, and, in the language of one of our own courts, in most instances it is the only evidence which the nature of the case ever admits of. It rests upon the simple proposition of the law, which addresses itself to the common judgment and the common sense of mankind, that what one man does by another he does himself. If the President conspired with Lorenzo Thomas to violate the laws of this country, and by his written letter of authority sent him forth to violate the law, he made him his agent, and in the language of the law, whatever Lorenzo Thomas did in the prosecution of that agreement to

do an unlawful act between himself and the President is evidence not simply against himself, but against his principal.

It is the law of this country and of every other country where the common law is observed; it is a question no longer open for discussion, and I may add that the question that is raised here is one that is not open for discussion, for I venture to say that every text-book that treats of the law of evidence declares that the declarations of an accused after the fact are never admissible upon his own motion. All that is said at any one given time, when any part of what is said on that occasion has been admitted for the prosecution, is admissible. But that is not the question before the Senate at all. This is a subsequent conversation between himself and his co-conspirator after his crime was complete, after he had sent forth his letter of authority to Thomas, after he had issued the order for the removal of Stanton, after the demand had been made by Thomas for the surrender of the office. On the evening of the 21st day of February there is a conversation between these co-conspirators, confessedly conspirators if your law be valid, upon their own answer before the Senate, in order to exculpate themselves. I say to senators that it is trifling with justice, trifling with that justice which was this day invoked in your presence, to allow any man to make evidence in this manner for himself, after the fact.

How easy it was for him to say to Mr. Thomas that night, when he found that inquiry was being made in the Capitol touching this criminal agreement between them, "Why, Mr. Thomas, our only object is peacefully and quietly to appeal to the courts of justice;" "Why, Mr. Thomas, you must not touch the hair of the head of the Secretary of War;" "Why, Mr. Thomas, we both have the profoundest respect for the decision of the Senate this day made, notice of which has been served upon us;" "Why, Mr. Thomas, we both recognize the obligations of the tenure-of-office act;" "Why, Mr. Thomas, it is farthest from our intention to violate the act at all." Sir, the law declares that if the order was unlawful, the unlawful intent laid in the averment is proved by the fact itself, and he can never disprove it by his declarations. Why, then, introduce them here? Why trifle with justice here in this way? The rule has been settled in every case that has ever been tried in the Senate of the United States heretofore, that the general rules of evidence according to the common law govern the proceedings. If there is an exception to be found to that in any of the rulings of the Senate in trials of this kind hitherto, I challenge its production.

The CHIEF JUSTICE. The Secretary will read the question once more.

The Secretary read as follows:

What occurred between the President and yourself at that second interview on the 21st?

The CHIEF JUSTICE. The question is, is the question just read admissible?

Mr. DRAKE. On that I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 42, nays 10; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Cattell, Cole, Conkling, Corbett, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Sherman, Sprague, Stewart, Sumner, Tipton, Trumbull, Van Winkle, Vickers, Willey, Williams, Wilson, and Yates—42.

NAYS—Messrs. Cameron, Chandler, Conness, Cragin, Drake, Harlan, Howard, Nye, Ramsey, and Thayer—10.

NOT VOTING—Messrs. Saulsbury and Wade—2.

So the Senate determined the question to be admissible.

The CHIEF JUSTICE. The question will be read to the witness.

The Secretary read the question, as follows:

What occurred between the President and yourself at that second interview on the 21st?

The WITNESS. I stated to the President that I had delivered the communication, and that Mr. Stanton gave this answer: "Do you wish me to vacate at

once, or will you give me time to take away my private property ?" and that I replied, "Act your pleasure." I then said that after delivering the copy of the letter to him he said : "I do not know whether I will obey your instructions or resist them." This I mentioned to the President, and his answer was : "Very well ; go and take charge of the office and perform the duties."

By Mr. STANBERY :

Q. Was that all that passed ?
A. That is about all that passed at that time.
Q. What time in the afternoon was that ?
A. This was immediately after giving the second letter to Mr. Stanton.

Mr. Manager BUTLER. We withdraw all objection to that conversation. [Laughter.]

Mr. STANBERY. Whether you do or not it is in. The withdrawal is *ex post facto*. (To the witness.) Was this before or after you got Stanton's order ?
A. It was after.
Q. Did you see Stanton again that afternoon ?
A. I did not.
Q. Or the President ?
A. Not after I left him this time.
Q. What first happened to you the next morning ?
A. The first thing that happened to me next morning was the appearance at my house of the marshal of the District, with an assistant marshal and a constable, and he arrested me.
Q. What time in the morning was that ?
A. About eight o'clock, before I had my breakfast. The command was to appear forthwith. I asked if he would permit me to see the President ; I simply wanted to inform him that I had been arrested. To that he kindly assented, though he said he must not lose sight of me for a moment. I told him certainly; I did not wish to be out of his sight. He went with me to the President's and went into the room where the President was. I stated that I had been arrested, at whose suit I did not know——

Mr. Manager BUTLER. Stop one moment. Does the presiding officer understand the ruling to go to this, to allow what occurred the next day to be brought in ?

The CHIEF JUSTICE. The Chief Justice so understands it.

Mr. STANBERY. Go on, general.

The WITNESS. He said, "Very well, that is the place I want it in—the courts." He advised me then to go to you, and the marshal permitted me to go to your quarters at the hotel. I told you that I had been arrested and asked what I should do——

Mr. Manager BUTLER. Wait a moment.

Mr. EVARTS. I suppose it is no great matter about that.

Mr. STANBERY, (to the managers.) Is that part of the conspiracy ? [Laughter.]

Mr. Manager BUTLER. I have no doubt of it. [Laughter.]

Mr. STANBERY, (to the witness.) Did you go to court ?
A. I was presented by the marshal to Judge Cartter.
Q. What happened there ?
A. Judge Cartter——

Mr. Manager BUTLER. I object.

Mr. STANBERY. Were you held to bail or anything of that kind ?
A. I was required to give bail in $5,000.
Q. And then discharged from custody ?
A. I was then discharged ; but there is one point that I wish to state if it is

admissible; I do not know whether it is or not. I asked him distinctly what that bail meant——

Mr. Manager BUTLER. Stop.

Mr. STANBERY. Do you mean that you asked the judge?

The WITNESS. Yes, I asked the judge what it meant. He said——

Mr. Manager BUTLER. Stop. Does your honor allow that?

Mr. STANBERY. That is another part of the case, and we will come to that after a while. (To the witness.) How long did you remain there?

A. I suppose it took altogether perhaps an hour, because friends came in to give the bail. I had nobody with me, not even a lawyer.

Q. After you were admitted to bail, did you go again to the War Department that day?

A. I did.

Q. That was the 22d?

A. I am speaking of the 22d; but I think this other matter is important to me.

Mr. Manager BUTLER. I will withdraw the objection if the witness thinks it important to him.

Mr. STANBERY. Very well; go on with the explanation you wished to make.

The WITNESS. I asked the judge what it meant. He said it was simply to present myself there at half past ten the following Wednesday. I then asked him if it suspended me from any of my functions. He said no, it had nothing to do with them. That is the point I want to state.

By Mr. STANBERY:

Q. When did you next go to the War Department that day?

A. I went immediately from there, first stopping at the President's on my way, and stating to him that I had given bail. He made the same answer, "Very well; we want it in the courts." I then went over to the War Office, and found the east door locked. This was on the 22d the office was closed. I asked the messenger for my key. He told me that he had not got it; the keys had all been taken away, and my door was locked. I then went up to Mr. Stanton's room, the one that he occupies as an office, where he receives. I found him there with some six or eight gentlemen, some of whom I recognized, and I understood afterward that they were all members of Congress. They were all sitting in a semi-ellipsis, the Secretary of War at the apex. I came in the door. I stated that I came in to demand the office. He refused to give it to me, and ordered me to my room as Adjutant General. I refused to obey. I made the demand a second and a third time. He as often refused, and as often ordered me to my room. He then said, "You may stand there; stand as long as you please." I saw nothing further was to be done, and I left the room and went into General Schriver's office, sat down and had a chat with him, he being an old friend. Mr. Stanton followed me in there, and Governor Moorhead, member of Congress from Pittsburg. He told Governor Moorhead to note the conversation, and I think he took notes at a side table. He asked me pretty much the same questions as before.

Q. State what he did ask.

A. Whether I insisted upon acting as Secretary of War, and should claim the office. I gave a direct answer, "Yes;" and I think it was at that time I said I should also require the mails. I said that on one occasion, and I think then. I do not know whether it is on the memorandum or not. Then there was some little chat with the Secretary himself.

Q. Between you and the Secretary?

A. Between me and the Secretary.

Q. Had these members of Congress withdrawn then?

A. Yes, sir.

Q. Now, tell us what happened between you and the Secretary after they withdrew.

A. I do not recollect what first occurred, but I said to him, "The next time you have me arrested"—for I had found out it was at his suit I was arrested; I had seen the paper——

Mr. Manager BUTLER. Stop a moment. I propose, Mr. President, to object to the conversation between the Secretary and General Thomas at a time which we have not put in, because we put in only the conversation while the other gentlemen were there. This is something that took place after they had withdrawn.

Mr. STANBERY. What is the difference? They did not stay to hear the whole.

The CHIEF JUSTICE. It appears to have been immediately afterward and part of the same conversation.

Mr. STANBERY. The same conversation went right on.

Mr. Manager BUTLER. Will General Thomas say it was the same conversation?

The WITNESS. Mr. Stanton turned to me and got talking in a familiar manner.

Mr. Manager BUTLER. Go on, then, sir.

The WITNESS. I said, "The next time you have me arrested, please do not do it before I get something to eat." I said I had had nothing to eat or drink that day. He put his hand around my neck, as he sometimes does, and ran his hand through my hair, and turned to General Schriver and said, "Schriver, you have got a bottle here; bring it out." [Laughter.]

By Mr. STANBERY:

Q. What then took place?

A. Schriver unlocked his case and brought out a small vial, containing I suppose about a spoonful of whiskey, and stated at the same time that he occasionally took a little for dyspepsia. [Laughter.] Mr. Stanton took that and poured it into a tumbler and divided it equally and we drank it together.

Q. A fair division?

A. A fair division, because he held up the glasses to the light and saw that they each had about the same, and we each drank. [Laughter.] Presently a messenger came in with a bottle of whiskey, a full bottle; the cork was drawn, and he and I took a drink together. "Now," said he, "this at least is neutral ground." [Laughter]

Q. Was that all the force exhibited that day?

A. That was all.

Q. Have you ever at any time attempted to exercise any force to get into that office?

A. At no time.

Q. Have you ever had any instructions or directions from the President to use force, intimidation, or threats at any time?

Mr. Manager BUTLER. Wait. "At any time?" That would bring it down to to-day. I suppose the ruling did not come down to to-day. Any time prior to the 21st or 22d of February I am content with your inquiring about, but I still must object to putting in what was said yesterday.

Mr. STANBERY. On the 9th of March you say it still continued.

Mr. Manager BUTLER. The 9th of March?

Mr. STANBERY. Then we will inquire prior to the 9th of March.

Mr. Manager BUTLER. I have said nothing about that. I say the 9th of March is just as bad as it would be to-day. I object to any time after the act. He was impeached on the 22d of February, and I suppose got up his case after that.

Mr. EVARTS. We have a right to negative up to the point at which you have given any positive evidence, which is the 9th of March.

Mr. Manager BUTLER. We have given no evidence of what the President has said or the instructions that came from the President. We have given evidence of what Mr. Thomas has said, and that is entirely a different thing. You may ask him if he said so to Mr. Karsener; but if there is anything in any rule of law, if law is to be held at all, this testimony cannot be put in.

Mr. EVARTS. Mr. Chief Justice, the point, if anything, by which Mr. Karsener was allowed to speak of the interview between General Thomas and himself of the 9th of March was that General Thomas's statements then made might be held to be either from something that had been proved on the part of the managers, or from something that would be proved on the part of the managers, a committal of the President. Now, certainly, under the ruling that has been made, as well as under the necessary principles of law and justice, the President is entitled to negative, through the witness who knows, anything that proceeded from him, the witness, as brought in testimony here, as having been authorized by anything that occurred between the President and himself.

Mr. Manager BUTLER. I do not propose to argue further. If it is not self-evident to everybody, no argument can make it plainer. I simply object to a question which is this: "What have been the directions of the President down to the 9th of March," after he had been impeached? Because, if he can put them in down to the 9th of March, he can down to to-day; and to prove that Mr. Karsener did not say a thing to Mr. Thomas they offer to prove that the President did not say a thing to Mr. Thomas.

Mr. EVARTS. That is not the point. The point is not that we can show affirmatively every conversation, but, negatively, we can show up to and including the date concerning which they have given anything in evidence by which they claim to implicate the President, that he up to that time had never given any instructions or declarations justifying the use of force. It is of the 9th of March they have given evidence that this witness then meant presently, *in futuro*, to kick Mr. Stanton out; and now we propose to show that up to that conversation the President of the United States had never given authority or direction of any kind to use force.

Mr. Manager BUTLER. How does that prove that Mr. Thomas did not say so?

Mr. EVARTS. It does not prove it in the least. It only proves that he said it without authority of the President of the United States, which is the whole point of your point of proving that he said it at all.

Mr. Manager BINGHAM. In other words, Mr. President, I desire to say the proposition now is for the witness to swear to conclusions, not to what the President did say, not to what the President did do, but to his conclusion that all he said and all he did did not authorize him to use force.

The CHIEF JUSTICE. The counsel for the President will reduce the question to writing, if they press it.

The question being reduced to writing was read, as follows:

Did the President, at any time prior to or including the 9th of March, authorize or direct you to use force, intimidation, or threats to get possession of the War Office?

The CHIEF JUSTICE. The Chief Justice will submit this question to the Senate. Senators, you who are of opinion that the question is admissible will say "ay," and those of the contrary opinion will say "no."

The question being put, was decided to be admissible.

Mr. STANBERY. Answer the question, now, general.

The WITNESS. Read it, if you please.

The Secretary read the question, as follows:

Did the President, at any time prior to or including the 9th of March, authorize or direct you to use force, intimidation, or threats to get possession of the War Office?

The WITNESS. He did not

By Mr. STANBERY:

Q. Now please state what conversation you had with Mr. Burleigh on the night of the 21st of February?

A. He came to my house and asked me in reference to this matter of my being appointed Secretary of War. I told him I was appointed, and I mentioned what occurred between Mr. Stanton and myself, and I think it was that which led him to ask me "What are you going to do?" Mr. Stanton having said he did not know whether he would obey my instructions or resist them. There are two persons I spoke with. To one I said, that if I found my door locked, or if I found the War Office locked, I would break open the door; and to the other I said I would call upon General Grant for force. I have got them mixed up; I do not know which expression I used to Mr. Wilkeson, but one to him and the other to Dr. Burleigh. I made use of both expressions that evening, however, one to Mr. Wilkeson and one to Dr. Burleigh; I do not suppose it makes any difference which. Their testimony shows that better than mine. Mr. Burleigh asked me what time I was going to the War Office. I told him I would be there about ten o'clock the next day. This was the night of the 21st I was talking to him. The conversation was a short one; he very soon left me, saying he would call again. I think he said he would come up to the War Office the next morning.

Q. Did you ask him to go?

A. I did not. I think he said he would come and see the fun, or something of that kind.

Q. What was the conversation you had with Mr. Karsener on the 9th of March?

A. I would like to describe that.

Q. What do you know of Mr. Karsner?

A. I knew nothing about him whatever until I had seen him then. If I had been asked the question, I should have said I had never seen him, though my attention was once called to the fact that I did once see him in the spring of 1827, when I happened to be at home with a severe spell of sickness. I did see him on that occasion. I suppose there were circumstances brought it to my mind.

Q. What took place at the President's?

A. It was towards the end of the President's reception, and I was walking with General Todd, and was about going out of the door when I found that this person rushed forward and seized me by the hand. I looked surprised, because I did not know him. He mentioned his name, but I could not recollect it. I understood him to say that he was from New Castle, my native village. He certainly used both those words; but he says he did not; it is possible he did not, as he says he only stated that he was from New Castle county. I may be mistaken; I do not want to do him injustice. He said he knew my father and my brother, and that he had known me forty years before. I suppose that would have been about the time I spoke of; but I have no recollection of it at all. He held on to my hand. I was surprised at the man's manner, because he came up to me as if I had been an intimate relation of his for years.

Mr. Manager BUTLER. Stop a moment. I suppose this is a little improper to give his surprises. Tell us what was done and stated there.

Mr. STANBERY. Go on, general.

The WITNESS. I tried to get away from him, and he then said—he was a Delawarean—"The eyes of all Delaware are upon you, [laughter,] and they expect you to stand fast." I said: "Certainly I shall stand fast," and I was about leaving, when he seized my hand again and asked me a second time the same question, saying he expected me to stand fast. Said I: "Certainly I will stand fast." I was smiling all the time. I got away from his hand a second

time, and he seized it again and drew me further in the room and asked the same question. I was a little amused, when I raised myself up on my toes in this way (standing on tiptoes) and said: "Why, don't you see I am standing firm?" Then he put this in my mouth: "When are you going to kick that fellow out," or something of that kind. "Oh," said I, "we will kick him out by and by."

Q. Are you certain the "kicking out" came from him?

A. Yes, sir—oh yes. [Laughter.] I want to say one thing. I did not intend any disrespect to Mr. Stanton at all. On the contrary, he has always treated me with kindness, and I would do nothing to treat him with disrespect.

Q. Had you ever any idea of kicking Mr. Stanton for any purpose?

A. No, sir.

Q. How came you to use the word at all?

A. It was put in my mouth.

Q. Did you say it seriously, or in a jocular way?

A. (Smilingly.) I was very glad to get away; I went out at once.

Cross-examined by Mr. Manager BUTLER:

Question. Did I understand you to say that there had been no unkind feelings between you and Mr. Stanton ever?

Answer. No, sir; I do not think there ever had been any unkind feeling.

Q. Or difference of opinion?

A. There was a difference of opinion, I suppose.

Q. Did you not believe that he sent you away from the office of Adjutant General in order to have General Townsend carry on that office?

A. I do not.

Q. You do not so believe?

A. No, sir.

Q. You have not done anything in the Adjutant General's office as the head of that department for how many years up to the 13th of February last?

A. I was a short time absent, as I told you, on the James river, making exchanges with the rebel commissioner; but on my return I always went to my office. The first time, perhaps, that I was detached was, I think, on the 23d day of ——. I ought to have said I had gone three or four times up to Pennsylvania.

Mr. Manager BUTLER. Please answer my question. You ought to do that. Since what time, up to the 13th day of February, had you done anything in your office as Adjutant General of the army, not acting inspector general?

A. I was in the Adjutant General's office—I have got the date here, if you will let me refer to it——

Mr. STANBERY. Certainly, refer to your papers.

The WITNESS, (producing papers.) These are my original instructions to go down on the Mississippi river.

Mr. Manager BUTLER. I do not care for the precise date. Can you not tell me the month?

A. I would rather give you the precise date. I have it—the 25th day of March, 1863.

Q. From that time until the 13th of February, 1868, have you ever conducted the business of the Adjutant General's office?

A. The 14th was the date.

Q. Up to the 13th will do for me?

A No, sir.

Q. Have you always been sent upon outside inspecting duty?

A. Yes.

Q. Had you been recommended by Mr. Stanton to be retired?

A. That I cannot say. I was recommended by General Grant to be retired, and that communication went to Mr. Stanton, and Mr. Stanton took it to the President, as I understood. What he said to the President I do not know.

Q. The President overruled General Grant's recommendation for your retiracy?

A. The President did not set me aside.

Q. He overruled that recommendation, did he not? He did not have you retired in pursuance of that recommendation, did he?

A. He did not.

Q. Did you ever ask Mr. Stanton to restore you to office?

A. No; I did not.

Q. If there was a kindly feeling with him all the time he was a friend of yours, and you would not harm a hair of his head, certainly not kick him, why did you not ask him?

A. I knew perfectly well that the services, especially this one that I referred to, were very important, and I knew he said himself that I was the only one who could do the work, and therefore he sent me.

Q. But while you knew the service you were sent on was so important, and you were the only man to do it, you did ask Johnson, and why did you not ask Stanton to restore you?

A. I did not suppose he wanted me in the office, though there was no unkind feeling.

Q. Only he did not want you there?

A. I do not suppose he did.

Q. It was perfectly kindly, except that he did not want you about?

A. I suppose so. I was in the habit of going to his office whenever I was here; I did it many a time, and he has asked me to do certain things in his office there.

Mr. Manager BUTLER. You have answered all. Now, General Thomas, when did you first receive the intimation from the President that you were to be made Secretary of War?

A. The President sent for me on the 18th of February.

Q. Three days before you got the order, was it?

A. Yes, sir.

Q. Have you ever stated that you had an intimation that you would be appointed Secretary of War earlier than that?

A. I must now refer to a paper which I suppose you have. When I was asked before one of the committees when I first got an intimation I supposed they were referring to my going in the Adjutant General's office, but I never had an intimation before the 18th of February that the President had any idea of making me Secretary of War.

Q. Now, if you will pay attention to my question, General Thomas, and answer it, you will oblige me. My question was, whether you ever stated to anybody that you got such an intimation before that time?

A. Not to my knowledge, unless it was before that committee, as I tell you, the two things were mixed up.

Q. Did you not swear that before the committee?

A. I afterward made a correction on that paper.

Q. Excuse me; I did not ask you what corrections you made; I asked you what you swore to?

A. I swore that I had received an intimation, but I found that it was not so, and I had a right to correct my testimony.

Q. You were asked, then, before the committee, not the managers?

A. I am not speaking of the managers, but of the committee.

Q. You were asked before a committee of the House when you received the first intimation. How early did you swear that to be, whether it was by mistake or otherwise?

A. The intimation that I received that I would probably be put in the Adju-

tant General's office must have been made some two weeks before the occurrence, perhaps.

Q. I ask now, and I want you again to pay attention to my question——

A. I know your question.

Q. How early did you swear that you received an intimation that you would be made Secretary of War?

A. I should like to divide those two things. I told you that I corrected my evidence.

Q. I am dividing them; now I am getting to what you swore to first; by and by I will come to the correction, perhaps. I have divided them. Now answer my question. What did you swear to first before you took advice?

Mr. STANBERY. "Took advice;" monstrous!

The WITNESS. I swore that I received an intimation—I think an intimation from Colonel Moore.

Q. I did not ask you who you received it from; I asked the time when.

A. I cannot tell the time; I do not know it.

Q. What time did you swear it was?

A. I say I do not know; I suppose two or three weeks; I cannot say.

Q. Did you receive it from Colonel Moore, the military secretary?

A. Receive what?

Q. The intimation that you were to be made Secretary of War?

A. No.

Q. Did you so testify?

A. I suppose not, because I tell you the two cases were in my mind. I think I have answered it distinctly enough. The honorable manager is trying to mix two things, when I am trying to separate them.

Q. Now, sir, did you not know or believe you were to be made Secretary of War before you received that order of the 21st of February?

A. No, sir.

Q. Did you not believe you were?

A. The 18th, I said.

Q. Now listen to the question and answer it. That will be better. I ask you if you did not know you were to be made Secretary of War before you received that order of the 21st—know or believe?

A. "Know" positive, no.

Q. Did you not believe you were to be?

A. I thought I would be, because it had been intimated to me.

Q. Intimated to you by the President himself?

A. Yes, sir.

Q. Did you tell him whether you would be glad to take the office?

A. I told him I would take it; I would obey his orders.

Q. What made you tell him that you would obey his orders?

A. Because he was my Commander-in-chief.

Q. Why was it necessary to tell him you would obey his orders?

A. I do not know that there was any particular necessity in it.

Q. Why should you say to him, when he asked you to be Secretary of War, that you would, and would obey his orders?

A. Certainly, as Secretary of War.

Q. Why did you feel it necessary in your own mind to say that you would obey his orders?

A. I do not know that it was particularly necessary.

Q. Why did you do it?

A. It was a very natural reply to make.

Q. Tell me any other time, when you were appointed to an office, that you told the appointing power you would obey the orders.

Mr. EVARTS. It does not appear he was appointed at any other time.

Mr. Manager BUTLER. Does it not? (To the witness.) Have you not been appointed Adjutant General?

A. Certainly; I am Adjutant General.

Q. At any other time, when you were appointed to office, tell me whom you told that you would obey the orders.

A. I do not know that I told any one. The other appointments I got in the ordinary course.

Q. Then this was an extraordinary appointment?

A. Certainly it was; I never had one of that kind before. [Laughter.]

Q. And so extraordinary that you thought it necessary to tell the President before you got it that if he would give it to you you would obey his orders?

A. I did not say any such thing.

Q. You did so tell him?

A. I did tell him so.

Q. And you thought it was proper so to tell him?

A. Certainly.

Q. What orders did you expect to receive that you found it necessary to tell him you would obey them?

A. I did not know that I was to expect to receive any particular order.

Q. Then, before you got the appointment you told him you would obey the order. This was on the 18th?

Q. Yes.

A. You got a note from Colonel Moore to go to the President's, you say, on the 21st?

A. Yes, sir.

Q. Were you sent for on the 18th?

A. Yes.

Q. Sent for by Colonel Moore?

A. Yes, sir.

Q. And you went up there?

A. Yes.

Q. And the President told you he thought of making you Secretary of War?

A. Yes.

Q. And you told him you would be very glad to be made Secretary of War, and would obey his orders?

A. I did not say I would be very glad.

Q. That you would accept it?

A. The President said that he thought of making me Secretary of War, but that he would consider of the matter.

Q. And you answered to that that you would accept it and obey his orders, did you?

A. The time that I said I would obey his orders was when I got the appointment.

Q. Oh! that was the time.

A. The other was an intimation from him.

Q. You said this about obeying his orders at the time you got the appointment?

A. Yes.

Q. What did you say on the 18th, when the President said he thought of making you Secretary of War?

A. He did not say positively he was going to make me so.

Q. He said he was considering it?

A. He said he was considering of it.

Q. What did you say then?

A. I do not recollect that I said anything in particular.

Q. Anything in general—anything at all?
A. I do not know that I did.
Q. You neither thanked him, nor intimated in any form that you would or would not take it?
A. No.
Q. Then you want to take it back now?
A. I do not want to take back anything I have said.
Q. Do you not? I understood you to say that you told him on the 18th you would obey his orders?
A. I meant to say on the 21st, when he gave me the appointment.
Q. Therefore, you want to take it back as to the 18th?
A. Certainly.
Q. Then you do want to take back anything?
Mr. EVARTS. He has already corrected it in stating that you misunderstood him.
Mr. Manager BUTLER. If he did, then he stated what was not correct, for I did not misunderstand him.
Mr. EVARTS. He has already made that correction, but you misunderstood him.
Mr. Manager BUTLER. I was competent to hear the correction he made. I am perfectly competent to hear it without any assistance. (To the witness.) Now, General Thomas, on the 21st again you were sent for?
A. Yes.
Q. Between the 18th and 21st did you go to your friend Stanton and tell him that you thought of taking his place?
A. No, sir.
Q. Were you in the War Office?
A. I was there generally every day.
Q. On the 21st you were sent for again by Colonel Moore, were you not?
A. Yes, sir.
Q. By a note?
A. A note.
Q. He came in person?
A. A note.
Q. Have you that note?
A. I do not know whether I have or not. I gave one note to the counsel. One I mislaid.
Q. Do you think Mr. Stanbery has got it?
A. I think he took one of them.
Mr. Manager BUTLER. We will pass that while the gentlemen are hunting it up.
Mr. EVARTS. We have none of the 21st.
The WITNESS. Then I have mislaid it.

By Mr. Manager BUTLER:

Q. You got a note to go to the President's?
A. I got a note to go to the President's.
Q. Did you know for what purpose?
A. I did not.
Q. Did you suspect?
A. I had no suspicion at all.
Q. Did you not have some belief of what you were going there for?
A. I had not.
Q. And you went over?
A. I went over, of course.
Q. You went into the President's room, and he was coming out of the library, you say?

A. I went into the council room, and he came out of the library with Colonel Moore.

Q. Fetching two papers ready written?

A. Yes, sir.

Q. Now, please state to me exactly, in order, what was first said and what was next said by each of you. The President is coming out with two papers in his hand; what next?

A. I think the first thing he did was to hand them to Colonel Moore and tell him to read them.

Q. What next? They were read then?

A. They were read and handed to me.

Q. What then?

A. He said, "I shall uphold the Constitution and the laws, and I expect you to do the same." I said certainly I would do it, and I would obey his orders; that is the time I used that expression.

Q. Let me see if I have got it exactly. He came out with the two papers; handed them to Colonel Moore; Colonel Moore read them. He then said, "I am going to uphold the Constitution and the laws, and I want you to do the same;" and you said, "I will, and I will obey your orders?"

A. I did.

Q. Why did you put in you would obey his orders just then?

A. I suppose it was very natural, speaking to my commander-in-chief.

Q. What next was said then?

A. He told me to go over to Mr. Stanton and deliver the paper addressed to him.

Q. Which you did so?

A. I did.

Q. In the manner you have told us?

A. Yes, sir.

Q. At this first interview before you left the building Mr. Stanton gave you the letter which you have put in here, did he?

A. After I delivered him the second one, the one to me, dated the 21st instant.

Q. Before you left the building he gave you that paper?

A. Yes, sir; that was when he was sitting in Schriver's room.

Q. Then you knew that he did not mean to give up the office?

A. I did.

Q. You so understood fully?

A. Certainly.

Q. You went back and reported that to the President, did you?

A. Yes, sir.

Q. Did you report to him that Stanton did not mean to give up that office?

A. I reported to him exactly what Stanton had said.

Q. Did he ask you what you thought about it, whether he was going to give it up or not?

A. He did not.

Q. Did you tell him what you thought about it?

A. I did not.

Q. You reported facts to him. You reported the same facts that had made an impression on your mind that Stanton was not going to give up the office?

Mr. EVARTS. You are assuming what facts he stated. You are assuming that he stated something.

Mr. Manager BUTLER. I beg pardon. I assume nothing. (To the witness.) I ask, did you report the same facts to the President which had made the impression on your mind that Stanton did not mean to give up the office?

A. I reported these facts—his conversation with me.

Q. Did you show him the letter?

A. I did not.
Q. Did you not tell him about the letter?
A. I did not.
Q. Why not?
A. I did not suppose that it was necessary.
Q. Here was a letter ordering you to——
Mr. STANBERY We object to your arguing it with the witness. Ask your question.
Mr. Manager BUTLER. Wait till the question is out, and if you have any objection state it. Do not interrupt me.
Mr. STANBERY. We object to argument now; that is all.
Mr. Manager BUTLER, (to the witness.) You had a letter which alleged on its face that your action was illegal, and which convinced you, as you say, with other facts——
Mr. STANBERY. Mr. Chief Justice, we ask that that question be reduced to writing.
Mr. Manager BUTLER. I shall never be able to reduce it to writing if you do not stop interrupting me. I will put the question now once more. (To the witness.) You had a letter from Mr. Stanton which, together with other facts that had happened, convinced you that Stanton meant not to give up the office. Now, sir, with that letter in your pocket, why did you not report it to your chief?
A. I did not suppose it was necessary. I reported the conversation that I had said I would give orders, and he said he would countermand them, and that he gave those orders to both General Schriver and General Townsend.
Q. Then did you tell the President that Mr. Stanton had given orders to Schriver and Townsend not to obey you?
A. I think I did.
Q. Have you any doubt about that in your own mind?
A. I do not think I have any doubt of that.
Q. After that I understand you to say he said, "Very well, go on and take possession of the office?"
A. He did so.
Q. Was anything more said?
A. I think not at that time.
Q. You went away?
A. Yes, sir.
Q. About what time in the day was this on the 21st?
A. I closed the office about 12 o'clock. I suppose I was absent at the President's a short time, for it took but a short time. I imagine it was about 1 o'clock.
Q. You mean you closed the office as Adjutant General, by your order as Adjutant General, about 12 o'clock?
A. Yes, sir; by order of the Secretary of War, at 12 o'clock.
Q. After that you went to the President and got your own order as Secretary of War?
A. Yes, sir.
Q. And after that you came down to Mr. Stanton and had a conversation with him, got a letter, and went back to the President's?
A. Yes, sir.
Q. What time in the afternoon was it when you went back to the President's?
A. I think I can call it to mind in this way: the time was noted when I had this conversation that Hon. Mr. Moorhead took down; I think it was ten minutes past——
Mr. Manager BUTLER. That was the next day.
The WITNESS. Oh! you are speaking of the 21st?

Q. Was Moorhead there on the 21st?
A. No, sir.
Q. I am speaking of the 21st.
A. I went down and had the copy made, and as soon as the clerk made it I certified it, and then I took it up, and then went to the President's.
Q. What time in the day was it? That is all I desire.
A. I suppose it must have been between 1 and 2 o'clock; perhaps nearer two than one.
Q. Did you see the President again that day?
A. Not after I paid this visit.
Q. Then after he told you to go and take possession of the office you did not see the President? Was it Mr. Wilkeson or Mr. Burleigh that you first told about taking possession of the office?
A. Wilkeson.
Q. Where was that?
A. I think it was in my own office first.
Q. About how long after you left the President's?
A. I am not certain whether it was before or after, as Wilkeson came there to see me.
Q. You do not know whether it was before or after that?
A. I do not recollect whether it was before I went over to the President's or after. I think it was before, however.
Q. You told Mr. Wilkeson, he tells us, that you meant to call on General Grant for a military force to take possession of the office?
A. Yes.
Q. Did you mean that when you told it, or was it merely rhodomontade?
A. I suppose I did not mean it, for it never entered my head to use force.
Q. You did not mean it?
A. No, sir.
Q. It was mere boast, brag?
A. Oh, yes.
Q. How was that? Speak as loud as you did when you began.
A. I suppose so.
Q. Very well, then. You saw Wilkeson that evening again, did you not, at Willard's Hotel?
A. I think I saw him there for a few moments.
Q. Did you again tell him you meant to use force to get into the office?
A. That I do not recollect. I stated it to him once, I know.
Q. Can you not tell whether you bragged to him again that evening?
A. I did not brag to him.
Q. Did you not tell him at Willard's that you meant to use force to get into that office?
A. Either at my office or Willard's, one of the two.
Q. You have already said you told it to him at your office?
A. I do not think I told it to him more than once.
Q. Suppose that he testifies that you told it at Willard's to him; was that brag then?
A. It would have been the same, yes.
Q. You saw Burleigh that evening?
A. At my own house.
Q. Did you tell him that you meant to use force?
A. I think the expression I used to him was that if I found my doors locked I would break them open.
Q. Did he not put the question to you in this form substantially: "What will you do if Stanton will not go out;" and did you not answer, "We will put him out?"

A. I dare say I did.
Q. Do you not know you did?
A. I dare say I did; I am not certain.
Q. Did he not then say, "But suppose the doors are barred;" and did you not then say, "I will batter them down," or "We will batter them down?"
A. Yes, sir.
Q. Was that brag?
A. No, sir. At that time I felt as if I would open the doors if they were locked against me.
Q. Then you had got over bragging at that time, had you?
A. I suppose so.
Q. Do you not know whether you had or not?
A. When I had this conversation with Mr. Burleigh I felt precisely as I said to him.
Q. At that time you really meant to go in and break down the door?
A. If it was locked, yes.
Q. And really meant to use force according as you said you would? You meant what you said, did you not?
A. I meant what I said.
Q. Do you mean to say that Mr. Burleigh has not properly put before the Senate what you did say?
A. I do not pretend to say so. He would recollect the conversation better than I.
Q. And whatever you said to him you meant in good, solemn earnest?
A. I suppose so.
Q. No rhodomontade there? You had got over playfulness with Wilkeson about writing to Grant entirely, had you not?
A. Yes; because I had got home and had time to think the matter over.
Q. And having got over the playful part of it, and thinking the matter over, you had come to the conclusion to use force; and having come to that conclusion, why did you not?
A. Because I reflected that it would not answer.
Q. Why not answer?
A. It would produce difficulty, and I did not want to bring it on.
Q. What kind of difficulty?
A. I supposed bloodshed.
Q. And what else?
A. Nothing else.
Q. Then by difficulty you mean bloodshed, do you say?
A. If I had used force I suppose I would have been resisted with force, and blood might have been shed. That is my answer.
Q. What time did you leave Burleigh or did Burleigh leave you?
A. It was after night when he came; the visit was a very short one.
Q. About what time did he leave?
A. I do not recollect exactly; eight or nine o'clock, I suppose.
Q. Immediately after he left did you go to a masquerade ball?
A. Yes, sir.
Q. How late did you stay?
A. I stayed until about the time of—I suppose it was toward midnight.
Q. After?
A. I cannot be positive of that. About midnight, I presume.
Q. How soon was it after Burleigh left before you left for the ball?
A. I think it was about nine o'clock or along about half past nine or somewhere there. It was after Burleigh left.
Q. Did you see anybody but your own family between the time Burleigh left and the time you started for the ball?

A. Yes.
Q. Who?
A. A little girl living next door, who was going with my daughter to the masquerade ball.
Q. A young lady?
A. Yes, sir.
Q. You did not discuss this matter with her, I take it?
A. I did not.
Q. Did you discuss it with anybody after you left Burleigh or Burleigh left you until you got to the ball?
A. I did not. I saw no person to discuss it with.
Q. And you did not discuss it at the ball?
A. I did not.
Q. And a masquerade ball—I do not know, but I put it interrogatively—is not a good place for contemplation of high ministerial official duties, is it?
A. No, it is not.
Q. You did not contemplate your official duties there, did you?
A. I went there, I say, to take charge of two little girls. That was all.
Q. And to throw off care, as we all have a right to do?
A. No, sir; I did not go with any such purpose. I had promised them some days before.
Q. You went with them?
A. I went with them to take charge of them. I went in my present dress. [The uniform of a major general.]
Q. And when you came home you went to bed immediately?
A. I did.
Q. How early in the morning—how long had you been up before this marshal came?
A. I generally rise about seven, unless when I go to market. I get up earlier then.
Q. How early did you get up this morning, having been out a little late the night before?
A. I got up at seven o'clock; that is my usual hour.
Q. Did the marshal come immediately?
A. The marshal came there about eight o'clock.
Q. Before you could get any breakfast?
A. Before I had my breakfast.
Q. Did you consult anybody on this question between the time of getting up and the time the marshal came?
A. I did not.
Q. Now, sir, before this the last you said to anybody on this question was that you told Burleigh in solemn earnest you were going to use force, and then, almost immediately, you went to a ball; from the ball you came home and went to bed; got up, and saw nobody until the marshal came. When did you change your mind from this solemn determination to use force, although it might bring on bloodshed?
A. I changed it after I had made use of this to Burleigh, undoubtedly.
Q. I know you did, after. When?
A. I suppose very soon.
Q. I did not ask you what your supposition is. I asked you when you changed your mind?
A. I do not know.
Q. When do you first remember having changed your mind?
A. I do not know.
Q. What is the first remembrance that you have of a different purpose?
A. I do not know. You are asking now as to a point of time.

Q. No; I am asking no point of time. You have now a different purpose in your mind, have you not, from what you told Burleigh?

A. I have.

Q. You must have obtained that purpose some time. When did you change the purpose? The first time, you remember, you had a different purpose.

A. I certainly changed it before I was arrested, and that was at 8 o'clock on the morning of the 22d.

Q. How do you fix that so certainly?

A. Because on the 22d I had determined not to do so.

Q. What time on the 22d?

A. Before I was arrested, undoubtedly.

Q. Why "undoubtedly?"

A. I may have thought it over in bed before I got up.

Q. Will you swear that you did, and that you changed your purpose then?

A. I cannot tell the precise moment when I changed my purpose.

Q. Did you not tell Mr. Burleigh that the reason why you did not carry out your purpose was the cause of your arrest?

A. I did not.

Q. Did you tell him anything to that effect?

A. No.

Q. Had you any conversation on that subject with him?

A. I did not see Dr. Burleigh after that, I do not think.

Q. He testified that within a week of the time he was on the stand you told him that the reason why you did not carry out the purpose which you had told him you would of using force was that you were arrested.

A. He must have misunderstood me, then, because the arrest had nothing to do with it.

Q. And you did not tell him that?

A. I think not.

Q. Do you know not?

A. I will not say I know not; but I am pretty certain I did not.

Q. What makes you certain you did not tell him so?

A. Because I had made up my mind not to use force at all.

Q. Were you not asked by the board of managers, on the 13th of March, after having heard Burleigh's testimony read, whether it was not true, and did you not say it was all true?

A. Yes, sir; I did. I said that both his and Wilkeson's was true, because what they testified to I said I had no doubt was the fact.

Q. Now, why do you say Burleigh's testimony is not true when he says that you told him that the arrest was the cause of your change?

A. That I do not think I told him.

Q. And the only reason you have for thinking you did not tell him is that you think you must have come to the conclusion before you were arrested?

A. I did, certainly.

Q. But you cannot tell us when you did come to that conclusion from any act of memory of yours?

A. Not the particular moment.

Mr. MORRILL, of Maine. If the parties are willing to pause here, as it is now 5 o'clock——

Several SENATORS. Get through with this witness.

Mr. MORRILL, of Maine. I would move an adjournment, not otherwise.

Mr. Manager BUTLER. We shall be wholly under the direction of the Senate. We have no objection on our part.

The CHIEF JUSTICE. The Senator from Maine moves——

Mr. MORRILL, of Maine. I do not make the motion unless it suits the convenience of parties.

Mr. Manager BUTLER. I will go on. (To the witness.) Now, then, General Thomas, when you came to the solemn conclusion to use force after solemnly thinking of the matter, did you believe in your own mind you were carrying out the President's orders?

A. No; quite the reverse

Q. Then when you came to that conclusion you believed you were going to do it against his orders, did you?

A. Not in accordance with them, certainly.

Q. Then, although you had told him the day before that you would obey his orders, you came to a determination to do quite the reverse, did you?

Mr. STANBERY. He has not said that.

Mr. Manager BUTLER. I am asking him if he did.

The WITNESS. Repeat that question.

By Mr. Manager BUTLER:

Q. You say that you came to the solemn determination to use force, and you meant to do it, quite in reverse of the President's orders?

A. I said no such thing.

Q. Hear the question. The day before, when you received your appointment, you told him you would obey his orders?

A. I did.

Q. The first act that you came to a solemn conclusion about was that you proposed to act the very reverse of his orders?

A. I did not say that was in reverse of his orders. I said that was my idea; if I was resisted I could resist in turn.

Q. Did you mean to do that act in obedience to the President's orders or against them?

A. Not in obedience to the President's orders, for he gave me no orders.

Q. You mean to say that you had come to a solemn resolution on your own responsibility to initiate bloodshed?

A. I said that I would, if I found the doors locked, break them down, and I afterward said that when I came to think of the matter I found that a difficulty might occur, and I would not be the means of bringing about bloodshed. That is what I say.

Q. Did you think you were justified in doing what you came to the conclusion to do by the President's order?

A. I would have been justified as my own act.

Q. Did you believe you were so justified by the President's order?

A. No; not by the President's order—by the appointment which he gave me, yes.

Q. The appointment he gave you?

A. I had a right then to go and take possession of that office.

Q. By force?

A. In any way I pleased.

Q. At your pleasure, by force. Now, did you ever ask the President what you should do?

A. I did not.

Q. Did you not ever suggest to him that Stanton would resist?

A. I reported to him from day to day that every time I asked him he refused.

Q. Anything but the refusal?

A. The refusal was the only thing.

Q. Did you ever suggest to him that Stanton would resist?

A. Resist by force?

Q. Yes, sir.

A. No; I said he refused.

Q. Did you not understand in your own mind that he would so resist?
A. I did not know what means he would take.
Q. I did not ask what you knew. Did you not in your own mind believe he would resist?
A. Yes.
Q. Had you any doubt of it?
A. I had not.
Q. Did you not know that, if you got in at all, you must get in by force?
A. Yes.
Q. Did you ever report to the President, your superior, that you came to the conclusion that you could not get in, if you got in at all, except by force?
A. I said no such thing to him.
Q. Why did you not report to him the conclusion you came to?
A. I did not think it necessary at all.
Q. You reported to him every time Stanton refused?
A. Yes.
Q. But you did not think it necessary to report to him that you could not get the office without resistance?
A. No.
Q. And you never asked his advice what you should do?
A. No.
Q. Nor for his command?
A. No.
Q. Nor orders in any way?
A. No. He merely told me to go on and take possession of the office, without stating how I was to do it.
Q. And how many times over did he keep telling you that as you reported to him?
A. I think I had three interviews with Mr. Stanton.
Q. One Friday?
A. One Saturday, one Monday, and one Tuesday; I think four. Saturday was the time I made the demand.
Q. Each time when you made the demand on Mr. Stanton he refused?
A. Yes, sir.
Q. Each time you reported it to the President?
A. Yes, sir.
Q. During all the time you were certain he would not give up except by force?
A. I was certain he would not give up; he was going to keep it.
Q. And, thinking it important to report each time his refusal, you never asked the President how you should get possession of the office?
A. I never did.
Q. Nor never suggested to him that you could not get it except by force?
A. I suggested to him that the true plan would be, in order to get possession of the papers, to call upon General Grant——
Q. Leave the papers—the office I am talking about.
A. The papers are the thing. You cannot carry on an office unless you have what is inside of it.
Q. I did not ask how you can carry on an office. I ask if you ever reported to him anything more than Mr. Stanton's refusal?
A. I never did.
Q. You never asked how you were to get possession of the building?
A. No.
Q. Now, let me come to the matter of papers. Did you afterward hit upon a scheme by which you might get possession of the papers without getting possession of the building?
A. Yes, sir

Q. And that was by getting an order of General Grant?
A. Yes——
Mr. Evarts. He has not stated what it was.

By Mr. Manager Butler:

Q. Did you write such an order?
A. I wrote the draft of a letter; yes, and gave it to the President.
Q. Did you sign it?
A. I signed it.
Q. And left it with the President for his——
A. For his consideration.
Q. When was that?
A. The letter is dated the 10th of March.
Q. That was the morning after you told Karsner you were going to kick him out?
A. That was the morning after.
Q. And you carried that letter?
A. I had spoken to the President before about that matter.
Q. You did not think any bloodshed would come of that letter?
A. None at all.
Q. And the letter was to be issued as your order?
A. Yes.
Q. And before you issued that order, took that way to get hold of the mails or papers, you thought it necessary to consult the President?
A. I gave that to him for his consideration.
Q. You did think it necessary to consult the President, did you not?
A. I had consulted him before.
Q. Either before or after you thought it necessary?
A. It was merely carrying out that consultation.
Q. When you thought of getting possession of the mails and papers through an order as Secretary of War you thought it necessary to consult the President; but you did not think any bloodshed would come from that, did you?
A. No, I did not; it was a peaceable mode.
Q. When you were about taking a peaceable mode in issuing your order you consulted him? When you had come to the conclusion to run the risk of bloodshed you did not consult him? Is that so?
A. I did not consult him.
Q. Did the President ever give at any of these times any other answer than "Go on and get possession?"
A. No; not in reference to the office.
Q. Did he ever chide you in any way for any means that you were employing?
A. Never.
Q. Did he ever find fault that you were doing it differently from what you ought to do?
A. No.
Q. Did he ever remark to you in any way about declarations of force until after these impeachment proceedings began?
A. No.
Q. They were published and notorious, were they not? Have you acted as Secretary of War *ad interim* since?
A. I have given no order whatever.
Q. That may not be all the action of a Secretary of War *ad interim*. Have you acted as Secretary of War *ad interim?*
A. I have, in other respects
Q. What other respects?

A. I have attended the councils.
Q. Cabinet meetings, you mean?
A. Cabinet meetings.
Q. Have you been recognized as Secretary of War *ad interim?*
A. I have been.
Q. Continually?
A. Continually.
Q. By the President and the other members of the cabinet?
A. Yes, sir.
Q. Down to the present hour?
A. Down to the present hour.
Q. All your action as Secretary of War *ad interim* has been confined, has it not, to attending cabinet meetings?
A. It has. I have given no order whatever.
Q. Have you given any advice to the President? You being one of his constitutional advisers, have you given him advice as to the duties of his office, or the duties of yours?
A. The ordinary conversation that takes place at meetings of that kind. I do not know that I gave him any particular advice.
Q. Did he ever call you in?
A. He has asked me if I had any business to lay before him several times.
Q. You never had any?
A. I never had any except the case of the note I proposed sending to General Grant.
Q. I want to inquire a little further about that. He did not agree to send that notice, did he?
A. When I first spoke to him about it I told him what the mode of getting possession of the papers was, to write a note to General Grant to issue an order calling upon the heads of bureaus, as they were military men, to send to me communications designed either for the President or the Secretary of War. That was one mode.
Q. What was the other mode you suggested?
A. The other mode would be to require the mails to be delivered from the city post office.
Q. And he told you to draw the order?
A. No; he did not.
Q. But you did?
A. I did it of myself, after having this talk.
Q. Did he agree to that suggestion of yours?
A. He said he would take it and put it on his own desk. He would think about it.
Q. When was that?
A. On the 10th.
Q. Has it been lying there ever since, as far as you know?
A. It has been.
Q. He has been considering ever since on that subject?
A. I do not know what he has been doing.
Q. Has he ever spoken to you or you to him about that order since?
A. Yes.
Q. When?
A. I may have mentioned it one day at the council, and he said we had better let the matter rest until after the impeachment. I think that was it.
Q. Until the impeachment trial was over? So it is resting there awaiting this trial, as you understand?
A. Yes, sir.
Q. Not to be brought up till then?

A. I so understand.

Q. With the exception of that, attending those meetings has been your entire business as Secretary *ad interim?*

A. Yes, sir.

Q. Now, has he ever asked you to know where the troops were about Washington?

A. He never did.

Q. Or whether there had been any changes of troops?

A. He never did.

Q. You tell us you attended a masquerade ball that night. Did you keep the President advised of where you were?

A. I did not.

Q. Did you tell Colonel Moore where you were?

A. I did not.

Q. Did you tell him where you were going?

A. I think not—no.

Q. You are pretty sure about that?

A. He might have known I was going to the masquerade ball. I had procured tickets for my children some days before.

Q. Did the President in any of the interviews with you, his cabinet counsellor, his constitutional adviser, ever suggest to you that he had not removed Mr. Stanton?

A. Never. He always said that Mr. Stanton was out of office; he took that ground at once.

Q. Were you not somewhat surprised when you heard Mr. Curtis say here yesterday that he was not removed?

A. I do not know anything about that.

Q. Did he ever tell you that you were not appointed?

A. No.

Q. Have you not always known you were appointed?

A. Yes.

Q. Has he not over and over again told you you were appointed?

A. No; not over and over again.

Q. But two or three times?

A. I do not know that it has come up at all. He may have done it two or three times.

Q. He never suggested to you from the day he gave you that paper, when he was going to support the Constitution and the laws, down to to-day, he never intimated to you that you were not appointed regularly as Secretary of War, did he?

A. No.

Q. And that he had not appointed you?

A. No.

Q. Nor none of the cabinet, his constitutional advisers, say, "You are not appointed, general; you are only here by sufferance?" None of them ever said that, did they?

A. None of them ever said that to me.

Q. Tell us, if you can, what you meant when you told the President you were going to uphold the Constitution and the laws?

A. Why, to be governed by the Constitution and the laws made in pursuance thereof, of course.

Q. You were going to be governed by the Constitution and the laws made in pursuance thereof. Did you include in that the tenure-of-office bill?

A. Yes, sir; so far as it applied to me.

Q. You were going to uphold the Constitution and that particular law; you had that in your mind at the time, had you not?

A. Not particularly in my mind at the time.
Q. You did not make any exception of that?
A. No; I made no exception; you have got my language.
Q. Has not the President given you directions about other things than taking possession of the War Office?
A. He has told me on several occasions what he wanted. He wanted to get some nominations sent up here. They were on the Secretary's table, on Mr. Stanton's table.
Q. And he could not get them?
A. He did not get them.
Q. Well, he could not?
A. I do not say that.
Q. What did he tell you, whether he could or could not get them?
A. I do not know whether he could or could not. I could not get them.
Q. And he could not, as far as you know?
A. I do not know that he could not.
Q. And he complained to you?
A. He did not complain to me, but he said that cases were lying over, and some of them military cases, that ought to be disposed of. I mentioned it to Mr. Stanton twice that the President wanted those nominations, and he said he would see to it. This was while I was acting as Adjutant General, not as Secretary of War.

By Mr. STANBERY:

Q. Did he send them to the President?
A. He did not, to my knowledge.

By Mr. Manager BUTLER:

Q. Now, at any other of these times, when he has given you directions, has he ever told you he was going to uphold the Constitution and the laws?
A. No; I think not.
Q. Did he ever tell you he was going to uphold the Constitution and the laws?
A. That is the only time that conversation occurred between us.
Q. Can you give any reason why both of you should come to the conclusion that the Constitution and the laws wanted upholding about that time?
A. No.
Q. What had happened to the Constitution and the laws, or was about to happen, that required you both to uphold them?
A. I do not know that anything was about to happen.
Q. Well, what had happened?
A. Nothing had happened.
Q. Why did he so solemnly tell you there, upon this occasion, that he was going to uphold the Constitution and laws, and why did you say, "I will uphold the Constitution and laws?"
A. Why, it was the most natural thing in the world. He made the remark to me.
Q. Now, about Mr. Karsner, and I will not trouble you much further. Were you examined before the managers about Mr. Karsner's testimony?
A. It was read to me there.
Q. As taken down from his lips?
A I suppose so.
Q. Was it not substantially almost exactly as he gave it here?
A. I do not know how he gave it here exactly.
Q. Did not you hear him?
A. There was one point in it I did not agree to.
Q. Did you hear him give it here?
A. Partially. I could not hear all where I was sitting.

Q. As it was read over to you there, were you not asked in Karsner's presence if there was anything that he said that was not true?

A. The question was asked me and I answered yes.

Q. What did you say it was he said that was not true?

A. I think he testified here——

Q No; there?

A. I do not know there. I am speaking now of a portion of the testimony here.

Q. You told me you did not hear here, and therefore I confine my question to what occurred before the managers. Keep your mind, if you can, to the time when you were before the managers. Did you not sit down before the managers and there have Mr. Karsner's testimony read over to you in his presence?

A. It was read over, but not at my instance at all. It was read to me, and I was asked if it was correct, and I said "Yes."

Q. You were asked if it were correct and you said "Yes." Did you object that any single word was not correct?

A. I did not object to any word. I objected to his manner.

Q. How could you see his manner on paper?

A. You asked him to get up and show it.

Q. Then, after you got there, when that was read over to you, did you say, "I did not say 'kicking;' Karsner said 'kicking' to me." Did you say that?

A. No; I did not.

Q. Then did you not say, when asked for any explanation, that it was playful; was not that the only explanation you gave?

A. I said it was playful on my part.

Q. Was not that the only explanation you gave before the managers?

A. I do not recollect; I suppose it was, though.

Q. Was not Mr. Karsner then called up and asked whether it appeared playful to him?

A. Yes; he was.

Q. And did not he testify to you that it was not playful at all, but that you seemed to be very earnest?

A. Yes; he did.

Q. And did he not illustrate your earnestness by the way you brought yourself down?

A. That is one point where I say he was mistaken. He applied that to the time I said we would kick him out. He applied it to that, which was not the case. It was the third time he asked me to stand firm; then I straightened myself up in that way.

Q. And you think he applied it to the time you were to kick him out?

A. Yes, sir.

Q. Did you object then that you yourself did not use the words "Kick him out?"

A. No; I did not. I said it was in answer to a question from him. I have had time to think that matter over after I was called up there, and I have gone over the whole in my own mind after I got home.

Q. That was the 13th of March you were asked before us, was it not?

Mr. EVARTS. Allow me to ask if you will allow us to have a copy of the testimony to which you are now referring—Mr. Karsner's testimony before the managers.

Mr. Manager BUTLER. With great pleasure. I gave it to Mr. Stanbery when Mr. Karsner was here.

Mr. SHERMAN. I was about to make a motion to adjourn.

Mr. Manager BUTLER. I am about through. I will be through in a minute. (To the witness.) Upon your reinstatement in office as Adjutant General did you address the clerks?

A. I did make a short address to each section of them. I sent for the officers in charge and told them I would like to see the clerks.

Q. Was that within three days of the time you were appointed Secretary of War *ad interim?*

A. It was between the time I was reinstated as Adjutant General and the time I was appointed Secretary of War; I do not recollect what particular day.

Mr. Manager BUTLER, (to the counsel for the respondent.) The witness is yours, gentlemen.

Mr. STANBERY. We will ask some questions.

Mr. HENDERSON. Mr. President, I move that the Senate sitting as a court do now adjourn.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned.

SATURDAY, *April* 11, 1868.

The Chief Justice of the United States entered the Senate chamber at 12 o'clock and five minutes p. m., and took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives appeared and took the seats assigned them.

The counsel for the respondent also appeared and took their seats.

The presence of the House of Representatives was next announced, and the members of the House, as in Committee of the Whole, headed by Mr. E. B. Washburne, the chairman of that committee, and accompanied by the Speaker and clerk, entered the Senate chamber and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the minutes of the last day's proceedings.

The Secretary read the journal of yesterday's proceedings of the Senate sitting for the trial of the impeachment.

The CHIEF JUSTICE. Gentlemen of counsel for the President, you will proceed with your evidence.

Mr. Manager BINGHAM. Mr. President, before the counsel for the accused proceed, I desire to say that the managers wish to move the Senate for such change of rule twenty-one of the proceedings in this trial as will allow the managers and the counsel for the President to be heard on the final argument, subject to the provision of the rule as it stands that the argument shall be opened and closed by the managers on the part of the House.

Mr. SHERMAN. I should like to have the proposition repeated. I could not hear it distinctly.

The CHIEF JUSTICE. The honorable manager will please reduce his proposition to writing.

Mr. Manager BINGHAM. I will. [After writing the proposition.] Mr. President, I desire to read the motion as reduced to writing.

Mr. CONKLING. I beg to state that the voice of the manager is entirely inaudible here.

Mr. Manager BINGHAM. "The managers move the Senate to so amend rule twenty-one as to allow such of the managers as desire to be heard, and also such of the counsel for the President as desire to be heard, to speak on the final argument, subject to the provision of the rule that the final argument shall be opened and closed by the managers on the part of the House."

The CHIEF JUSTICE. Senators, it is moved by the managers on the part of the House of Representatives, that the twenty-first rule be so modified as to allow as many on the part of the managers and as many on the part of the

counsel for the President to be heard as may see fit to address the Senate in the final argument.

Mr. POMEROY. Mr. President, as that is in the nature of a resolution, under our general rule it should lie over one day for consideration.

The CHIEF JUSTICE. The Chief Justice was about to observe that the proposition required some answer on the part of the Senate, and that it would be proper for some senator to make a motion in respect to it.

Mr. BUCKALEW. I move that the resolution be laid over for consideration until to-morrow.

The CHIEF JUSTICE. It goes over, of course, if there be objection.

Mr. EDMUNDS. I would inquire of the Chair whether the twenty-first rule does not now provide by its terms that this privilege may be extended to the managers and the counsel if the Senate so order; and I would therefore inquire whether any amendment of the rule be necessary if the Senate should desire to extend that privilege?

The CHIEF JUSTICE. Certainly not. It is competent for any senator to move such an order; but the Chair has yet heard no motion to that effect.

Mr. FRELINGHUYSEN. Mr. President, I make the motion that the order be adopted. It of course is not necessary that it should lie over, as it is provided for in the rule that this order may be adopted.

Mr. POMEROY. I have no objection to taking the vote now, if it is desired. I do not care to have it lie over to another day.

The CHIEF JUSTICE. The senator from New Jersey will please reduce his order to writing.

Mr. SHERMAN. If it is in order I will move that the twenty-first rule be relaxed so as to allow three persons on each side to speak under the rule, instead of two.

The CHIEF JUSTICE. That motion will be in order as an amendment to the order proposed by the senator from New Jersey.

Mr. SHERMAN. I withdraw it for the present to allow the vote to be taken on that.

The order proposed by Mr. Frelinghuysen having been reduced to writing and sent to the desk—

The CHIEF JUSTICE. The Secretary will read the order proposed by the senator from New Jersey.

The Secretary read as follows:

Ordered, That as many of the managers and of the counsel for the respondent be permitted to speak on the final argument as shall choose to do so.

The CHIEF JUSTICE. That order will be considered now, unless objected to.

Mr. HOWARD. Mr. President, I hope that order will be laid over until the next day's session.

The CHIEF JUSTICE. If objected to, it will lie over.

Mr. HOWARD. I object.

Mr. TRUMBULL. An objection does not carry it over, does it?

The CHIEF JUSTICE. The Chair thinks it does.

Mr. TRUMBULL. It does not change the rule. The rule provides for this very thing being done, if the Senate choose to allow it.

Mr. CONKLING. Mr. President, may I inquire under what rule of the Senate thus organized it is that this motion lies over upon the objection of a single senator?

The CHIEF JUSTICE. The Chief Justice, in conducting the business of the court, adopts for his general guidance the rules of the Senate sitting in legislative session as far as they are applicable. That is the ground of his decision.

Mr. CONKLING. The reason for my inquiry was this: the very rule we are discussing provides that a certain thing shall happen "unless otherwise ordered:" and I supposed a motion otherwise to order was always in order.

The CHIEF JUSTICE. It is competent for the senator from New York to appeal from the decision of the Chief Justice.

Mr. CONKLING. Oh, no, sir; I merely made the point by way of suggestion to the Chair.

Mr. JOHNSON. Mr. Chief Justice, I appeal to the honorable member from Michigan to withdraw——

The CHIEF JUSTICE. No debate is in order.

Mr. JOHNSON. I am not about to debate it, sir. If they are to have an opportunity of addressing the Senate they ought at once to know it on both sides.

The CHIEF JUSTICE. Gentlemen of counsel for the President, you will please to proceed with the defence.

LORENZO THOMAS—examination continued:

Mr. STANBERY. General Thomas wishes to make some explanatory statements.

The WITNESS. I wish to correct my testimony yesterday in one or two particulars. I read a letter signed by Mr. Stanton addressed to me on the 21st of February. The date misled me; I did not receive a copy of that letter until the next day after I had made the demand for the office. The Secretary came in and handed me the original, and my impression is that I noted on that original its receipt. It was then handed to General Townsend, who made the copy that I read here, and handed it to me. I had it not until after the demand on the 22d of February.

By Mr. STANBERY:

Q. Then when you saw the President, on the afternoon of the 21st, you had not yet received that letter from Mr. Stanton?

A. I had not.

Q. You then stood upon the interview which you referred to?

A. I did. The next correction I want to make is that I am made to say here that the President told me "to take possession of the office." His expression was "take charge of the office."

Q. Are you certain that that was his expression?

A Positive. I was asked if I could give the date of my brevet commission. I do not know whether it is important or not, but I have it here.

Q. What is the date?

A. The brevet of major general 13th of March, 1865.

Q. Upon whose recommendation was that? Who first suggested it?

A. Mr. Stanton gave it to me.

Q. Did you ask him for it or did he volunteer it?

Mr. Manager BUTLER. That is not in the nature of correction or of explanation.

Mr. STANBERY. He could not get it yesterday. It was an omitted fact, and he passed it until he could get his commission.

Mr. Manager BUTLER. Very good.

By Mr STANBERY:

Q. How was it; asked for or voluntarily tendered?

A. He had more than once said he intended to give it to me, and on this occasion, when I came from some important duty, I said that the time had arrived when I ought to have this commission. He said "certainly," and gave it to me at once. I do not think he ever intended to withhold it.

There is another point I want to state. When I was before the committee, or the honorable managers, General Butler asked the clerk, I think it was, for the testimony of Dr. Burleigh. He said he had it not; that it was at his home. I do not know whether I said or he said, "It makes no difference." He asked me a number of questions in reference to that. I assented to them all. I never heard that testimony read.

Q. You never heard Dr. Burleigh's testimony read?

A. No, sir; nor do I recollect the particular questions, except that they were asked me, and I assented. I said that Dr. Burleigh, no doubt, would recollect the conversation better than I.

By Mr. Manager BUTLER:

Q. General Thomas, how many times yesterday did you answer that the President told you each time to "take possession of the office?"

A. I have not read over my testimony particularly. I do not know how many times.

Q. Was that untrue each time you said it?

A. If I said so, it was. "Take charge" were the words of the President.

Q. Have you any memorandum by which you can correct that expression? If so, produce it.

A. I have no memorandum with me here; I do not know that I have any.

Q. Have you looked at one since you were on the stand?

A. I have not.

Q. How can you tell better to-day than you could yesterday?

A. Because I read that evidence as recorded.

Q. You gave it yesterday yourself?

A. I did.

Q. And you could know better what it was by reading it than when you testified to it?

A. Yes, sir.

Q. And you are sure the word was "charge" each time?

A. "Take charge of."

Q. And then the three times when you reported to him that Stanton would not go out, refused to go out, each time he said, "Take charge of the office?"

A. He did.

Q. Was your attention called at the time he said that to the difference between taking "charge" of the office and taking "possession" of it?

A. My attention was not called to it.

Q. How, then, do you so carefully make that distinction now in your mind?

A. Because I know that that was his expression. I have thought the matter over.

Q. You have always known that that was his expression, have you not?

A. Yes.

Q. And you have thought the matter over?

A. Yes.

Q. Well, then, how could you make such a mistake yesterday?

A. I think the words were put into my mouth. I do not recollect distinctly.

Q. The same as Karsner put in about the "kicking out?"

A. Yes.

Q. And you are rather in the habit, are you, when words are put into your mouth, of using them?

A. I am not always in the habit.

Q. Why was yesterday an exception?

A. I do not know why it was an exception.

Q. I want to ask you another question on another subject which was omitted yesterday.

A. Certainly.

Q. After you and Karsner were summoned here as witnesses, did you go and quarrel with him?

A. I had some words with him in the room here adjoining.

Q. Did you call him a liar and a perjurer?

A. I did.

Q. You called him a liar and perjurer, did you?

A. I think I did both; I certainly did call him a liar.
Q. And a perjurer?
A. I think it is probable I did; but the "liar" I know.
Q. You knew that he and you both were in the witness-room waiting to be called?
A. I was here.
Q. And you knew he was here for that purpose?
A. I presume I did; yes.
Q. And while he was there you undertook to talk with him about his testimony?
A. I stated to him in the two instances; I will give them to you——
Q. Just answer my question, sir; I have not asked you what you said. I only ask you this question, whether you undertook to talk with him about his testimony?
A. I do not know who introduced the conversation. It was certainly not I, I do not think, for he was there some time before I spoke to him.
Q. Did you speak first or he?
A. That I do not recollect.
Q. Now, then, did you tell him that he was a liar and a perjurer at that time?
A. I did tell him he was a liar, and I may have said he was a perjurer.
Q. Did you offer violence to him?
A. I did not.
Q. Did you speak violently to him?
A. I did not, except in that way.
Q. Were you then in full uniform as now?
A. As I am now.
Q. There is another question I want to ask you which was omitted. Do you still intend to take charge or possession of the office of Secretary of War?
A. I do.
Q. Have you said to any person within a few days, "we'll have that fellow," meaning Stanton, "out, if it sinks the ship?"
A. Never.
Q. Did you say so to Mr. Johnson?
A. I did not.
Q. Anything to that effect?
A. Not that I have any recollection of.
Q. Do you know whether you did or not?
A. What Mr. Johnson do you mean?
Q. Mr. B. B. Johnson.
A. There was a Mr. Johnson came to see me at my house in reference to another matter, and we may have had some conversation about this.
Q. When was it that that Mr. Johnson came to your house to see you about another matter?
A. That I hardly recollect.
Q. About how long.
A. I am trying to recollect now. He came to me about the business——
Q. Never mind what his business was. When was it?
A. But I want to call it to mind. I have a right to do that, I think.
Q. But not to state it.
A. I took no note of the time, and I can hardly tell. It was recently, not very long ago.
Q. Within two or three days?
A. No, sir; before that time.
Q. Within a week?
A. I think it is more than a week.
Q. Let me give you the date—on Friday, a week ago yesterday?
A. I cannot give the date. I do not know it.

Q. Was it longer than that?
A. Well, I did not charge my memory with it. It was a familiar conversation we had.
Q. Were you joking then?
A. Certainly.
Q. Oh! joking?
A. Yes.
Q. Did you, jokingly or otherwise, say these words: "And we'll have Stanton out of there if we have to sink the ship?"
A. I have no recollection of making use of that expression.
Q. Did you make use of one equivalent to that in substance?
A. I have no recollection of it.
Q. Have you such a recollection of what you say as to know whether you did or not?
A. I have not. I would rather he would testify himself; he knows it better than I. I cannot recollect all the conversation I had.
Q. Do you deny that you said so?
A. I cannot deny it, because I do not know that I did.
Q. You say you would rather he would testify; and I will try to oblige you in that respect; but if you did say so, was it true or merely more brag?
A. You may call it as you please; brag, if you say so.
Q. I do not want to put words into your mouth; what do you call it?
A. I do not call it "brag."
Q. What was it?
A. It was a mere conversation, whatever it may have been.
Q. Did you mean what you said, or did you say what you did not mean?
A. I did not mean to use any violence against Mr. Stanton to get him out of office.
Q. What did you mean by the expression, "We'll have him out if it sinks the ship?"
A. I have said that I do not know that I used that expression.
Q. You have told me also that Mr. Johnson can tell better. I am assuming now you did say it?
Mr. EVARTS. That you have no right to do. Mr. Johnson has not said so yet.
Mr. Manager BUTLER. This witness does not say he did not say so.
Mr. EVARTS. That is another matter. You have not proved it yet.
The WITNESS. I cannot say. He was there on official business in reference to an officer dismissed from the army.
Q. Official business?
A. I mean business connected with an officer dismissed from the army.
Q. Then you were joking on the subject?
A. Certainly.
Q. Did you ever see Mr. Johnson before?
A. I have no recollection. It is possible I may have seen him
Q. Have you seen him since?
A. I have not to my knowledge.
Q. Now, here was a stranger who called on you on official business, business pertaining to your office?
A. No, sir.
Q. Official business about getting a man reinstated who had been dismissed?
A. Yes.
Q. Very good. He called upon you on business connected with the army?
A. That had nothing to do with my office.
Q. Now, did you go to joking with him, a total stranger, in this way?
A. I knew him as the lawyer employed by Colonel Belger to get him reinstated, and Colonel Belger sent him to me. Now you have got it.

Q. Was he a stranger to you?

A. I think he was.

Q. Now, then, being a stranger, having that fixed, will you answer, did you go to joking with this stranger on such a subject?

A. Certainly. We had quite a familiar talk when he was there. He sat with me for some time.

Q. And that is the only explanation you can give of that expression?

A. That is sufficient, I think.

Q. Whether it is sufficient or not somebody else will judge; is it the only one you can give?

A. It is the only one I do give.

Q. And it is the only one you can give?

A. Yes.

Q. A single word now upon another subject; did anybody talk with you about your testimony since you left the stand?

A. Since I left the stand?

Q. Yes; since yesterday?

A. Well, I suppose I have talked with a dozen persons.

Q. Such as whom?

A. Several persons met me and said they were very glad to hear my testimony. We did not enter into any particulars about it. I have been met to-day jocularly about taking an equal drink with the Secretary of War by two or three persons. I have talked in my own family about it.

Q. Has anybody talked to you about these points, or have you talked to anybody about these points where you have changed your testimony?

A. I came here this morning and saw the managers, and told them wherein I wanted——

Mr. Manager BUTLER. The managers! You do not mean that quite?

Mr. EVARTS. The counsel for the President.

The WITNESS. I saw the counsel for the President, and told them I wished to make corrections.

By Mr. Manager BUTLER. You did not mean the managers; you meant the counsel?

A. I meant the counsel; these gentlemen sitting here, [pointing to the counsel for the President.]

Q. That you had a perfect right to do. Had you talked with anybody before that about these points?

A. Yes.

Q. Whom?

A. General Townsend this morning.

Q. The Assistant Adjutant General?

A. Yes.

Q. Anybody else?

A. About these points?

Q. Exactly.

A. No.

Q. Are you sure?

A. I have said no. I am sure.

Q. Now, sir, did you not receive a letter from Mr. Stanton, whether a copy or not, on the 21st of February?

A. I did not.

Q. You said that he gave you the original, and the date is noted. Have you seen that original?

A. Since?

Q. Yes.

A. I have not.

Q. The date was noted on that original. When was that original given you?

A. The one I read here on the 22d?

Q. I did not ask you, "the one you read here"—the original; when was that given you?

A. On the 22d.

Q. Did you have more than one paper given you?

A. That was handed to me, and then it was handed to General Townsend, who made a copy, and the Secretary gave me the copy which I read here. The other paper I have not seen.

Q. And that was the 22d?

A. On the 22d, dated the 21st.

Q. Prepared, then, the day before?

A. I suppose so. It has the date of the day before.

Q. Then do you mean to take all back that was said in the room of Mr. Schriver about your not going on with the office, or their not obeying you on the afternoon of the 21st?

A. Oh, yes; it was the 22d, because General Townsend was not there on the 21st.

Q. Then on the 21st there was nothing said about his not obeying you?

A. I think not.

Q. Nothing said to Schriver about not obeying you?

A. I think not.

Q. Then there was nothing said about not obeying you on the 21st at all?

A. I think not.

Q. And you never reported to the President that Stanton would not obey you on the 21st?

A. I reported to the President the two conversations I had with him.

Q. What were the two? The one in Schriver's room seems to have gone out. What were the two?

Mr. EVARTS. There were two besides that, Mr. Butler.

Mr. Manager BUTLER. The witness will tell me.

Mr. EVARTS. But you said it was not so.

Mr. Manager BUTLER. I did not. I said that one seemed to have gone out.

Mr. EVARTS. One of the conversations. That was not one of the two.

Mr. Manager BUTLER. I do not know that.

The WITNESS. General Schriver did not hear either of these conversations.

Q. Then on the 21st there was no such conversation that you testified to?

A. Not in reference to that letter—no.

Q. Was there any conversation at all as to General Townsend's not obeying you, or General Schriver's not obeying you, on the 21st?

A. None.

Q. Then what you told us yesterday, that you reported that to the President and got his answer to that—all that was not so, was it?

A. All that was not so.

Q. Now, upon another matter. When you were examined before the committee——

A. Which committee?

Q. The committee——

A. I have been examined twice. I only want to know.

Q. The committee of the House, not the managers. You were asked this question: "Did you make any report to the President on Friday of what had transpired," and did you not answer in these words: "Yes, sir; I saw the President and told him of what had occurred." He said, 'Well, go along and administer the department.' When I stated what had occurred with Mr.

Stanton, he said to me, 'You must just take possession of the department and carry on the business.'" Did you so swear before the committee?

The witness not replying—

Q. Let me give you the words again?

A. I thought you were waiting for somebody else. I say as I said before, the words were: "Take charge"——

Q. That is not the question.

A. What is the question?

Q. The question is this: in answer to a question which I will read again to show you that the words were not put in your mouth, in these words, "Did you make any report to the President on Friday of what had transpired," did you not answer in these words, "Yes, sir; I saw the President, and told him what had occurred." He said, 'Well, go along and administer the department.' And did you not proceed to state, "When I stated what had occurred with Mr. Stanton, he said 'You must just take possession of the department and carry on the business.'" Now, sir, did you swear that? That is the only thing I asked you.

A. If that is there I suppose I swore to it. I want to make one statement, though.

Q. Was it true?

A. No; the word used was the other.

Mr. Manager BUTLER. That is all.

The WITNESS. I wish to make one statement in reference to that very thing. I think I ought to do it. I was called there hastily. There were a good many events that had transpired. I requested on two occasions that committee to let me wait and consider, and they refused, would not let me do it, pressed me with questions all the time.

By Mr. Manager BUTLER:

Q. How was that?

A. When I was called before that committee on the evening of——

Mr. Manager BUTLER. February 26.

The WITNESS. On the evening of the day of my trial. I went there after getting through with that trial. I on two occasions requested them to postpone the examination until the next morning, or until I could go over the matter. That was not allowed me.

Q. Did you make any such request?

A. I did twice.

Q. Of whom did you make it?

A. To those who were there.

Q. Who was there?

A. I think the committee was pretty full.

Q. The committee on preparing the articles of impeachment were there?

A. Yes, sir.

Q. That committee you mean, and the committee was full?

A. I do not know whether Mr. Stevens was there. He was there a portion of the time. I do not know whether he was there at this particular time.

Q. And you tell the Senate now on your oath that you requested the committee to give you time to answer the questions, and they refused you?

A. I requested that it might be deferred until the next morning, when I could have an opportunity to go over in my own mind those things. It was not granted. There was no refusal given, but I was still pressed with questions. Then there is another matter I want to speak about—when I came to correct that testimony. There are two things there that are confounded in reference to dates; the first part of it, the date of my appointment as Adjutant General and that of my appointment as Secretary of War *ad interim*—I supposed they were

asking me in reference to the former, and that is the reason those two questions got mixed up. Then when I went there to correct my testimony I wished to do it. I read it over and found that some of it was not in English, and I thought there was something taken down, and I believe there was, that I did not say. They would not permit me to correct the manuscript, but I put something at the bottom just in a hasty way. I suppose it is on that paper, [pointing to a manuscript in the hand of Mr. Manager Butler.] I do not know.

Q. I will come to that. Now, then, have you got through with your statement?

A. I have.

Q. Very well; then you will answer me a few questions. Did you not come and ask to see your testimony as it was taken down by that committee?

A. I went to the clerk and saw him.

Q. Did he give you the report which I hold in my hand?

A. He was not in; and I came the next day, the second day, and he handed it to me; and twice he went, I think, to some member of the committee; I do not know who. I said I wished to correct it; I wanted to make it at least decent English in some respects; but I was informed that I could not correct the manuscript; that I might——

Q. He reported to you that you might make any corrections in writing?

A. Yes, sir.

Q. Then, did you read the whole testimony over?

A. I think I did; I am not certain about that.

Q. Do you not know you did?

A. No; I do not know that I did.

Q. What were you there for?

A. I came there to correct the first part of it particularly, and that was the reason I went there. I took it for granted that the rest was correct.

Q. You did not want to correct any other portion of it?

A. No.

Q. And the first part of it only referred to the mistake in the time about your being made Adjutant General or being made Secretary of War?

A. It had reference to the notification given me more particularly.

Q. By the President?

A. I had stated the notification——

Q. The notification by the President to be Secretary of War or Adjutant General, that was mixed?

A. That was mixed.

Q. That was what you wanted to correct?

A. I stated that I received that notification from Colonel Moore. Colonel Moore did give me the notification that I would probably be put back as Adjutant General, but he did not as Secretary of War.

Q. That was what you wished to correct?

A. That was the principal correction I wished to make.

Q. And you did not want to correct anything else?

A. If there was anything wrong, I did. My corrections are there, whatever they may be. I suppose that is the paper.

Q. You then went over your testimony, did you not, and corrected such portions as you pleased?

A. Oh, I had full privilege to do that, of course.

Q. And wrote out here portions of two sheets, which are in your handwriting, are they not, of corrections? Showing the pages to the witness.

A. Yes, sir, I corrected in my own handwriting.

Q. And signed it "L. Thomas, Adjutant General?"

A. Yes, sir. There are not two sheets, however. There is one sheet and a little more.

Q. I said portions of two sheets. Now, sir, having read over your testimony and attempted to correct it, did you correct anything in this portion in which you are reported as saying that the President ordered you to go forward and take possession and administer the office?

A. I do not think I made any such correction as that.

Q. You have sworn that it was not true. Why did you not correct it?

A. I have said so because I know his expression.

Q. Why did you not correct it before?

A. Well, I have thought the matter over.

By Mr. STANBERY:

Q. General Thomas, I find a report of your testimony as given yesterday, as as you gave it originally on the examination as to the first interview with the President, which I will now read to you and see whether it is correctly reported:

Q. What occurred between the President and yourself at the second interview on the 21st of February?

WITNESS. I stated to the President that I had delivered the communication, and that he gave this answer.

Mr. STANBERY. What answer?

WITNESS. The answer, "Do you wish me to vacate at once, or will you give me time to take away my private property?" and that I answered "At your pleasure." I then stated that after delivering the copy of the letter to him he said, "I do not know whether I will obey your instructions or resist them."

The WITNESS. I said "act your pleasure."

Mr. STANBERY. Now, the point of your answer I wish to bring to your attention is this:

This I mentioned to the President. His answer was, "Very well; go on and take charge of the office and perform the duty."

Did you say that?

A. I said that.

Q. It was in the cross-examination that this "possession" came out, was it not?

A. Yes, sir.

By Mr. Manager BUTLER:

Q. Then you mean to say that in answer to Mr. Stanbery you put it all right yesterday, and in the answer to me you got it all wrong?

A. In reference to your examination.

Mr. STANBERY. We will see how your examination was by and by. We shall want General Thomas as to what took place on the trial after we put in the record.

Mr. Manager BUTLER. Call him in at any time; we shall always be glad to see him. [Laughter.]

General THOMAS. Thank you, sir.

WILLIAM T. SHERMAN sworn and examined.

By Mr. STANBERY:

Q. General Sherman, were you in Washington last winter?

A. I was.

Q. What time did you arrive here?

A. About the 4th of December last.

Q. How long did you remain here?

A. Two months.

Q. Till the 4th of February, or about that time?

A. Until about the 3d or 4th of February.

Q. On what business had you come?

A. I came as a member of the Indian peace commission by adjournment.

Q. Any other business at that time?

A. At that time no other business. Subsequently, by order, I was assigned to a board of officers organized under the laws of Congress to submit articles of war and regulations for the army.

Q. At what date was that assignment?

A. I could procure the order, which would be perfect evidence of its date; but I must now state that it was within ten days of my arrival here; about ten days.

Q. About ten days after your arrival here?

A. About the middle of December that order was issued.

Q. Then you had a double duty?

A. I had a double duty for a few days.

Q. During that time, from the 4th of December until the 3d or 4th of February, had you several interviews with the President?

A. I had.

Q. Did you see him alone, when there was no person present but the President and yourself?

A. Yes, sir.

Q. Did you see him also in company with General Grant?

A. I saw him in company with General Grant once, and I think twice.

Q. Had you several interviews with him in relation to the case of Mr. Stanton?

A. I had.

Mr. Manager BINGHAM. Mr. President, we desire, without delaying the Senate, to respectfully submit our objections here again, without desiring to argue it. We believe it our duty, as the representatives of the House, to object——

Mr. STANBERY. Object to what?

Mr. Manager BINGHAM. That the declarations of the President touching any matter involved in this issue, not made at the time when we have called them out ourselves, are not competent evidence, and desire to submit the point, if such is the pleasure of the Senate, to the ruling of the presiding officer.

Mr. STANBERY. Allow me to come to some question that we can get started upon. This is introductory.

Mr. Manager BINGHAM. I understand it so.

Mr. STANBERY. You will soon see what our object is with General Sherman. There will be no mistake about it when we come to it.

Mr. Manager BINGHAM. I understand the object is to call out conversations with the President.

The CHIEF JUSTICE. At present no such question has been asked.

Mr. STANBERY. Now we will come to the point very quick. (To the witness.) General, while you were here, did the President ask you if you would take charge of the office of the Department of War in case of the removal of Mr. Stanton?

Mr. Manager BUTLER. I object to the question and ask that it be reduced to writing.

The CHIEF JUSTICE. The counsel will reduce the question to writing.

Mr. STANBERY. Do you object because it is leading or because of the substance of it?

Mr. Manager BUTLER. I object to it for every reason.

Mr. STANBERY. Then I will put it in a form——

Mr. Manager BUTLER. I beg your pardon; put it in writing.

Mr. STANBERY. I will lay a foundation first. (To the witness.) At what time were those interviews? Have you a memorandum?

The WITNESS, (consulting his memoranda.) The interview with General Grant and the President, do you refer to?

Mr. STANBERY. No; any interview. I will ask you a question that will

relieve you, perhaps. Had you interviews with the President before Mr. Stanton came back to the office, while General Grant was yet in it?

The WITNESS. Yes, sir; of a social nature entirely, before that time.

Q. Had you interviews with him after that?

A. I had.

Q. How long after that; after Mr. Stanton came back?

A. The day following, I think.

Q. Were you and the President alone at that interview the day after?

A. General Grant was also present.

Q. What did that interview relate to?

A. The removal——

Mr. Manager BUTLER. Stop a moment. Do not get it in indirectly. Meet the question man-fashion, please.

Mr. STANBERY. What did it relate to?

Mr. Manager BUTLER. That gives the substance of it. I object. Meet the question.

Mr. STANBERY, (to the witness.) Did it relate to the occupation of the War Department by Mr. Stanton?

The WITNESS. It did.

Q. Now, what was it?

Mr. Manager BUTLER. Stop a moment. We object. We ask that it be put in writing.

By Mr. STANBERY:

Q. What conversation passed between you and the President?

Mr. Manager BUTLER. Excuse me; I asked to have the question in writing. Shall I have it? I have three times attempted, and each time failed.

The CHIEF JUSTICE. The counsel will please reduce the question to writing.

The question having been reduced to writing, was handed to and read by the Secretary, as follows:

In that interview what conversation took place between the President and you in regard to the removal of Mr. Stanton?

Mr. Manager BUTLER. To that we object. I suppose we can agree on the day. That must have been the 14th of January last. On the 13th Mr. Stanton was reinstated; and the 14th, if it was the day after, would be the date.

Mr. STANBERY, (to the witness.) Can you give us the day of that conversation, general?

The WITNESS. Yes, sir. [Consulting a memorandum.] According to a memorandum which I hold Mr. Stanton re-entered on the possession of his office of Secretary of War on Tuesday, the 13th. Monday was the 12th, Tuesday the 13th. The conversation occurred on Wednesday, the 14th of January.

The CHIEF JUSTICE. The Chief Justice thinks the question admissible within the principle made by the decision of the Senate relating to a conversation between General Thomas and the President; but he will put the question to the Senate, if any senator desires it.

Mr. CONNESS. On that I ask for a vote and the yeas and nays.

The yeas and nays were ordered.

Mr. Manager BUTLER. We should like to hear the grounds on which the offer is made stated.

Mr. STANBERY. The managers ask me to state the grounds upon which we expect this testimony——

Mr. Manager BUTLER. No, sir.

Mr. STANBERY. What then?

Mr. Manager BUTLER. I ask you simply for the ground on which you put it, not the testimony; the grounds on which you can put in any possible declaration, not the declaration itself.

Mr. STANBERY. This ground: we expect to prove by General Sherman——

Mr. Manager BUTLER. I object, sir. I have not asked that.

Mr. STANBERY. Is it not admissible to say what we expect to prove?

Mr. Manager BUTLER. No, sir; that is to get before the court, Mr. Chief Justice——

Mr. STANBERY. "Get before the court!"

Mr. Manager BUTLER. Get before the court or the Senate—that I should fall into bad habits sometimes is not wonderful, [laughter]—it is to get before the Senate the testimony by statements of the counsel. The question wholly and solely is whether the declarations of the President can be given in evidence. What those declarations are, in my judgment, it would be improper to state, and unprofessional to state, because that is begging the whole question and attempting to get them before the Senate and the country by the recital of the counsel. That never is permitted. The sole question is, whatever the declarations are, if any possible declaration can be competent at that time. If the declaration asked for can be competent, you may assume that any possible conversation can be competent, and then we will assume that this——

Mr. STANBERY. Exactly; then you come to the point.

Mr. Manager BUTLER. That this can be, and therefore there is no occasion to state what it is.

Mr. STANBERY. Take it in that way, any possible declaration can be evidence. Do you propose to argue this?

Mr. Manager BUTLER. We do not want to argue it.

Mr. STANBERY. We do.

Mr. Manager BUTLER. If the Senate will vote that it is competent, we cannot alter it by argument.

Mr. STANBERY. Mr. Chief Justice and Senators, the testimony which we expect to elicit from General Sherman I look upon as vital upon the question of intent, as testimony we are entitled to have upon legal grounds perfectly well settled and perfectly unanswerable. I can say now in argument, I presume, what I expect to prove. "If," says the honorable manager, "any declarations you choose to call out are admissible, you may make them as strong as you please—imagine any that you please—and still no declaration of the President made on that 14th of January can be admitted here!"

Now, first of all, what is the issue here? Let the managers speak for themselves. I first read from the honorable manager who opened this case, at page 94 of his argument.

Mr. Manager BUTLER. You read from page 94 of the record, not of the argument.

Mr. STANBERY. The manager said:

> Having shown that the President wilfully violated an act of Congress, without justification, both in the removal of Stanton and the appointment of Thomas, for the purpose of obtaining wrongfully the possession of the War Office by force, if need be, and certainly by threats and intimidations, for the purpose of controlling its appropriations through its *ad interim* chief, who shall say that Andrew Johnson is not guilty of the high crime and misdemeanors charged against him in the first eight articles?

Again, on page 190, speaking of the orders of removal:

> These and his concurrent acts show conclusively that his attempt to get the control of the military force of the government, by the seizing of the Department of War, was done in pursuance of his general design, if it were possible, to overthrow the Congress of the United States; and he now claims by his answer the right to control at his own will, for the execution of this very design, every officer of the army, navy, civil, and diplomatic service of the United States.

Again, on page 99:

> Failing in this attempt to get full possession of the office through the Senate, he had determined, as he admits, to remove Stanton at all hazards, and endeavored to prevail on the General to aid him in so doing. He declines. For that the respondent quarrels with him, denounces him in the newspapers, and accuses him of bad faith and untruthfulness. Thereupon, asserting his prerogatives as Commander-in-chief, he creates a new military depart-

ment of the Atlantic. He attempts to bribe Lieutenant General Sherman to take command of it by promotion to the rank of general by brevet, trusting that his military services would compel the Senate to confirm him.

If the respondent can get a general by brevet appointed, he can then by simple order put him on duty according to his brevet rank, and thus have a general of the army in command at Washington, through whom he can transmit his orders and comply with the act which he did not dare transgress, as he had approved it, and get rid of the hated General Grant. Sherman spurned the bribe. The respondent, not discouraged, appointed Major General George H. Thomas to the same brevet rank, but Thomas declined.

What stimulated the order of the President just at that time, almost three years after the war closed, but just after the Senate had reinstated Stanton, to reward military service by the appointment of generals by brevet? Why did his zeal of promotion take that form and no other? There were many other meritorious officers of lower rank desirous of promotion. The purpose is evident to every thinking mind. He had determined to set aside Grant, with whom he had quarrelled, either by force or fraud, either in conformity with or in spite of the act of Congress, and control the military power of the country. On the 21st of February—for all these events cluster nearly about the same point of time—he appoints Lorenzo Thomas Secretary of War and orders Stanton out of the office. Stanton refuses to go; Thomas is about the streets declaring that he will put him out by force, "kick him out."

But, still more closely to the point, we will come to the testimony of intent, on page 251. This is upon the introduction of the case of Mr. Cooper. To show the intent of the President, the learned managers have gone back to the fall of 1867, and begin their proof with an intention commenced in the fall, carried along, says the honorable manager, to the very date of the 21st of February, of the appointment of Thomas. Most of the proof, he says, "clusters about that time," but it begins, he says, in the fall; and he calls Chandler to prove what? That Cooper was inducted into office by the President, being his own private secretary, for the purpose of carrying out what? His intention to get his own man first into the War Office to control the requisitions there, and then to get his own man into the Treasury Department to meet those requisitions and to pay them, and thereby control the purse as well as the sword of the nation.

The only question—

says the learned manager—

is, is this competent, if we can show it was one of the ways and means? The difficulty that rests in the minds of my learned friends on the other side is that they cluster everything about the 21st of February, 1868. They seem to forget that the act of the 21st of February, 1868, was only the culmination of a purpose formed long before, as in the President's answer he sets forth, to wit: as early as the 12th of August, 1867. * * * * * *

To carry it out there are various things to do. He must get control of the War Office; but what good does that do if he cannot get somebody who shall be his servant, his slave, dependent on his breath, to answer the requisitions of his pseudo officer whom he may appoint; and therefore he began when? Stanton was suspended, and as early as the 12th of December he had got to put that suspension and the reasons for it before the Senate, and he knew it would not live there one moment after it got fairly considered. Now he begins. What is the first thing he does? "To get somebody in the Treasury Department that will mind me precisely as Thomas will, if I can get him in the War Department." That is the first thing; and thereupon, without any vacancy, he must make an appointment. The difficulty that we find is that we are obliged to argue our case step by step upon a single point of evidence. It is one of the infelicities always of putting in a case that sharp, keen, ingenious counsel can insist at all steps on impaling you upon a point of evidence; and therefore I have got to proceed a little further.

Now, our evidence, if you allow it to come in, is, first, that he made this appointment; that this failing, he sent it to the Senate, and Cooper was rejected. Still determined to have Cooper in, he appointed him *ad interim*, precisely as this *ad interim* Thomas was appointed, without law and against right. We put it as a part of the whole machinery by which to get hold, to get, if he could, his hand into the treasury of the United States, although Mr. Chandler has just stated there was no way to get it except by a requisition through the War Department; and at the same moment, to show that this was part of the same illegal means, we show you that although Mr McCulloch, the Secretary of the Treasury, must have known that Thomas was appointed, yet the President took pains—we have put in the paper—to serve on Mr. McCulloch an attested copy of the appointment of Thomas *ad interim*, in order that he and Cooper might recognize his warrants.

That is what they put in. They have got that testimony for that purpose, as they say, to show the intent of the President, begun, they say, as early as the 12th of August, 1867, progressed in by the appointment of Cooper in the

fall of 1867, going all through the subsequent time until it "culminated" on the 21st of February by at last finding the proper tool to do this work in the War Office. He was looking, according to the argument, for a proper tool—for a servant—for one who would do his bidding, and, forsooth, after a search, he found the very man in what the manager has called "a disgraced officer."

Now, Mr. Chief Justice and Senators, and especially those of you who are lawyers, what case are they attempting to make against the President? Not simply that he did certain acts that would make him criminal, but that he did these acts *mala fide*, with an unlawful intent and criminal purpose. They do not prove that purpose, or attempt to prove it, by any positive testimony; but they say, "we prove certain facts from which we raise a presumption that that was the purpose." It is upon proof founded on presumption, and such proof is admissible, that the gentlemen rest the essential part of their case; that is to say, the criminal intent. They prove certain acts that may be criminal or stand indifferent, according to the intent of the party. Then they prove certain other acts and declarations which, as they say, raise the presumption that the thing done, the order given, the appointment made, was made with that criminal intent laid, and they say, "we not only show that criminal intent then, but," they say, "it was conceived months before," and that all the machinery was put in motion, and that the President, from the 12th of August, 1867, was pursuing that intent, looking for tools, agents to carry out that intent, and it did not culminate until the 21st of February, 1868, although the gentleman says most of the facts happened to cluster about that period, but not all of them.

This being so, senators, what is the rule to rebut this presumption of intention? When a prosecution is allowed to raise the presumption of guilt from the intent of the accused, by proving circumstances which raised that presumption against him, may he not rebut it by proof of other circumstances which show that he could not have had such a criminal intent? Was anything ever plainer than that?

Why, consider what a latitude one charged with crime is allowed under such circumstances. Take the case of a man charged with passing counterfeit money. You must prove his intent; you must prove his *scienter;* you must prove circumstances from which a presumption arises. Did he know the bill was counterfeit? You may prove that he had been told so; prove that he had seen other money of the same kind, and raise the intent in that way. Even when you make such proof against him arising from presumptions, how may he rebut that presumption of intent from circumstances proved against him? In the first place, by the most general of all presumptions, proof of good character generally. That he is allowed to do to rebut a presumption—the most general of all presumptions—not that he did what was right in that transaction, not that he did certain things or made certain declarations about the same time which explained that the intent was honest, but going beyond that through the whole field of presumptions, for it is all open to him, he may rebut the presumption arising from proof of express facts by the proof of general good character, raising the presumption that he is not a man who would have such an intent.

Mr. Manager BUTLER. We do not object to that proof.

Mr. STANBERY. You do not!

Mr. Manager BUTLER. Put in his good character.

Mr. STANBERY. Such a general thing as that! And yet you object to this?

Mr. Manager BUTLER. Put in his good character, and we will take issue on that.

Mr. STANBERY. Now, what evidence is a defendant entitled to who is charged with crime where it is necessary to make out an intent against him where the intent is not positively proved by his own declarations, but where the intent is to be gathered by proof of other facts, which may be guilty or indifferent according to the intent? What proof is allowed against him to raise this

presumption of intent? Proof of those facts from which the mind itself infers a guilty intention. But while the prosecution may make such a case against him by such testimony, may he not rebut the case by exactly the same sort of testimony? If it is a declaration that they rely upon as made by him at one time, may he not meet it by declarations made about the same time with regard to the same transaction? Undoubtedly. They cannot be too remote; I admit that; but if they are about the time, if they are connected with the transaction, if they do not appear to have been manufactured, then the declarations of the defendant from which the inference of innocence would be presumed are, under reasonable limitations, just as admissible as the declarations of the defendant from which the prosecution has attempted to deduce the inference of criminal purpose. Now let us look at the authorities on this point. In the trial of Hardy, reported in State Trials, volume twenty-four, page 1065, Mr. Erskine, who defended Hardy, called a Mr. Daniel Stuart as a witness. The case is so fully in point that I will read from it pretty largely:

Mr. ERSKINE. I call back this gentleman only for the purpose of asking him one question, which I could not with propriety ask him before; you stated, in your former examination, your personal acquaintance with the prisoner at the bar, and your transactions with him before; did you ever hear him state what his plan of reform was?

Yes, I have; he always stated it to be the Duke of Richmond's plan—universal suffrage and annual Parliaments.

Was that said to you publicly, or in the privacy of confidence?

It was said publicly. And he sold me some copies of the Duke of Richmond's letter.

Mr. ATTORNEY GENERRAL. I really must object to this sort of examination.

Mr. ERSKINE. Then I will not defend this question. I am persuaded your lordships will not refuse to the unfortunate man at the bar that evidence which has been received for every prisoner, under similar circumstances, from the earliest times of our history to the present moment. I am sorry to consume the time of the court, but if I am called upon I will repeat to your lordships, *verbatim*, from the State Trials, various questions, upon similar occasions, put by different prisoners, by consent of all the judges, all the attorney generals, and solicitor generals, and counsel for the Crown. I only wish to know whether the question is objected to or not.

Mr. ATTORNEY GENERAL. It is.

Mr. ERSKINE. I will proceed, and I have much more pleasure in doing it from the manner in which the attorney general conducted himself recently, because the moment it was stated as a proceeding which, we thought, might be serviceable to the prisoner, and consistent with the rules of evidence, he instantly acceded to its production; therefore, independent of satisfying your lordships, if I can satisfy my learned friend that we are in the regular course, I am persuaded he would be sorry himself that this prisoner should be deprived of the advantage all others have enjoyed.

Then this great advocate proceeds to give the cases from the State Trials upon the point that I am now considering—the declarations of a prisoner as evidence of his intent, whether it were unlawful or lawful, in the matter as to which he is charged.

I read from page 1068:

Now, what is the present case? The prisoner is charged with the overt acts, which I need not repeat, because we are so well acquainted with the nature of them.

We are charged with overt acts in issuing this order.

But he is not charged with the commission of those acts as substantive acts, but he is charged with having in his mind the wicked and detestable purpose of aiming at the destruction of the king, to put down and bring the king to death, and that in the fulfilment of that most detestable imagination he did the specific acts charged upon the record.

As we are charged here with intent, not to put down the king, but to put down Congress, and our detestable acts are to put a tool in the War Department to control the requisitions, and another tool in the Treasury Department to get hold of the money.

Mr. Erskine continues:

That is to say, that he agreed to assemble a convention to be held which was not held—that he conspired to hold it, for the purpose of subverting the rule and authority of the country, and not that alone, but that he consented to hold such convention, which convention, in his mind, was to accomplish the purpose of the subversion of the government, and

that he did agree to assemble that convention for the purpose of that subversion in fulfilment, not that the other is the consequence of it, but in fulfilment of the detestable purpose of compassing the king's death.

Here, then, the intention of the mind is the question which the jury have to try: and I think I may appeal to what passed in the court on Saturday, that I did not seek to lay down other rules of evidence than those that have been most recently stated, and those that have been determined in ancient times.

Now he comes to the cases:

The counsel for Lord George Gordon were the present Lord Kenyon, lord chief justice of the King's Bench, and myself, who have now the honor to speak to the court; and I was permitted to ask the Rev. Erasmus Middleton (the first witness, and, therefore, his examination fell to me as junior in the case) these questions—I should tell your lordships, to make it more intelligible, that the great object was to see what intention Lord George Gordon had, which could be collected only from what passed before—"Did you, at any of these numerous meetings of this Protestant Association, which you attended from the time Lord George Gordon became president of that society," (which was two years before,) "till the 29th of May"—

That was the "culmination" of Lord George Gordon's conduct:

—"till the 29th of May; did you ever hear Lord George Gordon, in his public speeches in that association, make use of any expressions which showed any disloyal or unconstitutional intentions in him?"

"Not in the least," says the witness; "the very reverse." Now, continues Erskine:

Now, compare this with the question I am going to ask; a cunning, artful man might stand up in a Protestant association, and hold forth great professions when he meant the contrary; but no man, who reposes confidence in the bosom of a friend, building himself upon the honor and honesty of his friend, when he tells him what his object is, will deceive him. Good God! if I were to ask people, did not Mr. Hardy, in the Corresponding Society, say that the Duke of Richmond's plan was his object, he might say it there, for the purpose of its afterwards being given in evidence, that he had publicly avowed that; if that may be asked, how is it possible to oppose the other? The examination then goes on: "Did all his speeches, delivered as president, meet with your approbation; and did it appear to you that his views were the same as those of the whole associated body?" "Quite so." "Did you ever hear Lord George Gordon make use of any expressions as if he meant to repeal this bill by force of arms?" "Not in the least." "Were the meetings open?" and so on.

Again:

The next case I shall state is that of my Lord Russell, who was indicted for compassing the king's death, and the overt act was consulting to raise rebellion and to seize the king's guards. In his defence he called many persons of quality to speak to his affection toward the government, and his detestation of risings against it—I will pause here a minute. Why, a man might have a great deal of affection to the government in the year 1780 and might change upon the subject, but yet the criminal law of England looks out industriously to see how it can interfere in favor of liberty and life, not trying how it can shut out the light, but how it can let it shine in; even that question, which I do not think one of the strictest, was suffered to be let in, because Dr. Burnet had had a long acquaintance with Lord Russell, and Lord Russell might not have conceived the purpose of rebellion till a short time before; but I shall ask as to the time when they say this man's mind was full of this conspiracy—

As we do here—the time of this intent; no other time—

but I shall ask, as to the time when they say this man's mind was so full of conspiracy, so horrible in its nature, what were the sentiments which he was pouring into the bosom of his friend as the object of all these societies?

"Doctor Burnet," (says Lord Russell,) "if you please to give some account of my conversation?" Doctor Burnet says: "I have had the honor to be known to my Lord Russell several years, and he hath declared himself with much confidence to me, and he always, upon all occasions, expressed himself against all risings." Now this is not character to say that Lord Russell was a quiet, peaceable man; no, this is evidence of conversation; my Lord Russell declared it so; therefore it is not that you are to raise a probability upon the subject by the general nature of a man's character, or what you think of him; but it shall be allowed to witnesses to say what the person trying has expressed, because it raises an intrinsic improbability of his being guilty of the crime imputed to him. Doctor Burnet says: "He always expressed himself against all risings; and when he spoke of some people that would provoke to it, he expressed himself so determined against that matter I think no man could do more."

Now, what we expect to prove is, that, so far from there being any intent on the part of the President to select a tool to take possession of the War Office, he asked first the General of the army, Grant, and when he failed him, who next? The next most honored soldier that we have, Sherman. He was a tool!

It was the President's purpose, they say, to put a tool there! That was his intent, to find a man who could take a bribe, by brevet perhaps, and, having found such a man as that, put him there! They say he did find such a man in Thomas, "a disgraced officer." Well, if that was his intent in the fall; if with that intent he put Cooper in the Treasury, it must have been with that intent he would put Sherman in the War Office. Before he thought of Thomas at all, before he thought of any subordinate, he took one of the most honored officers of the land, and said to him: "Come now, take this office; you are fit to be my tool—take this office, not to carry it on as you carried on this great war, not to remain a trusted and honorable man, but to become my subordinate and my tool!" Will the gentleman say that the President at that time had an intent to seize upon the requisitions of that department, to get a man there who would send an improper requisition over to the Treasury, as he got a man in the Treasury, as they say, to honor an improper requisition—that the President had put him there to drive Congress out of these halls, and that he intended to put Sherman there to become his tool? Would the gentleman dare to say that? Would the President, in the first place, have dared to make such a proposition to such a man as General Sherman?

Gentlemen of the Senate, if you are to raise a presumption that the President intended to carry out an unlawful purpose by appointing Cooper, that he intended to carry out the same unlawful purpose by appointing Thomas, how does it happen that you do not give him the benefit of the presumption arising from his attempt to get such a man as General Sherman, that could not be made a tool of? And yet this is all to be shut out from the defence of the President!

In the cases that I have put, the case, for instance, of Lord George Gordon, who was indicted for a treasonable speech made on a certain day—I forget the date—before a certain association, he was allowed to go into proof running through a period of two years before that in meetings of that same association, that, instead of encouraging risings or insurrections, he had set his face against them. All that was admitted, although it was begun two years prior to the declaration for which he was indicted, and, indeed, more than two years before, certainly not clustering about the same time, not during the time when they say the intent arose, but long prior to that time, when, in fact, his intent may have been honest; for in two years a man may change his intent. They might have said at that time, "You have gone too far back; the question is as to your intent at the time of the transaction; as to your intent of the time when we have given evidence against you." Lord George Gordon went back two years behind that. We stop within the time which they have fixed themselves. We do not ask to give any testimony as to the President's intent before the acts which they have brought forward to raise a presumption of guilt against him.

They began in the fall of 1867 with the appointment of Cooper, as they say. This is in the subsequent winter, when Sherman is here, right in the middle of this transaction. The President, as they say, had this intent all along before the act had culminated; that is, had ended, had reached its consummation—all that time, they say, the bad intent was in the President's mind, and they use every circumstance they can against him to raise the presumption that he intended to carry it out. Now, we want to show his acts and his declarations during that time to dissipate this idea that the President had any unlawful intent, to show that he was not seeking after a tool, but seeking for an honest, honorable, high-minded soldier—to do what? That which was unlawful? No; but to do that which the President thought belonged to him. We will show you that he asked General Sherman if he would take that office upon the removal of Mr. Stanton, and then said to General Sherman——

Mr. Manager BUTLER. That is not allowable.

Mr. STANBERY. What! that I cannot state what we are going to prove? I insist on it as a right.

Mr. Manager BUTLER. I insist that it is never done in any court.

Mr. STANBERY. If the Senate choose to stop me I will stop; but I hope I shall be allowed to state what I expect to prove. I have been too long at the bar not to know that I have that right. The gentleman may answer my argument, but I hope he will not stop it.

Mr. Manager BUTLER. If you look at the book you hold in your hand you will find that Erskine stopped the attorney general in precisely the same case from which you have quoted, and said, "You must not read a letter."

Mr. STANBERY. "Must not read a letter!" I am not reading a letter; I am stating what I expect to prove, and the gentleman takes me up. He does not understand where he is or where I am. He puts an intent into my mind that I have not got, as he seems to have the very good faculty of putting intents into every man's mind. We expect to show that the President not only asked General Sherman to take this position, but told him then distinctly what his purpose was, and that was to put that office in such a situation as to drive Mr. Stanton into the courts of law.

Mr. Manager BUTLER. This is wholly unprofessional and improper.

Mr. STANBERY. I will judge of that. Erskine in this argument introduces a great many cases, which it would take too long to read; but finally the question which he put was allowed to be put and was answered, and I understand the decision in Hardy's case has gone into the text-books as law. But it was not necessary to have Hardy's case. I will ask any lawyer who has ever tried a case where the question was the intention, and where the case made against his client was of facts from which a presumption of intention was pretended to be raised by the prosecution, may he not show contemporaneous acts, acts covering the same time as those used against him, declarations within the same time with those used against him; may he not be allowed to resort to these to rebut the criminal intention, and to show that his intention was fair, honest, and legal? Undoubtedly such is the law, and it is upon this ground that we ask the introduction of the testimony of General Sherman.

Mr. Manager BUTLER. Mr. President, senators, I was quite willing to put this case to the judgment of both lawyers and laymen of the Senate without a word of argument; and I only speak now to "the lawyers," because the learned counsel for the President emphasizes that word as though he expected some peculiar advantage from speaking to the lawyers of the Senate. All the rules of evidence are founded upon the good sense of mankind, as experience in the courts of law has shown what is most likely or unlikely to elicit truth, and they address themselves just as well to the layman as they do to the lawyer. There is no gentleman in the Senate, nay, there is no gentleman anywhere, that cannot understand this question of evidence; and if the plain rules of fair judgment and fair examination are applied to it, as I doubt not they will be, there can be no difficulty in the matter.

I agree that I labor, not under any weight of the argument that has just been put forward against me, but labor under the weight of the opinion of the presiding officer, who, deciding without argument, has told the Senate that in his opinion this came within the previous ruling, which I suppose to be the ruling of yesterday. If it did I should not for a moment have troubled the Senate, because I have long since learned, however they may be against me, to bow to the decisions of the tribunal before which I am.

But this is entirely another and a different case. In order to understand it let us see what is the exact question. The exact question is, "In that interview," to wit, on the 14th of January, "what conversations took place between the President and you in regard to the removal of Mr. Stanton?" "What conversation;" it does not ask for acts now; pray, gentlemen, keep the distinction.

"What conversation took place between you?" is the question, and upon that the Senate will vote.

Now, how is this attempted to be supported? I agree that the first part of the argument made by the learned Attorney General was the very best one he ever made in his life, because it consisted mostly in reading what I had said. [Laughter.] He put the question, and I have a right to say so, I trust, without any immodesty, because he adopted all I said as his own, which is one of the highest compliments I ever had paid to me. I thought it was a good argument, senators, when I made it to you; I hoped it would convince you that it was right; but it failed. If it can be any better now in the mouth of the Attorney General I desire to see the result. I was arguing about putting in the President's act in appointing Mr. Cooper. I tried in every way I could to get it before you; I tried to show you that you ought to permit me to do so; but by an almost solid vote you said I should not. I said, "I can prove the intent." My argument failed to convince you. Will it do any better when read by the musical voice of my friend from Ohio? I think not. Of course you will allow me to have so much self-gratulation as still to say that I think it ought to have convinced you. I only bow to the fact that it did not.

But the point was there that I was attempting to prove, not a declaration of Mr. Johnson, but his act in putting in Cooper; here they ask for conversations. We failed; the Senate decided that we could not put in any act except such as was charged in the articles. We do not charge in the articles an attempt to bribe, or use as a tool, the gentleman who is on the stand, for whom we all have so high a respect. I do not think that we have that appreciation of him. Whatever appreciation the President might have, we never had that. What do we charge? We charge that he used the man whom we saw on the stand here before as a tool, and judge ye on your consciences whether he is not on his appearance here a fit instrument. Judge ye! Judge ye! You have seen him—a weak, vacillating, vain old man, just fit to be pampered by a little pride to do things which no man and no patriot would dare do. Why, let me call your attention for a moment to him. On this stand here yesterday he was going on to say that his conversation was playful to Karsner, playful to Wilkeson; but when he saw that that was not so, that that did not put him in a dignified position, he swung back to the truth, and told us he meant to have force to the shedding of blood.

Mr. EVARTS. He said exactly the contrary.

Mr. Manager BUTLER. I do not understand the gentleman.

Mr. EVARTS. He said exactly the contrary.

Mr. Manager BUTLER. He said that he had made up his mind to use force to the shedding of blood.

Mr. EVARTS. No; to break a door; but when he thought of shedding blood he retracted his opinion.

Mr. Manager BUTLER. And he remained of that mind until the next morning.

Mr. EVARTS. No; he did not say that.

Mr. Manager BUTLER. What he found at the masquerade ball or elsewhere to change his mind he has not told us; nor can he tell us when he changed his mind. Am I not right? But I pass from that; I am only calling the attention of the Senate to the distinction between the two.

Now, then, how is this attempted to be supported? The learned gentleman from Ohio says what? He says "in a counterfeiter's case we have to prove the *scienter*." Yes, true; and how? By showing the passage of other counterfeit bills? Yes; but, gentlemen, did you ever hear, in a case of counterfeiting, the counterfeiter prove that he did not know the bill was bad by proving that at some other time he passed a good bill? Is not that the proposition? We try the counterfeit bill, which we have nailed to the counter, of the 21st of February; and, in order to prove that he did not issue it, he wants to show that he passed a good bill on the 14th of January. It does not take a lawyer to understand that. That is the proposition.

We prove that a counterfeiter passed a bad bill: I am following the illustration of my learned opponent. Having proved that he passed a bad bill, what is the evidence he proposes? That at some other time he told somebody else, a good man, that he would not pass bad money, to give it the strongest form; and you are asked to vote it on that reason. I take the illustration. Is there any authority brought for that? No.

What is the next ground? The next is that it is in order to show Andrew Johnson's good character. If they will put that in testimony I will open the door widely. We shall have no objection whenever they offer that. I will take all that is said of him by all good and loyal men, whether for probity, patriotism or any other matter that they choose to put in issue. But how do they propose to prove good character? By showing what he said to a gentleman. Did you ever hear of good character, lawyers of the Senate; laymen of the Senate, did you ever hear a good character proved in that way? A man's character is in issue. Does he call up one of his neighbors and ask what the man told him about his character? No; the general speech of people in the community, what was publicly known and said of him, is the point, and upon that went Hardy's case.

Now, then, lawyers of the Senate, I have never seen before cited in the course of an argument on the law the speeches of counsel. I thought it was not within the common usage of the profession. Am I not right, lawyers of the Senate; and yet page after page of the argument of Mr. Erskine, who was going forward in every way that he could to save the life of his client, has been cited here to the Senate to govern them as a precedent. A more unprofessional act I never knew.

Mr. STANBERY. Mr. Chief Justice, I must ask the gentleman to cease these statements of "unprofessional" matter. I read—I wish the gentleman to attend to what I say now—I read only so much of the argument of Erskine as showed the application of the cases which I read from Erskine's speech. That was all.

Mr. Manager BUTLER. I attended with care to what was said; I had the book in my hand and followed the gentleman; the argument of the counsel only was read; and now, to show the application of that particular case, let me ask what the question there was. The question was, what were the public declarations of Mr. Hardy? He was accused of having made a speech and made a series of speeches which were held to be treasonable. Then the question was, what was his character as a loyal man, and upon that the discussion arose from which citations have been made; and when the discussion finally terminated, gentlemen of the Senate, what was the question? I read from page 1096 of the twenty-fourth volume of the State Trials:

> Did you before the time of this convention being held, which is imputed to Mr. Hardy, ever hear from him what his objects were—whether he has at all mixed himself in that business?
>
> I have very often conversed with him, as I mentioned before, about his plan of reform; he always adhered to the Duke of Richmond's plan, and said that will be the plan that will be adopted in the end. I disagreed with him about that, and that occasioned it more particularly to be marked in my memory; we disputed about it, and he always obstinately adhered to it, and stated that to be the object of the society, and his whole object.
>
> Was this said in the confidence of private regard or in public company, where it might be said ostentatiously?
>
> I was never in public company with him; he and another person were with me one night, and I have had long and frequent conversations with him upon the subject.
>
> From all that you have seen of him, what is his character for sincerity and truth?
>
> I have every reason to believe him to be a very sincere, simple, honest man.
>
> *Mr. Attorney General.* If this had been stated at first to be the question meant to be asked, I do not see what possible objection I could have to it.

And if they will ask General Sherman or anybody else what is Andrew Johnson's character for sincerity and truth I will not object, I assure you. That was the whole question about which the dispute arose in Hardy's case; and

the Attorney General finally said "if I had known that was what you are after I never should have objected."

What was Lord George Gordon's case? This is an illustration of the difficulty of reading from the arguments of counsel, whether they are made here by me or made by Lord Erskine in regard to Gordon's trial. We are on one side when we are arguing our cause, and we are apt to get our minds somewhat biased. What was Lord George Gordon's case? Lord George Gordon was accused of treason in leading a mob of Protestants against the House of Parliament; and there, in order to show his intention, there were allowed to be put in evidence against him the cries of the mob made publicly and orally as part of the *res gestæ*. To meet that, what was the defence? The defence was the insanity of Lord George Gordon, and upon that defence, and upon the whole case they went into the widest possible range. Let the gentlemen on the other side come in and prove—which is the best defence they have got—that Andrew Johnson is insane, and we shall then go into all his conversations to see whether he talked or acted like a sane man, on which idea in that case the defence went into Lord George Gordon's acts and sayings, but in no other way.

Then, what is the next thing that is said about this? They then go into Lord William Russell's case. Lord Russell's case was one of those so eloquently denounced by the gentleman who opened for the President yesterday as one of those cases occurring under the Plantagenets and Tudors which he would not appeal to for authority. They do drink at our fountain sometimes. They have got back now to those cases which they would lay aside yesterday. They have come back to them to-day; but what was there? The whole question was, what was Lord William Russell's character for loyalty. The question asked the witness was, what was his character for loyalty, to which the reply was "good." Then he was asked "How long have you known him?" and he replied "I have known him some time." Then came the question "Did you ever hear him express himself against the King and against the government?" to which the answer was "No;" and then followed the question, "Did you ever hear him express himself in favor of insurrection?" and the answer was "No." That is precisely as every lawyer here has heard the question of character inquired into. The question is, "What is the character of such a man for truth?" The witness says "Good." That is not putting in hearsay. That is to get a negative. In that case they were not asking for what Lord Russell said, but they were offering to prove that he did not say anything that was treasonable, not what he did say; and that was upon the question of his good character.

Let me call your attention to the other point upon which this is pressed, and that seems to be the strong point in the case, because my friend said as he opened it, "this is very vital," hoping, I suppose, that by possibility he might in some way be able to fright you from your propriety. If it is a very vital matter you will pardon me for arguing it at some length.

Mr. STANBERY. Will the learned manager allow me one moment? In regard to Mr. Hardy's case, he has fallen into an error in reading the question, which was not the one at all I was upon. He read as to general character.

Mr. Manager BUTLER. To that I say I have fallen into no such error.

Mr. STANBERY. One moment, if you please.

Mr. Manager BUTLER. No; I cannot allow you to interpolate for the purpose of stating that I did not cite correctly.

Mr. STANBERY. One moment for a correction.

Mr. Manager BUTLER. I cannot spare a moment, sir.

Mr. STANBERY. I wish to show only that the very question was put and answered under the decision of the court in that case.

Mr. Manager BUTLER. Allow me to say that I read the only question that was put and directly after it was allowed to be put——

Mr. STANBERY. I shall have to leave it to my associate.

Mr. Manager BUTLER. Certainly. If you will turn to the case you will find it, sir. I began with "Mr. Daniel Stuart examined by Mr. Erskine," and I read from there to where the attorney general said, "If this had been stated at first to be the question meant to be asked, I do not see what possible objection I could have to it." I read from where the court decided down to where the question was put and answered, and to what the attorney general said about it. Therefore I made no mistake. I am not in the habit of reading a portion and leaving out a portion of a man's speech, and then commenting upon it.

Now, senators, what is the other point? and it is the only one I feel any trouble about. That is that some gentlemen may think that this question comes within the decision of yesterday. Yesterday we objected to the President's declaration after we said the conspiracy had culminated. It was claimed that they had a right to put in what he said when Thomas reported back to him, and the Senate decided that it should be put in; but now they propose to go a month prior to that time, and they propose to go over a space of time where we offered evidence to prove the President's bad intent, and the Senate of the United States ruled it out. I allude to Cooper's case. We offered to prove that in December he put Cooper in, and what Cooper was doing in order to show the President's bad intent; and the Senate of the United States, upon the offer of the representatives of the people of the United States, ruled that out; and now the gentlemen propose to go on and show what the President said to General Sherman.

One argument which I used to appeal to prejudice is that I stated that the President was seeking for tools. I said so; but, at the same time, I said that he never found one in General Sherman. What I mean to say, and what will appear to you and the country, is that he was seeking for somebody by whom he might get Mr. Stanton out; some gentleman of the army. First he tried Grant; then he wanted to get General Sherman in, so that when General Sherman, not wanting the cares of office upon him for a moment, ready to get rid of them at any time, should resign and leave, so as to get rid of it, as he doubtless would, he could then put in somebody else. He went along; he began with Grant, and he went down through Grant and down through Sherman and George H. Thomas, and down, down, until he struck Lorenzo Thomas, and then he found the man who could be put in. Now, the gentlemen propose to offer to prove that he did not find a tool in General Sherman, in order to satisfy the Senate that he did not find one in Thomas! Do these two things hold together? Does one belong to the other? Because he did not find a tool, a proper man to be made an *ad interim* Secretary, and to sit in his cabinet as an *ad interim* Secretary, in General Sherman, does that prove that therefore he did not find a proper man in Thomas?

But, then, look at the vehicle of proof. What is the vehicle of proof? They do not propose to prove it by his acts. When they are offered I shall be willing to let them go in. Let them offer any act of the President about that time, either prior or since, and I shall not object, although the Senate ruled out an act in Cooper's case. But how do they propose to prove it? "What conversation took place between the President and you?" I agree, gentlemen of the Senate—I repeat it even after the criticisms that have been made—that you are a law unto yourselves. You have a right to receive or reject any testimony. All the common law can do for you is, that being the accumulation of the experience of thousands of years of trial, it may afford some guide to you; but you can override it. You have no right, however, to override the principles of justice and equity, and to allow the case of the people of the United States to be prejudiced by the conversations of the criminal they present at your bar, made in his own defence before the acts done which the people complain of. That I may, I trust, without offence say; because there is a law that must govern us at any and all times, and the single question is—I did not mean to trouble the Senate

with it before, and never will again on this question of conversation—what limit is there? If this is allowable you may put in his conversations with everybody; you may put in his conversations with newspaper reporters—and he is very free with those, if we are to believe the newspapers. If he has a right to converse with General Sherman about this case and put that in, I do not see why he has not a right to converse with Mack, and John, and Joe, and J. B., and J. B. S,, and T. R. S., and X. L. W., or whoever he may talk with, and put all that in.

I take it there is no law which makes a conversation with General Sherman any more competent than a conversation with any other man. And where are you going to stop in this trial? Go on thus and they will get the forty, the sixty, the ninety, the one hundred days—more than the forty they first asked, by simply calling everybody with whom the President has had conversation; for I believe I may say without offence, that he is understood to be a great conversationalist, and on this principle they may introduce proof of all that he has said to everybody else about that time about the case; and if we may believe report, we are to have reporters and everybody else with whom the President has engaged in conversation.

Allow me to say one thing further. Gentlemen of the Senate, I said in your hearing to the learned counsel that I did not think it right for him to state what he expected to prove; and in order to prevent his stating it, I said he might imagine any possible conversation. I objected to it, because he thereby gets before the court, before the court and jury, before the court and the country, a supposition that he could prove that thing. That is what it is done for; it is an argument to the prejudice; and I thought it then unprofessional, and I state that in that very book which he held in his hand in Hardy's case the attorney general of England offered to read a letter found in Hardy's possession and he began to read it. Erskine objected, and said "You must not read it until it is allowed to go in evidence." Said he, "I want the court to understand what is in the letter." "It cannot be read for that purpose. Argue from its situation, argue from where it was found, argue from who signed it, what its pertinency or relevancy is; but you cannot read the letter and put it in before the court and jury until after it is ruled to be in evidence." The gentleman in his practice—I charge it upon him here—has seen hundreds of times a court stop counsel and say, "Hand it to me; hand the paper up to me; you must not read it until after it is ruled upon." I objected all that I could, but an aggregate body like this of course could not stop him if he chose to go on. Now, what was said after he had argued it? He said he wanted to show that the President had tried to get this officer of the army to take the War Department, so that he could get Stanton out. That is what we charge, that he would take anybody, do anything, to get Stanton out. That is the very thing we charge. He would be glad to get General Sherman to aid him. He would have been glad to get General Grant. Failing in him he tries General Sherman. Failing in him he tries Major General George H. Thomas, the hero of Nashville. He failing, he is willing then even to take Lorenzo Thomas to get Stanton out. What for? The late Attorney General has said the purpose was to drive Stanton into the courts. The President knew, or his counsel knew, that Stanton could not go into the courts to get back again. There is no proper process.

Let them state the process, if they can, by which Mr. Stanton was to be reinstated in office. I think they will find it as difficult to show to the Senate such a process as they will to show that where a general law applies to the States and Territories of the United States it does not apply to the District of Columbia. It will be as difficult and fully as troublesome to show the one as the other.

Now, the simple question comes back to us, and it is the only one on which you are to rule. Are the conversations of the President with General Sherman evidence? If the conversations with him are evidence, is not every conversa-

tion that the President has had at any time with anybody evidence in this case? Where is the distinction?

Mr. EVARTS. Mr. Chief Justice and Senators, some incidental questions, partly of professional propriety, have arisen and been discussed at some length by the learned manager. Let me read from page 165 of the record of this trial on the question of stating what is intended to be proved.

We objected to certain testimony, and then this occurred:

Mr. Manager BUTLER. The object is to show the intent and purpose with which General Thomas went to the War Department on the morning of the 22d of February; that he went with the intent and purpose of taking possession by force; that he alleged that intent and purpose; that in consequence of that allegation, Mr. Burleigh invited General Moorhead and went up to the War Office. The conversation which I expect to prove is this: after the President of the United States had appointed General Thomas and given him directions to take the War Office, and after he had made a quiet visit there on the 21st, on the evening of the 21st he told Mr. Burleigh that the next day he was going to take possession by force. Mr. Burleigh said to him——

Mr. STANBERY. No matter about that. We object to that testimony.

Mr. Manager BUTLER. You do not know what you object to if you do not hear what I offer.

Mr. Manager BUTLER. Read on: "We object to it," and I stopped.

Mr. EVARTS. I have read what I have read, sir.

Mr. Manager BUTLER. But stopped a little short.

Mr. EVARTS. I have read what I have read. Now, sir, we come to the impropriety of my learned associate's having drawn attention to the pertinency of what appeared in argument and in the citation of authorities upon the trial of Hardy, and whether that question was pertinent to this or not. Now, I understand the question which was there discussed related exactly to the introduction of conversations between the accused and the witness produced to prove them, antecedent to the period of the alleged treason; and it all resulted in this, on page 1096 of 24 State Trials:

Lord Chief Justice EYRE. You may put the question exactly as you propose. I confess I wished by interposing to avoid all discussion, because I consider what we are doing, and whom we have at that bar, and in that box, who are suffering by every moment's unnecessary delay in such a case as this.

Mr. ERSKINE. I am sure the jury will excuse it; I meant to set myself right at this bar; this is a very public place.

Mr. Daniel Stuart examined by Mr. Erskine:

The question was put exactly as he proposed.

Did you before the time of this conversation being held, which is imputed to Mr. Hardy, ever hear from him what his objects were—whether he has at all mixed himself in that business?

I have very often conversed with him.

And then he goes on to state the conversation.

Now, Mr. Chief Justice and Senators, I come to the merits of this question of evidence. This is a very peculiar case. Whenever evidence is sought to be made applicable to it, it is a crime of the narrowest dimensions and of the most puny proportions; it exists for its completion and for its guilt, for its enormity and for its claim to punishment, upon the delivery of a written paper by the President to General Thomas, to be communicated to the Secretary of War; and that offence, in those naked proportions, if contrary to a valid law and if done with intent which makes it criminal under that law, the Congress in the enactment which makes it indictable has permitted to be punished by a fine of six cents and no more! That is the naked dimension of the mere technical statutory offence, and that is included within the mere act of the delivery of a paper unattended by any grave public considerations of guilt and of consequence that should attend it to bring it into judgment here. When we come to evidence, I say thus puny are the proportions of the offence that thus limited the range to which the defendant is permitted to call witnesses. But when we come to the

magnificence of the accusation, as found on page 75, italicised by the managers, we will see what it is:

We define, therefore, an impeachable high crime or misdemeanor to be *one in its nature or consequences subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives, or for any improper purpose.*

Without any violation of law, an act may be done in abuse of discretionary authority with improper motives or for an improper purpose; and thus the widest possible range is opened to this inquiry on the part of the accusation, to bring within the range of guilt the President of the United States. But further, the claim is that it is a mistake, on the whole, to think that it is a question of guilt or of innocence; but, in the phrase of the learned managers, "Is it not rather more in the nature of an inquest of office?" And then, on page 77:

We suggest, therefore, that we are in the presence of the Senate of the United States, convened as a constitutional tribunal, to inquire into and determine whether Andrew Johnson, because of malversation in office, is longer fit to retain the office of President of the United States.

At page 97 we come a little more definitely to matter bearing upon this question, and I beg the attention of senators to this:

It may be said that the President removed Mr. Stanton for the very purpose of testing the constitutionality of this law before the courts, and the question is asked, Will you condemn him as for a crime for so doing? If this plea were a true one it ought not to avail; but it is a subterfuge. We shall show you that he has taken no step to submit the question to any court, although more than a year has elapsed since the passage of the act.

Then, at page 108, we are told:

Upon the first reading of the articles of impeachment the question might have arisen in the mind of some senator, why are these acts of the President only presented by the House when history informs us that others equally dangerous to the liberties of the people, if not more so, and others of equal usurpation of powers, if not greater, are passed by in silence?

To such possible inquiry we reply: that the acts set out in the first eight articles are but the culmination of a series of wrongs, malfeasances, and usurpations committed by the respondent, and therefore need to be examined in the light of his precedent and concomitant acts to grasp their scope and design.

And then common fame and current history are referred to, and confirmed by a citation of cases two hundred and forty years old from the British reports, to show that they are good ground for you to proceed upon in your verdict. Bringing, then, this to a head, the honorable manager says:

Who does not know that from the hour he began these his usurpations of power he everywhere denounced Congress, the legality and constitutionality of its action, and defied its legitimate powers, and, for that purpose, announced his intentions and carried out his purpose, as far as he was able, of removing every true man from office who sustained the Congress of the United States? And it is to carry out this plan of action that he claims the unlimited power of removal, for the illegal exercise of which he stands before you this day.

These are the pretensions and these the dimensions of public inculpation of the Chief Magistrate of this nation which are of such grave import. From their intent and design, from their involving the public interests and the fundamental principles of the government, they are worthy of this great tribunal's attention, and of a judgment that deposes him from his office and calls upon the people for a re-election. All the eleven articles are upon trial, and if this evidence be pertinent under any of them it is pertinent and admissible now. And now I should like to look first to the question of the point of time as bearing upon the admissibility of this evidence. Under the eleventh article the speech of the 18th of August, 1866, is alleged as laying the foundation of the illegal purposes that culminated in 1868, to point the criminality, that is what made the subject of accusation in that article. Proof, then, of the speeches of 1866 is made evidence under this article eleven, that imputes not criminality in making the speech, but in the action afterward pointed by the purpose of the speech. So, too, a tele-

gram to Governor Parsons, in January, 1867, is supposed to be evidence as bearing upon the guilt completed in the year 1868.

So, too, the interview between Wood, the office-seeker, and the President of the United States, in September, 1866, is supposed to bear in evidence upon the question of intent in the consummation of the crime alleged to have been completed in 1868. I apprehend, therefore, that on the question of time this interview between General Sherman and the President of the United States, in the very matter of the public transaction of the President of the United States changing the head of the War Department, which was actually completed in February, 1868, is near enough to point intent and to show honest purpose, if these transactions, thus in evidence, are near enough to bear upon the same attributed crimes.

There remains, then, only this consideration, whether it is open to the imputation that it is a mere proof of declarations of the President concerning what his motives and objects were in reference to his subsequent act in the removal of Stanton. It certainly is not limited to that force or effect. Whenever evidence of that mere character is offered that question will arise to be disposed of; but as a part of the public action and conduct of the President of the United States in reference to this very office, and his duty and purpose in dealing with it, and on the very point, too, as to whether that object was to fill it by unwarrantable characters tending to a perversion or betrayal of the public trust, we propose to show his consultations with the Lieutenant General of the armies of the United States to induce him to take the place.

On the other question of whether his efforts are to create by violence a civil war or bloodshed, or even a breach of the peace, in the removal of the Secretary of War, we show that in this same consultation it was his desire that the Lieutenant General should take the place in order that by that means the opportunity might be given to decide the differences between the Executive and Congress as to the constitutional powers of the former by the courts of law. If the conduct of the President in relation to matters that are made the subject of inculpation, and of inculpation through motives attributed through designs supposed to be proved, cannot be made the subject of evidence; if his public action, if his public conduct, if the efforts and the means that he used in the selection of agents are not to be received to rebut the intentions or presumptions that are sought to be raised against him, well, indeed, was my learned associate justified in saying that this is a vital question. Vital in the interests of justice, I mean, rather than vital to any important considerations of the cause. Vital undoubtedly on the merest principles of common justice, that when the Chief Magistrate of the nation is brought under inculpation from a series of charges of this complexion and of this comprehension, and when the motives are assigned, when the presumptions and innuendoes are alleged which I have treated of, that he shall not be permitted, in the presence of this great council sitting upon his case and doing justice to him as an individual, but more, sitting in this case and doing justice in respect to his office of President of the United States, doing justice to the great public questions proposed to be affected by your judgment—whether the chosen head of the nation shall be deposed from authority by the action of this court composed of a branch of the Congress, and the people resorted to again through the mode of election for a new Chief Magistrate. I apprehend that this learned court of lawyers and laymen will not permit this "fast and loose" game of limited crime for purposes of proof and unlimited crime for purposes of accusation, that they will not permit this enlargement and contraction, phrases sometimes replaced by a more definite and shorter Saxon description.

Mr. SPRAGUE, (at 20 minutes before 3 o'clock.) I move that the Senate take a recess for fifteen minutes.

The motion was agreed to; and the Chief Justice resumed the chair at five minutes to three o'clock.

The CHIEF JUSTICE. Senators will please give their attention. The counsel for the President will proceed. (After a pause.) Do the counsel for the President desire to be heard further?

Mr. CURTIS. No, Mr. Chief Justice.

Mr. Manager WILSON. Mr. President, I shall claim the attention of the Senate but for a few minutes. My principal purpose is to get before the minds of senators the truth in the Hardy case as it fell from the lips of the Chief Justice, when he passed upon the question which had been propounded by Mr. Erskine and objected to by the attorney general. The ruling is in these words:

Lord Chief Justice EYRE. Mr. Erskine, I do not know whether you can be content to acquiesce in the opinion that we are inclined to form upon the subject, in which we go a certain way with you. Nothing is so clear as that all declarations which apply to facts, and even apply to the particular case that is charged, though the intent should make a part of that charge, are evidence against a prisoner and are not evidence for him, because the presumption upon which declarations are evidence is, that no man would declare anything against himself unless it were true; but every man, if he was in a difficulty, or in the view to any difficulty, would make declarations for himself. Those declarations, if offered as evidence, would be offered, therefore, upon no ground which entitled them to credit. That is the general rule. But if the question be—as I really think it is in this case, which is my reason now for interposing—if the question be, what was the political speculative opinion which this man entertained touching a reform of Parliament, I believe we all think that opinion may very well be learned and discovered by the conversations which he has held at any time or in any place.

Mr. ERSKINE. Just so, that is my question; only that I may not get into another debate, I beg your lordship will hear me a few words.

Lord Chief Justice EYRE. I think I have already anticipated a misapprehension of what I am now stating, by saying that if the declaration was meant to apply to a disavowal of the particular charge made against this man that declaration could not be received: as, for instance, if he had said to some friend of his, "When I planned this convention I did not mean to use this convention to destroy the King and his government, but I did mean to get, by means of this convention, the Duke of Richmond's plan of reform"—that would fall within the rule I first laid down; that would be a declaration, which being for him, he could not be admitted to make, though the law will allow a contrary declaration to have been given in evidence. Now, if you take it so, I believe there is no difficulty.

And upon that ruling the question was changed, as read by my associate manager, and correctly read by him, and all that followed this ruling of the Chief Justice and the subsequent discussion was read by my associate manager. The lord chief justice further said:

You may put the question exactly as you propose.

That is after discussion had occurred subsequent to the ruling of the Chief Justice to which I have referred, and in which a change in the character of the original question was disclosed.

I confess I wished by interposing to avoid all discussion, because I consider what we are doing, and whom we have at that bar, and in that box, who are suffering by every moment's unnecessary delay in such a cause as this.

Mr. ERSKINE. I am sure the jury will excuse it; I meant to set myself right at this bar; this is a very public place.

Then follows the question—

Mr. Daniel Stuart examined by Mr. Erskine:

Did you before the time of this conversation being held, which is imputed to Mr. Hardy, ever hear from him what his objects were, whether he has at all mixed himself in that business?

I have very often conversed with him, as I mentioned before, about his plan of reform; he always adhered to the Duke of Richmond's plan.

And which declaration——

Mr. FESSENDEN. Is that the answer?

Mr. Manager WILSON. That is the answer. And which declaration came within the exception to the rule laid down by the chief justice. The final question was then put:

From all that you have seen of him, what is his character for sincerity and truth?

I have every reason to believe him to be a very sincere, simple, honest man.

To which the attorney general said:

If this had been stated at first to the question meant to be asked, I do not see what possible objection I could have to it.

Mr. FESSENDEN. Does not that remark apply to both questions?

Mr. Manager WILSON. That remark applies to the last question. The remark was made after the last question was put; but, as I understand it, the two questions are substantially the same, and are connected, and the remark of the attorney general applied to both, as the first was the basis, the inducement to the last.

Mr. FESSENDEN. They were put consecutively?

Mr. Manager BUTLER. Nothing between. One was inducement to the other.

Mr. Manager WILSON. Now, what is the question which has been propounded by the counsel on the part of the President to General Sherman? It is this:

In that interview what conversation took place between the President and you in regard to the removal of Mr. Stanton?

Now, I contend that that calls for just such declarations on the part of the President as fall within the rule laid down by the Chief Justice in the Hardy case, and therefore must be excluded. If this conversation can be admitted, where are we to stop? Who may not be put upon the witness-stand and asked for conversations had between him and the President, and at any time since the President entered upon the duties of the presidential office, to show the general intent and drift of his mind and conduct during the whole period of his official existence? And if this be competent and may be introduced, may it not be followed by an attempt here to introduce conversations occurring between the President, his cabinet, and General Grant, by way of inducing this Senate, under pretence of merely defending the respondent, to try a question of veracity between the General of the army and the President of the United States? The interview out of which that question sprung occurred about the same time that this one did; and I suppose the next offer will be to put in the conversation between the President, his several Secretaries, cabinet officers, and the General of the army, in order that the preponderance of testimony (considered numerically, at least) submitted here in this trial may weigh down the General of the army, he being no party concerned in this proceeding. Such an offer may meet us at the next step, because it was a conversation which transpired about that time.

Mr. Manager BUTLER. Only the day before.

Mr. Manager WILSON. Yes; only the day before. We certainly must insist upon the well-known and long-established rule of evidence being applied to this particular objection, for the purpose of ending now and forever, so far as this case is concerned, these attempts to put in evidence the declarations of the President, made, it may be, for the purpose of meeting an impeachment by such weapons of defence.

It is offered to be proved now, as the counsel inform us, that the President told General Sherman that he desired him to accept an appointment of Secretary for the Department of War, to the end that Mr. Stanton might be driven to the courts of law for the purpose of testing his title to that office; and, inasmuch as the counsel have referred to the opening argument of my associate manager, and seem to delight in reading therefrom, let me read a brief paragraph or two from that opening applying to this pretended purpose of the President of driving the Secretary of War to the courts to test his title. On that occasion the manager said:

The President knew, or ought to have known, his official adviser, who now appears as his counsel, could and did tell him, doubtless, that he alone, as Attorney General, could file an information in the nature of a *quo warranto* to determine this question of the validity of the law.

Mr. Stanton, if ejected from office, was without a remedy, because a series of decisions has settled the law to be that an ejected officer cannot reinstate himself, either by *quo warranto*, *mandamus*, or other appropriate remedy in the courts.

The counsel refrain from noticing this answer to the President's assertion, so often made, that he was only endeavoring to manufacture a lawsuit and get a case into the courts; and I am led to believe that the purpose was not the harmless one of getting the Lieutenant General of the army in the position of Secretary of War, by way of enabling the respondent to secure a judicial decision of the contested question to which the President and Secretary Stanton were parties, but for the purpose of getting possession, as we have charged, of that department for his, the respondent's, own purposes, and putting Mr. Stanton in a position where he could not get into court and secure a judgment upon his title to that office—not, I beg counsel to remember, not that we charge that the President believed or expected that he could make a tool of General Sherman; but that he might oust Mr. Stanton from the actual possession of his office by getting General Sherman to accept it, and thus putting Stanton in a position where he could not have his claim to the office tested; and further expecting and believing, doubtless, that General Sherman would not long desire to occupy the position; and when he might ask to be relieved from the thankless position, to escape from the never-ending political contests of this city, then the Adjutant General of the army, or some other person equally pliant, could be put into the place vacated by General Sherman. The President did not succeed in that effort. General Sherman declined the position tendered, and, as has been said, the respondent wandered on down with his offer of place and power until he came to Adjutant General Thomas. Then he found the person who was willing to undertake this work, who was willing to use force, as he declared, to get possession of that office, and obey the orders of the President; and now, with that proof of the President's criminal acts and intents in and before the Senate, it is proposed by his counsel to make apparent his innocence and effectuate his defence by giving in evidence his own declarations at a time not embraced in any of the former rulings of the Senate. If a case can be defended in this way, no civil officer of the United States can ever be convicted on impeachment; and if the same rule should apply in the courts of justice, no criminal will ever be convicted for any offence therein. If the officer or the criminal may make his own defence by his own declarations, he will always have one which will meet his case and work his acquittal.

I do not desire longer to detain the Senate by prolonging this discussion. I am willing to let this objection rest upon the authority produced by the learned counsel for the President, for under it, and by force of it, the testimony now offered must be excluded.

The CHIEF JUSTICE. Senators, the Chief Justice has expressed the opinion that the question now proposed is admissible within the vote of the Senate of yesterday. He will state briefly the grounds of that opinion. The question yesterday had reference to a conversation between the President and General Thomas after the note addressed to Mr. Stanton was written and delivered, and the Senate held it admissible. The question to-day has reference to a conversation relating to the same subject-matter between the President and General Sherman, which occurred before the note of removal was written and delivered. Both questions were asked for the purpose of proving the intent of the President in the attempt to remove Mr. Stanton. The Chief Justice thinks that proof of a conversation shortly before a transaction is better evidence of the intent of an actor in it than proof of a conversation shortly after the transaction. The Secretary will call the roll.

Mr. DRAKE. Will the Chief Justice be so kind as to state the question submitted to the Senate and about to be voted on?

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read as follows:

Q. In that interview what conversation took place between the President and you in regard to the removal of Mr. Stanton?

The CHIEF JUSTICE. Upon this question the yeas and nays have been demanded, and have been ordered. Senators, you who are of opinion that the question is admissible will, as your names are called, answer yea; those of the contrary, nay.

The question being taken by yeas and nays, resulted---yeas 23, nays 28; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Cole, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Morgan, Norton, Patterson of Tennessee, Ross, Sprague, Sumner, Trumbull, Van Winkle, Vickers, and Willey—23.

NAYS—Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Henderson, Howard, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—28.

NOT VOTING—Messrs. Howe, Saulsbury, and Wade—3.

So the question was ruled to be inadmissible.

Mr. STANBERY, (to the witness.) General Sherman, in any of the conversations of the President while you were here, what was said about the department of the Atlantic?

Mr. Manager BUTLER. Stay a moment. I submit that that falls within the ruling just made. They cannot put in these declarations.

The CHIEF JUSTICE. The counsel will reduce his question to writing.

Mr. STANBERY. I will vary the question.

The question was reduced to writing and sent to the desk.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read it, as follows:

What do you know about the creation of the department of the Atlantic?

Mr. Manager BUTLER. We have no objection to what General Sherman knows about the creation of the department of the Atlantic, provided he speaks of knowledge and not from the declarations of the President. All orders, papers, his own knowledge, if he has any, if it does not come from declarations, we do not object to. Although we do not see how this is in issue, if the presiding officer will instruct the witness, as in the other case, to separate knowledge from hearsay, we shall make no objection. I have no doubt the general knows the distinction himself. I desire to ask, do these gentlemen ask for the President's declarations under this?

The CHIEF JUSTICE. Do the counsel for the President ask for the President's declarations?

Mr. STANBERY. I may misunderstand the honorable managers, but I understood them to claim that the President created the department of the Atlantic as a part of his unlawful intent by military force to oust Congress, or something of that kind. Do I understand the gentlemen to abandon all claim in regard to the department of the Atlantic?

Mr. Manager BUTLER. I am not on the stand, Mr. President. When I am I will answer questions to the best of my ability. The presiding officer asked the learned counsel a question. If the presiding officer does not want an answer, that is another matter. The question put was, do you ask for the President's declarations, and thereupon the counsel undertakes to quiz me.

The CHIEF JUSTICE. The counsel for the President will be good enough to state whether in this question they include statements made by the President.

Mr. STANBERY. Not merely that; what we expect to prove is in what manner the department of the Atlantic was created; who defined the bounds of the department of the Atlantic; what was the purpose for which the department was arranged.

The CHIEF JUSTICE. Is this conversation subsequent to the time of the removal or attempted removal?

Mr. STANBERY. I do not know whether it was subsequent. It was about the time——

Mr. EVARTS. Prior.

Mr. STANBERY. Prior to the time, I believe.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate.

Mr. Manager BUTLER. I do not see that there is any question. I stated——

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read it, as follows :

What do you know about the creation of the department of the Atlantic?

Mr. Manager BUTLER. I suppose a department can only be created by an order.

The CHIEF JUSTICE. Does the honorable manager object to the question as put?

Mr. Manager BUTLER. I object to the question altogether; but, if it is to be put at all, I want it expressly, carefully guarded, not to put in any declarations or any information learned from the President.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate, whether the question shall be put.

The question being put, it was determined in the negative. So the Senate ruled the question was inadmissible.

Mr. STANBERY, (to the witness.) I will ask you this question, General Sherman: did the President make any application to you respecting the acceptance of the duties of Secretary of War *ad interim?* Did he make a proposition to you—not a declaration—but did he make an offer to you?

Mr. Manager BUTLER. Have you the question in writing?

Mr. STANBERY. Yes, sir, (handing it to Mr. Manager BUTLER.) Now, we propose to prove an act, not a declaration.

Mr. Manager BUTLER. I am instructed, Mr. President, to object to this, because an application cannot be made without being either in writing or in conversation, and then either would be the written or oral declaration of the President, and it is entirely immaterial to this issue.

Mr. EVARTS. Mr. Chief Justice and Senators, the ground, as we understand it, upon which the offer, in the form and to the extent in which our question which was overruled sought to put it, was overruled, was because it proposed to put in evidence declarations of the President as if statements of what he was to do or what he had done. We offer this present evidence as executive action of the President at the time, and in the direct form of a proposed devolution of office then presently upon General Sherman.

Mr. Manager BUTLER. To that we simply say this is not the way to prove executive action. Anything done by the Executive we do not object to. Applications made in a closet cannot be put in, whether in the form of declarations or otherwise.

Mr. STANBERY. Of course, Mr. Chief Justice and Senators, if we offer to prove the actual appointment of General Sherman to be Secretary of War *ad interim*, we must produce the paper, the executive order. That is not what we are about to offer now, for the proffer was not accepted. What we offer now is, not a declaration, but an act; a thing proposed by the President to General Sherman, unconnected, if you please, with any declaration of any intention. Let the act speak for itself.

Mr. Manager BUTLER. Verbal or written?

Mr. STANBERY. Verbal. Would it have been any better if it had been in writing by a note? Is it a question under the statute of frauds that you must have it in writing—a thing that can only be made in writing, and is not good when made by parol? What we are upon now we have not discussed at all. It is an act; a thing proposed; an office tendered to a party unaccompanied by any declaration at all. "General Sherman, will you take the position of Secretary of War *ad interim?*" Is not that an act? Is that a declaration merely

of intention? Is not that the offer of the office? We claim that it is; and we say, therefore, it does not come within the question of declarations at all. He is not declaring anything about it; he is not saying what his intention is; but he is doing an act. "Will you take this office, general? I offer it to you." That is the question. Let us have that act in, and then let it speak for itself, whether it makes for us or makes against us.

Mr. Manager BUTLER. I propose only to claim my right to close the discussion just to call the attention of the Senate to this. Suppose he did offer it, what does that prove? Suppose he did not offer it, what does that prove? If you mean to deal fairly with the Senate, and not get in a conversation under the guise of putting in an act, what does it prove? It would rather prove in our favor that he was trying to get General Sherman to take this office in order to get out Stanton. And if it was the mere act I should not object, perhaps. The difficulty is, while it is not within the statute of frauds, I think it is within everything but the statute. I think it is an attempt under the guise of an act to get in a conversation.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read as follows:

Did the President make any application to you respecting your acceptance of the duties of Secretary of War *ad interim?*

The CHIEF JUSTICE. The Chief Justice will put the question to the Senate.

The question being put, was determined in the affirmative. So the Senate decided the question to be admissible.

By Mr STANBERY:

Q. Answer the question, if you please, General Sherman.

The WITNESS, (to the Secretary.) Will you read it again, sir?

The Secretary read the question, as follows:

Did the President make any application to you respecting your acceptance of the duties of Secretary of War *ad interim?*

A. The President tendered me the office of Secretary of War *ad interim* on two occasions; the first was on the afternoon of January 25, and the second on Thursday, the 30th of January.

Q. Mr. Stanton was then in office, was he?

A. Mr. Stanton was then in office as now.

Q. Was any one else present?

A. I think not, sir. Mr. Moore may have been called in to show some papers, but I think was not present when the President made me this tender. To both of them—shall I go on?

Mr. STANBERY. There is no objection.

A. To both of them I replied in writing. My answer to the first is dated on the 27th of January; my answer to the second is dated on the 31st of January.

Q. Did you receive any communication in writing from the President on that subject?

A. I did not.

Q. What was the date of your first letter?

A. The 27th.

Q. Is that letter to the President or to General Grant?

A. According to my notes, the letter is to the President; and I think my notes are correct, for I took them from my record-book this morning. The second letter I know to be dated the 31st, also taken from the same record-book.

Q. Now, referring to the time when the offer was first made to you by the President, did anything further take place between you in reference to that matter? Besides the tender by him and the acceptance or non-acceptance by you, what took place concomitantly with that act?

Mr. Manager BUTLER. I suppose you mean to except the answer?

Mr. STANBERY. I ask in reference to that very thing as concomitant with the act.

Mr. Manager BUTLER. We object, for the very plain reason that this is now getting in the conversations again.

Mr. STANBERY. You have got the act.

Mr. Manager BUTLER. Ah, yes, senators; I call your attention to the manner in which this case is tried. I warned you that if you let in the act they would attempt to get in the declaration under it. That was the opening wedge. Now, they say they have got in the act and they are going for the declaration, to see if by chance they cannot get around your ruling.

Mr. EVARTS. What is your proposition now to the senators?

Mr. Manager BUTLER. My proposition is, objecting to this evidence, that the evidence is incompetent and is based upon first getting in an act which proved nothing and looked to be immaterial, so that it was quite liberal for senators to vote it in, but that liberality is taken advantage of to endeavor to get by the ruling of the Senate and put in declarations which the Senate has ruled out.

Mr. EVARTS. The tender of the War Office by the Chief Executive of the United States to a general in the position of General Sherman is an executive act, and as such has been admitted in evidence by this court. Like every other act thus admitted in evidence as an act, it is competent to attend it by whatever was expressed from one to the other in the course of that act to the termination of it. And on that proposition the learned manager shakes his finger of warning at the senators of the United States against the malpractices of the counsel for the President. Now, senators, if there be anything clear, anything plain in the law of evidence, without which truth is shut out, the form and features of the fact permitted to be proved excluded, it is this rule that the spoken act is a part of the attending qualifying trait and character of the act itself.

Mr. Manager BUTLER. To that I answer, senators, that here was an immaterial act—mark, an act wholly immaterial. The only qualification that could be put in would be the answer, perhaps, of General Sherman; that is not offered; but the offer is to put in an incompetent conversation as explaining an immaterial act. What is the proposition put forward here? It is that the Executive can make offers of office to any man in the country, general or other, and then put in the fact that he made the offer of the office, and, as illustrative of that fact, put in everything he said about it. That is the proposition. I did not use the word "malpractice" about that proposition; but it is a most remarkable proposition. He makes an act himself, insists upon putting it in, and then says, "I have got in the act; now you must let me explain it." He could have saved himself the explanation by keeping the act out. But that is the proposition; and I undertake—no; it is not worthy of words or asseveration. A criminal on trial puts in his act, presses it in, and then says, "I have got the act in; now I must show what I said about it in order to explain that act." It argues itself.

The CHIEF JUSTICE. The counsel will reduce their question to writing.

The counsel for the respondent reduced the question to writing, and presented it to Mr. Manager Butler.

Mr. Manager BUTLER having read the question, passed it up to the Secretary's desk, saying: I assume that it asks for conversations.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read the question as follows:

At the first interview at which the tender of the duties of the Secretary of War *ad interim* was made to you by the President, did anything furthef pass between you and the President in reference to the tender or your acceptance of it?

Mr. Manager BUTLER. The President will ask the counsel whether they expect, under that, to put in the declarations of the President or the conversations of the President?

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate as it is proposed.

Mr. DRAKE. On that question I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ANTHONY. Let the question be read.

The Secretary again read the question.

The question being taken by yeas and nays, resulted—yeas 23, nays 29; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Cole, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Morgan, Norton, Patterson of Tennessee, Ross, Sprague, Sumner, Trumbull, Van Winkle, Vickers, and Willey—23.

NAYS—Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Henderson, Howard, Howe, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—29.

NOT VOTING—Messrs. Saulsbury and Wade—2.

So the Senate decided the question to be inadmissible.

By Mr. STANBERY:

Q. Now, the second interview, General Sherman: when did you say that was?

A. The second interview, wherein he offered me that appointment, was on the 30th of January.

Q. In that interview did he again make an offer to you to be Secretary of War *ad interim?*

A. Very distinctly, sir.

Q. At that interview was anything said in explanation of that offer?

Mr. Manager BINGHAM and Mr. Manager BUTLER. We object.

Mr. EVARTS. The same ruling, of course.

Mr. STANBERY. I only want it to be ruled out, if you object to it. Let us have the ruling upon it.

Mr. Manager BUTLER. I would ask the presiding officer whether that does not exactly fall within the ruling just made?

Mr. EVARTS. We understand that it does, Mr. Butler, and have so stated to the Chair. We have asked our question, and we take the ruling of the court against it.

By Mr. STANBERY:

Q. In these conversations did the President state to you that his object was to take the question before the courts?

Mr. Manager BINGHAM and Mr. Manager BUTLER. Stop a moment. We object to that.

The CHIEF JUSTICE. The counsel will please reduce their question to writing.

Mr. Manager BUTLER. I suppose they do not propose——

Mr. STANBERY. We have a right to offer it.

Mr. Manager BINGHAM. We have a right to object to it.

Mr. STANBERY. That we understand perfectly. We may state what we propose to prove.

Mr. Manager BUTLER. But then, Mr. President, the courts sometimes say, after they have ruled a question, that it is not within the proprieties of the trial to offer the same thing over and over again. It is sometimes done in a court for the purpose of taking a bill of exceptions or a writ of error on the rulings. If the counsel say that that is the purpose here, we shall not object, because they ought to preserve their rights in all forms. But supposing this to be the court of last resort, if court at all, there can be no proper occasion over and over for throwing themselves against the rulings.

Mr. STANBERY. I do not understand that the ruling was upon this specific question. It was the general question, what was said, that was ruled out those times. I want to make the specific question now, to indicate what we desire to prove. I now put the specific question whether in any of those interviews the

President said what was his intention in regard to making the question at law? I have not put that question before.

Mr. Manager BUTLER. And, Mr. President, my remarks were in reply to the distinct admission of the counsel that the question came within the ruling and that he expected it to be ruled out, but still intended to make the offer.

Mr. EVARTS. That was the previous question.

Mr. Manager BUTLER. Oh, no; this last one.

Mr. EVARTS. No; you are mistaken about it. Besides, Mr. Chief Justice and Senators, although there is no review by any court of your determinations of interlocutory or of final questions, yet, as the learned managers know, it is entirely competent to bring to the notice of the court that is to pass upon the question in the final judgment the evidence that is supposed to be admissible, in order that it may be, as it is always if properly originated, a matter of argument, that the case is to be disposed of on the ground as if it were admitted; and that we have a right to do, and not be limited to abstractions in the determination of these questions.

The CHIEF JUSTICE. The counsel for the President will please reduce their question to writing.

Mr. EVARTS. And the difference we make between this specific question and the general question which has been excluded, and in regard to which we do not propose to trouble the Senate further, is, that when a general conversation cannot be admitted, if the objection be applicable, and it has been successfully made here, then to exclude a conclusion on a definite point the specific question may be put.

The CHIEF JUSTICE. The counsel will reduce their question to writing.

The question being reduced to writing, it was handed by the counsel for the respondent to Mr. Manager Butler, and after inspection, handed by him to the Secretary.

Mr. Manager BUTLER. I object, Mr. President, to the question, both as leading in form, outrageously so, and incompetent under the previous rulings.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read the question as reduced to writing, as follows:

In either of these conversations did the President say to you that his object in appointing you was that he might thus get the question of Mr. Stanton's right to the office before the Supreme Court?

The CHIEF JUSTICE. Senators, you who are of opinion that the question just read——

Mr. HOWARD. I ask for the yeas and nays on that question.

The yeas and nays were ordered.

The CHIEF JUSTICE. Senators, you who are of opinion that the question just read is admissible will, as your names are called, answer yea. Those of the contrary opinion will answer nay. The Secretary will call the roll.

Mr. Manager BUTLER. Let the question be again read.

The CHIEF JUSTICE. The Secretary will read the question again.

The Secretary read as follows:

In either of these conversations did the President say to you that his object in appointing you was that he might thus get the question of Mr. Stanton's right to the office before the Supreme Court?

Mr. DOOLITTLE. Mr. Chief Justice, I do not know that I understood the ground of objection of the managers.

Mr. Manager BUTLER. As outrageously leading and utterly incompetent and entirely against the ruling of the Senate.

The CHIEF JUSTICE. The Secretary will call the roll.

The Secretary proceeded with and concluded the calling of the roll.

Mr. JOHNSON, (who had not voted.) I ask for the reading of the question. I did not hear it distinctly, and that was the reason I declined to vote.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read as follows:

In either of these conversations did the President say to you——

Mr. JOHNSON, That will do, sir. I vote in the negative.

Mr. DAVIS, (who had first voted in the affirmative.) Mr. Chief Justice, the question is leading. I vote in the negative.

The result was announced—yeas 7, nays 44; as follows:

YEAS—Messrs. Anthony, Bayard, Fowler, McCreery, Patterson of Tennessee, Ross, and Vickers—7.

NAYS—Messrs. Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Davis, Dixon, Doolittle, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Grimes, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Thayer, Tipton, Trumbull, Van Winkle, Willey, Williams, Wilson, and Yates—44.

NOT VOTING—Messrs. Saulsbury, Sumner, and Wade—3.

So the question was decided to be inadmissible.

Mr. STANBERY. Mr. Chief Justice and Senators, this question undoubtedly has been overruled upon matter of form at least. I now propose to change the form of it. I do not want to be thrown out upon a mere technicality. I therefore change it.

Mr. Manager BUTLER. Let me see it.

Mr. STANBERY handed the question as written by him to Mr. Manager Butler.

Mr. Manager BUTLER. Mr. President and senators, the question as presented to me is—

Was anything said at that conversation by the President as to any purpose of getting the question of Mr. Stanton's right to the office before the courts?

Now, Mr. President and senators, this is the last question precisely, without the leading part of it, I so understand. Now, then, I understand it to be a very well settled rule of trials that where a counsel deliberately puts a question leading in form, and has it passed upon, he cannot afterward withdraw the leading part and put the same question without it. Sometimes this rule has been relaxed in favor of very young counsel, [laughter,] who did not know what a leading question was, but not otherwise. I have seen very young men make mistakes by accident, and I have known the courts to let them up and say, "We will not hold the rule, if you made an accident."

Mr. President, I call your and the Senate's attention to the fact that I three times over objected to the last question as being outrageously leading, and I did it so that there should be no mistake; yet the counsel for the President went on and insisted not only on not withdrawing it, but on putting the Senate to the delay of having the yeas and nays taken. If I had not called their attention to it I agree that perhaps the rule might not be enforced; but I called their attention to it. They are five gentlemen of the oldest men in the profession, to whom this rule is well known. They chose to submit to the Senate a tentative question, and now they propose to try that over again, keeping you voting on forms of questions until your patience is wearied out. That is what they may do.

I had the honor to say to the Senate a little while ago that all the rules of evidence are founded upon good sense, and this rule is founded on good sense. It would do no harm in the case of this witness; but the rule is founded on this proposition: that counsel shall not put a leading question to a witness, and thus instruct him what they want him to say, and then have it overruled and withdraw it, and put the same question in substance, because you could always instruct a witness in that way. Of course that way was not meant here, because I assume it would do no harm in any form, and the counsel would not do it; but I think the Senate should hold itself not to be played with in this way. If

you choose to sit here and have the yeas and nays called, I can sit here as long as anybody.

Mr. STANBERY. Mr. Chief Justice, this is quite too serious a business that we are engaged in, and the responsibility is too great, the issues are too important, to descend to the sort of controversy that would be introduced here. The gentleman says I am an old lawyer, long at the bar. I hope I never have disgraced the position. I hope I am not in the habit of making factious opposition before any court, high or low, especially not before this body, which has treated us with so much courtesy.

But the learned manager intimates here that I have deliberately put a leading question, resorting to the low tactics of an Old Bailey court, for the purpose of getting time and making factious opposition. I scorn any such imputation.

Leading questions! Undoubtedly the previous question was leading; but was it intended to be leading, intended to draw General Sherman out to say something that otherwise would not be said? The learned manager says "Oh no, it was not intended, so far as General Sherman is concerned, to be a leading question; but so far as the counsel is concerned the purpose was to put it in that form that the counsel might have another opportunity of putting it in a legal form," thus insinuating that deliberately that question was manufactured in a leading form, knowing that it would be rejected on account of form, for the purpose of getting ten or fifteen minutes of time in order to put it in a proper form!

Leading questions! Will the honorable manager please to read over the record of this case and see hundreds of leading questions put by him again and again. We got tired of objecting to them. I must be permitted to disclaim any such intention as this.

This is a matter of great importance to us. We deem it to be so. The interests of our client are in our hands, to defend him the best way we can. We wish it to appear what we desire to prove and what we are anxious to prove. We do not want to make any more argument upon it. We submit it to the judgment of the Senate. We put the question as to the matter which we seek to prove, that it may appear what it is that we seek to prove, to use every effort in our power, not factiously, but honorably, properly, not to argue again and again the same point, but simply to have the opportunity of having our questions put before the Senate and decided.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read as follows:

Was anything said at that conversation by the President as to any purpose of getting the question of Mr. Stanton's right to the office before the courts?

Mr. EVARTS. We desire to alter the first phrase by striking out the words "at that conversation," and inserting "at either of these interviews," so as to cover the same ground as before.

The CHIEF JUSTICE. The question will be so modified. The Secretary will read the question as modified.

The Secretary read as follows:

Was anything said at either of those interviews by the President as to any purpose of getting the question of Mr. Stanton's right to the office before the courts?

The CHIEF JUSTICE put the question on the admissibility of this question, and it was determined in the negative.

Mr. HENDERSON. I desire to ask a question of the witness, and I send it to the desk in writing.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Missouri.

The Secretary read as follows:

Did the President, in tendering you the appointment of Secretary of War *ad interim*, express the object or purpose of so doing?

Mr. Manager BINGHAM. Mr. President, we must object to that question, as

being within the ruling already settled by the court, and submit it to the Senate. It is both leading and incompetent.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate. Senators, you who are of the opinion that the question proposed by the senator from Missouri——

Messrs. DOOLITTLE and THAYER called for the yeas and nays, and they were ordered.

Mr. DRAKE. I ask for the reading of the question again.

The Secretary again read the question propounded by Mr. Henderson.

Mr. DOOLITTLE. Mr. Chief Justice, I have risen for the purpose of moving that the Senate go into consultation on this important question; but as I see that there may not be time to-night to go into consultation, I move that the court adjourn until Monday at 12 o'clock. ["No!" "No!"]

The CHIEF JUSTICE. The question is on the motion of the senator from Wisconsin, that the Senate, sitting as a court of impeachment, adjourn until Monday at 12 o'clock.

The motion was not agreed to.

The CHIEF JUSTICE. The question recurs on the admissibility of the question proposed by the senator from Missouri, [Mr. HENDERSON.] Senators, you who are of opinion that the question is admissible and should be put to the witness will, as your names are called, answer yea; those of the contrary opinion will answer nay. The Secretary will call the roll.

The question being taken by yeas and nays, resulted—yeas 25, nays 27; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of Tennessee, Ross, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, and Willey—25.

NAYS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—27.

NOT VOTING—Messrs. Saulsbury and Wade—2.

So the question proposed by Mr. Henderson was decided to be inadmissible.

Mr. TRUMBULL, (at 4½ o'clock.) I move that the Senate, sitting as a court of impeachment, adjourn until Monday at 12 o'clock.

Mr. STEWART, Mr. SUMNER, and Mr. THAYER called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 25, nays 27; as follows:

YEAS—Messrs. Bayard, Buckalew, Cameron, Cattell, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morton, Norton, Patterson, of Tennessee, Ramsey, Sprague, Trumbull, Van Winkle, and Vickers—25.

NAYS—Messrs. Anthony, Chandler, Cole, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Morgan, Morrill of Maine, Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Willey, Williams, Wilson, and Yates—27.

NOT VOTING—Messrs. Saulsbury and Wade—2.

So the Senate refused to adjourn.

Mr. Manager BUTLER, (to the counsel for the respondent.) Have you anything further with this witness, gentlemen?

Mr. STANBERY. I propose to put a question which I will send to the managers.

The question was sent in writing to Mr. Manager Butler.

Mr. Manager BUTLER. The question proposed is:

At either of these interviews was anything said in reference to the use of threats, intimidation, or force, to get possession of the War Office, or the contrary?

We object for the reason that it is leading, and the substance of it has been voted upon at least three times.

Mr. EVARTS. Do you say it is leading?

Mr. STANBERY. I do not understand that it is leading

Mr. Manager BUTLER. We do not care much about the "leading" point.

Mr. EVARTS. You do not object to it as leading?

Mr. Manager BUTLER. No, sir.

The CHIEF JUSTICE. The question will be read by the Secretary.

The Secretary read as follows:

At either of these interviews was anything said in reference to the use of threats, intimidation, or force, to get possession of the War Office, or the contrary?

The CHIEF JUSTICE put the question on the admissibility of the question, and it was determined in the negative.

After a pause—

The CHIEF JUSTICE. Have the counsel for the President any further questions?

Mr. STANBERY. We are considering, Mr. Chief Justice, whether there is any other question we have to put to General Sherman.

Mr. ANTHONY, (at 4 o'clock and 37 minutes p. m.) I move that the Senate, sitting as a court of impeachment, do now adjourn.

Mr. Manager BUTLER. Let us finish with this witness.

The CHIEF JUSTICE put the question on the motion to adjourn, and declared that it appeared to be agreed to.

Mr. DRAKE called for the yeas and nays, and they were ordered.

Mr. CONKLING. I beg to inquire whether the managers mean to cross-examine this witness.

Mr. Manager BUTLER. Not at all, if we can only get the other side through with him.

Mr. CONKLING. I thought they were through with him.

Mr. Manager BUTLER. No; they will not finish with him.

The CHIEF JUSTICE. The Secretary will call the roll.

The Secretary called the name of Mr. Anthony, and he responded.

Mr. THAYER. Mr. President, I rise for information. I desire——

The CHIEF JUSTICE. The roll is being called, and no debate is in order.

Mr. THAYER. I desire to inquire what we are voting on?

The CHIEF JUSTICE. On a motion to adjourn.

Mr. THAYER. I did not hear what the counsel for the defence said in regard——

The CHIEF JUSTICE. Debate is not in order. The Secretary will proceed with the call.

The Secretary concluded the call of the roll, and the result was announced—yeas 20, nays 32—as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Edmunds, Fowler, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morton, Norton, Patterson of Tennessee, Trumbull, Van Winkle, and Vickers—20.

NAYS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Fessenden, Frelinghuysen, Harlan, Howard, Morgan, Morrill of Maine, Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy. Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Willey, Williams, Wilson, and Yates—32.

NOT VOTING—Messrs. Saulsbury and Wade—2.

So the Senate refused to adjourn.

Mr. STANBERY. Mr. Chief Justice, I will state to the managers and to the Senate that, under these rulings, we are not now prepared to say that we have any further questions to put to General Sherman; but it is a matter of so much importance that we desire to be allowed to recall General Sherman on Monday if we deem it proper further to examine him.

Mr. Manager BUTLER. We are very desirous that the examination of this witness should be closed, if possible——

Mr. Manager BINGHAM. Oh, no; we have no objection.

Mr. HOWE. I move that the Senate, sitting as a court, adjourn.

The motion was agreed to; and the Senate, sitting for the trial of the impeachment, adjourned until Monday next at 12 o'clock.

MONDAY, *April* 13, 1868.

The Chief Justice of the United States entered the Senate chamber at 12 o'clock and 5 minutes p. m., and took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives appeared and took the seats assigned them.

The counsel for the respondent also appeared and took their seats.

The presence of the House of Representatives was next announced, and the members of the House, as in Committee of the Whole, headed by Mr. E. B. Washburne, the chairman of that committee, and accompanied by the Speaker and Clerk, entered the Senate chamber, and were conducted to the seats provided for them.

The CHIEF JUSTICE. The journal of the last day's proceedings will be read by the Secretary.

The Secretary proceeded to read the journal of the proceedings of the Senate sitting for the trial of the impeachment on Saturday last, but was interrupted at 15 minutes past 12 o'clock.

Mr. STEWART. I move that the further reading of the journal be dispensed with.

The CHIEF JUSTICE. If there be no objection, the further reading of the journal will be dispensed with. The Chair hears no objection. Before the counsel for the President proceed, the Chief Justice will state that on Saturday last the senator from New Jersey [Mr. Frelinghuysen] had submitted a motion for an order to remove the limit fixed by Rule 21 as to the number who may participate in the final argument of the cause. That order is before the Senate unless objected to.

Mr. SUMNER. Mr. President, I send to the Chair an amendment to that order to come in at the end:

Provided, That the trial shall proceed without further delay or postponement on this account.

The CHIEF JUSTICE. The order which is proposed by the senator from New Jersey will be read.

The SECRETARY. The order is as follows:

Ordered, That as many of the managers and of the counsel for the President be permitted to speak on the final argument as shall choose to do so.

It is proposed to amend the order by adding the following proviso:

Provided, That the trial shall proceed without any further delay or postponement on this account.

Mr. FRELINGHUYSEN. I accept the amendment of the senator from Massachusetts.

The CHIEF JUSTICE. The question will be on the order as modified.

Mr. Manager WILLIAMS. Mr. President, with your leave, and yours, gentlemen of the Senate, before taking the vote on this question, and in default of any remarks in support of the motion submitted by the honorable managers on the part of the House, I feel constrained to ask your indulgence for a word or two, not so much in the way of argument or remonstrance as for the purpose of inviting your attention to the precedents in cases of this sort.

It has pleased the Senate to adopt a rule limiting the discussion upon the final argument of this case to two counsel on each side; and this I may say is in conformity with the rule which I believe prevails almost universally in ordinary cases in the trial of all civil actions, and in the trial of indictments in the criminal courts, even though those cases may be of very small magnitude, and concern the public at large to none, or but a very trifling extent. I am not here to contest the right of this tribunal sitting as a court, or of any other judicial tribunal, to impose such reasonable limitations upon the freedom of speech as

the interests of justice may require, or as may be necessary to facilitate its proper administration. I admit that time is legitimate consideration; but in the text of Magna Charta, it comes, I think, after justice: "we will not sell, we will not deny, we will not delay right or justice."

It struck me, however, that the effect of this rule was to create a condition of things which was calculated, in some degree, to embarrass the gentlemen who have been sent here to conduct this case on the part of the House and the people. The House, acting upon its discretion and upon a full consciousness of the importance of this case, has devolved this responsible task upon seven of its members. In this particular, although the case is one without a precedent, they certainly have not deviated from the ordinary rule. I know no cases in which the number has been less than five. There are many, I think, where it has amounted to as much as eleven. The effect, however, of this rule will then be to exclude from the debate upon this question—I mean the final debate, and I take that to be really and substantially the only important one—at least four of the managers appointed by the House.

If time were a matter of importance—and I am now willing to admit that it is, as the House concedes in its proceedings here, in the articles which it has presented, and in the whole conduct of its managers, as exhibited before you—it would have seemed to me, that while a reasonable limitation would be proper, it would, perhaps, have relieved us to some extent, and enabled all the managers to perform what they might conceive to be their duties as imposed upon them by the House of Representatives, if this honorable body had undertaken to say how much time, or, in other words, how many hours, the public convenience and the interests of the state would allow them to give to the prosecution in this case. In that event the time allowed could have been divided and apportioned among the managers, and that would have been in conformity with the terms of the rule in regard to interlocutory motions where an hour has been assigned to each side and the privilege left to members of saying by whom the several questions may be discussed. If the rule had been modified in this way, the managers, as I have observed, would have been relieved, because they could then have distributed the several parts among themselves.

It struck me, however—and I rose merely for the purpose of calling your attention to the precedents—that the rule was an unusual one. It did not meet the approbation of the managers in the first instance; and when, as they did, under a sort of compulsion imposed upon them, distribute the parts in this drama, if I may be allowed to call it so, they directed their chairman to make this application. It has been postponed; it is now made and is now before you. They thought the rule was unusual. I think they all shared in that opinion. I have taken very little time myself to look into the precedents, but since the motion has been made I have thought it was my duty so to do, and I desire to state now to this honorable Senate what is the result in ordinary cases; and this, I think, will not be considered one of that description.

There have been but five cases within our history of impeachments before the Senate of the United States. The first of them was the case of Blount, which was tried, I think, in the year 1798. That was the impeachment of a senator; it went off upon a collateral question; which was as to the fact whether a member of the Senate was an officer impeachable under the Constitution. The next case was the case of Judge Pickering, of New Hampshire. The charge there was drunkenness. The defence put in—if there can be said to have been a defence put in regularly, where the respondent did not appear by counsel—was insanity. That question was tried in advance; it was ruled against him; and thereupon, upon the motion of the members of the House, at the special instance and upon the special order of the House itself, to whom, I believe, the question was then referred, the case was submitted without argument, and a judgment rendered against the defendant.

The third case was that of Justice Chase. There the number of managers was seven They were all heard except one, and yet the number of arguments made was equal to the number of managers, because the default of that one, if it was a default, was supplied by two speeches from Mr. Randolph, the chairman, who opened the case and closed it.

The next case was that of Judge Peck. There the number of managers was five. They all participated in the argument.

In none of these cases does there seem to have been—I may be mistaken, and stand subject to correction if I am wrong—any question as to the right of the House to be heard, if it desired, through all its managers. If there was any discussion then, or any rule adopted on the subject at that or any other time, members of the Senate who have participated in the framing of these rules must be of course aware of it, and will be able to make the answer in their votes. There, however, as I have already remarked, the course was the same as in the case of Justice Chase.

The last case was the case of Judge Humphreys. That took place at the commencement of the war. There there was no appearance, and of course no defence, and a sort of judgment was taken by default, something, perhaps, in the nature of a judgment of outlawry.

It seems, then, that in the only two cases that have been contested in this country before this Senate, the rule has been that all the managers appointed by the House should be allowed to participate in the discussion.

How is it elsewhere? I have not chosen to go beyond the waters to look into the precedents; but there is one case in British history which is familiar to all of us, which is associated, I may say, with the school-boy recollection of every man in this nation, of every man, indeed, who is familiar with our language, a case made memorable, I suppose, mainly, not by the peculiar interest which it involved, but by the fact that it was illustrated by the splendid genius of some of the greatest men that England has ever produced. It was not because Warren Hastings was the governor general of Bengal—that was a small matter, held, I believe, by the grace of the British East India Company—but because such men as Edmund Burke and Richard Brinsley Sheridan were among the managers. It was such men as those who made the case an epoch in parliamentary history.

It may be said, however, that there was another reason for it, and that was its long duration It continued, I believe, for as long a period as seven years. I beg senators to understand that I do not quote it as an authority on that point; but I think it will be remembered by all of them that the labor of argumentation was distributed among all the managers, the articles being numerous, complicated, and elaborate, though I suppose that the fact of all the managers participating had nothing to do possibly with the prolongation of the time.

And now, in view of these precedents, I would desire to ask how does the present case compare with them? Is it an ordinary one? Why, it dwarfs them all into absolute nothingness. There is nothing in the world's history that compares with this. It makes an epoch in history, and therefore I may well say that you are making history to-day. And therefore, too, I think it is, that upon questions of this sort you should so rule as to show to posterity that you do properly appreciate the magnitude of the interests involved. Senators, I feel myself the difficulty of realizing its magnitude. I know how hard it is for us, even, who are the actors in this great drama, to rise to the height of this great argument. Why, what is the case? That of a judge of the Supreme Court or of the district court of the United States? That of a custom-house officer? No. It is the case of the Chief Magistrate of a great people, of an empire reaching from ocean to ocean, and comprehending within its circumference forty millions of free, intelligent, thinking people, who are looking upon your doings and waiting in breathless suspense for your verdict. That is the case now before you; and if in the case of a judge of the Supreme Court—and from my habitual

respect for that tribunal, I would not be understood to speak disparagingly of the position—or if in the case of a judge of the district court, it was thought improper to impose any limitations, where the number of managers was the same as now, what shall be said of the application in a case like this of a rule which prevails, as I have already remarked, in all the courts, even in the most indifferent causes? It can only be accounted for in one way: either that the case was of small consequence, or that it was so plain that the judges required no professional research and no argument to aid them.

And now I desire only to say in conclusion, in order that I may not be misunderstood, that in the remarks which I have made I have not been moved by any considerations that were personal to myself. I have lived long enough to outlive the time when the ambition to be heard is felt by men; I have lived too long, at all events, to think it worth while to press an argument upon an unwilling judge, whatever may be the reasons by which he may be influenced, whether he may regard the case as too clear a one, or whether he may consider it as so unimportant as not to be entitled to a reasonable amount of time. I do not know, if you relax this rule, whether I shall be personally able to take advantage of it or not. That will depend upon my strength; that will depend again upon the feeling that I may have as to the necessity of anything additional to what may be said by others. I felt it, however, to be my duty to enter my protest—and I do it most respectfully—against what may be drawn into a precedent hereafter. If in a case like this the argument may be limited to two, how will it be when another supreme judge is arraigned before another Senate for high crimes and misdemeanors? I take it for granted that, measuring things by their comparative proportions, another Senate would feel authorized to reduce the number of counsel to one; and if it came to a district judge or a custom-house officer I do not know whether they might not feel authorized to deny that privilege altogether.

Mr. Manager STEVENS. Mr. Chief Justice, I have but a word to say, and that is of very little importance. I do not expect to be able, if allowed, to say many words upon this subject There is one single article which I am somewhere held responsible for introducing, and a single article only, which I wish to argue at a very brief length; but I desire that my colleagues should have full opportunity to exercise such liberty as they deem proper in the argument.

I have no objection myself—I do not speak for my colleagues—if the Senate choose to limit our time, to their doing so, and fixing it at what they think reasonable, what one gentleman here would occupy, for I find they occupy three days sometimes here. I am willing to allow the Senate to fix the time, and let the managers, those who are not already expected to speak in conclusion, to divide that time among themselves; however, sir, this is a mere suggestion.

I merely wish to say that I trust some further time will be given, as there are two or three subjects on which for a short time, perhaps an hour or three-quarters of an hour, some of us may be anxious to give the reasons why we were so pertinacious in the House in insisting upon their introduction after the House had reported leaving them out. I confess I feel in that awkward position that I owe it to myself and to the country to give the reasons why I insisted, with what is called obstinacy, in introducing one of the articles; but I am willing to be confined to any length of time which the Senate may deem proper. What I have to say I can say very briefly. Indeed, I cannot say it at any great length, if I would. I merely make this suggestion, and beg the pardon of the Senate for having obtruded thus long upon their time when they ought to proceed.

The CHIEF JUSTICE. Do the counsel for the President desire to submit any remarks to the Senate?

Mr. SHERMAN. Mr. President, I submit an amendment, which I desire to be added to the order as it stands.

The CHIEF JUSTICE. The amendment will be read by the clerk.

Mr. FRELINGHUYSEN. Mr. President, before the amendment of the senator from Ohio is submitted, I desire, if I am at liberty, to modify the resolution somewhat by adding a further proviso that only one counsel on the part of the managers shall be heard in the close. It was not the purpose of the resolution to change the rule, excepting as to the number who should speak.

The CHIEF JUSTICE. The Secretary will read the order as modified by the senator from New Jersey.

The SECRETARY. The order, as modified by the mover, now reads:

Ordered, That as many of the managers and of the counsel for the President be permitted to speak on the final argument as shall choose to do so: *Provided*, That the trial shall proceed without any further delay or postponement on this account: *And provided further*, That only one manager shall be heard in the close.

The amendment of the senator from Ohio (Mr. Sherman) is to add:

But the additional time allowed by this order to each side shall not exceed three hours

Mr. Manager BOUTWELL. Mr. President and Senators, I am very unwilling myself to make any remarks upon this resolution, because I am so situated, upon the judgment of the managers, that it is a delicate matter for me to do so; and had it not been for the qualification made by the honorable senator from New Jersey I should have said nothing But if the Senate will consider that in the case of Judge Peck, after the testimony was submitted to the Senate, it was first summed up by two managers on the part of the House; that then the counsel for the respondent argued the cause of the respondent by two of their number, and that then the case was closed for the House of Representatives by two arguments made by the managers; if the Senate will consider that in the trial of Judge Chase the argument on the part of the House of Representatives and of the people of the United States was closed by three managers after the testimony had been submitted and the arguments in favor of the respondent had been closed; if they will consider that in the trial of Judge Prescott, in Massachusetts—which, I venture to say in this presence was one of the most ably-conducted trials in the history of impeachments, either in this country or in Great Britain, on the part of the managers sustained by Chief Justice Shaw, and on the part of the respondent by Mr. Webster—that two arguments were made by the managers of the house of representatives on the part of the house and on the part of the people of that Commonwealth after the case of the respondent had been closed both upon the evidence and upon the argument, I think it needs no further illustration to satisfy this tribunal that the cause of the people, the cause of the House of Representatives, if this case should be opened to full debate on the part of the five gentlemen who represent the respondent here, ought not to be left to the close of a single individual.

Mr. JOHNSON. Mr. Chief Justice, I ask for the reading of the order as moved by the mover, and as proposed to be modified by the member from Ohio.

The Secretary read the order as modified by Mr. Frelinghuysen, and the amendment of Mr. Sherman.

Mr. STANBERY. Mr. Chief Justice and Senators, we hope this extension of time will not be an injury to us in disguise. We have neither asked it nor objected to it; it comes from the opposite side to have more counsel than are already assigned by the rules which have been adopted. We make no objection; no objection if all seven of my learned friends argue this case; but as I understand the amendment offered by the senator from Ohio, it is that in the final argument, as to which as yet there is no limitation of time, but only of the number of counsel, the provision as to the addition of counsel shall be amended by a proviso that the additional time shall not be more than three hours. The time already is indefinite. The rule fixes only the number of counsel, not the time that they shall occupy. As yet the Senate have not said that in the final summing up, or indeed in the opening which we have had, counsel shall be limited

as to time. I do not know in what position we should be if this amendment of the senator from Ohio is adopted. Three hours in addition to what? Three hours in addition to a time that is made indefinite by the rule! I cannot understand it. I only call the attention of the Senate to it, that there may be no misunderstanding hereafter; and as to that matter of a limit as to time, I hope we may say that not one of us has any idea of lengthening out time for any purpose of delay. I think the Senate can have enough confidence in us to know that when we are through we will stop; that we will only take as much time as in this great case we may deem to be necessary. I know if we go beyond that we shall lose the attention of the court. Not an instant do we mean to speak after we have concluded what is material to us in the case. If we attempt to take time beyond that for something out of the case we shall very soon see, senators, in the expression of your faces, that you are not listening to us with attention. For one I can say, and I think I can speak for my learned associates, that we shall not take a moment more than we consider necessary; every moment necessary for the case, not a moment unnecessarily in our best judgment as to how we are to present the case. I know it is the custom of courts to limit the time of counsel—they must do it—in their ordinary business. It is done in the Supreme Court of the United States; but when there is an important case even before that court which limits each argument of counsel to two hours generally, whenever the court is asked in an important case to enlarge the time, they do it and give four hours. On one occasion I had myself two entire days for an argument in that court; but that case, important as it was, has no sort of comparison with the case now before you. Counsel, when they are limited to an exact time, are embarrassed by it. It is a rule that keeps our attention continually on the clock and not on the case; we are afraid to begin and follow up an argument for fear we shall exhaust too much time on that and will be caught by the punctual hour before we come to other important matters. Now, I hope it is not necessary to suggest that counsel are not here to use unnecessary time, who have a reputation to sustain before the world and before this Senate. I beg them not to decide this question upon any idea that we have abused the liberty which is or may be accorded to us.

Mr. SHERMAN. Mr. President, I will withdraw my amendment, as I see there will be difficulty in discriminating between those who are limited by time and those who are not.

The CHIEF JUSTICE. The senator from Ohio withdraws his amendment. The question recurs on the order proposed by the senator from New Jersey, as modified by him.

Mr. Manager BUTLER. I do not rise, sir, to debate this question, but simply to ask the counsel for the President, while they do not ask for this, whether they desire it? I should like to know whether they desire this extension? They may think that they would not ask it, but the question is whether they would wish it, because if they do not wish it it would make a very decided impression on my mind as to whether it should be granted. I want to say here, however, Mr. President, that I speak without prejudice to anybody, because, from the very kind attention I have received from the Senate in the opening argument, which, unfortunately, fell upon me, I do not, in any event, under any relaxation of the rule, propose to trespass a single moment in the closing argument upon the attention of the Senate, but to leave it to the very much better argumentation of my associates. Therefore I speak wholly without any wish upon my own part except that such argumentation may be had as shall convince the country that the case has been fully stated on the one side and the other.

Mr. SUMNER. Mr. President, I should like to have the resolution reported.

The CHIEF JUSTICE. The Secretary will read the resolution again.

The Secretary read as follows:

Ordered, That as many of the managers and of the counsel for the President be permitted

to speak on the final argument as shall choose to do so: *Provided*, That the trial shall proceed without any further delay or postponement on this account: *And provided further*, That only one manager shall be heard in the close.

Mr. SUMNER. Mr. President, I move to strike out the last proviso and insert the substitute which I send to the chair.

The CHIEF JUSTICE. The Secretary will read the amendment proposed by the senator from Massachusetts.

The SECRETARY. It is proposed to strike out the last proviso in the following words:

And provided further, That only one manager shall be heard in the close.

And in lieu thereof to insert:

And provided, That according to the practice in cases of impeachment the several managers who speak shall close.

Mr. CONKLING. I beg to ask an answer from the counsel for the President to the question propounded by Mr. Manager Butler.

Mr. EVARTS. I was rising, Mr. Chief Justice and Senators, to say a word in reference to this question when the senator from Massachusetts sent up an amendment to the Clerk. It will not be in the power of the counsel for the President, if the rule should now be enlarged, to contribute the aid of more than two additional advocates in behalf of the President. The rule was early adopted and known to us, and the arrangement of the number of counsel was accommodated to the rule. Beyond that we have nothing to say. If the rule shall be enlarged, all of us will with pleasure take advantage of the liberality of the Senate.

In regard, however, to the arrangement of six against four, as would be the odds which we should need to meet, we naturally might feel some interest, particularly if it is a proposition to be entertained by the court that all our opponents should speak after we had got through, and we should have nobody to reply to before we made our arguments. The last speech hitherto has been made in behalf of the President; but if there is any value in debate whatever, it is that when it begins and is of controversy between two sides, each as fairly as may be should have an opportunity to know and reply to the argument of the other. Now, the present rule, very properly as it seems to us, and wholly in accordance with the custom of all matters of forensic debate, thus disposes of the matter by requiring that the managers shall open by one of their number, and the two counsel for the President allowed to speak and make their reply, and then the second manager appearing in that behalf to close. So, too, if the number should be enlarged, it would seem, especially if there should be the disparity of six against four, an equal and equally just arrangement should be made in the distribution of the arguments of the managers and of the counsel. Beyond that we have nothing to say.

The CHIEF JUSTICE. Senators, the question is on the amendment proposed by the senator from Massachusetts.

Mr. WILLIAMS. Mr. President, I move to lay the order and the amendment upon the table, with a view of having a test vote as to whether the original rule shall or shall not be changed.

Mr. DRAKE. I raise a question of order, Mr. President, that in this Senate, sitting for the trial of an impeachment, there is no authority for moving to lay any proposition on the table. We must come to a direct vote, I think, one way or the other.

Mr. HOWARD. Debate is out of order.

The CHIEF JUSTICE. The Chief Justice cannot undertake to limit the Senate in respect to its mode of disposing of a question; and as the senator from Oregon (Mr. Williams) announced his purpose to test the sense of the Senate in regard to whether they will alter the rule at all, the Chief Justice conceives his motion to be in order.

Mr. WILLIAMS. I ask for the yeas and nays on the motion.

The yeas and nays were ordered, and taken.

Mr. ANTHONY. My colleague (Mr. Sprague) has been called away by a summons to attend the bedside of a friend with whom he has held the most intimate relations for 20 years, and who sent a request by telegraph that he would come and see him before he died. I make this explanation, as under no ordinary circumstances would he have been absent from the service of the Senate even for a single day.

The result was announced—yeas 38, nays 10; as follows:

YEAS—Messrs. Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Fessenden, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Van Winkle, Vickers, Williams, Wilson and Yates—38.

NAYS—Messrs. Anthony, Davis, Dixon, Doolittle, Fowler, Grimes, McCreery, Patterson of Tennessee, Trumbull, and Willey—10.

NOT VOTING—Messrs. Bayard, Frelinghuysen, Nye, Saulsbury, Sprague and Wade—6.

So the order, with the pending amendment, was laid on the table.

The CHIEF JUSTICE. Gentlemen of counsel for the President, you will proceed with the defence.

WILLIAM T. SHERMAN'S examination continued.

By Mr. STANBERY:

Question. After the restoration of Mr. Stanton to the War Office upon the vote of the Senate, did you form an opinion as to whether the good of the service required another man in that office than Mr. Stanton?

Mr. Manager BUTLER. Stay a moment. We object. Will you reduce the question to writing?

The CHIEF JUSTICE. The counsel for the President will please reduce the question to writing.

Mr. STANBERY. I am perfectly willing to do so, though I can hardly be called to do so at the request of the learned manager. I made a similar request to him more than once, and it was never complied with.

The CHIEF JUSTICE. The rule requires that it be done.

Mr. Manager BUTLER. I beg a thousand pardons. Whenever it was intimated by the Chief Justice it was done. It is not a matter of kindness; it is a matter of rule.

Mr. STANBERY. Mr. Chief Justice, my impression was that that rule applied to a question put by a senator, not to the questions of counsel. Otherwise we should never get through. It is a question put by a senator that must be in writing. I may be mistaken, however.

The CHIEF JUSTICE. The Secretary will read the rule.

The Secretary read Rule 15, as follows:

XV. All motions made by the parties or their counsel shall be addressed to the presiding officer, and if he or any senator shall require it, they shall be committed to writing and read at the Secretary's table.

The CHIEF JUSTICE. The counsel will please reduce their question to writing.

The question was reduced to writing.

The CHIEF JUSTICE. The Secretary will read the question proposed by the counsel for the President.

The Secretary read as follows:

Question. After the restoration of Mr. Stanton to office did you form an opinion whether the good of the service required a Secretary of War other than Mr. Stanton; and if so, did you communicate that opinion to the President?

Mr. Manager BINGHAM. Mr. President and Senators, we desire to state very briefly to the Senate the ground upon which we object to this question. It is that matters of opinion are never admissible in judicial proceedings, but in certain exceptional cases, cases involving professional skill, &c.; it is not neces-

sary that I should enumerate them. It is not to be supposed for a moment that there is a member of the Senate who can entertain the opinion that a question of the kind now presented is competent under any possible circumstances in any tribunal of justice. It must occur to senators that the ordinary tests of truth cannot be applied to it at all; and in saying that, my remark has no relation at all to the truthfulness or veracity of the witness. There is nothing upon which the Senate could pronounce any judgment whatever. Are they to decide a question upon the opinions of forty or forty thousand men what might be for the good of the service? The question involved here is a violation of the laws of the land. It is a question of fact that is to be dealt with by witnesses; and it is a question of law and fact that is to be dealt with by the Senate.

Now, this matter of opinion may just as well be extended one step further, if it is to be allowed at all. After giving his opinion of what might be requisite to the public service, the next thing in order would be the witness's opinion as to the obligations of the law, the restrictions of the law, the prohibitions of the law. We cannot suppose that the Senate will entertain such a question for a moment. It must occur to the Senate that by adopting such a rule as this it is impossible to see the limit of the inquiry or the end of the investigation. If it be competent for this witness to deliver this opinion, it is equally competent for forty thousand other men in this country to deliver their opinions to the Senate; and then, when is the inquiry to end? We object to it as utterly incompetent.

Mr. STANBERY. Mr. Chief Justice and Senators, if ever there was a case involving a question of intention, a question of conduct, a question as to acts which might be criminal or might be indifferent according to the intent of the party who committed them, this is one of that class. It is upon that question of intent (which the gentleman know is vital to their case, which they know as well as we know they must make out by some proof or other) that a great deal of their testimony has been offered, whether successfully or not I leave the Senate to determine; but with that view much of their testimony has been offered and has been insisted upon. That is, it has been to show with what intent did the President remove Mr. Stanton They say the intent was against the public good, in the way of usurpation, to get possession of that War Office and drive out a meritorious officer, and put a tool, or, as they say, in one of their statements, a slave, in his place.

Upon that question of conduct, senators, what now do we propose to offer to you? That the second officer of the army—and we do not propose to stop with him—that this high officer of the army, seeing the complication and difficulty in which that office was, by the restoration of Mr. Stanton to it, formed the opinion himself that for the good of the service Mr. Stanton ought to go out and some one else take the place. Who could be a better judge of the good of the service than the distinguished officer who is now about to speak?

But the gentlemen say what are his opinions more than another man's opinions, if they are merely given as abstract opinions? We do not intend to use them as abstract opinions. The gentlemen did not read the whole question. It is not merely what opinion had you, General Sherman; but having formed that opinion, did you communicate it to the President, that the good of the service required Mr. Stanton to leave that department; and that in your judgment, acting for the good of the service, some other man ought to be there?

This is no declaration of the President we are upon now. This is a communication made to him to regulate his conduct, to justify him; indeed, to call upon him to look to the good of the service, and to be rid, if possible, in some way, of that unpleasant complication. Any one can see there was a complication there that must, in some way or other, be got rid of; for look at what the managers have put in evidence! It appears by Mr. Stanton's own statement,

that from the 12th of August, 1867, Mr. Stanton had never seen the President, has never entered the Executive Mansion, has never sat at that board where the President's legal advisers, the heads of departments, are bound to be under the Constitution.

Will they say that the relations between him and the President had got to that pitch that Mr. Stanton was unwilling to go there lest he might not be admitted? He never made that attempt; but that is not all: Mr. Stanton says deliberately, on the 4th of March, in his communication to the House of Representatives, when he sent the correspondence between the President and General Grant: "I have not only not seen the President, but I have had no official communication with the President since the 12th of August, 1867." How is the army to get along with that sort of thing? How is the service to be benefited in that way? Certainly it is for the benefit of the service that the President should have there some one with whom he can advise as to what is to be done in regard to the army.

But what has the Secretary of War become? One of two things is inevitable: he is running the War Department without any advice or consultation with the President, or he is doing nothing. Ought that to be the position of a Secretary of War? The President could not get out of that difficulty. He might have got out of it, perhaps, by humbling himself before Mr. Stanton, by sending him a note of apology that he had ever suspended him. By humbling himself to his subordinate it might have been that Mr. Stanton would have forgiven him. Would you ask him to do that, senators?

Now, when you are looking to motives, when you consider the provocations that the President has had, when beyond that you see the necessities of the public service placed in that situation that no longer can there be any communication between the Secretary of War and the President, is it fit that the public service should be carried on in that way, just to enable the Secretary of War to hold on to his office and become a mere *locum tenens?* Then, when you are considering the conduct, the intentions, and the matter that is in the mind of the President to get rid of Stanton—undoubtedly he had that matter in his mind—when you find that he has been advised, not only as we propose to prove, by General Sherman himself, that the good of the service required that that difficulty should be ended, but that General Sherman, as I shall undertake to prove, communicated also the opinion of General Grant to the very same point, and when, as I tell you, we shall follow it up by the agreement of these two distinguished generals to go to Mr. Stanton and to tell him that, for the good of the service, he ought to resign, as he had intimated when the President first suspended him that he would resign, the Senate being here to take care that the President got no improper man there—now, when you are trying the President for his intentions, whether he acted in good faith or bad faith, senators, will you shut out from him the advice that he received from these two distinguished officers, and will you allow the managers still to say that he acted without advice, that he acted for the very purpose of removing a faithful officer and getting in his place some tool or slave of his? When it was said to him that there should be a change for the benefit of the service, can you not extend to him so much charity as to believe that he would be impressed by the opinions of these two distinguished generals? They say they did not intend to make themselves parties to the controversy, but they saw, as things stood there, that either the President must go out or Mr. Stanton. That was the character of it. It is with this view that we offer this testimony, and I trust this is not to be ruled out.

Mr. Manager BUTLER. Mr. President, Senators, I foresaw if we did not remain long enough in session, which the late hour of the night on Saturday warned us not to do, to finish this witness, so that only the usual rule of recalling would be enforced, that the struggle would be renewed again in some form to-day to get in the declarations of the President or declarations to the President;

and now the proposition is to ask General Sherman whether he did not form an opinion that it was necessary that Mr. Stanton should be removed.

Mr. STANBERY. I did not say "removed."

Mr. Manager BUTLER, (to the Secretary.) Allow me to have the question. I believe I am correct. (Obtaining the question.) What is it?

Whether the good of the service required a Secretary of War other than Mr. Stanton, and if so, did you not communicate that opinion to the President.

Of course there could not be any other Secretary of War but Mr. Stanton, unless Mr. Stanton resigned or was removed. It would be a good deal more to the purpose to ask him whether he communicated that opinion to Mr. Stanton, if it may be put in at all, because Mr. Stanton could have resigned.

Mr. EVARTS. We will follow it up with that.

Mr. Manager BUTLER. *Quousque tandem abutere nostra patientia?* I am not able to say to what extent you will go in offers; but I am very glad we are told that is to be done and these tentative experiments are to go on, for what purpose, senators, you will judge; certainly for no legal purpose. Now, it is said that it is necessary to put this in, and the argument is pressed that was used on Saturday, "We must show that or we cannot defend the President." Well, if you cannot defend the President without another breach of the law for his breach of the law, I do not see any necessity for his being defended. You are breaking the law to defend him, because you are putting in testimony that has no relevancy, no pertinency, no competency under the law. After you have let this come in, senators, if you can do so, will you allow me to ask General Sherman whether he did not come to an equally firm opinion that it was for the good of the service, or for the good of the country, that Johnson should be removed? The learned Attorney General says he came to the opinion that this complication, as he called it, should be broken up. I think most of us came to that conclusion—but how? General Sherman might think it was by removing Mr. Stanton; General Grant might think it was by removing Johnson. The House of Representatives have thought that the complication could be broken up by the removal of Johnson. Are you going to put in General Sherman's opinion to counterbalance the weight of the opinion of the House of Representatives?

Again, will the next question be put to General Sherman whether, if he thought it was better to remove Stanton and put in Thomas, that would be a good change for the good of the service; or shall we be allowed on another article to show that General Sherman did not think it was a good plan to put in Thomas, and so convict the President of a wrong intent, because General Sherman thought Thomas was a bad man, and, therefore, the President is guilty if he put him in? Because General Sherman thought that Mr. Stanton was a bad man, therefore it was for the good of the service to put Stanton out, and therefore the President is innocent in putting him out—that seems to be the proposition. Can we go into this region of opinion? I speak wholly without reference to the witness. I am now speaking wholly upon the general principle of opinions of men. That will send us into another region of inquiry which we do not want to go into. If this testimony comes in, we shall then have to ask General Sherman what were your relations with Mr. Stanton? Have you had a quarrel with him? Did you not think it would be better for the service if you could get rid of your enemy? Was not that the thing? Was there not an unfortunate difficulty between you? If you allow this opinion to go in, you cannot prevent our going into the various considerations which would make this opinion of little value. It is that kind of inquiry into which I have no desire to enter, and I pray this Senate not to enter, for the good of the country and for the integrity of the law. That is the next question we shall have to ask—what were the grounds of your opinion?

Again, we shall have to go further. We shall have to call as many men on the

other side as we can. If General Sherman is put in here as an expert, we shall have to call General Sheridan and General Thomas—I mean George H. Thomas always—and General Meade, and other men of equal experience, to say whether upon the whole they did not think it was for the best to keep Mr. Stanton in, and whether they communicated their opinions to the President and to Mr. Stanton. But I think nothing can more clearly demonstrate the fact that this cannot be evidence. If it is put on the ground that he is an expert as an army officer, then we have army officers, if not quite as expert, yet as much experts in the eye of the law as he is, and the struggle will be here on which side would be the most of them.

There is another purpose on which this is put in. It is said it is put in to show that the President had not a wrong intent. There has been a great deal said here about intent which, I think, deserves a word of comment, as though the intent has got to be proved by somebody that the President told he had a wrong intent. That seems to be the proposition as put forward, that you have to bring some direct proof, some man who heard the President say he had a bad intent, or something equivalent to that. The question before you is, did Mr. Johnson break the law of the land when he removed Mr. Stanton? If he did break the law of the land when he removed Mr. Stanton, what then? Then the law supplies the intent, and says that no man can do wrong intending right. That illustrates this question in another view; because, suppose it is for the good of the service and it is demonstrated that it is best for the good of the service that Mr. Stanton should be put out, does that justify the President in breaking the law of the land to get him out? Does that aid his intent? Shall you do evil that good may come? Can you do that under any state of circumstances? The question is not whether it was best to have Mr. Stanton out. Upon that question senators may be divided in opinion. There may be many men, for aught I know or aught I care, there may be senators who think that it would be best to have Stanton out; but that is not the question at all. Admit it; the question is, is it best to break the law of the land by the chief executive officer in order to get him out? Is it best to strain the Constitution and the laws in order to get him out? However much he may desire to do it, the fact that the Secretary is a bad officer does not give the President a right to do an illegal thing to get him out. See where you are coming, senators. It is this, that it is a justification for the President or any other executive officer to break the law of the land if he can show that he did what he thought was a good thing by doing it.

I am aware that the executive office, if I go to history, has been carried on a little upon that idea. Let me illustrate: you senators and house of representatives, agreeing together as the Congress of the United States, passed a law that no man should hold office in the southern States that could not take the oath of loyalty; and I am aware that the President of the United States—he ought to have been impeached for it—boldly put men into office who could not take that oath in the south, and paid them their salaries, and justified it before the Senate and the House of Representatives on the ground that he thought he was doing the best for the service to do it—a breach of the law which, if the House and the country had time to follow him in the innumerable things he has done, would and ought to have been presented as ground for impeachment. It is one of his crimes. And now he comes here and before the Senate of the United States says, "Well, I got advice that such a man was not a good officer, and, therefore, I broke the law to put him out, and that is my excuse." Is it an excuse?

But one other thing to which I wish to call your attention, because you have heard it here over and over again, is this: it is said that Mr. Stanton has not had a seat in that board, that cabinet council, since the 12th of August last. Whose fault was that? He attended every meeting up to within a week of the

12th of August. He did his duty up to within a week of the 12th of August. He was notified that suspension was coming. He was then suspended until the 13th of January; and when he came back into the office it was not for the President to humble himself, but it was for him to notify him as the head of a department to come and take his seat if he so desired; but that notice never came. It was not for him to thrust himself upon the President, but it was for him to go when he understood his presence would be agreeable.

But that is put forward here as though this government could not go on without a cabinet board; and the learned counsel has just told us that it is a constitutional board. Upon that I want to take issue, once for all, senators; it is an unconstitutional board. There is not one word in the Constitution about a cabinet or a board. Jeremy Bentham said, years ago, that a board was always a shield, and there has been an attempt in some of the later Presidents to get these boards around them to shield them in their acts as a board. The Constitution says that the principal officers of the departments may be called upon in their respective offices, in regard to their duties, to give opinions in writing to the President; and the earlier Presidents called upon their cabinet officers for opinions in writing. I have on my table here an opinion that Thomas Jefferson gave to Washington, about his right to appoint embassadors, in writing. They are not to be a board, not to sit down and consult, nor to have cabinet counsels. That is an assumption of executive power that has grown up little by little from the cabinets of the Old World. These heads of departments were given to the President as aids, and not as a shield, and he now will attempt to shield himself, perhaps, under their advice and under their action. It is not mere form. The opinion in writing was required by the Constitution—why? Because the framers of the Constitution well knew that there were cabinet councils, and from the initials of a cabinet council in England came that celebrated word "cabal," which has been the synonym of all that was vile in political combinations from that day to this; and knowing that, it would seem almost with prescience that they required not that there should be verbal communications semi-weekly by which things might be arranged and by which a secret conclave might be held, but that there should be what? That there should be written opinions asked and given, so that they might be known of all men; so that the President could not say, "Why, I got this advice from my cabinet counsellor," unless he showed it in writing, and so that the cabinet counsellor should not say that he failed to give this advice, because the President might show it in writing. Think of this cabinet and what it has got to be! Picture to yourselves, senators, President Johnson and Lorenzo Thomas in cabinet consultation to shield the President! If Lorenzo Thomas was rightly appointed, then of course he can go into cabinet consultation. If they have a right to put in consultation one cabinet officer they have a right to put in another. If they have a right to put in the opinion of the Attorney General, who, by the way, is not by the law a cabinet officer in the sense in which it is said a head of a department is—if they have a right to put in the opinion of one head of a department they have a right to put in another; if a permanent, then a temporary cabinet officer; if a temporary head of a department, then an *ad interim* one. I find no dereliction of duty on the part of Mr. Stanton in this; nothing showing that the War Department could not go on. Let them show that the President has ever done according to the Constitution, asked Mr. Stanton any opinion in writing as to the duties of his department, or that he has ever sent an order to him which he disobeyed; and that will be pertinent; that will show a reason; but I pray the Senate not to let us go into the region of opinion

I have taken this much time, senators, because I think we save time by taking it, if we come to the right decision to-day to keep out this range of opinion. This case is to be tried by your opinion; not upon your opinion as to whether Stanton is a good or a bad officer, but upon the opinion that, whether good or

bad, the President broke the law in removing him, and must take the consequences of that breach of the law. It is said that he broke it in order to get into court. I agree that if his counsel are correct he is in court, and in a court where he will have the full benefit of having the law settled forever.

Mr. EVARTS rose.

Mr. CONKLING. Before the counsel proceeds I beg to submit a question, which I send to the desk in writing.

The CHIEF JUSTICE. The question propounded by the senator from New York will be read.

The Secretary read as follows:

Question. Do the counsel for the respondent offer at this point to show by the witness that he advised the President to remove Mr. Stanton in the manner adopted by the President, or merely that he advised the President to nominate for the action of the Senate some person other than Mr. Stanton?

Mr. STANBERY. We do not propose either. We propose simply to show that he gave his opinion that for the good of the service somebody else ought to be there.

Mr. Manager BUTLER. Without regard to the mode?

Mr. STANBERY. We do not propose to show that he advised him about the mode of removal; but we propose to show this opinion communicated to the President.

Mr. EVARTS. Mr. Chief Justice and Senators, I do not propose, upon this question of evidence, to discuss the constitutional relations of the President of the United States to his cabinet, nor to anticipate in the least the consideration of the merits of this case, as they shall finally be the subject of discussion. If the accusations against the President of the United States, upon which he is on trial here, and judgment upon which must result in his deposition from his great office and a call upon the people of the United States to choose his successor, turn wholly upon the mere question of whether the President has been guilty of a formal violation of a statute law, which might subject him to a six cents' fine or a ten days' imprisonment, if he were indicted for it—if that is the measure and the strength (as, when it comes to question of evidence, is constantly urged upon you) of this accusation, I think that the honorable manager, who so eloquently and warmly pressed upon you the consideration that Warren Hastings's trial was nothing to this, was a little out of place. If they will make it just as it would be if the President had been indicted under the civil-tenure act, when he could have been found guilty or innocent under the circumstances of the act, and then the punishment could have been made appropriate to the circumstances of its actual formal technical infraction, we could understand that trial; and that is open to the House of Representatives or to any informer at any time. On the contrary, through hours and pages of eloquence, the mere act and fact of the removal of Mr. Stanton is made the circumstance or *corpus delicti* upon which, in respect to its motives, its purposes, its tendencies, its results, the "high crime," in the constitutional sense of that term, which would call for a removal from office of the Chief Magistrate by reason of some grave public interest being injured, is made the topic of argument and of proof.

Now, Mr. Chief Justice and Senators, you cannot fail to see that General Sherman is not called here as an expert to give an opinion whether Mr. Stanton is a good Secretary of War or not. He is not called here as an expert to assist your judgment in determining whether or no it was for the public interest that Mr. Stanton should be removed, in the sense of determining whether this form of removal was legal or not. He is introduced here as the second in command over the armies of the United States, and to show an opinion on his part, a as military man and in that position, that the military service required for its proper conduct that a Secretary should take the place of Mr. Stanton whose relations to that service and to the Commander-in-Chief were not such as those

of Mr. Stanton were, that that opinion was communicated to the President. We shall enlarge the area by showing that it was shared in by other competent military authority.

And, now, if a President of the United States, when brought under trial before a court of impeachment upon impeachment, is not at liberty in his defence to show that the acts which are brought in question as against the public interest and with bad motives, and to obstruct laws, and to disturb the public peace, acts wantonly done, recklessly done, violently done, were proper and necessary in the judgment of those most competent to think, most competent to advise, most responsible to the country in every sense for their opinions and their advice, what can he show? Is it not proper for him to prove that, furnished with those opinions and supported by those opinions, (whether, in fact, which is yet to be determined, he adopted a mode that was unjustifiable or not; and whether you shall adjudge the mode to be criminal or not, is not now important,) he acted in such a manner that the motives and the objects which he had in view were of the public service, and for the public service, and based upon the intelligent and responsible opinion and advice of those in whom the service and the community generally had, and upon the best foundations, the most abiding confidence.

Now, senators, reflect; you are taking part in a solemn transaction which is to effect, in your unfavorable judgment, a removal of the Chief Magistrate of the nation for some offence that he has committed against the public welfare with bad motives and for an improper purpose; and we offer to show you that upon consultations and deliberations and advice from those wholly unconnected with any matters of personal controversy and any matters of political controversy, and occupying solely the position of duty and responsibility in the military service of the country, he acted and desired to accomplish this change. We cannot prove everything in a breath; nor is it a criticism on testimony justly to exclude it, that it does not in itself prove all; but if it shall be followed, as it will be, by evidence of equal authority and weight and by efforts of the President, or authority to make efforts given by the President to secure a change in the control of this office which the military service of the country thus demanded, we shall have shown you by an absolute negative that this intention, this motive, this public injury, so vehemently, so profusely imputed in the course of the arguments, so definitely charged in the articles, had no foundation whatever.

Mr. Manager BINGHAM. Mr. President and Senators, after the very pertinent question that was propounded by one of the senators to the counsel for the President had been put, nothing more would have been said by the managers but for the argument that has since been interposed. The suggestion made by the honorable senator shows the utter incompetency and absurdity of the proposition that is presented here now: that was whether you proposed to ask of the witness that he formed the opinion and expressed it to the Executive that he ought to remove the Secretary of War in the mode and manner that he did remove him or attempt to remove him. Is there any one here bold enough to say that if he had formed the opinion against the legality of the proceeding and had so expressed himself to the President it would be competent for us to introduce any such matter here as a mere matter of opinion to prove intent or to prove anything else against the President?

But, apart from that, the reason chiefly why I rose to reply to the utterances of the gentleman who has just taken his seat is this: He intimates here the extraordinary opinion for himself that the trial in a court of justice of a beggar arrested in your streets for a crime punishable with six cents of fine or, perchance, five hours' imprisonment, is subject to a very different rule of evidence and of administrative justice from that which prevails and applies when you come to prosecute the Chief Magistrate of the nation. The American people will enter-

tain no opinions of that sort; nor will their senators. We have the same rule of justice and the same rule of evidence for the trial of the President of the United States and for the trial of the most defenceless and the weakest of all our citizens.

Mr. EVARTS. Will the honorable manager allow me to say that the only illustration I used was of an indictment against the Chief Magistrate of the Union on trial before a police court?

Mr. Manager BINGHAM. I supposed myself that when the gentleman made use of the remark he intended certainly to have the Senate understand that there was a different rule of evidence and of administrative justice in the prosecution of an indictment in a court where the penalty might be six cents from that which applied in the prosecution of the President before the Senate.

Mr. EVARTS. When the issues are different the evidence will be different. It does not depend on the dignity of the defendant.

Mr. Manager BINGHAM. It is very difficult to see how the gentleman can escape from the position which he has assumed here before the Senate by making the remark that he supposed the President to be prosecuted. It is a very grave question in this country whether the President can be prosecuted in the courts of the United States for an indictable offence before he is impeached. It has been incorporated in your Constitution that after he has been impeached and removed he may be indicted and prosecuted for the crime. I do not, however, stop to argue that question now. I do not care who is prosecuted upon an indictment, whether the President or a beggar, the same rule of evidence applies to each. I do not care who is impeached, whether it be the President of the United States or the lowest civil officer in the service of the United States before the Senate, the same rule of evidence obtains, and the common-law maxim applies that where an offence is charged which is unlawful in itself, and it is proved to have been committed, (as alleged in every one of these articles, and established, I say, by the proof as to all of them,) the law itself declares that the intent was criminal, and it is for the accused to show justification. That is the language of the books. I so read it in the volume lying before me, the third of Greenleaf.

I do not stop to delay the Senate by reading the words further than I have recited them, that where the act is unlawful the intent is established by the proof of the fact that he did commit the unlawful act. As I intimated before, that being the rule of evidence as to the intent, which was very adroitly suggested as the reason for asking this extraordinary question, this kind of testimony could be of no avail unless, indeed, we were to have the opinion of the Lieutenant General as to the legality of the act.

I remarked before—and upon that remark I stand—that the question of the legality of the President's conduct is not to be settled by the opinions of any witness called at this bar; it is to be settled by the judgment of this Senate; and it is to be settled by the judgment of the Senate to the exclusion of every other tribunal on the earth, for it is so written in your Constitution. Intents are not to be proved in any conceivable form or shape by the opinions of any number of witnesses about the legality of an act. The law and the judges of the law will determine whether the act was unlawful; and opinions, though ever so often formed and expressed by a third person, cannot make an unlawful act a legal or a lawful act, and cannot get rid of the intention which the law says necessarily follows the commission of an unlawful act.

Well, say the gentlemen again, the President was taking the advice of honored and honorable gentlemen in the public service. The Constitution, as the Senate well know, indicates who shall be the President's advisers in such a case as this of the removal of the head of a department. That Constitution expressly declares that he may appoint, and thereby necessarily remove, the present incumbent by and with the advice and consent of the Senate. The

tenure-of-office act, following the Constitution, provided further that he may, for sufficient reasons to him appearing, suspend the incumbent and take the advice of the Senate, laying the facts before the Senate, with the evidence upon which he acted, whether the suspension should be made absolute. The President did take the advice of the Senate; he did suspend this officer whose removal he undertakes to prove now by individual opinions the public service requires. He sent notice of that suspension to the Senate. The Senate, as his constitutional adviser, acted upon it. They gave him notice that they advised him not to attempt any further interference with the Secretary for the Department of War. They gave him notice that under the law he could not go a step further. He therefore falls back upon his assumed right, and undertakes to defy the Constitution, to defy the tenure-of-office act, to defy the Senate, and to remove the Secretary of War, and to appoint another in his place without the advice and consent of anybody except such as he chose to call into his councils; and now he undertakes to justify by having them swear to their opinions. We protest against it in the name of the Constitution; we protest against it in the name of the laws enacted in pursuance of the Constitution; and we protest against it in the name of that great people whom we this day represent, and whose rights have been outrageously betrayed, and are now being audaciously defied before this tribunal.

The CHIEF JUSTICE. The Secretary will read the question.

The Secretary read as follows:

Question. After the restoration of Mr Stanton to office, did you form an opinion whether the good of the service required a Secretary of War other than Mr. Stanton; and if so, did you communicate that opinion to the President?

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate.

Mr. CONNESS called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 15, nays 35; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Dixon, Doolittle, Fowler, Grimes, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Trumbull, Van Winkle, and Vickers—15.

NAYS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Davis, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Harlan, Henderson, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Thayer, Tipton, Willey, Williams, Wilson, and Yates—35.

NOT VOTING—Messrs. Saulsbury, Sprague, Sumner, and Wade—4.

So the question was decided to be inadmissible.

Mr. JOHNSON. Mr. President, I send to the Chair a question.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Maryland.

The Secretary read as follows:

Did you at any time, and when, before the President gave the order for the removal of Mr. Stanton as Secretary of War, advise the President to appoint some other person in the place of Mr. Stanton?

Mr. Manager BUTLER. To that we have the honor to object as being leading in form, and not only in form bad, but being covered by the vote just taken.

Mr. EVARTS. I suggest, Mr. Chief Justice, that the objection of a question being leading in form cannot be made when it is put by a member of the court. I have never understood that such an objection could be made. It imputes to the court the idea of putting words into the witness's mouth to lead him.

Mr. Manager BUTLER. I do not know, Mr. President——

Mr. DAVIS. Mr. Chief Justice, I suggest whether the managers or the counsel for the defence can interpose any objection to a question made by a member of the court?

The CHIEF JUSTICE. The Chief Justice thinks that any objection to the putting of a question by a member of the court must come from the court itself.

Mr. Manager BUTLER. Whenever that question arises, the managers wish to be heard upon it.

Mr. DRAKE. I object to the putting of the question.

The CHIEF JUSTICE. The only mode in which an objection to the question can be decided properly is to rule the question admissible or inadmissible, and that is for the Senate. The question of the senator from Maryland has been proposed unquestionably in good faith, and it addresses itself to the witness in the first instance, and it is for the Senate to determine whether it shall be answered by the witness or not. Senators, the question is, whether the question propounded by the senator from Maryland is admissible?

Mr. HOWE. Mr. President, I should like to have the question read again. I did not understand it.

The CHIEF JUSTICE. The Secretary will read the question propounded to the witness by the senator from Maryland.

The Secretary read as follows:

Question. Did you at any time, and when, before the President gave the order for the removal of Mr. Stanton as Secretary of War, advise the President to appoint some other person than Mr. Stanton?

Mr. DRAKE. On that question I ask for the yeas and nays

The yeas and nays were ordered, and being taken, resulted—yeas 18, nays 32—as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Trumbull, Van Winkle, and Vickers—18.

NAYS.—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Davis, Drake, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Norton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Thayer, Tipton, Willey, Williams, Wilson, and Yates—32.

NOT VOTING.—Messrs. Saulsbury, Sprague, Sumner, and Wade—4.

So the Senate decided the question to be inadmissible.

Mr. STANBERY. We have nothing further to ask of General Sherman.

Mr. Manager BINGHAM. We have nothing to ask of General Sherman.

The CHIEF JUSTICE. The Chief Justice desires to ask whether the counsel for the President will require General Sherman again at all?

To this question no response was made; but Mr. Stanbery and Mr. Manager Butler each engaged in conversation with the witness.

Mr. COLE, (at two o'clock and fifteen minutes p. m.) I move that the Senate take a recess for fifteen minutes.

The motion was agreed to; and the Chief Justice resumed the chair at half past two o'clock, and called the Senate to order.

The CHIEF JUSTICE. Gentlemen counsel for the President, please proceed with your evidence.

R. J. MEIGS sworn and examined.

By Mr. STANBERY:

Q. What office do you hold?

A. I am clerk of the supreme court of the District of Columbia.

Q. Were you clerk of that court in February last?

A. Yes.

Q. Have you with you the affidavit and warrant under which Lorenzo Thomas was arrested?

A. I have. (Producing some papers.)

Q Are these the original papers?

A. The original papers.

Q. Did you affix the seal of the court to the warrant?

A. I did.

Q. On what day?

A. On the 22d of February last.
Q. At what hour of the day?
A. It was between two and three o'clock in the morning of that day.
Q. At what place?
A. At the clerk's office, where the seal is.
Q. Did you sit up in that office all night?
A. No, sir.
Q. Who brought that warrant to you?
A. I do not know the gentleman who brought it; he said he was a member of Congress, Mr. Pile, of Missouri.
Q. He announced himself as Mr. Pile, of Missouri?
A. Yes, sir.
Q. He then brought that warrant to you at your house at that hour in the morning?
A. Yes, sir.
Q. And you went then to the clerk's office?
A. I went to the clerk's office and affixed the seal and attested it.
Q. To whom did you deliver the warrant?
A. To Mr. Pile, if that was the gentleman. I did not know him, and do not know him now.
Q. The marshal was not there at that time?
A. No, sir.
Mr. Manager BUTLER. May I ask to what article this applies?
Mr. STANBERY. What article! It does not apply to any article. It applies very conclusively to some of your proof, and it applies very much to our answer, as you will find when we are a little further along in the case. (To the witness.) Have you the warrant here?
A. Yes, sir, I have.
Q. Did he bring the affidavit upon which the warrant was founded, or did you get that afterward?
A. I believe all the papers he gave me. I think so; but am not sure of it. I cannot recollect.
Mr. STANBERY. We propose to read these papers, gentlemen, (handing the warrant and affidavit to the managers.)
Mr. Manager BUTLER, (having examined the papers.) I understand, Mr. President, that the counsel for the President offer the affidavit and warrant in evidence. Before coming to them I should like to ask a question or two of the witness. I suppose that is our right.
Mr. STANBERY. About the papers, or what?
Mr. Manager BUTLER. About the thing you have been examining in regard to.
Mr. EVARTS. That is all we have been examining about.
Mr. Manager BUTLER. I propose to examine about the proof you have already put in.
Mr. STANBERY. We are through with the witness as soon as we get the papers. You can take him now and cross-examine him.
Mr. Manager BUTLER. Very well.

Cross-examined by Mr. Manager BUTLER:

Q. You say you affixed the seal about 2 o'clock in the morning of the 22d of February?
A. Between 2 and 3 o'clock in the morning.
Q. Were you called upon to get up and go to the office to do that?
A. I was.
Q. In cases where great crimes have been committed, and it is necessary to stop the further progress of crime, you have been accustomed to do that, I suppose?

A. I do not know of any case where that was necessary to prevent a crime. I have done the same thing in *habeas corpus* cases, and in one replevin case I remember.

Q. Where it is a matter of consequence you do these things when called upon?

A. Certainly.

Q. It is nothing unusual for you to do it in such cases?

A. It cannot be said to be unusual. I would do it at any time.

By Mr. STANBERY:

Q. Have you often been called upon in the course of your experience at night?

A. Only three times, and this is one of them.

Q. Do you know what became of this extreme case? What was done with this criminal?

A. I was not present at the examination.

Mr. STANBERY, (to the managers.) Are you through with the papers?

Mr. Manager BUTLER. I am through with the papers.

Mr. STANBERY. Very well.

Mr. Manager BUTLER. I have the honor to object, Mr. President, to the warrant and affidavit of Mr. Stanton being received as evidence in this cause. I do not think Mr. Stanton can make testimony against the President by any affidavit that he can put in, or for him by any proceedings between him and Lorenzo Thomas. I do not think the warrant is relevant to this case in any form. The fact that Thomas was arrested has gone in, and that is all. To put in the affidavit upon which he was arrested certainly is putting in *res inter alios*. It is not a proceeding between Thomas and the President; but this is between Thomas and Stanton, and in no view is it either pertinent or relevant to this case or competent in any form, so far as I am instructed.

Mr. EVARTS. Mr. Chief Justice and Senators, the arrest of General Thomas was brought into testimony by the managers and they argued, I believe, in their opening, before they had proved it, that that was what prevented General Thomas from using force to take possession of the War Office. We now propose to show what that arrest was in form and substance by the authentic documents of it, which are the warrant and the affidavit on which it was based. The affidavit, of course, does not prove the facts stated in it; but the proof of the affidavit shows the fact upon which, as a judicial foundation, the warrant proceeded. We then propose to follow the opening thus laid, of this proceeding, by showing how it took place and how efforts were made on behalf of General Thomas by *habeas corpus* to raise the question for the determination of the Supreme Court of the United States in regard to this act.

Mr. Manager BUTLER. I understand, Mr. President, that if this affidavit goes in at all, it is then evidence of all that it states, if the gentlemen have a right to put it in.

Mr. EVARTS. I said otherwise; but you can have your own conclusion. We do not admit it to be so.

Mr. Manager BUTLER. That is my conclusion, and that was what we should claim; and I think nothing more clearly shows that it cannot be evidence than that fact. This was not an attempt of the President to get this matter before the court; it was an attempt of Mr. Stanton to protect himself from violence which had been threatened in two instances before. This was late at night. Mr. Stanton, we can easily judge from the evidence, was informed that night of the threats made to Burleigh, the threats made to Wilkeson, and the threats made at Willards' Hotel, and being informed of them he did not know at what hour this man might bring his masqueraders upon him, and thereupon he took care to protect himself at the earliest possible hour.

But how that can relieve the President from crime, how that shows that he did or did not commit the act complained of, because Stanton arrested Thomas or Thomas arrested Stanton, is more than I can conceive. Suppose Stanton had not arrested Thomas, would it show that the President is not guilty here? Suppose he did arrest him, does it show that he is guilty here? Is it not merely, in the language of the law, well known to every lawyer in the Senate, *res inter alios acta*, things done between other parties than the parties to this record? We only adverted to the arrest in putting in Thomas's declaration to show what effect it had on his mind.

Mr. EVARTS. It has already been put in proof by General Thomas that before he went to the court upon this arrest he saw the President and told him of his arrest, and the President immediately replied "that is as it should be;" or, "that is as we wish it to be, the question in the court." Now, I propose to show that this is the question that was in the courts, to wit: the question of the criminality of a person accused under this civil-tenure bill. And I then propose to sustain the answer of the President, and also the sincerity and substance of this his statement already in evidence, by showing that this proceeding, having been commenced as it was by Mr. Stanton against General Thomas, was immediately taken hold of as the speediest and most rapid mode, through a *habeas corpus*, in which the President or the Attorney General, or General Thomas acting in that behalf, would be the actor, in order to bring at once before this court, the supreme court of the District, the question of the validity of his arrest and confinement under an act claimed to be unconstitutional, with an immediate opportunity of appeal to the Supreme Court of the United States then in session, from which at once there could have been obtained a determination of the point.

Mr. Manager BUTLER. And whenever that is proposed to be shown I propose to show that Mr. Thomas was discharged on the motion of his own counsel from arrest by the judge.

Mr. EVARTS. Very well; that is afterward; we will see about that; we will prove our case; you can prove yours.

Mr. Manager BUTLER. Admit this, and the Senate will be travelling into the question of the various facts taking place in another court; and I have not yet heard any of the learned counsel say that this did not come within the rule of *res inter alios acta*—things done between others than parties to the record.

Mr. EVARTS. I did not think it necessary.

Mr. Manager BUTLER. That may be a very good answer; but, whether it is necessary or not, is it not so? Is there a lawyer anywhere who does not understand that, and who does not know that the proceedings between two other persons, after a crime is committed, never yet were offered in evidence to show that a crime was not committed?

It is said that the President was glad to get this matter before a court. Did he see that affidavit? No. Did he know what was in it? No. All he knew was that his man was carried into court on some process which the man himself, Thomas, did not even know what it was. He was simply arrested. Mr. Thomas himself did not see the affidavit at that time, did not know anything of the matter except that he was taken by the marshal. He had never seen the paper on the evidence here; he did not even know for what he was arrested. All he knew was that he was arrested for something or other; whether it was for being at the masquerade ball the night before, masked, or what it was he could not tell; he does not pretend to have told here in evidence; but when he said to the President, "they have arrested me"—for which of his virtues or for which of his crimes nobody knew—he did not, he does not say that he ever saw any paper in any form; but he simply went to the President and told him "I am arrested." And what, then, did the President say? "That is where I want you to be, in court." I should have thought he wanted him anywhere else except in the War Office; and that is all the testimony shows so far.

Now, they propose to put in Mr. Stanton's affidavit. It is exceedingly good reading, gentlemen of the Senate, and sets forth the case with great luminousness. It shows the terror and alarm of the good citizens of the District of Columbia when at night men who are known to be men of constancy and steadfastness, men representing important districts in Congress, felt it was their duty to call upon the chief justice of the supreme court of this District to interpose, felt that it was their duty to call up the venerable clerk of that court in the dead of night to get a warrant, and felt that it was their duty to take immediate means to prevent the consummation of this crime. It shows the terror and alarm which the unauthorized, illegal, and criminal acts of this respondent had thrown this city into at that hour. Undoubtedly all that is in the affidavit; undoubtedly all that can be shown; and then, thank God, we have before the Senate and the people of America this appeal to the laws by Mr. Stanton, which this criminal respondent never undertook, either before or since, although furnished with all the panoply of legal attack and defence in the Attorney General. He never brought his *quo warranto;* he never brought any process; he never took any step of himself, nor had he for a year.

All that will appear doubtless, and we should be glad to have it in, provided it did not open us into regions of unexplored and uncertain, diffuse and improper evidence, opening entirely new issues. If you are ready to go into it I am; but I say it does not belong to this case. I think we can make quite as much out of it as they can, but it is no portion of this case. It is not the act of the President; it has nothing to do with the President; the President never saw these papers upon any evidence here; and what Mr. Thomas did, and what Mr. Stanton did, they themselves must stand by.

Mr. STANBERY. I believe our hour has not expired, and I wish upon this matter to address, Mr. Chief Justice, a few words to the Senate.

Senators, there are two grounds upon which we ask the admission of this testimony. First of all, there are already in evidence the declarations of the President that he made this removal to bring the question of that law to the consideration of the courts. That is already in evidence, and as to that the managers say it is all pretense, all a subterfuge.

Mr. Manager BUTLER. Where in evidence?

Mr. STANBERY. Among other things in a place that I need not refer to now, the speech of the honorable manager who opened the case.

Mr. Manager BUTLER. If you will take my speech as evidence I am very glad. That is the best evidence.

Mr. STANBERY. Not, except as a last resort, for anything. The gentleman has repeated that this is all pretense of asking to get into the courts, that it is a subterfuge, an afterthought, a mere scheme on the part of the President to avoid the consequences of an act done with another intention than that. Again, what sort of a case have the managers attempted to make against the President upon his intentions with regard to the occupation of the War Office by Thomas? They have sought to prove that the intentions of the President were not to get it by law but to get it by intimidation, threats, and force; they have gone into this themselves to show the intent of the President, and how? They have given the declarations of Thomas as to his purpose of using threats, intimidation, or force, and claim that those declarations bind the President, and you, senators, have admitted them against the President. The mere declarations of Thomas as to his intention to enter the office by force and intimidation are to be considered the declarations of the President, and as evidence of his intent. Oh! say the gentlemen, that thing was stopped by this prosecution; the prompt arrest of General Thomas next morning was the only thing that defeated the accomplishment of the purpose that was in the mind of the President and in the mind of General Thomas.

Mr. Manager BUTLER. I did not say so. Thomas said so.

Mr. STANBERY. Thomas said so! The Senate will bear me witness who said so, who called that a subterfuge, and who called that a pretence! We wish to show what was this proceeding got up at midnight, as the learned manager says, in view of a great crime just committed or about to be committed; got up under the most pressing necessity, with a judge, as we will show, summoned from his bed at an early hour that winter morning, the 22d of February, at 2 o'clock—a judge brought from the bench, such was the urgent and pressing necessity, either pretended or real, on the part of Mr. Stanton to avoid the use of force and intimidation to remove him from that office. We shall show that having had him arrested, held to bail in $5,000, the time of the trial or further hearing of this great criminal having been fixed for the next Wednesday, all this being done on the prior Saturday, when he got there on that day it turned out thus: "Why, we have got no criminal at all; General Thomas is just as good a citizen as we have in this community." General Thomas's counsel say to the court, "He is surrendered; he is in custody; and we do that for the purpose of moving a *habeas corpus*." As soon as that purpose was announced, all at once this great criminal and this great criminal act immediately disappear, and the judge says, "This is all nothing at all that we have had against you, General Thomas; we do not even want to ask you to give bail; on the contrary, I dismiss you" And the counsel for Mr. Stanton, who were there on that morning, and who had seen this great criminal punished, or, at any rate, put under bonds for good behavior, expressly consent to what? Not merely that he shall be put at large under bonds; not merely that he shall give bonds for his good behavior, but that he shall be absolutely discharged and go free, just as if there was no prosecution at all; not bound over to the next term of the court, but totally discharged, and, as we shall show you, discharged for the very purpose of preventing what was then in preparation, the presentation of a *habeas corpus*, that the case might be got immediately to the Supreme Court of the United States, then in session, the only ready way in which the question could be brought before the courts and decided for any purpose of any value. Senators, is that, too, to be excluded? I trust not.

Mr. Manager BUTLER. I did not mean to trouble the Senate again; but one or two statements of fact have been made to which, I think, I must call your attention. First, it is said that Mr. Thomas was discharged wholly. That depended upon the chief justice of that court. If you are going to try him by impeachment, wait until after we get through with this case. One trial at a time is sufficient. Is he to be tried because he did not do his duty under the circumstances? Neither Mr. Stanton, nor your honor, nor anybody else has any right to judge of the act of that court until he is here to defend himself, which the chief justice of the supreme court of the District of Columbia is amply able to do.

Then there is another point which I wish to take into consideration. It is said that Thomas had become a good citizen. I have not agreed to that. I do not believe anybody else has; but he himself testifies that the fight was all out of him the next morning after this process, and they put in then that he agreed to remain neutral. Then there was no occasion to hold him any longer. He took a drink to seal the neutrality. Do they not remember the testimony that on the next morning after this he and Stanton took a drink and agreed to remain neutral, and they held up the glasses and said, "This is neutral ground now?" What was the use of holding him any further?

Mr. STANBERY. That is, he took a drink with the great criminal!

Mr. Manager BUTLER. He took a drink with the President's tool; that is all. The thing was settled. The poor old man came and complained that he had not had anything to eat or drink, and in tender mercy to him Mr. Stanton gave him something to drink; and he says that from that hour, if he had not

before, he has never had an idea of force. What, then, was the use of holding him?

Now, I wish to call the attention of the Senate to another statement of fact, and that is, that they did not hold him to keep the peace. Why, the next morning he was told that he was not held to keep the peace. He said that here to the Senate upon his oath, and he insisted upon putting it in; I objected, but he said it was necessary for him to make that point, and then I yielded that he might do it. He said to the Senate that the judge told him, "This does not interfere in any way with your duties as Secretary of War."

But there is still another thing. This unconstitutional law has been on the statute-book since a year ago last March. The learned Attorney General of the United States stands before me. Where is the writ of *quo warranto* which it was his duty to file?

Mr. STANBERY. I will show it to you right away, as soon as I get through this testimony.

Mr. Manager BUTLER. Then it will be the first exhibition that has ever been made to any court in the United States of it, if it is shown to me. I suppose it has been prepared since as part of this defence. Where is the *quo warranto* filed in any court, Judge Cartter's court or anybody else's court? Where is the proceeding taken? He—I put it to him as a lawyer; dare he deny it?—he is the only man in the United States who could file a *quo warranto*, and he knows it. He is the only man who could initiate this proceeding, and he knows it. And yet it was not done; and still he comes here and talks about putting in the quarrels between Mr. Stanton and Mr. Thomas over this matter. They are *res inter alios*, I say again—things done between others—and they have nothing more to do with this case, and hardly as much as the fact which the President with his excellent taste, and the excellent taste of his counsel, drew out here against my objection, that Mr. Stanton, when this man Thomas claimed that he was fainting for want of his breakfast and his drink, gave him a drink.

The CHIEF JUSTICE. The counsel will please reduce their question to writing.

Mr. STANBERY. It is the affidavit, if the court please, that we offer in evidence.

The CHIEF JUSTICE. What does the affidavit relate to?

Mr. STANBERY. It is that upon which the warrant was issued—the affidavit by Mr. Stanton, and the warrant for the arrest of Thomas founded on that affidavit. We offer the two papers.

Mr. EVARTS. To be followed by the other proof which we have stated.

The CHIEF JUSTICE. The Chief Justice thinks the affidavit upon which the arrest was made is competent testimony, as it relates to a transaction upon which Mr. Thomas has already been examined, and as it may be material to show the purpose of the President to resort to a court of law. He will be happy to put the question to the Senate if any member desires it. (No senator being heard to speak.) Read the affidavit.

Mr. Manager BUTLER. Does your honor understand that the affidavit is admitted?

The CHIEF JUSTICE. Yes, sir.

Mr. Manager BUTLER. I heard one senator ask for the question to be put.

The CHIEF JUSTICE. Does any senator ask the question to be put?

Mr. CONNESS. I asked that the question be put, and I now ask for the yeas and nays upon it.

The yeas and nays were ordered

Mr. HOWARD. I wish the question might be read. We do not fully understand it.

The CHIEF JUSTICE. The Chair will state that the counsel for the President

propose to put in the affidavit upon which the arrest of General Thomas was made on the morning, I think, of the 22d of February.

Mr. JOHNSON. It is impossible to decide without knowing what the paper is.

The CHIEF JUSTICE. Will the counsel state what they propose to prove in writing?

Mr. EVARTS. I will read the affidavit.

Mr. Manager BUTLER. We object to that. Then it is in.

The CHIEF JUSTICE. Objection is made to reading the affidavit. If the counsel will state what they propose to prove in writing it will be better.

Mr. STANBERY. We propose to offer an affidavit made by Mr. Stanton on the night of the 21st or morning of the 22d of February.

The CHIEF JUSTICE. Will you state it in writing?

The proposition having been reduced to writing,

The CHIEF JUSTICE. The Secretary will read the proposition of the counsel for the President.

The Secretary read as follows:

We offer a warrant of arrest of General Thomas, dated February 22, 1868, and the affidavit on which the warrant issued.

The CHIEF JUSTICE. Senators, you who are of the opinion that the evidence proposed to be offered by the counsel for the President is admissible, will, as your names are called, answer yea; those of the contrary opinion, nay. The Secretary will call the roll.

The question being taken by yeas and nays, resulted—yeas 34, nays 17; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Cattell, Cole, Corbett, Cragin, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Sherman, Sumner, Trumbull, Van Winkle, Vickers, Willey, Williams, and Yates—34.

NAYS—Messrs. Cameron, Chandler, Conkling, Conness, Drake, Edmunds, Ferry, Harlan, Howard, Howe, Morgan, Nye, Ramsey, Stewart, Thayer, Tipton, and Wilson—17.

NOT VOTING—Messrs. Saulsbury, Sprague, and Wade—3.

So the Senate decided that the offer of the counsel should be admitted.

Mr. EVARTS. I will read the papers. The affidavit is:

To Hon. David K. Cartter, Chief Justice of the Supreme Court for the District of Columbia:

Comes Edwin M. Stanton, of the city of Washington, in the said District, and upon oath says that on the 21st day of February, A. D. 1868, he, the said Edwin M. Stanton, duly held the office of Secretary for the department of War, under and according to the Constitution and laws of the United States; that he had, prior to said 21st day of February, A. D. 1868, been duly nominated and appointed to the said office of Secretary of War by the President of the United States, and that his said nomination had been submitted in due form of law to the Senate of the United States, and his said nomination had been duly assented to and confirmed by and with the advice of the Senate; and he, the said Edwin M. Stanton, had duly accepted said office, and taken out and subscribed all the oaths required by law, upon his induction into said office, and was in the actual possession of said office and performing the duties thereof on the said 21st day of February, A. D. 1868, and he had never resigned said office, or been legally dismissed therefrom, and he claims that he does now legally hold said office, and is entitled to all the rights, privileges, and powers thereof.

And the said Edwin M. Stanton on oath further states that on said 21st day of February, 1868, in the city of Washington aforesaid, Andrew Johnson, President of the United States, made and issued an order in writing under his hand, with intent and purpose of removing him, the said Edwin M. Stanton, from the said office of Secretary for the Department of War, and authorizing and empowering Lorenzo Thomas, Adjutant General of the army of the United States, to act as Secretary of War *ad interim*, and directing him, the said Thomas, to immediately enter upon the discharge of the duties pertaining to that office. And your affiant further states that the said pretended order of removal of him from the said office of Secretary of War is wholly illegal and void, and contrary to the express provisions of an act duly passed by the Congress of the United States on the 2d day of March, A. D. 1867, entitled "An act regulating the tenure of certain civil offices." And your affiant on oath further states that the said Lorenzo Thomas did, on said 21st day of February, A. D. 1868, in said city of Washington, accept the said pretended appointment as Secretary of War *ad interim*, and on the same day left with your affiant a copy of the said pretended order of the President removing your

affiant as Secretary of War, and appointing the said Lorenzo Thomas Secretary of War *ad interim*, certified by the said Lorenzo Thomas under his own hand as Secretary of War *ad interim*. And on the same 21st day of February, A. D. 1868, in the city of Washington aforesaid, the said Lorenzo Thomas delivered to your affiant the said pretended order of Andrew Johnson, with intent to cause your affiant to deliver to him, the said Thomas, all the records, books, papers, and other public property now in his (the affiant's) custody and charge as Secretary of War. And your affiant further states on oath, and that he is informed and believes that the said Thomas has, in said city of Washington and District aforesaid, exercised and attempted to exercise the duties of Secretary of War, and to issue orders as such; and your affiant is also informed and believes that the said Lorenzo Thomas gives out and threatens that he will forcibly remove your complainant from the building and apartments of the Secretary of War in the War Department, and forcibly take the possession and control thereof under his said pretended appointment by the President of the United States as Secretary of War *ad interim*.

And your affiant alleges that the appointment under which the said Thomas claims to act, and to hold and perform the duties of Secretary of War, is wholly unauthorized and illegal, and that the said Thomas, by accepting such appointment, and thereunder exercising and attempting to exercise the duties of Secretary of War, has violated the provisions of the fifth section of the act above referred to, and thereby has been guilty of a high misdemeanor, and subjected himself to the pains and penalties prescribed in said fifth section against any person committing such offence.

Whereupon your affiant prays that a warrant may be issued against Lorenzo Thomas, and that he may be thereupon arrested and brought before your honor, and thereupon that he may be dealt with as to the law and justice in such case appertains.

EDWIN M. STANTON.

Sworn and subscribed before me this 21st day of February, A. D. 1868.

D. K. CARTTER, *Chief Justice.*

Sworn to and subscribed before me by Edwin M. Stanton at the city of Washington, in the District of Columbia, this 22d day of February, 1868.

D. K. CARTTER, *Chief Justice.*

The warrant is dated the 22d of February, 1868.

Mr. STANBERY. First the 21st and then the 22d. It is dated before 12 o'clock, and then after 12 o'clock.

Mr. EVARTS. It is sworn to twice—once on the 21st, and once on the 22d. The warrant is as follows:

UNITED STATES OF AMERICA, *District of Columbia, ss:*

To David S. Gooding, United States marshal for the District of Columbia: I, David K. Cartter, chief justice of the supreme court of the District of Columbia, hereby command you to arrest Lorenzo Thomas of said District forthwith, and that you have the said Lorenzo Thomas before me at the chambers of the said supreme court in the city of Washington, forthwith, to answer to the charge of a high misdemeanor in this, that on the 21st day of February, 1868, in the District of Columbia, he did unlawfully accept the appointment of the office of Secretary of War *ad interim*, and did then and there unlawfully hold and exercise and attempt to hold and exercise the said office contrary to the provisions of the act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and hereof fail not, but make due return.

Given under my hand and seal of said court this 22d day of February, 1868.

[L. S.] D. K. CARTTER,

Chief Justice of the Supreme Court of the District of Columbia.

Attest:

R. J. MEIGS, *Clerk.*

The marshal's return is as follows:

WASHINGTON CITY, D. C., *February* 22, 1868.

The within writ came to hand at seven o'clock a. m., and was served by me on the said Lorenzo Thomas at eight o'clock a. m., and I now return this writ and bring him before Chief Justice Cartter at nine o'clock a. m. of to-day.

DAVID S. GOODING,

United States Marshal D. C.

By Mr. STANBERY:

Q. Mr. Meigs, I perceive this is a judge's warrant at chambers?

A. Yes, sir.

Q. Are you in the habit of keeping any record further than filing the papers, or did you make any record further than filing the papers of that proceeding?

A. When the recognizance was executed that was put upon the docket of the court. You will see that the warrants are marked with a number.

Q. The recognizance of bail?

A. As soon as that is done the cases are all put upon the docket of the court in order that it may appear how the defendant is discharged, or what becomes of him.

Q. Well, has this defendant been discharged?

Mr. Manager BUTLER. Stay a moment. That will appear by the record.

The WITNESS. Yes; that will appear by the record.

By Mr. STANBERY:

Q. Have you a record of the discharge also?

A. The docket shows that.

Q. Is that the docket of the judge or the docket of the court?

A. The docket of the court.

Q. Does the judge return the case into court?

A. The recognizance of course is returned into court.

Q. I am not speaking of the recognizance; I am speaking of this case.

A. The recognizance was taken upon that case, and was returned into court, and was entered upon the docket of the court.

Q. You make no record of these papers?

A. No; no record of those papers. They are filed, and constitute a part of the record of the case at court.

Q. Have you got your docket with you?

A. No, sir. The subpœna did not require it to be brought, and of course it was not brought.

Mr. STANBERY, (to the managers.) We will have the docket if you require it, gentlemen. Do you want that formal matter?

Mr. Manager BUTLER. A little more than that.

Mr. STANBERY. Do you want us to produce——

Mr. Manager BUTLER. I do not want anything, except I shall object to any incompetent testimony.

Mr. STANBERY. You can take this witness.

Mr. Manager BUTLER. That is all, Mr. Meigs.

Mr. STANBERY. Mr. Meigs, will you bring this docket that contains this entry?

A. Yes, sir.

Mr. Manager BUTLER, (to the witness.) A single word. Will you not extend the record as far as you can, and bring us a certified copy of this case as it will appear after being extended?

Mr. STANBERY. Call Mr. Clephane.

Mr. JOHNSON, (sending a question to the desk.) Mr. Chief Justice, I desire to put a question to General Sherman. He is in the room, I believe.

The CHIEF JUSTICE. The Secretary will read the question. To whom does the senator from Maryland address it?

Mr. JOHNSON. General Sherman. He is in the court, I understand.

WILLIAM T. SHERMAN recalled.

The Secretary read the question of Mr. Johnson, as follows:

When the President tendered to you the office of Secretary of War *ad interim*, on the 27th of January, 1868, and on the 31st of the same month and year, did he, at the very time of making such tender, state to you what his purpose in so doing was?

Mr. Manager BINGHAM. We object to the question as being within the ruling of the Senate, and incompetent.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate.

Mr. DRAKE. Upon that question I ask for the yeas and nays.

The yeas and nays were ordered.

The CHIEF JUSTICE. Senators, you who are of opinion that the question proposed by the honorable senator from Maryland is admissible, will, as your names are called, answer yea; those of a contrary opinion, nay.

Mr. JOHNSON. Before the roll is called I ask that the question be read again.

The Secretary again read the question.

The question being taken by yeas and nays, resulted—yeas 26, nays 22; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Cole, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Norton, Patterson of Tennessee, Ross, Sherman, Sumner, Trumbull, Van Winkle, Vickers, and Willey—26.

NAYS.—Messrs. Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Howe, Morgan, Nye, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—22.

NOT VOTING—Messrs. Cameron, Hendricks, Patterson of New Hampshire, Saulsbury, Sprague, and Wade—6.

The CHIEF JUSTICE. On this question the yeas are 26 and the nays 22. So the question is admitted and will be put to the witness. The secretary will read the question again.

The Secretary read the question to the witness, as follows:

When the President tendered to you the office of Secretary of War *ad interim*, on the 27th of January, 1868, and on the 31st of the same month and year, did he, at the very time of making such tender, state to you what his purpose in so doing was?

The WITNESS. He stated to me that his purpose——

Mr. Manager BUTLER. Stay a moment. The question, Mr. Chief Justice, was whether he did state, not what he stated. We want to object to what he stated.

Mr. EVARTS. Answer yes or no, general.

Answer. Yes.

The CHIEF JUSTICE. The witness answers that he did.

By Mr. STANBERY:

Q. What purpose did he state?

Mr. Manager BINGHAM. To that we object.

Mr. Manager BUTLER. The counsel had dismissed this witness, and he is not to be brought back, on a question of the court, for the purpose of counsel opening the case again.

The CHIEF JUSTICE. The Chief Justice thinks it is entirely competent for the Senate to recall any witness.

Mr. Manager BUTLER. I have not objected to the Senate recalling a witness.

The CHIEF JUSTICE. The Senate has decided that the question shall be put to the witness. That amounts to a recalling of him, and the Chief Justice is of opinion that the witness is bound to answer the question. Does any senator object?

Mr. Manager BUTLER. We understand that the only question he has been recalled for has been answered.

Mr. EVARTS. We have asked another question.

Mr. JOHNSON. I propose to add to it—I thought my question included that—if the President did, what did he state that his purpose was?

Mr. Manager BINGHAM. To that we object; and we ask the Senate to consider that the last clause suggested now by the honorable senator from Maryland, "and what did the President say," is the very question which the Senate this day did solemnly decide adversely to its being put, and it so decided on Saturday; in short, the last clause now put to the witness by the honorable senator from Maryland is, what did the President say? making the President's declarations evidence for himself when they are not called out by the government.

It was suggested by my associate in argument on Saturday that if that method were pursued in the administration of justice, and the declarations of the accused were made evidence for himself at his pleasure, the administration of justice would be impossible in any court.

Mr. DAVIS. I rise to a question of order.

The CHIEF JUSTICE. The senator from Kentucky.

Mr. DAVIS. It is that one of the managers has no right to object to a question propounded by a member of the court.

Mr. Manager BUTLER. We might as well meet that question now.

Mr. Manager BINGHAM. I desire to say on that subject, if I may be allowed to do so, without trespassing——

The CHIEF JUSTICE. The honorable manager will wait one moment. When a member of the court propounds a question it seems to the Chief Justice that it is clearly within the competency of the managers to object to the question being put and state the grounds for that objection, as a legal question. It is not competent for the managers to object to a member of the court asking a question; but after the question is asked, it seems to the Chief Justice, that it is clearly competent for the managers to state their objections to the questions being answered.

Mr. CONNESS. I ask that the question now put be reduced to writing.

The CHIEF JUSTICE. The clerk has it reduced to writing. It will be read.

The Secretary read it, as follows:

If he did, state what he said his purpose was.

Mr. CONNESS. Do I understand that to be a part of, or an addition made to the other question?

Mr. JOHNSON. Part of the same question.

The CHIEF JUSTICE. It must be regarded at present as an independent question.

Mr. CONNESS. And therefore I ask that the independent question be reduced to writing. It has nothing to do with the other.

The CHIEF JUSTICE. The Chief Justice understands the question which has just been read by the clerk to be the question.

Mr. CONNESS. Then I call for its reading again.

The CHIEF JUSTICE, (to the Secretary.) Read the question.

The Secretary read as follows:

If he did, state what he said his purpose was?

Mr. CONNESS. "Did" what?

Mr. DRAKE. I would inquire for information, Mr President, whether, in order to test the introduction of that question, it is necessary that a senator should object to its being put?

Mr. EDMUNDS. No; the Chief Justice has decided that it is not.

Mr DRAKE. Very well.

The CHIEF JUSTICE. The Chief Justice has said that it does not seem to him competent for the managers or the counsel to object to a question being put by a senator; but after it has been put, the question whether it shall be answered must necessarily depend upon the judgment of the court, and either the counsel for the President or the honorable managers are quite at liberty to address any observations they see fit to the court upon that point.

Several SENATORS. That is right.

Mr. JOHNSON. Certainly; I do not doubt that.

Mr. Manager BINGHAM. Upon that statement I may be pardoned for saying our only purpose is to object to the answer being taken by the Senate to the question, and not to object to the right of the honorable gentleman from Maryland to offer his question.

Mr. JOHNSON. I so understand.

Mr. Manager BINGHAM. And that is the question that is before the Senate

The question that we raise before the Senate is, that it is incompetent for the accused to make his own declarations evidence for himself.

The CHIEF JUSTICE. The Chief Justice has already said upon a former occasion that he thinks that, for the purpose of proving the intent, this question is admissible; and he thinks, also, that it comes within the rule which has been adopted by the Senate as a guide for its own action. This is not an ordinary court, but it is a court composed largely of lawyers and gentlemen of great experience in the business transactions of life, and they are quite competent to determine upon the effect of any evidence which may be submitted to them; and the Chief Justice thought that the rule which the Senate adopted for itself was found in this fact; and in accordance with that rule, by which he determined the question submitted on Saturday, he now determines this question in the same way.

Mr. DRAKE. I ask for a vote of the Senate upon the question.

The CHIEF JUSTICE. The Secretary will read the question.

Mr. Manager BUTLER. I only want to ask a single question. The Chief Justice understands this, as does the board of managers, as I understand, to be precisely the same question that was ruled upon on last Saturday evening, when the Chief Justice ruled.

Mr. Manager BINGHAM. And this morning, too.

The CHIEF JUSTICE. The Chief Justice does not intend to say that. What he does say is, that this is a question of the same general import, to show the intent of the President during these transactions. The Secretary will read the question again.

Mr. JOHNSON. I ask that both questions be read, the first and the second, taken in connection with each other. The witness has answered the first.

The CHIEF JUSTICE. The Secretary will read the original question, and then he will read the present question before the Senate.

The SECRETARY. The first question was:

When the President tendered to you the office of Secretary of War *ad interim* on the 27th of January, 1868, and on the 31st of the same month and year, did he, at the very time of making such tender, state to you what his purpose in so doing was?

The witness having answered this, the question now is:

If he did, state what he said his purpose was?

The CHIEF JUSTICE. Senators, you who are of opinion that the question just read, "if he did, state what he said his purpose was," is admissible, and should be put to the witness, will, as your names are called, answer yea; those of a contrary opinion, nay. The Secretary will call the roll.

Mr. HOWE. Before I vote upon the admissibility of this answer, I wish, if there is any regular mode of doing so, to ascertain the state of the record upon another point; and that is, whether the fact that this office was tendered to the witness on the stand was a fact put in by the defence or by the prosecution. My own recollection is not very distinct about it, and I am not sure that I am right.

The CHIEF JUSTICE. The Chief Justice must remind the senator that no debate is in order unless there be a motion to retire for conference.

Mr. EVARTS. I may be permitted, as counsel, to state that it was put in by the defence.

Mr. Manager BINGHAM. It was put in by the defence.

Mr. EVARTS. I have so stated.

Mr. Manager BINGHAM. I wish it to be understood distinctly.

Mr. HOWE. The Chief Justice will allow me to remark that putting a question to ascertain the state of the record was entering into debate by no manner of means.

The CHIEF JUSTICE. It may be, however.

Mr. HOWE. It may not be.

The CHIEF JUSTICE. The secretary will call the roll.

The question being taken by yeas and nays, resulted—yeas, 26; nays, 25; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Cole, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Johnson, McCreery, Morton, Norton, Patterson of Tennessee, Ross, Sherman, Sumner, Trumbull, Van Winkle, Vickers, and Willey—26.

NAYS—Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—25.

NOT VOTING—Messrs. Saulsbury, Sprague, and Wade—3.

So the question propounded by Mr. Johnson was held to be admissible.

The WITNESS. May I take the question in my hand? (The question was handed to the witness and examined by him.) The first question was as to "both occasions." (The previous question was handed to the witness and examined by him.)

Mr. EVARTS. It covers both occasions.

The WITNESS. The conversations were long and covered a great deal of ground; but I will endeavor to be as precise to the point as possible. The President stated to me that the relations which had grown up between the Secretary of War, Mr. Stanton, and himself——

Mr. Manager BUTLER. Stay a moment. I must again interpose, Mr. President. The question is simply what the President stated his purpose was, and not to put in his whole declarations.

Mr. JOHNSON. That is all that is asked. That is preliminary to that.

Mr. CURTIS. That is all he is going to answer.

Mr. Manager BUTLER. I pray that that may be submitted to the Senate, whether they will have the whole of the long conversation, which is nothing to the purpose.

Mr. Manager BINGHAM. His purpose in offering General Sherman a commission.

Mr. Manager BUTLER. Yes, sir.

Mr. JOHNSON. That is it.

The WITNESS. I intended to be very precise and very short; but it appeared to me necessary to state what I began to state, that the President told me that the relations between himself and Mr. Stanton, and between Mr. Stanton and the other members of the cabinet, were such that he could not execute the office which he filled as President of the United States without making provision *ad interim* for that office; that he had the right under the law; he claimed to have the right, and his purpose was to have the office administered in the interest of the army and of the country; and he offered me the office in that view. He did not state to me then that his purpose was to bring it to the courts directly; but for the purpose of having the office administered properly in the interest of the army and of the whole country.

Mr. STANBERY. On both occasions, General, or the other occasion?

The WITNESS. I asked him why lawyers could not make a case; that I did not wish to be brought as an officer of the army into any controversy.

Mr. CONKLING. Will you repeat that last answer, General?

The WITNESS. I asked him why lawyers could not make a case, and not bring me, as an officer, into the controversy. His answer was that it was found impossible, or a case could not be made up; but, said he, "If we can bring the case to the courts it would not stand half an hour." I think that is all that he stated to me then.

By Mr. STANBERY:

Q. On either occasion?

Mr. JOHNSON. That is my question.

The WITNESS. The conversation was very long and covered a great deal of ground——

Mr Manager BUTLER. I object to this examination being renewed by the counsel for the President.

Mr. STANBERY. There were two occasions. Has the witness got through both? That is the question.

Mr. Manager BUTLER. Whatever may be the pretence under which it is to be renewed, I hold that, according to the due order of trials, it ought not to be allowed. Let us see how it is to be done, Mr. President. The counsel dismissed this witness and he was gone, and he is brought back at the request of one of the judges, and that judge——

Mr. STANBERY. I must interrupt the learned manager to say that we did not dismiss him. On the contrary, both sides asked to retain him, the learned manager saying at the time that he wanted to give him a private examination.

Mr. Manager BUTLER. To that I must interpose a denial. I have asked for no private examination. I say the counsel dismissed him from the stand, dismissed him as a witness in the case from the stand. Then he is called back by one of the judges. In any court that anybody ever practiced in before, or in any tribunal, when that is done, and a question is put by a judge, that never yet opened the case to have the witness examined by the counsel who had dismissed him.

Mr. JOHNSON. I ask for the reading of the question. I think I asked him to answer as to both of the occasions when the office was tendered to him.

The CHIEF JUSTICE. The secretary will read the question proposed by the senator from Maryland.

The SECRETARY. The witness having answered "yes" to the previous question, the question is, "state what he said his purpose was?"

The CHIEF JUSTICE. Nothing is more usual in courts of justice than to recall witnesses for further examination, especially at the instance of one of the members of the court. It is very often done at the instance of counsel. It is, however, a matter wholly within the discretion of the court; and if any senator desires it the Chief Justice will be happy to put it to the court, whether the witness shall be further examined. If not——

Mr. WILLIAMS. I ask for the opinion of the court on that subject, whether the counsel can renew the examination of this witness and go beyond the question propounded by a member of the court.

The CHIEF JUSTICE. The counsel will please reduce the question they propose to writing.

The question having been reduced to writing, was sent to the Secretary's desk, and read as follows:

Have you answered as to both occasions?

The CHIEF JUSTICE. The question is objected to, and the decision of the question will determine whether the counsel can put any further questions to the witness.

Mr. EVARTS. We may be heard upon that, I suppose?

The CHIEF JUSTICE. Certainly.

Mr. EVARTS. The question, senators, whether a witness may be recalled is a question of the practice of courts. It is a practice almost universal, unless there is a suspicion of bad faith, to permit it to be done, and it is always in the discretion of the court. In special circumstances, where collusion is suspected between the witness and counsel for wrong purposes adverse to the administration of justice, a strict rule may be laid down. Whatever rule this court in the future shall lay down as peremptory, if it be that neither party shall recall a witness that has been once dismissed from the stand, of course will be obligatory upon us; but we are not aware that anything has occurred in the progress

of this trial to intimate to counsel that any such rule had been adopted, or would be applied by this court.

Mr. Manager BUTLER. Mr. President, on Saturday this took place: this question was asked:

In that interview—

That is, when the offer was made—

What conversation took place between the President and you in regard to the removal of Mr. Stanton?

That question was offered to be put, and after argument, and upon a solemn ruling, twenty-eight gentlemen of the Senate decided that it could not be put. That was exactly the same question as this, asking for the same conversation at the same time. Then certain other proceedings were had, and after those were had the counsel waited some considerable time at the table in consultation, and then got up and asked leave to recall this witness this morning for the purpose of putting questions. The Senate gave that leave and adjourned. This morning they recalled the witness, and put such questions as they pleased, and we spent as many hours, as you remember, in doing that. On Saturday they had got through with him, except that they wanted a little time to consider whether they would recall him; they did recall him this morning, and after getting through with him the witness was sent away. Then he was again recalled to enable one of the judges to put a question, to satisfy his mind. Of course, he was not acting as counsel for the President in so doing; that could not be supposed possible. He wanted to satisfy his mind.

Mr. JOHNSON. What does the honorable manager mean?

Mr. Manager BUTLER. I mean precisely what I say, that it cannot be supposed possible that he was acting as counsel for the President.

Mr JOHNSON. Mr. Chief Justice, if the honorable manager means to impute that in anything I have done in this trial I have been acting as counsel, or in the spirit of counsel, he does not know the man of whom he speaks. I am here to discharge a duty; and that I propose to do legally. And permit me to say to the honorable manager that I know what the law is as well as he does, and it is not my purpose in any way to depart from it.

Mr. Manager BUTLER. Again I repeat, so that my language may not be misunderstood, that it is not to be supposed that he was acting as counsel for the President. Having put his question and satisfied his mind of something that he wanted satisfied, something that he wanted to know, how can it be that that opens the case to allow the President's counsel to go into a new examination of the witness? How do they know, if he is not acting as counsel for the President, and there is not some understanding between them, which I do not charge—how can the President's counsel know that his mind is not satisfied? He recalled the witness for the purpose of satisfying his own mind, and only for that reason. I agree it is common to recall witnesses for something that has been overlooked or forgotten; but I appeal to the presiding officer that while—and I never have said otherwise—a member of the court who wants to satisfy himself by putting some question may recall a witness for that purpose, it never is understood that that having been done, the case was opened to the counsel on either side to go on and put other questions. The court is allowed to put the question, because it is supposed that the judge wants to satisfy his mind on a particular point. After the judge has satisfied his mind on that particular point then there is to be an end, and it is not to open the case anew. I trust I have answered the honorable senator from Maryland that I meant no imputation. I was putting it right the other way.

Mr. JOHNSON. I am satisfied, Mr. Chief Justice; and I only rise to say that I did not know that the counsel proposed to ask any question, and I agree with the honorable manager that they have no right to do any such thing.

Mr. EVARTS. Mr. Chief Justice, one moment will, I think, show that——

Mr. Manager BINGHAM. Will the gentleman from New York yield to me a single moment, without pretending to interrupt him? Mr. President, I desire, on behalf of the managers, here, so that there may be no possible misunderstanding about it, to disclaim, once for all, that it was either intended by my associate, who has taken his seat, or is intended by the managers, at any time, or in any way, to question the right and the entire propriety of any senator recalling any witness and putting any question to him that he sees fit. We impute no improper motives to any senator for doing so; and we wish it distinctly understood that it is furthest from our purpose. But we recognize his perfect right to do so and the entire propriety of it.

Mr. EVARTS. A moment's consideration, I think, will satisfy the Senate, Mr. Chief Justice, that the question is not precisely of our right to recall the witness, but the question of right, if it be important to be discussed—and it may be in some future applications of the rule—is, that when the court have introduced, by their right of questioning, new matter of evidence that had previously been excluded, then the counsel upon either side are not obliged to leave that portion of the evidence incomplete or without cross-examination; for some piece of evidence might be drawn out that, as it stood, nakedly, would be prejudicial to one side or the other, prejudicial to the side whose witness was recalled, if you please; and certainly it would be competent, in the ordinary rules of examination, that the counsel should be permitted to place the whole of the fact and the truth—within the proper rules of evidence, of course—before the court.

Mr. WILLIAMS. If I may be allowed to state, I do not, of course, object, under the decision made by the Senate, to a full answer to the question propounded by the senator from Maryland; but my objection is made upon the ground that the Senate has repeatedly decided that the conversations of the President were not admissible in evidence, and the witness having answered the question of the senator from Maryland, it is not competent for the counsel for the President to proceed to examine him upon that point, because it is contrary to the decision already made.

The CHIEF JUSTICE. The Secretary will again read both the questions, so that the Senate may understand precisely what is before it.

The SECRETARY. The first question was as follows:

When the President tendered to you the office of Secretary of War *ad interim*, on the 27th of January, 1868, and on the 31st of the same month and year, did he, at the very time of making such tender, state to you what his purpose in so doing was?

The witness having answered "yes," the next question was:

State what he said his purpose was.

The question now is:

Have you answered as to both occasions?

Mr. JOHNSON. That is not my question.

Mr. STANBERY. That is mine; and I want to say one word as to that. Notwithstanding the honorable senator from Maryland has put this question, he has put it about our client and our case. They belong to us. He has put it so that a new door is opened that was closed to us before, and the court has gone into that new evidence that was a sealed book to us, about which we could neither examine nor cross-examine. That which was closed to us by the decision of the court on Saturday, is now opened by the question of the senator to-day. Now, I understand the doctrine contended for to be that we must take that answer, for better or worse, to a question we did not put. Now, senators, if in that answer the matter had been condemnatory of the President; if the senator had got as an answer that the President told the witness expressly that he intended to violate any law; that he was acting in bad faith; that he meant to use force, I am told the doctrine

here now is, "inasmuch as it was brought out by a senator, not by yourselves, although it is fatal testimony to your client, you cannot cross-examine him one word about it" It is not testimony of our asking. Suppose it had been brought out by the managers, could we not cross-examine? Suppose it is brought out by a senator, does that make it any more sacred against the pursuit of truth and the sacred right of cross-examination? Does the doctrine of estoppel come here, that wherever any question is answered upon the interrogatory of a senator you must take that answer, without any opportunity to contradict the witness or to cross-examine the witness; that that sacred right cannot be exercised; that we are estopped not by our own act, not by testimony we have called out, but we are estopped by the act of another, and shut out from the pursuit of truth because a senator has put the question and the answer to that question is condemnatory of our client? I say the moment that door is opened and new testimony introduced in the cause we have a right to cross-examine the witness; a right to explain it if we can, to contradict it if we can, to impeach the very witness who testifies to it if we can. Every weapon that a defendant has in pursuit of truth as to testimony against him is put into our hands the moment such a question is put and such a question is answered.

Mr. Manager BINGHAM. Mr. President, I think senators cannot fail to have observed the most extraordinary remarks that have just fallen from the lips of the honorable counsel for the President. It is perfectly apparent to intelligent men, whether on the floor of the Senate or in these galleries, that they have attempted, through this witness, to obtain the mere naked declaration of the accused to rebut the legal presumption of his guilt arising from his having done an unlawful act.

I am not surprised at the feeling with which the honorable gentleman has just discussed this question. If I heard aright the testimony which fell from the lips of the witness, the Lieutenant General, it was testimony that utterly disappointed and confounded the counsel for the accused. What was it? Nothing was said, said the witness, in the first conversation about an appeal to the courts, and finally this was said, that it was impossible to make up a case by which to appeal to the courts. These declarations of the President, standing in that form, are not satisfactory to the counsel. They are brought out, to be sure, upon the question of the honorable gentleman from Maryland; but they are not satisfactory to the counsel; and now he tells the Senate that he has the right to cross-examine. To cross-examine whom, sir? To cross-examine his own witness. To cross-examine him for what purpose? "In search of the truth!" Well, he is in pursuit of the truth under difficulties. The witness has already sworn to matter of fact that shows the naked, bald falsity of the defence interposed here by the President in his answer, that his only purpose in violating the law was to test the validity of the law in the courts. Why did not he test the validity of the law in the courts? It will not do to say to the Senate of the United States that he has accounted for it in telling this witness that the case could not be made up. The learned counsel who has just taken his seat is too familiar with the law of this country, too familiar with the absolute adjudication of this very case in the Supreme Court, to venture to indorse for a moment this utterance of his client made to the Lieutenant General that it was impossible to make up a case. I stand here and assert what the learned counsel knows right well, that all that was needful to make up a case was for the President of the United States to do just what he did do in the first instance, to issue an order directing Mr. Stanton to surrender the office of Secretary for the Department of War to "Lorenzo Thomas, whom he had that day appointed Secretary of War *ad interim*," and to surrender all the records of the office to him, to surrender the property of the office to him, and upon the refusal of the Secretary of War to obey his command, through his Attorney General, who now appears as his attorney in the trial and defence of this

case, to sue out a writ of *quo warranto*. That is the law which we undertake to say is settled in this case, notwithstanding his statement to the witness whom they have called here. It is settled in the case of Wallace *vs.* Anderson, as the Senate will recollect, reported in 5 Wheaton, page 291. The opinion of the court, from which no dissent was expressed by any member of the bench, was delivered by Chief Justice Marshall, and I will read the opinion :

> Mr. Chief Justice Marshall delivered the opinion of the court, that a writ of *quo warranto* could not be maintained, except at the instance of the government; and as this writ was issued by a private individual, without the authority of the government, it could not be sustained, whatever might be the right of the prosecutor or of the person claiming to exercise the office in question. The information must, therefore, be dismissed.

That power was not employed by the Executive through the Attorney General. Let him answer in some other way than by these declarations, sought to be reached through a cross-examination of their own witness, why he did not follow up his illegal order for the removal of Stanton and for the appointment of Lorenzo Thomas as Secretary of War *ad interim* by legally suing out his writ of *quo warranto* and trying the question in the courts.

But, gentlemen senators, there is something more than that in this case—and I desire merely to refer to it in passing—that the question which the gentlemen raise here in argument now is, in substance and in fact, whether, having violated the Constitution and laws of the United States, in the manner shown by the testimony here, beyond question, they cannot at last strip the people of the power which they retained to themselves by impeachment—to hold such malefactors to answer before the Senate of the United States, to the exclusion of the interposition of every other tribunal of justice upon God's footstool. What has this question to do with the final decision of the case before the Senate? I say if your Supreme Court sat to-day in judgment upon this question it has no power and can have none over this Senate. The question belongs to the Senate, in the language of the Constitution, exclusively. The words are that "the Senate shall have the sole power to try all impeachments."

The sole or only power to try impeachments includes the power to try and determine every question of law and fact arising in a case of impeachment. It is in vain that the decision of the Supreme Court or of the circuit court or of the district court or of any court outside of this is invoked for the decision of any question arising in this trial between the people and their guilty President. We protest, then, against a speech that has been made here in this matter. We protest, also, against the attempt here to cross-examine their own witness and get rid of the matter already stated so truthfully and so fairly by the witness, which clearly makes against their client and strips him of every feather, and leaves him naked for the avenging hand of justice to reach him without let or hindrance.

Mr. EVARTS. Mr. Chief Justice and Senators, I shall enter into no discussions irrelevant to this matter; but we cannot consent to have matters so misrepresented. My learned associate, arguing upon a hypothetical case as to the injustice of the rule sought to be laid down when it should happen that the evidence was injurious to a party, that he should be restricted from cross-examination undertook, by way of argument, to influence the opinion of the Senate. It had not the remotest application, and, as must have been apparent to every intelligent observer, was not connected in the least with the actual evidence given. The evidence given, if it is agreeable to the managers, is extremely satisfactory to us, presenting the very point of the inquiry of the Lieutenant General to the President why the lawyers could not make up a case without bringing in an *ad interim* appointment. The answer of the President was that it could not be done, but when on the effect of an *ad interim* appointment the matter was brought up, the case would not stand half an hour, agreeing with

Mr. Manager Butler in his hypothetical case in the note that he wrote for the President to send to the Senate:

> I felt myself constrained to make this removal lest Mr. Stanton should answer the information in the nature of a *quo warranto*, which I intend the Attorney General shall file at an early day, by saying that he holds the office of Secretary of War by the appointment and authority of Mr. Lincoln, which has never been revoked.

Mr. Manager BINGHAM. Mr. President, I desire, in response to the gentleman's remarks, very briefly to state to the Senate that instead of bettering his client's case he has made it worse by his attempt to explain this declaration of the President to the witness that it was impossible to make up a case without an *ad interim* appointment. I agree and stated myself in the remarks which I made before, that it was necessary that he should issue his order of removal as he did issue it, and that it was necessary he should issue his order of appointment to Lorenzo Thomas or somebody else as Secretary of War *ad interim*, as he did issue it; but now how does the case stand? Had he not made an *ad interim* appointment six months before this conversation with the Lieutenant General? Had he not made an *ad interim* appointment in August, 1867, of General Grant? Ah! says the gentleman, he only suspended Mr. Stanton then under the tenure-of-office act, and therefore the question could not very well be raised. I have no doubt that will be the answer of the counsel; it is all the answer they can make; but, gentlemen senators, how does such an answer stand with the corrupt answer put in here by the President that he did not make that suspension under the tenure-of-office act, but under the Constitution of the United States, and by virtue of the powers vested in him by that Constitution? He cannot play "fast and loose" in this way in the presence of the Senate and the people of this country.

Why did he not issue out his writ of *quo warranto* in August, when he had his appointment of Secretary *ad interim*, casting aside your statute, going into courts, forestalling the power of the people to try him by impeachment for this violation ot law, for this unlawful act, which by the law of every country where the common law obtains carries the criminal intent with it on its face, and which he cannot talk from the record by any false statement, nor swear from the record in any shape or form by any mere declarations of his own.

One word more, and I have done with this matter. They got in evidence of what he told Thomas, and now they want to contradict that evidence. After the refusal of the office to him by Stanton, after Stanton refused to obey Thomas's orders, after he had ordered Thomas to go to his own place, and Thomas refused to obey his orders and declared himself Secretary and his purpose to control the office, to take possession of the records, and seize upon its mails, you have had offered here by this defence the declarations of the accused to Thomas when he went back and reported to him this refusal, "Go on, take possession of the office;" not "I am going to appeal to the courts," not "Go to the Attorney General for a writ of *quo warranto;*" there was no intimation of that sort then; but that declaration of the accused to Lorenzo Thomas on the night of the 21st of February, after he had committed this crime against the laws and Constitution of his country, is to be got rid of here to-day by his declaration at another time that they are seeking after now, to the Lieutenant General.

We are not trying the President here for having offered the Lieutenant General an appointment of Secretary *ad interim*, or an absolute appointment either. We are trying the President here for issuing an order, in violation of law, for the removal of Mr. Stanton and another letter of authority, in violation of the law, directing Lorenzo Thomas to take possession of the War Department, its records, and its property, and to discharge the functions of the office of Secretray of War *ad interim*, in utter contempt of the Constitution, of his own oath of office, of the statutes of the United States, and of the solemn decision of the Senate. And these gentlemen come here to get rid of this matter in this way

by cross-examining, to use their own word, their own witness, because, after failing to get anything from him themselves, and the Senate having succeeded in getting words from him that do not suit their purpose, they seek to get rid of the whole matter by a further examination.

Mr. DAVIS. Mr. Chief Justice, I ask for information if the question propounded by the honorable senator from Maryland has been fully answered?

The CHIEF JUSTICE. The senator from Kentucky will reduce his question to writing.

Mr. DAVIS. I do not propose——

The CHIEF JUSTICE. The rule requires that the question shall be reduced to writing.

Mr. DAVIS. I do not propound any question to the witness at all. I merely make the suggestion to the Chief Justice whether the question, as drafted by the honorable senator from Maryland, has been fully answered by the witness or not?

The CHIEF JUSTICE. It is impossible for the Chief Justice to reply to that question. The witness only can reply.

The WITNESS. Where is my answer?

Mr. TRUMBULL. I ask is there not a question pending?

Mr. DAVIS. I ask that the question be read.

The CHIEF JUSTICE. The Chief Justice will explain the position of the matter to the Senate. The Senator from Maryland desired that the following question should be put to the witness, (General Sherman.) "When the President tendered to you the office of Secretary of War *ad interim* on the 27th of January, 1868, and on the 31st of the same month and year, did he, at the very time of making such tender, state to you what his purpose in so doing was?" To that question the witness replied, "he did" or "yes." That answer having been given, the senator from Maryland propounded the further question, "The witness having answered yes, will he state what he said his purpose was?" The witness having made an answer to that question either partial or full, the Chief Justice is unable to decide which, the counsel for the President propose this question: "Have you answered as to both occasions?" That is the same question which the senator from Kentucky now proposes to the Chief Justice, and which he is unable to answer. The senator from Oregon (Mr. WILLIAMS) objects to the question proposed by the counsel for the President upon the ground that General Sherman having been recalled at the instance of a senator, and having been examined by him, he cannot be examined by counsel for the President. The Chief Justice thinks that that is a matter entirely within the discretion of the Senate, but that it is usual, under such circumstances, to allow counsel to proceed with their inquiries relating to the same subject-matter.

Mr. WILLIAMS. Mr. President, I withdraw my objection to this question. When the question was orally put I understood it to be another and different question. I am willing a full answer shall be given to the question propounded by the senator from Maryland, but object to new questions.

The CHIEF JUSTICE. The Secretary will read the question, and the witness will answer.

The SECRETARY. The question is, "Have you answered as to both occasions?"

The WITNESS. I should like to hear my answer as far as it had gone.

Mr. JOHNSON. I move that the reporter read the answer.

The CHIEF JUSTICE. That will be done.

Mr. J. J. Murphy, one of the official reporters of the Senate, read the previous answer of the witness from the short-hand notes, as follows:

> I intended to be very precise and very short; but it appeared to me necessary to state what I began to state—that the President told me that the relations between himself and Mr. Stanton, and between Mr. Stanton and the other members of the cabinet, were such

that he could not execute the office which he filled as President of the United States without making provision *ad interim* for that office; that he had the right under the law; he claimed to have the right; and his purpose was to have the office administered in the interest of the army and of the country; and he offered me the office in that view. He did not state to me then that his purpose was to bring it to the courts directly; but for the purpose of having the office administered properly in the interest of the army and the whole country.

Mr. STANBERY. On both occasions, general, or the other occasion?

The WITNESS. I asked him why lawyers could not make a case; that I did not wish to be brought as an officer of the army into any controversy.

Mr. CONKLING. Will you not repeat that last answer, general?

The WITNESS. I asked him why lawyers could not make a case, and not bring me, or an officer, into the controversy? His answer was, that it was found impossible, or a case could not be made up; but, said he, if we can bring the case to the courts, it would not stand half an hour. I think that is all that he stated to me then.

Mr. DRAKE. Now read the pending question.

The SECRETARY. The question is: "Have you answered as to both occasions."

The WITNESS. The question first asked me seemed to restrict me so close to the purpose that I endeavored to confine myself to that point alone. On the first day or the first interview in which the President offered me the appointment *ad interim* he confined himself to very general terms, and I gave him no definite answer. The second interview, which was on the afternoon of the 30th, not the 31st, was the interview during which he made the points which I have testified to. In speaking he referred to the constitutionality of the bill known as the civil tenure-of-office bill, I think, or the tenure of civil-office bill; and it was the constitutionality of that bill which he seemed desirous of having tested, and which, he said, if it could be brought before the Supreme Court properly, would not stand half an hour. We also spoke of force. I first stated that if Mr. Stanton would simply retire, although it was against my interest, against my desire, against my personal wishes, and against my official wishes, I might be willing to undertake to administer the office *ad interim*. Then he supposed that the point was yielded; and I made this point, "Suppose Mr. Stanton do not yield?" He answered, "Oh! he will make no objection; you present the order, and he will retire." I expressed my doubt, and he remarked, "I know him better than you do; he is cowardly." I then begged to be excused from giving him an answer to give the subject more reflection, and I gave him my final answer in writing. I think that letter, if you insist upon knowing my views, should come into evidence, and not parol testimony taken up; but my reasons for declining the office were mostly personal in their nature.

Mr. JOHNSON. Mr. Chief Justice, with the permission of the Senate I desire to correct a mistake of fact. I thought General Sherman said the 31st, but it is the 30th of January, and therefore I desire to have that correction made in my written question.

The CHIEF JUSTICE. If there be no objection that correction will be made. The 30th will be substituted for the 31st in the record of the question of the senator from Maryland.

Mr. HENDERSON. I desire to ask the witness a question, which I send to the Chair in writing.

The CHIEF JUSTICE. The Secretary will read the question of the senator from Missouri.

The Secretary read as follows:

Did the President, on either of the occasions alluded to, express to you a fixed resolution or determination to remove Stanton from his office?

The WITNESS. If by removal is meant a removal by force, he never conveyed to my mind such an impression; but he did most unmistakably say that he could have no more intercourse with him in the relation of President and Secretary of War.

Mr. HOWARD. I wish to put a question to the witness. I send it to the Chair.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Michigan.

The Secretary read as follows:

You say the President spoke of force. What did he say about force?

The WITNESS. I inquired, "Suppose Mr. Stanton do not yield, what then shall be done?" "Oh," said he, "there is no necessity of considering that question; upon the presentation of an order he will simply go away," or "retire."

Mr. HOWARD. Is that a full answer to the question?

The WITNESS. I think it is, sir.

Mr. HENDERSON. Mr. President, I desire to submit another question. I send it to the desk.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Missouri.

The Secretary read as follows:

Did you give any opinion or advice to the President on either of those occasions in regard to the legality or propriety of an *ad interim* appointment; and if so, what advice did you give, or what opinion did you express to him?

Mr. Manager BINGHAM. Mr. President, we must object to that.

Mr. Manager BUTLER. It has been overruled once to-day. I suppose the Senate means to adhere to some rule.

The CHIEF JUSTICE. Do the honorable managers object to the question being answered?

Mr. Manager BINGHAM and Mr. Manager BUTLER. We do.

The CHIEF JUSTICE. The Chief Justice will put the question to the Senate whether the question proposed by the senator from Missouri is admissible and should be put to the witness.

The question being put, it was determined in the negative.

So the question propounded by Mr. Henderson was decided to be inadmissible.

Mr. STANBERY. If no other questions are sought to be put to General Sherman, I believe we are through with him.

The CHIEF JUSTICE. Do the honorable managers desire to put any questions?

Mr. Manager BUTLER. I did not know that the counsel for the President had anything to do with this examination.

Mr. STANBERY. I have said we are through. We do not propose to argue that point.

The CHIEF JUSTICE. Gentlemen, General Sherman desires to know if you are through with him on both sides?

Mr. Manager BINGHAM. We may desire to recall the Lieutenant General to-morrow.

The WITNESS. I have a summons to appear before your committee to-morrow.

Mr. EVARTS. We must insist, Mr. Chief Justice, that the cross-examination must be finished before the witness is allowed to leave the stand.

Mr. Manager BINGHAM. We do not propose to make any cross-examination at present.

Mr. EVARTS. No cross-examination "at present!" We insist that the cross-examination must be made now if it is to be made at all.

The CHIEF JUSTICE. Undoubtedly that is the rule.

Mr. Manager BINGHAM. We submit that the gentlemen themselves on Saturday made an appeal for leave to recall the witness; and for myself, and as I understood it to be for my associate managers, I made no objection. It is for the Senate to determine whether we shall recall him to-morrow.

Mr. EVARTS. We have no desire to be strict about these rules, but we desire that they shall be equally strict on both sides.

The CHIEF JUSTICE. Undoubtedly the general rule is that if the managers desire to cross-examine they must cross-examine before dismissing the witness; but that will be a question for the Senate when General Sherman is recalled.

Mr. Manager BUTLER. This witness has not been called now by the counsel, and therefore we do not cross-examine at present about the matter inquired of by the court. The court's questions are all very well; we cannot interfere with those; we do not propose to do so. We will take our own course in our own way.

Mr. EVARTS. Very well.

Mr. Manager BUTLER. And let you know what it is when we get ready.

R. J. MEIGS recalled.

By Mr. STANBERY:

Q. Have you the docket of the supreme court of the District with you now?

A. I have.

Q. Will you read the docket entries in the case of the United States *vs.* Lorenzo Thomas?

Mr. Manager BUTLER. Is that evidence? I have no belief that the docket entry of a court, until the record is made up, is anything more than a minute from which the record may be extended. I directed that the record should be extended in this case for the use of the Senate.

Mr. STANBERY. It is not a case in which any record was made, as the witness has already told us; but it was a proceeding before a judge at chambers, and the only entry on the books is the entry on the docket.

The CHIEF JUSTICE. The witness will proceed, unless the question be objected to.

Mr. Manager BUTLER. I have objected.

Mr. Manager BINGHAM. We must object to the evidence as incompetent.

The CHIEF JUSTICE. The counsel for the President will please state in writing what they propose to prove.

The offer of the counsel for the President was reduced in writing in the form of a question to the witness, as follows:

Have you got the docket entries as to the disposition of the case of the United States *vs.* Lorenzo Thomas, and if so will you produce and read them?

The CHIEF JUSTICE. The Chief Justice thinks that this is a part of the same transaction, and is competent evidence; but he will put the question to the Senate if any senator desires it. [After a pause.] The witness will answer the question.

The WITNESS. The examining magistrate or the judge took the recognizance of General Thomas for his appearance on a subsequent day, and when that recognizance was taken it was put on the docket of the court, because there might be a *scire facias* upon it on one supposition, and there might be an indictment. Therefore it was put upon the docket of the court.

Mr. STANBERY. Read the docket entries.

The WITNESS. The case is numbered 5711.

THE UNITED STATES *vs.* LORENZO THOMAS.

Warrant for his arrest, issued by Hon. Chief Justice Cartter, on the oath of E. M. Stanton, to answer the charge of high misdemeanor in that he did unlawfully accept the appointment of the office of Secretary of War *ad interim*, February 22, 1868.

Warrant served by the marshal February 22, 1868.

Recognizance for his appearance on the 26th instant, February 22, 1868.

Discharged by Chief Justice Cartter, on the motion of the defendant's counsel, February 26, 1868.

Mr. STANBERY. That is all.

The CHIEF JUSTICE. Do the honorable managers desire to cross-examine this witness?

Mr. Manager BUTLER. We have nothing to ask of this witness, sir.

Mr. JOHNSON. I move that the court adjourn.

Mr. STEWART. On that motion I call for the yeas and nays.

The CHIEF JUSTICE. The senator from Maryland moves that the Senate, sitting as a court of impeachment, adjourn until to-morrow at 12 o'clock. On this question the yeas and nays are asked for.

The yeas and nays were not ordered, one-fifth of the senators present not sustaining the call.

The question being put on the motion to adjourn, there were, on a division, ayes 24, noes 18; and the Senate, sitting for the trial of the impeachment, adjourned until to-morrow at 12 o'clock.

TUESDAY, *April* 14, 1868.

The Chief Justice of the United States entered the Senate chamber at 12 o'clock and 5 minutes p. m., and took the chair.

The usual proclamation having been made by the Sergeant-at arms,

The managers of the impeachment on the part of the House of Representatives appeared and took the seats assigned them.

The counsel for the respondent, with the exception of Mr. Stanbery, also appeared and took their seats.

The presence of the House of Representatives was next announced, and the members of the House, as in Committee of the Whole, headed by Mr. E. B. Washburne, the chairman of that committee, and accompanied by the Speaker and Clerk, entered the Senate chamber, and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the journal.

Mr. STEWART. I move that the reading of the journal be dispensed with.

The CHIEF JUSTICE. If there be no objection the reading of the journal will be dispensed with. The Chair hears no objection.

Mr. SUMNER. I send to the Chair an order.

The CHIEF JUSTICE. The Secretary will read the order.

The Secretary read as follows:

Ordered, In answer to the motion of the managers, that, under the rule limiting the argument to two on a side unless otherwise ordered, such other managers and counsel as choose may print and file arguments at any time before the argument of the closing manager.

The CHIEF JUSTICE. If there be no objection the order will be considered now.

Mr. CONNESS. I object, Mr. President.

The CHIEF JUSTICE. Objection is made. The order will lie over for one day.

Mr. SUMNER. I beg leave most respectfully to inquire under what rule such an objection can be made.

The CHIEF JUSTICE. The Chief Justice stated on Saturday that in conducting the business of the court he applied, as far as they were applicable, the general rules of the Senate. This has been done upon several occasions, and when objection has been made orders have been laid over to the next day for consideration.

Mr. SUMNER. Of course it is not for me to argue the question; but I beg to remind the Chair of the rule under which this order is moved.

The CHIEF JUSTICE. It will lie over. Gentlemen of counsel for the President, you will please proceed with the defence.

Mr. EVARTS. Mr. Chief Justice and Senators, it is our misfortune to be obliged to state to the court that since the adjournment yesterday, and not com-

ing to our knowledge until just before we came into court this morning, our associate, Mr. Stanbery, is prevented by illness, which confines him wholly, from attending upon the court to-day. I have seen him, and have learned the opinion of his physician that he will undoubtedly, in expectation, be able to resume his duty within forty-eight hours, and there may be some hope that he will be able to do so by to-morrow. In the suddenness of this knowledge to us, and in the actual arrangement in reference to the proofs, it would be very difficult for us, and almost impossible with any proper attention to the justice of the case, to proceed to-day; and we suppose that an indulgence, at least for the day, would lessen the chance of longer procrastination. The gentlemen of the Senate and the Chief Justice will be so good as to bear in mind that much of the matter to be produced in evidence is within the personal knowledge of our associate, Mr. Stanbery, and not within our own, and we have to say that the conduct of the proofs has been accorded to him.

It is, of course, not pleasant for us, and not pleasant for Mr. Stanbery, especially, that such an occasion as this should arise for the introduction of personal considerations; but in our best judgment we can only present it to the court in the aspect I have named, and submit it to their discretion whether the facility and the indulgence that may be needed on our part should be limited to this day or whether it should extend over the two days that we suppose would assure the restoration of Mr. Stanbery to health. I saw Mr. Stanbery last evening, and, although he had been a little affected by a cold which he had contracted, I supposed him to be, as he supposed himself to be, in a condition of health that would permit him to go on as usual; and it was only as we were preparing to come to court this morning that he himself was obliged to submit to the confinement of his physician and to inform us of his situation.

Mr. DRAKE. Mr. President, I would ask a question of the counsel for the defence.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Missouri.

The Secretary read the question, as follows:

Cannot the day be occupied by counsel for the respondent in giving in documentary evidence?

Mr. EVARTS. It cannot, as we understand the situation of the proofs and our duty in regard to them.

Mr. HOWE. Mr. President, I move that the Senate, sitting as a court of impeachment, adjourn until to-morrow at 12 o'clock.

The motion was agreed to.

The CHIEF JUSTICE. The Senate, sitting as a court of impeachment, stands adjourned until to-morrow at 12 o'clock.

WEDNESDAY, *April* 15, 1868.

The CHIEF JUSTICE of the United States took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives and the counsel for the respondent, except Mr. Stanbery, appeared and took the seats assigned them respectively.

The members of the House of Representatives, as in Committee of the Whole, preceded by Mr. Washburne, chairman of that committee, and accompanied by the Speaker and Clerk, appeared and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the journal of yesterday's proceedings.

The Secretary read the journal of yesterday's proceedings of the Senate sitting for the trial of the impeachment.

The CHIEF JUSTICE. The first business in order is the consideration of the order submitted by the senator from Massachusetts [Mr. Sumner] yesterday.

Mr. SUMNER. I should like to have it reported.

The CHIEF JUSTICE. The Secretary will read the order.

The Secretary read as follows:

Ordered, In answer to the motion of the managers, that, under the rule limiting the argument to two on a side, "unless otherwise ordered," such other managers and counsel as choose may print and file arguments at any time before the argument of the closing manager.

The CHIEF JUSTICE. The question is on agreeing to the order.

Mr. EDMUNDS. I move to amend the order so that it will read, "May print and file arguments at any time before the argument of the opening manager shall be concluded," in order that the counsel for the defence may have an opportunity to see what arguments they are to reply to.

Mr. SUMNER. I have no objection to that.

Mr. JOHNSON. I ask for the reading of the order as proposed to be amended.

The CHIEF JUSTICE. The Secretary will read the order.

The SECRETARY. The order submitted reads as follows:

Ordered, In answer to the motion of the managers, that, under the rule limiting the argument to two on a side, unless otherwise ordered, such other managers and counsel as choose may print and file arguments at any time before the argument of the closing manager.

It is proposed to strike out the words "argument of the closing manager," and insert "argument of the opening manager shall be concluded."

Mr. EVARTS. Mr. Chief Justice, may we be allowed to make a suggestion in reference to this order?

The CHIEF JUSTICE. Certainly.

Mr. EVARTS. The amendment offered and accepted places, I suppose, the proper restriction upon the arguments to be furnished in print on the part of the managers. That puts the matter in proper shape, I suppose, as regards the printed briefs that may be put in on the part of the managers; that is to say, that they shall be filed before we make our reply. On our part, however, it would be proper that we should have the liberty of filing the briefs at any time before the closing manager makes his final reply, as a part of our new briefs may be in reply to the new briefs that are put in on the part of the prosecution.

Mr. Manager BINGHAM. Mr. President and senators, I desire to say, in regard to the remark which has just been made by the honorable gentleman on behalf of the accused, that it would seem, if the order be entered as he suggests, that additional arguments made by counsel on behalf of the President need not be filed until the close of the arguments on behalf of the accused made orally to the Senate, the repliant on behalf of the Congress of the United States and of the people would have no opportunity to see those arguments not delivered, and therefore could not reply to them. I would suggest that the order as it stands is right. It gives the counsel for the President the opportunity to review what may be filed before they argue, and it gives the counsel for the people the opportunity to review before he argues whatever may be filed here on behalf of the President.

Mr. EVARTS. Undoubtedly there are inconveniences in this enlargement of the rule, however applied; but there seems to be an equality in requiring each side to furnish its arguments in time to have replying counsel answer them; and the same rule upon my suggestion would be applied to us that by this present amendment is applied to the managers for the impeachment, for they are not required to file their additional briefs except at the very moment that they close their oral argument, and then we are obliged to commence our oral argument.

Mr. NELSON. Mr. Chief Justice and Senators, I desire to say on this motion

that it was agreed between the counsel for the President that the three of our number who have hitherto managed the case should take upon themselves the continuous management and the argument of the case before the Senate. In consequence of the imputation made by the managers, that we desired unnecessarily to consume the time of the Senate, those of us who, under this arrangement, had not intended to argue the cause did not intend, either by ourselves or through others, to make any application to the Senate for an enlargement of the rule; but inasmuch as that application has been made in behalf of the managers, I desire to say to the Senate that if we are permitted to argue the cause I think it would be more fair to the two counsel who did not expect to argue the case to permit us to make an extemporaneous argument before the Senate. We have not made any preparation whatever in view of written arguments. We suppose, though we do not know how the fact is, that the managers on the part of the House, who have had this subject before them for a much longer period than we have had, are much more familiar with this subject and are better prepared with written addresses than we are, so that if the rule is to be extended I respectfully ask the Senate to allow us to address the Senate in such mode, either oral or written, as we may desire. I beg leave to say to the Senate that while I do not, speaking for myself, expect to be able to interest the Senate as much as the learned gentlemen to whom the management of the cause has been hitherto confided on the part of the President, yet, as I reside in the President's own State, as I have practiced my profession in his town, the town of his domicile, for the last thirty years, and as he saw proper to ask my services in his behalf, and as I fully concur with him in the leading measures of his administration, I desire, if I am heard at all, to be heard in the mode which I have suggested.

Mr. CONNESS. I offer the following as a substitute for the order now pending.

The CHIEF JUSTICE. The Secretary will read the substitute proposed by the senator from California.

The Secretary read it, as follows:

Strike out all after the word "ordered," and insert:

That the twenty-first rule be so amended as to allow as many of the managers and of the counsel for the President to speak on the final argument as shall choose to do so: *Provided*, That not more than four days on each side shall be allowed; but the managers shall make the opening and the closing argument.

Mr. DRAKE. On that question I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. Manager BOUTWELL. I should like to have the substitute read once more.

The CHIEF JUSTICE. The Secretary will read the proposed substitute.

The Secretary again read it.

The CHIEF JUSTICE. Does the honorable manager desire to address the Senate?

Mr. Manager BOUTWELL. No, sir.

The CHIEF JUSTICE. The question is on the substitute proposed by the senator from California.

The question being taken by yeas and nays, resulted—yeas 19, nays 27; as follows:

YEAS—Messrs. Cameron, Conness, Cragin, Dixon, Doolittle, Fowler, Harlan, Henderson, Hendricks, McCreery, Patterson of Tennessee, Ramsay, Sherman, Stewart, Trumbull, Van Winkle, Willey, Wilson, and Yates—19.

NAYS—Messrs. Anthony, Buckalew, Cattell, Chandler, Cole, Conkling, Davis, Drake, Edmunds, Ferry, Frelinghuysen, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Pomeroy, Ross, Saulsbury, Sumner, Thayer, Tipton, Vickers, and Williams—27.

NOT VOTING—Messrs. Bayard, Corbett, Fessenden, Grimes, Norton, Nye, Sprague, and Wade—8.

So the substitute was rejected.

Mr. DOOLITTLE. Mr. Chief Justice, I prefer altogether oral arguments to

these printed ones, and I submit the following as a substitute, understanding that there are six managers on the part of the House and four counsel for the respondent. ["Order!" "Order!"] I have drawn an order which—— ["Order!" "Order!"]

The CHIEF JUSTICE. Order! Order! There can be no debate.

Mr. DOOLITTLE. Which I ask to have read.

The CHIEF JUSTICE. The Secretary will read the amendment proposed by the senator from Wisconsin.

The Secretary read as follows:

Strike out all after the word "ordered," and insert:

That upon the final argument two managers of the House open, two counsel for the respondent reply; that two other managers rejoin, to be followed by two other counsel for the respondent; and they in turn, to be followed by two other managers of the House, who shall conclude the argument.

Mr. DRAKE. I move the indefinite postponement of the whole proposition, together with the substitute.

The CHIEF JUSTICE. The senator from Missouri moves the indefinite postponement of the order and the proposed substitute.

Mr. SUMNER. Let us have the yeas and nays on that.

The yeas and nays were ordered; and being taken, resulted—yeas 34, nays 15; as follows:

YEAS—Messrs. Anthony, Buckalew, Chandler, Cole, Conkling, Conness, Corbett, Davis, Dixon, Drake, Edmunds, Ferry, Fessenden, Grimes, Harlan, Henderson, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Pomeroy, Ross, Saulsbury, Sherman, Stewart, Thayer, Tipton, Williams, and Yates—34.

NAYS—Messrs. Cameron, Cattell, Cragin, Doolittle, Fowler, Frelinghuysen, McCreery, Patterson of Tennessee, Ramsey, Sumner, Trumbull, Van Winkle, Vickers, Willey, and Wilson—15.

NOT VOTING—Messrs. Bayard, Norton, Nye, Sprague, and Wade—5.

So the order and substitute were indefinitely postponed.

Mr. FERRY. I now submit an order on which I desire action.

The CHIEF JUSTICE. The Secretary will read the order proposed by the senator from Connecticut.

The Secretary read as follows:

Ordered, That the twelfth rule be so modified as that the hour of the day at which the Senate shall sit upon the trial now pending shall be, unless otherwise ordered, at 11 o'clock forenoon; and that there shall be a recess of thirty minutes each day, commencing at 2 o'clock p. m.

The CHIEF JUSTICE. This order is for present consideration unless objected to.

The CHIEF JUSTICE put the question, and declared that the noes appeared to have it.

Mr. THAYER, Mr. DRAKE, and others called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 24, nays 26, as follows:

YEAS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Ramsey, Sherman, Stewart, Sumner, Thayer, Williams, and Wilson—24.

NAYS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ross, Saulsbury, Tipton, Trumbull, Van Winkle, Vickers, Willey, and Yates—26.

NOT VOTING—Messrs. Norton, Nye, Sprague, and Wade—4.

So the order was rejected.

The CHIEF JUSTICE. Gentlemen of counsel for the President, please proceed with the defence.

Mr. EVARTS. Mr. Chief Justice and Senators, although I am not able to announce, as I should be very glad to do, that our associate, Mr. Stanbery, had, according to his hopes, been able to come out to-day, yet I am happy to say that he is quite convalescent, and cannot be long interrupted from giving the

proper attention to the proper conduct of the case. Under these circumstances, and from a desire to do whatever we may properly do in advancing the trial of the cause, we propose, with the permission of the court, to proceed to-day in putting in the documentary evidence, which will take a very considerable time, and probably we shall not wish to be called upon to proceed with any oral testimony until to-morrow, when we shall be happy to do so.

Mr. CURTIS. Mr. Chief Justice, we desire to bring before the Senate the nomination sent by the President of the United States to the Senate on the 21st of February, as I am instructed, of Hon. Thomas Ewing for the office of Secretary for the Department of War. We wish the executive clerk to be instructed to produce that, in order that we may put it in evidence.

Mr. CONKLING. Mr. President, I beg to say that counsel is entirely inaudible here.

Mr. CURTIS. My request, senators, was that the executive clerk might be instructed to bring in and exhibit here in evidence the nomination sent by the President of the United States under the date of the 21st of February last, as I am instructed, the nomination of Hon. Thomas Ewing for the place of Secretary for the Department of War.

The CHIEF JUSTICE. The Chief Justice is informed by the Secretary that the injunction of secrecy has not been removed from this proceeding. It will be necessary that it should be removed.

Mr. JOHNSON. Does that apply to a nomination?

Mr. EDMUNDS. I ask unanimous consent to say, if I am permitted, on that point ——

The CHIEF JUSTICE. If there be no objection, the senator can proceed by unanimous consent.

Mr. EDMUNDS. I desire to say that under the new rules the fact of a nomination being made, it is provided, shall not be a secret communication, and hence I think there can be no impropriety in ordering the production of the paper.

Mr. CURTIS. I was so instructed on inquiry, and supposed no motion to remove the injunction of secrecy was necessary.

Mr. SHERMAN. Mr. Chief Justice, if a motion is necessary, I will move that the executive clerk be sworn as a witness in the case.

Mr. EDMUNDS. With the consent of the Chief Justice I will read the fortieth rule, recently adopted:

> All information or remarks concerning the character or qualifications of any person nominated by the President to office shall be kept a secret. But the fact that a nomination has been made shall not be regarded as a secret.

The CHIEF JUSTICE. The executive clerk will be sworn.

D. W. C. CLARKE sworn and examined.

By Mr. CURTIS:

Q. Will you state what document you have before you?

A. I have the original nomination by the President of Thomas Ewing, senior, to be Secretary for the Department of War.

Q. Will you please to read it?

A. The witness read as follows:

To the Senate of the United States:

I nominate Thomas Ewing, senior, of Ohio, to be Secretary for the Department of War.

ANDREW JOHNSON.

WASHINGTON, D. C., *February* 22, 1868.

Q. On what day was that actually received by you?

A. On the 22d of February.

Mr. CURTIS. Now, I desire to put in evidence, Mr. Chief Justice, a copy of the message of the President of the United States to the Senate of the United States, which bears date on the 24th of February, 1868. I have the printed

copy, which is the authorized copy. I suppose it will not be objected that we have not obtained it from the proper source?

Mr. Manager BUTLER. The mere vehicle of proof, Mr. President, will not be objected to; but the proof itself will be, for a very plain reason. It was after the President was impeached by the House, and, of course, it is his declaration attempted to be put in. A declaration by him, after he was impeached, whether made to the Senate or anybody else, it seems to us, cannot be evidence.

The exact order of time, if it may not be in the mind of senators, was this: on the 21st of February a resolution was offered to the House of Representatives looking to the impeachment of the President, bringing it before the house; on the 22d it was acted on and actually voted. Impeachment was actually voted on the 22d. Then intervened Sunday, the 23d. Any message sent on the 24th, therefore, must have been known to the President to have been after the impeachment.

Mr. CURTIS. It will be remembered that the honorable managers put in evidence in the course of their proceedings a resolve passed by the Senate to which this message is a response; so that the question is, whether the honorable managers can put in evidence a resolve of the Senate transmitted to the President of the United States in reference to the removal of Mr. Stanton, and the Senate will refuse to receive the reply which the President made to that resolve. That is the question which is now before the court.

Mr. Manager BUTLER. I have only to say, Mr. President, that that is an argument to the prejudice, and not to the law. Suppose he offers his answer here to-day, is that to be received as evidence? This message is said to be the answer to the resolve of the Senate. I pray you to remember that our learned friends insist that the rules of law should govern. Will they dare to say to the Senate that they ever heard of a case where, after indictment of the criminal, the respondent was allowed to put in evidence his statement of his defence? If so, when is that right to cease? We put in the resolve because it was a part of the transaction of removing Mr. Stanton, made before the impeachment was determined upon. We cannot put in his declarations down to to-day. That is a familiar rule of law. They cannot. I only ask the Senate to consider it as a precedent hereafter, as well as being a great wrong upon the people, that after they indict—if you use that word—after they impeach an officer, then he can send in a message which shall be taken as evidence for him.

Mr. EVARTS. Mr. Chief Justice and Senators, the learned manager asks whether we dare do something. We have not been in the habit of considering the measure for the conduct of forensic disputations to be a question of daring. We are not in the habit of applying such epithets to opponents, nor, hitherto, of receiving them from them. The measure of duty of counsel to the law and the facts is the measure we shall strive to obey, and not the measure of daring, if for no other reason, for this, that on the rule of law and fact and evidence we might, perhaps, expect sometimes a superiority, but on the measure of daring, never.

Now, this question arises thus: is the learned manager entirely right in saying that the impeachment was voted on the 22d? The 22d was Saturday, and, unless I am mistaken, the vote was not taken until Monday.

Mr. Manager BUTLER. I was entirely right—on Saturday. The vote was taken on the 22d of February.

Mr. EVARTS. That is, that articles should be brought in. The articles, however, were not voted until the 24th.

Mr. Manager BUTLER. The articles could not be prepared until some time afterward.

Mr. EVARTS. I am merely stating a fact, not complaining. They were found soon enough. Now, it is said that because the vote that impeachment should proceed was taken on the 22d, that impairs the credit or the admissibility of the

piece of evidence that is laid before the Senate. My learned associate has distinctly told the situation of the matter. Perhaps both of these transactions were public at the time, or were made public soon afterward. This message, the injunction of secrecy in respect to which has been removed, might be within the range of recourse on the one side or the other for argument, and for the knowledge of the court. But our learned opponents have put in the language of the resolution of the Senate. Exactly what bearing that has as part of the *res gestæ* of the removal of Mr. Stanton, which had taken place, so far as the criminality of the President was concerned, before this resolution was passed by the Senate, it was not easy to see. It was, however, received as proper evidence. The one reason that we did not consider it objectionable was that we supposed, as a matter of course and of right, that this message, which is an answer of that resolution, upon the introduction of the topic by the resolution being offered in evidence, would be admissible in itself. We submit, therefore, that on every principle, both of law and of discretion, if it may be so said, in regard to the completeness of the record upon the point, this message of the President should be allowed to be read and given in evidence.

Mr. Manager BUTLER. I simply desire to call the attention of the Senate to the fact that whether it is a matter of daring or professional knowledge, neither of the counsel has stated any possible precedent. I desire also to call the attention of the Senate to the fact, so that the counsel may never be in doubt hereafter what was the legal effect of the resolution of the Senate in our minds, that we put in that resolution to show that, notwithstanding the resolution of the Senate served on the President at eleven o'clock at night on the night of the 21st, he still went on and treated this Lorenzo Thomas as Secretary, and took him into his cabinet consultation, and Lorenzo Thomas was recognized after that by him as the Secretary *ad interim*, and after that Lorenzo Thomas breathing out his own designs to take possession of the office by force. It was in order to show that the President of the United States was determined to disobey the law of the land, that it was known to him—the Senate served it upon him for the purpose of having him know it, and did not leave it to the slow channels of communication in print, but served a certified copy on him to stay his hand, and he refused to stay his hand.

Now, can it be that a prepared argument after that, and after he was impeached by the House of Representatives, can be put in evidence? One ounce of action on his part in obedience to the law and the resolution of the Senate would have been a great deal better than pages of argument; but there was none. The gentlemen will not use the word "dare," for they would dare do all that good lawyers would dare do in favor of their client, but I will say the gentlemen have not shown a single legal position upon which this can stand.

The CHIEF JUSTICE. The counsel for the President will please put in writing what they propose to prove.

Mr. Manager BUTLER. We have sent the Clerk to look at the House Journal to correct us if we are wrong.

Mr. EVARTS. It will delay the question, then, somewhat.

Mr. Manager BUTLER. The report of the committee was made on the 22d. All of us were of opinion that the resolution was passed on the 22d. We think we are right; but we will make that certain.

After the lapse of a few minutes—

Mr. Manager BUTLER. We find, Mr. President, on examination, the state of the record is this: that on the 21st of February a resolution was proposed for impeachment and referred to a committee; on the 22d the committee reported, and that was debated through the 22d and into Monday, the 24th, and the actual vote was taken on Monday, the 24th.

Mr. EVARTS. Late in the afternoon—5 o'clock in the afternoon; so that I was right in the fact. Is there any further objection made now?

Mr. Manager BUTLER. Certainly.

Mr. Manager BINGHAM. I desire to state the reasons why we insist upon this objection. The House of Representatives, as appears by the Journal which has now been furnished us, on the 22d of February, through its committee, reported "that Andrew Johnson be impeached of high crimes and misdemeanors." The discussion proceeded on that day. On the day preceding, however, the 21st of February, it appeared that the Senate of the United States, as is already in evidence from the Journal of the Senate itself, proceeded to consider another message of the President of the United States, in which he had reported to the Senate that he had removed from the Department of War Edwin M. Stanton, then Secretary of War, by the previous action of the Senate. The Senate having refused to concur in the suspension, refused to acquiesce in the reasons assigned by the President under the tenure-of-office act. Having given the President notice thereof, the President thereupon proceeds, after this notice, to remove him and to appoint a Secretary of War *ad interim*, in direct contravention of the express words of the act itself and of the action of the Senate. On that day, the 21st of February, the Senate, it seems, considered the action of the President in this matter of removal and in this matter of appointment of the head of a department in direct contravention of the prohibitions of existing law and of the action of the Senate under it and the notice which it had served on the President.

On that night, as the record also shows, the 21st of February, 1868, the Senate of the United States passed a resolution reciting the action of the President in the premises, to wit, his removal of the Secretary of War, his appointment of a Secretary *ad interim*, and declaring by solemn resolve that under the Constitution and laws of the United States the President had no power to make the removal or to make the appointment. That was the action of the Senate, which has been given in evidence here in support of the prosecution. It was all concluded, as the Senate will notice from what I have said, on the 21st and 22d of February, 1868. My impression is that the notice was served on the night of the 21st, but, that I may not make a mistake in this matter, I say it was not served later than the 22d day of February.

Now, what takes place? Here is a presentment made on the 21st or 22d day of February, 1868, against this President before the grand inquest of the nation, and he seeks to put in a declaration made after presentment made, which is certainly tantamount to a warrant for his arrest, for from that moment he was within the power of the people. Although he fled to the remotest ends of the earth he could never stop for a moment the progress of this inquiry to final judgment, although personal process never reached him. It is so provided in the text of your Constitution. It is to be challenged by no man.

After these proceedings had been thus instituted, two days after the fact of the action of the Senate, and three days after the fact of his commission of the crime, he enters upon the task of justifying himself before the nation for a violation of its laws, for a violation of its Constitution, for a violation of his oath of office, for his defiance of the Senate, for his defiance of the people, by sending a message to the Senate of the United States on the 24th day of February, 1868. What is it, senators? Is it any more than a volunteer declaration of the criminal, after the fact, in his own behalf? Does it alter the case in law? Does it alter the case in the reason or judgment of any man living, either within the Senate or out of the Senate, that he chose to put his declaration in his own defence in writing? The law makes no such distinctions. I undertake to assert it here, regardless of any attempt to contradict my statement, that there is no law that enables any accused criminal, after the fact, to make declarations, either orally or in writing, either by message to the Senate or a speech to a mob, to acquit himself or to affect in any manner his criminality before the tribunals of

justice, or to make evidence which shall be admitted under any form of law upon his own motion to justify his own criminal conduct.

I do not hesitate to say that every authority which the gentlemen can bring into court regulating the rule of evidence in procedures of this sort is directly against the proposition, and for the simple reason that it is a written declaration made by the accused voluntarily, after the fact, in his own behalf. I read for the information of the Senate the testimony touching this fact of the service of the notice of the action had by the Senate upon the conduct of the President whereof he stands accused before the Senate. It is as follows. On page 109 of the trial Mr. McDonald testified:

An attested copy of the foregoing resolution was delivered by me into the hands of the President of the United States at his office in the Executive Mansion at 10 o'clock p. m. on the 21st of February, 1868.

On the 24th of February, three days afterward, he volunteers a written declaration which he now proposes to make evidence in his own behalf before this tribunal of justice. Of course it is evidence for no purpose whatever, except for the purpose of exculpating him from the criminal accusation preferred against him. It is for no other purpose.

Senators will bear with me while I make a further remark. The proposition is to introduce his whole message, not simply what he says for himself, not simply the arguments that he chooses to present in the form of a written declaration, in vindication of his criminal conduct, in violation of the clearest and plainest provisions of law, and in direct defiance of the action of the Senate and of the notice it had served on him on the night of the 21st of February; but the Senate will bear with me when I say, what they do know, that this message reports the declarations of third persons, and of course the Senate are asked to accept these, too, as evidence in the trial of the accused at their bar.

He reports in this message the declarations of third persons whom he has pleased to call his "constitutional advisers." He states their opinions. Without giving their language he gives the conclusions, and those conclusions are to be drawn before the Senate as matter of evidence. I beg leave to say here, in the presence of the Senate, that there is no colorable excuse for the President or for his counsel coming before the Senate to say to them, whether it be communicated in his written message or otherwise, that he has any right to attempt to shelter himself for a violation of the laws of the country under the opinions of any member of his cabinet. The Constitution never vested his cabinet counselors with any such authority, as it never vested the President with authority to suspend the laws, or to violate the laws, or to disregard the laws, or to make appointments in direct contravention of the laws, and in defiance of the final action of the Senate acting in express obedience to the requirement of the law.

Mr. Manager BUTLER, (after examining the message.) You are right. He reports the opinion of his cabinet.

Mr. Manager BINGHAM. I was aware that I was right. There is no colorable excuse for this proceeding. I say it with all respect to the learned counsel, and I challenge now the production of authority from any respectable court that ever allowed any man, high or low, official or unofficial, to introduce his own declarations, written or unwritten, made after the fact, in his defence. That is the point I take here. I beg the pardon of the Senate for having detained them so long in the statement of a proposition so simple, and the law of which is so clearly settled, running through centuries. I submit the question to them.

Mr. EVARTS. Mr. Chief Justice and Senators—

Mr. Manager BUTLER. Do we ever have the close here?

Mr. EVARTS. I dare say you have; but I also have the opportunity to speak. No question arises of my irregularity, I take it.

Mr. Manager BINGHAM. No, no.

Mr. EVARTS. Mr. Chief Justice and Senators, the only apology that the

learned manager has made for the course of his remarks is the consumption of your time, and yet he has not hesitated to say, and again to repeat, that there is not a color of justification for the attempt of the President of the United States to defend himself, or for the efforts that his counsel make.

Mr. Manager BINGHAM. Will the gentleman allow me to correct him? I do not think the gentleman intends to misrepresent me here.

Mr. EVARTS. I do not misrepresent you.

Mr. Manager BINGHAM. I did not say, then, if the gentleman pleases, that there was no colorable excuse for the President to attempt to defend himself, or for his counsel to defend him. I did not say that.

Mr. EVARTS. It all comes to the same thing. Everything that is attempted upon our view or line of the subject in controversy, unless it conforms to the preliminary view that the learned managers choose to throw down, is regarded as outside of the color of law or of right on the part of the President or his counsel, and so it is repeatedly charged.

Now, if the crime was completed on the 21st of February, which is not only the whole basis of this argument of the learned managers, but of every other argument upon the evidence that I have had the honor of hearing from them, I should like to know what application or relevancy the resolution passed by the Senate on the 21st of February, after the act of the President had been completed, and after that act had been communicated to the Senate, has on the issue of whether that act was right or wrong? And if the fact that it is an expression of opinion relieves the testimony from the possibility of admission, what was this but an expression of the opinion of the Senate of the United States in the form of a resolution regarding a past act of the President? There could be, then, no single principle of the law of evidence upon which this fact put in proof in behalf of the managers could be admitted, except as a communication from this branch of the government to the President of the United States of its opinion concerning the legality of his action; and in the same line and in immediate reply the President communicates to the Senate of the United States, openly and in a proper message, his opinions concerning the legality of the act. What would be thought of the government that, in a criminal prosecution, by way of inculpating a prisoner, should give in evidence what a magistrate or a sheriff had said to him concerning the crime imputed, and then shut the mouth of the prisoner as to what he had said then and there in reply? Why, the only possibility, the only argument for affecting the prisoner with criminality for what had been said to him, was that, unreplied to, it might be construed into admission or submission; and to say that the prisoner, when told "You stole that watch," could not give in evidence his reply, "It was my own watch, and I took it because it was mine," is precisely the same proposition that is being applied here by the learned managers to this communication back and forth between the Senate and the President.

Mr. Manager BUTLER. A single word, Mr. President, upon that proposition. I think if any sheriff should say to a thief, "Sir, whose watch is that?" and the thief could not make a reply until four days afterward, after he was indicted, a written statement, then, as to whose watch it was, and putting in what his neighbor said about it, would never be received. I take the illustration; it is a good one, an excellent illustration. A sheriff says to a prisoner, "Where did you get that watch?" Four days afterward, after he has been in jail, after the indictment is being found against him, and while the court is in session, he sends an answer to the sheriff and says that answer must be given in evidence; and not only that, but he puts in that answer what everybody else said, what four or five men said to him, as is the case in this message. He is not content with putting in his own answer, but he puts in the view of the cabinet. Now, we object. If they will fetch the cabinet here and let us cross-examine them, and find out what they meant when they gave him any advice, and how they came to give

it to him, and under what circumstances they gave it to him, we shall have a different reply to make to that. But at present we do not want them to put in (to carry out the parallel) what, after he got into jail and consulted with the prisoners in the same room, he says was his answer, and what the prisoners who were with him said about it.

Mr. EVARTS. Mr. Chief Justice and Senators, every case is to be regarded according to its circumstances, and you will judge whether a communication from you to the President of the United States, communicated to him on the 22d of February——

Mr. Manager BUTLER. The 21st.

Mr. EVARTS. I understood you to say that you could not say that.

Mr. Manager BUTLER. Ten o'clock at night on the 21st.

Mr. EVARTS. You got at it then. You did not have it before.

Mr. Manager BINGHAM I read it.

Mr. EVARTS. Ten o'clock at night on the 21st the communication was sent to him. The Senate was not in session on the 22d, as I am informed, more than an hour, it being a holiday, and this message sent in on Monday, Sunday intervening, is not an answer according to the ordinary course of prompt and candid treaty between the Senate and President concerning a matter in difference, or an answer to imputation communicated to him. As for the simile of the President being in prison, we have removed that by showing that he was not impeached until five o'clock in the afternoon of Monday the 24th; and as to the simile that the cabinet were his fellow-prisoners in the same cell, the answer is that they have not been impeached at all. But we do not pursue these trivial illustrations. The matter is within the intelligence of the court, and must be disposed of by it.

Mr. Manager BINGHAM. Mr. President and Senators, I desire to say, once for all, to the Senate, that I have said no word, and intend to say no word, during the progress of this trial, that justifies the assertion of counsel for the President that I deny his right to make a defence either in person or by his counsel. What I insist upon here, and ask the Senate to act upon, is that he shall make a defence precisely as unofficial citizens of the United States make defences, according to the law of the land and not otherwise; that he shall not after the commission of crime manufacture evidence in his own behalf, either oral or written, by his own declaration, and incorporate in it, too, the declarations of third persons and throw it upon the court as testimony. It has never been allowed in any respectable court in this country upon any occasion. When men stood upon trial for their lives they never were permitted after the fact to manufacture testimony by their own declarations, either written or unwritten, and on their own motion introduce it in the courts of justice.

I have another word or two to say in the light of what has dropped from the lips of the counsel. He has evaded most skilfully the point I took occasion to make in the hearing of the Senate, that here is an attempt to introduce not only the written declarations of the accused in his own behalf after the fact, but the declarations of third persons, not under oath, and their conclusions reported in this message of the 24th of February, 1868. I venture to say that a proposition of the extent of this never was made before in any tribunal of justice in the United States where any man stood accused of crime, not simply to give his own declarations, but to report the declarations of third persons in his own behalf and throw them before the Senate as testimony.

One other remark. The gentleman seems to think that the President had a right to send a message to the Senate of the United States which should operate as evidence. I concede that the President of the United States has the right under the Constitution to communicate from time to time to the two houses of Congress such matters as he thinks pertain to the public interest; and if he thinks that is of the public interest he may do so; but I deny that there is any

colorable excuse (I repeat those words here) for intimating that the President of the United States, charged with the commission of crime on the 21st of February, 1868, and proved guilty, I undertake to say, by his written confession, to the satisfaction of every intelligent and unprejudiced mind in and out of the Senate in this country, could proceed to manufacture a defence three days after the fact in the form of a message. That is the point I make on the gentleman here. He says "What importance, then, do you attach to the action of the Senate?" We attach precisely this importance to it: that the law of the land enjoined upon the President of the United States the duty to notify the Senate of the suspension of this officer and the reasons therefor, and the evidence upon which he made the suspension. The law of the land enjoined upon the Senate the duty to act upon the report of the President so made, together with his reasons and the evidence which he adduced, and come to a decision. In pursuance of the requirement of the second section of the tenure-of-office act the Senate of the United States, by an almost unanimous decision, came to the conclusion that the reasons furnished by the President and the evidence adduced by him for the suspension of the Secretary of War were insufficient, and in accordance with that law the Senate non-concurred in the suspension. The law expressly provides that if they concur they shall notify the President. The law, by every intendment, provides that if they non-concur they shall notify the Secretary of War, that he may, in obedience to the express requirement of the act, forthwith resume the functions of the office from which he has been suspended. They did give him that notice. Why should they not notify the Executive, that he may know with whom to communicate, and not be longer communicating with the Secretary of War *ad interim*, General Grant, who had been appointed, in accordance with the provisions of the act, Secretary of War *ad interim* in August, 1867?

The gentleman, I trust, is answered as to the importance and propriety of introducing this evidence; but there was further reason for it, to leave the President without excuse before the Senate and before the people for persisting in his unlawful attempt, in violation of the law of the land, to execute the duties of the office of the Secretary of War through another person than Edwin M. Stanton. It was his business to submit to the final decision of that arbiter constituted by the tenure-of-office act to decide the question whether the suspension should become absolute or whether it should be rejected.

But here is a man defying the action of the Senate, defying the express letter of the law, that the Secretary of War, in whose suspension they had refused to concur, should forthwith resume the functions of that office, proceeding with his conspiracy with Thomas to remove him and to confer the functions of this office upon another, regardless of the action of the Senate, regardless of the law regulating the tenure of civil offices, regardless of the Constitution, regardless of his oath, regardless of the rights of the American people; and he winds up the farce and the defiant guilt of which he stands convicted by act before the Senate with his written declaration, which is of no higher authority than his oral declaration, made three days after the fact, and asks the Senate to receive it as evidence.

The CHIEF JUSTICE. There is, perhaps, senators, no branch of the law in which it is more difficult to lay down precise rules than that which relates to evidence of the intent with which an act is done. In the present case it appears that the Senate, on the 21st of February, passed a resolution, which I will take the liberty of reading:

> Whereas the Senate have received and considered the communication of the President stating that he has removed Edwin M. Stanton, Secretary of War, and had designated the Adjutant General of the army to act as Secretary of War *ad interim*: Therefore,
>
> *Resolved by the Senate of the United States*, That under the Constitution and laws of the United States the President has no power to remove the Secretary of War, and to designate any other officer to perform the duties of the office *ad interim*.

That resolution was adopted on the 21st of February, and was served, as the evidence before you shows, on the evening of the same day. The message which is now proposed to be introduced was sent to the Senate on the 24th day of February. It does not appear to the Chief Justice that the resolution of the Senate called for an answer, or that there was any call upon the President to answer from the Senate itself; and therefore he must regard the message which was sent to the Senate on the 24th of February as a vindication of the President's act addressed by him to the Senate; and it does not appear to the Chief Justice to come within any of the rules which have been applied to the introduction of evidence upon this trial. He will, however, take pleasure in submitting the question to the Senate if any senator desires it. (After a pause.) If no senator desires that the question be submitted to the Senate, the Chief Justice rules the evidence to be inadmissible.

Mr. CURTIS. Mr. Chief Justice, we wish to put in evidence a table which has been compiled in the office of the Attorney General, which will be found to be, I believe, a convenience in the progress of the trial in the examination of the documentary evidence which will be put in.

Mr. DRAKE. Mr. President, we cannot hear the honorable counsel.

Mr. CURTIS. I will endeavor to make myself heard.

The CHIEF JUSTICE. If senators will observe the rules of the Senate, and the gentlemen who are in the chamber and the persons in the galleries will abstain from conversation, it will be much easier to hear the counsel.

Mr. CURTIS. I will read the headings of this table, so that the nature of its contents may be perceived. It excludes all military and naval officers, all judges of the constitutional judiciary of the United States, all judges of the Court of Claims, all officers whose appointment is vested in the President alone, the heads of departments, or the courts of law, and all public ministers, consuls, and other agents of foreign intercourse. They are excluded, and with these exceptions "the following is an approximate list of all other executive and territorial offices of the United States now and heretofore established by statutory designation, with their respective statutory tenures."

Then follows the list of officers the table contains. In the first place the date of the act of Congress by which the office was created, the volume and page of the Statutes at Large, and next comes the name or title of the office. The fourth column shows whether the tenure of the office was for a definite term. Then there is another column showing whether it was for a term definite "unless sooner removed," the first column being for a definite term without any qualification whatever, the second column being for a term definite unless sooner removed, the third column for a term indefinite and not expressly during pleasure, and the fourth for a term indefinite, but expressly "during pleasure."

Mr. Manager BUTLER. Before you put that in we wish to object.

Mr. CURTIS. One moment. The names of the offices are given, and then there are carried out in these columns what tenure belongs to each of them. Of course this is not offered as strictly evidence, but it has been compiled as a table which it will be found very convenient to refer to in argument, but which it would be necessary to consult and turn over a great number of statutes of the United States in order to make use of or arrive at these results. Here they are all brought under the eye, and we desire to have the table printed so that it may be used in argument by counsel on all sides.

Mr. Manager BUTLER. I observe, Mr. President and senators, that there is one important column missing in this table, if it has to have any effect on anybody's mind, and that is a column showing whether the Senate was or was not in session at the time any one of these officers was removed.

Mr. CURTIS. It has nothing to do, allow me to say, Mr. Manager, with removals at all. It is the tenure of office merely. It has no bearing on any

question of removal. It merely gives the statute tenures of these different offices; and there are no facts here stated; everything is derived from the statutes. All that is in the table is derived from the statutes of the United States.

Mr. Manager BUTLER. The difficulty that we find is that this is proposed to be made a portion of the evidence. It may be printed and appended to the argument of either gentleman or sent as argument to the table of any senator—precisely as (if I may use it as an illustration) I sent my brief—as an abstract from the laws; but to offer it in evidence and to have it printed except in that way is what we object to. The reason for the objection must be obvious. Who has any surety that this is correct? The commissions are not kept by the Attorney General. They are in the Department of State.

Mr. EVARTS. This has nothing to do with commissions.

Mr. Manager BUTLER. Then this is a mere abstract of the laws?

Mr. EVARTS. That is what we have stated exactly.

Mr. Manager BUTLER. Put it, then, in your argument. Why should your abstract of the laws be put in evidence any more than anybody else's? The difference is this: if either of my friends on the other side under their hand and upon their examination put in their brief an abstract of law I should believe that the law was exactly as it purports to be abstracted. But they do not claim that they have examined this table—that this is their work. It is done in the Attorney General's office. Now, I have not so much confidence in everybody in the Attorney General's office that I am willing to take his abstract of laws and have it put in these solemn proceedings. If Mr. Binckley, for instance, the Assistant Attorney General, should prepare any paper of this sort, I should look it over a great while before I should give it great weight, and, I think, the country would from their knowledge. If Mr. Stanbery, if either of the learned gentlemen before me, will examine this and say that from their examination it is correct, and they make it a part of their argument, I am content; but until that is done I object to its going in evidence. Until that is done I object, and, as my associate says, we shall object then. It is not evidence in any form.

Mr. EVARTS. Mr. Chief Justice and senators, there is but a word to be said on this subject. It imparts to the case no primary evidence. It can be verified by oath as being correctly or honestly made up, if that is required. We, upon our professional credit, present it as in our belief a correct statement in a tabular form of the distribution of the statutory provisions concerning the tenure of office that are in force under the government of the United States.

Mr. Manager BUTLER. Allow me, without interrupting the gentleman, here to ask whether he has examined it so as to know, of his own knowledge, that it is so, because that will make a great difference to my mind.

Mr. EVARTS. So presenting it, the question is whether you will receive it as the proper and necessary tabular introduction to the documentary evidence concerning these different classes of offices in respect to the conduct of the government in filling or in vacating the places. We did not expect an objection to be made, least of all upon so vague a notion as Mr. Binckley's political character, which we are not prepared to defend, and he is not present to defend himself. We submit it to the Senate. They can treat it, if you please, as a presentation by us now presently of the distribution of the offices of the United States according to statute, in order to introduce our practical and actual legal testimony appropriate to each class. It is submitted to the discretion of the Senate.

Mr. Manager BOUTWELL. Mr. President and senators, this paper, upon examination, does not show that any person was ever appointed to office or was removed from office.

Mr. EVARTS. So we have stated, over and over again, that it comes out of the statutes bodily.

Mr. Manager BOUTWELL. Then I am utterly unable to see how it can be regarded as testimony upon any issue that is before this tribunal.

Mr. TRUMBULL. Mr. President, I move that the paper be printed as a part of the proceedings of the Senate.

Mr. EVARTS. That is all we desire.

The CHIEF JUSTICE. It will be necessarily printed, having been offered by the counsel for the President. The Chair will put the question, however. You who are of opinion that the paper be printed will say "aye;" those of contrary opinion will say "no."

The motion was agreed to.

The table thus ordered to be printed is as follows:

Exclusively of all military and naval officers; all judges of the constitutional judiciary of the United States; all judges of the Court of Claims; all officers whose appointment is vested in the President alone, the heads of departments, or the courts of law; and all public ministers, consuls, and other agents of foreign intercourse, the following is an approximate list of all other executive and territorial officers of the United States now and heretofore, by statutory designation, with their respective statutory tenure, namely:

Date of act creating the office	Statutes at Large. Volume.	Statutes at Large. Page.	Name or title of office.	For a term definite.	For a term definite unless sooner removed.	For a term indefinite, and not *expressly* during pleasure.	For a term indefinite, but *expressly* during pleasure.	Remarks.
September 2, 1789	1	65	Secretary of the Treasury			do		
March 3, 1857	11	220	Assistant Secretary of the Treasury			do		
March 14, 1864	13	26	Additional Assistant Secretary of the Treasury			do		
September 2, 1789	1	65	Comptroller			do		
September 2, 1789	1	65	Auditor			do		
September 2, 1789	1	65	Treasurer			do		
August 6, 1846	9	59	Assistant treasurers		do			
March 3, 1863	12	761	Assistant treasurers			do		
September 2, 1789	1	65	Register of Treasury			do		
February 20, 1863 / March 14, 1864	12 / 13	656 / 28	Assistant Register			do		
May 8, 1792	1	280	Commissioner of the Revenue			do		This office was discontinued by act of April 6, 1802; re-established by act of July 24, 1813; and finally abolished by act of December 23, 1817.
February 23, 1795	1	419	Purveyor of public supplies			do		Abolished by act of March 28, 1812.
April 25, 1812	2	716	Commissioner of General Land Office			do		
March 3, 1817	3	366	Second Auditor			do		
March 3, 1817	3	366	Third Auditor			do		
March 3, 1817	3	366	Fourth Auditor			do		
March 3, 1817	3	366	Fifth Auditor			do		
July 2, 1836	5	80	Sixth Auditor			do		
March 3, 1817	3	366	Second Comptroller			do		
May 29, 1830	4	414	Solicitor of the Treasury			do		
March 3, 1849	9	395	Commissioner of Customs			do		
June 3, 1864	13	99	Comptroller of Currency		do			
July 1, 1862	12	432	Commissioner of Internal Revenue			do		
March 3, 1863	12	725	Deputy Commissioner of Internal Revenue			do		

July 31, 1789	1	29	Naval officer			do		By act of May 15, 1820, 3 Statutes, 582, these offices are limited to a term of four years, and the incumbents are declared to be removable therefrom at pleasure.
And March 2, 1799	1	627	Collector of customs			do		
March 2, 1799	1	627	Surveyor of customs			do		
March 3, 1809	2	536	Navy agent			do		
May 10, 1800	2	75	Receiver of public moneys for lands			do		
May 10, 1800	2	73	Register of land office			do		
September 24, 1789	1	92	District attorneys			do		
September 24, 1789	1	87	Marshals		do			Removable at pleasure.
September 23, 1789	1	93	Attorney General			do		
March 1, 1823	3	735	Appraisers (for certain ports)			do		
May 28, 1830	4	409	Additional appraiser (for New York)			do		
March 3, 1851	9	629	General appraiser			do		
March 3, 1863	12	276	Cashier of internal revenue			do		
July 1, 1862	12	433	Assessors of internal revenue			do		
July 1, 1862	12	433	Collectors of internal revenue			do		
April 2, 1792	1	246	Director of Mint			do		
And January 18, 1837	5	133	Treasurer of Mint			do		
January 18, 1837	5	133	Assayer of Mint			do		
January 18, 1837	5	133	Melter and refiner of Mint			do		
January 18, 1837	5	133	Chief coiner of Mint			do		
January 18, 1837	5	133	Engraver of Mint			do		
March 2, 1799	1	700	Captain revenue cutter			do		
March 2, 1799	1	700	Lieutenants revenue cutter			do		
March 3, 1845	5	794	Engineers revenue cutter			do		
July 16, 1798	1	696	Directors of marine hospitals				do	
July 27, 1789	1	29	Secretary of State			do		
March 3, 1853	10	212	Assistant Secretary of State			do		
July 4, 1864	13	386	Commissioner of immigration	do				
July 4, 1864	13	386	Superintendent of immigration			do		
July 11, 1862	12	531	Judges and arbitrators under treaty of April 7, 1862			do		
August 7, 1789	1	53	Governor of Northwest Territory		do			
August 7, 1789	1	53	Secretary of Northwest Territory		do			
August 7, 1789	1	53	Judges of Northwest Territory					Tenure "during good behavior."
March 26, 1804	2	283	Governor of Territory of Orleans and Territory of Louisiana		do			
And March 3, 1805	2	331	Secretary of Territory of Orleans and Territory of Louisiana		do			
March 3, 1805	2	331	Judges of Territory of Orleans and Territory of Louisiana	do				
March 3, 1805	2	331	District attorney of Territory of Orleans and Territory of Louisiana			do		
March 3, 1805	2	331	Marshal of Territory of Orleans and Territory of Louisiana			do		
April 7, 1798	1	550	Officers for Territory of Mississippi			do		
May 7, 1800	2	59	Officers for Territory of Indiana			do		
January 11, 1805	2	309	Officers for Territory of Michigan			do		
February 3, 1809	2	514	Officers for Territory of Illinois			do		
June 4, 1812	2	744	Governor of Territory of Missouri		do			
June 4, 1812	2	744	Secretary of Territory of Missouri		do			
June 4, 1812	2	746	Judges of Territory of Missouri		do			
March 2, 1819	3	494	Governor of Arkansas Territory		do			
March 2, 1819	3	494	Secretary of Arkansas Territory		do			
March 2, 1819	3	495	Judges of Arkansas Territory		do			
March 3, 1817	3	372	Governor of Alabama Territory			do		
March 3, 1817	3	372	Secretary of Alabama Territory			do		
March 30, 1822	3	655	Governor of Florida Territory		do			

Statement exclusively of all military and naval officers, &c.—Continued.

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March 30, 1822	3	355	Secretary of Florida Territory		do			
March 30, 1822	3	656	Judges of Florida Territory	do				
March 30, 1822	3	656	District attorneys of Florida Territory			do		
March 30, 1822	3	656	Marshals of Florida Territory			do		
March 3, 1825	4	126	Keepers of archives of Florida Territory			do		Act vests appointment in the President alone.
April 20, 1836	5	11	Governor of Wisconsin Territory		do			
April 20, 1836	5	11	Secretary of Wisconsin Territory		do			
April 20, 1836	5	13	Chief justice and associate judges					Tenure "during good behavior."
April 20, 1836	5	14	Attorney and marshal		do			
September 9, 1850	9	447	Governor of Territory of New Mexico		do			
September 9, 1850	9	448	Secretary of Territory of New Mexico		do			
September 9, 1850	9	449	Chief justice and associate justices	do				
September 9, 1850	9	450	Attorney for Territory of New Mexico		do			
September 9, 1850	9	450	Marshal for Territory of New Mexico		do			
September 9, 1850	9	453	Governor of Utah Territory		do			
September 9, 1850	9	453	Secretary of Utah Territory		do			
September 9, 1850	9	455	Chief and associate justices	do				
September 9, 1850	9	456	Attorney and marshal		do			
June 12, 1838	5	236	Governor of Iowa Territory		do			
June 12, 1838	5	236	Secretary of Iowa Territory		do			
June 12, 1838	5	237	Chief and associate justices	do				
June 12, 1838	5	238	Attorney and marshal		do			
August 14, 1848	9	324	Governor of Oregon Territory		do			
August 14, 1848	9	324	Secretary of Oregon Territory		do			
August 14, 1848	9	326	Chief and associate justices	do				
August 14, 1848	9	327	Attorney and marshal		do			
March 3, 1849	9	404	Governor of Minnesota Territory		do			
March 3, 1849	9	404	Secretary of Minnesota Territory		do			
March 3, 1849	9	406	Chief and associate justices	do				
March 3, 1849	9	406	Attorney and marshal		do			
March 2, 1853	10	173	Governor of Washington Territory		do			
March 2, 1853	10	173	Secretary of Washington Territory		do			
March 2, 1853	10	175	Chief and associate justices	do				
March 2, 1853	10	176	Attorney and marshal		do			
May 30, 1854	10	278	Governor of Nebraska Territory		do			

May 30, 1854	10	278	Secretary of Nebraska Territory	.....	....do ...	.....	.....	
May 30, 1864	10	280	Chief and associate justices	....do ...	.....	.....	.....	
May 30, 1854	10	281	Attorney for Nebraska Territory	.....	....do ...	.....	.....	
May 30, 1854	10	281	Marshal for Nebraska Territory	.....	....do ...	.....	.....	
May 30, 1854	10	284	Governor of Kansas Territory	.....	....do ...	.....	.....	
May 30, 1854	10	284	Secretary of Kansas Territory	.....	....do ...	.....	.....	
May 30, 1854	10	286	Chief and associate justices	....do ...	.....	.....	.....	
May 30, 1854	10	287	Attorney and marshal	.....	....do ...	.....	.....	
February 24, 1863	12	665	Governor of Arizona Territory	.....	....do ...	.....	.....	
February 24, 1863	12	665	Secretary of Arizona Territory	.....	....do ...	.....	.....	
February 24, 1863	12	665	Judges for Arizona Territory	....do ...	.....	.....	.....	
February 24, 1863	12	665	Attorney and marshal	.....	....do ...	.....	.....	
February 24, 1863	12	665	Surveyor general of Arizona Territory	.....	....do ...	.....	.....	
February 28, 1861	12	172	Governor of Colorado Territory	.....	....do ...	.....	.....	
February 28, 1861	12	172	Secretary of Colorado Territory	.....	....do ...	.....	.....	
February 28, 1861	12	174	Chief and associate justices	....do ...	.....	.....	.....	
February 28, 1861	12	175	Attorney and marshal	.....	....do ...	.....	.....	
March 2, 1861	12	239	Governor of Dakota Territory	.....	....do ...	.....	.....	
March 2, 1861	12	240	Secretary of Dakota Territory	.....	....do ...	.....	.....	
March 2, 1861	12	241	Chief and associate justices	....do ...	.....	.....	.....	
March 2, 1861	12	242	Attorney and marshal	.....	....do ...	.....	.....	
March 2, 1861	12	210	Governor of Nevada Territory	.....	....do ...	.....	.....	
March 2, 1861	12	210	Secretary of Nevada Territory	.....	....do ...	.....	.....	
March 2, 1861	12	212	Chief and associate justices	....do ...	.....	.....	.....	
March 2, 1861	12	213	Attorney and marshal	.....	....do ...	.....	.....	
March 3, 1863	12	809	Governor of Idaho Territory	.....	....do ...	.....	.....	
March 3, 1863	12	809	Secretary of Idaho Territory	.....	....do ...	.....	.....	And until successor qualified.
March 3, 1863	12	811	Chief and associate justices	....do ...	.....	.....	.....	
March 3, 1863	12	812	Attorney and marshal	.....	....do ...	.....	.....	And until successors qualified.
May 26, 1864	13	86	Governor of Montana Territory	.....	....do ...	.....	.....	And until successors qualified.
May 26, 1864	13	86	Secretary of Montana Territory	.....	....do ...	.....	.....	
May 26, 1864	13	88	Chief and associate justices	....do ...	.....	.....	.....	
May 26, 1864	13	89	Attorney for Montana Territory	.....	....do ...	.....	.....	
May 26, 1864	13	89	Marshal for Montana Territory	.....	....do ...	.....	.....	
May 18, 1796	1	464	Surveyor general	.....	.....	... do ...	.....	
March 3, 1803	2	233	Surveyor of land south of Tennessee	.....	.....	....do ...	.....	
April 29, 1816	3	325	Surveyor for Territories of Illinois and Missouri	.....	.....	....do ...	.....	
March 3, 1823	3	755	Surveyor for Territory of Florida	.....	.....	....do ...	.....	
March 3, 1831	4	492	Surveyor general for Louisiana	.....	.....	....do ...	.....	
June 12, 1838	5	243	Surveyor for Territory of Wisconsin	.....	.....	....do ...	.....	
September 27, 1850	9	496	Surveyor general for Territory of Oregon	.....	.....	....do ...	.....	
March 3, 1851 and March 3, 1853	9 10	617 244	Surveyor general for California	.....	.....	....do ...	.....	
July 17, 1864	10	306	Surveyor general for Washington Territory	.....	.....	....do ...	.....	
July 22, 1854	10	308	Surveyor general for New Mexico	.....	.....	....do ...	.....	
July 22, 1854	10	309	Surveyor general for Kansas and Nebraska	.....	.....	....do ...	.....	
February 21, 1855	10	611	Surveyor general for Utah Territory	.....	.....	....do ...	.....	
February 28, 1861	12	176	Surveyor general for Colorado Territory	.....	.....	....do ...	.....	
March 2, 1861	12	214	Surveyor general for Nevada Territory	.....	.....	....do ...	.....	
March 2, 1861	12	244	Surveyor general for Dakota Territory	.....	.....	....do ...	.....	
March 3, 1817	3	375	Surveyor for north Mississippi territory	.....	.....	....do ...	.....	
May 26, 1864	13	89	Surveyor general for Montana Territory	.....	.....	....do ...	.....	

Statement exclusively of all military and naval officers, &c.—Continued.

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July 4, 1836	5	117	Commissioner of Patents			do		
March 2, 1861	12	246	Examiner-in-chief of patents			do		
July 9, 1832	4	564	Commissioner of Indian Affairs			do		
April 16, 1818	3	428	Superintendent of Indian trade			do		
April 16, 1818	3	428	Indian agents			do		
March 3, 1819	3	514	Indian agent			do		
March 3, 1819	3	519	Indian agent			do		
May 6, 1822	3	683	Superintendent of Indian Affairs			do		
June 30, 1834	4	735	Superintendent of Indian Affairs			do		
June 30, 1834	4	735	Indian agents			do		
March 3, 1837	5	163	Indian agents			do		
June 5, 1850	9	437	Superintendent of Indian Affairs			do		
June 5, 1850	9	437	Indian agents			do		
February 27, 1851	9	586	Superintendent of Indian Affairs	do				
February 27, 1851	9	586–7	Indian agents	do				
March 3, 1852	10	3	Superintendent of Indian Affairs			do		
March 3, 1855	10	700	Indian agents	do		do		
August 18, 1856	11	81	Indian agents	do				See act February 27, 1851.
March 3, 1857	11	185	Superintendent of Indian Affairs			do		
June 25, 1860	12	113	Indian agents	do			do	See act February 27, 1851.
February 8, 1861	12	130	Superintendent of Indian Affairs			do		
February 8, 1861	12	130	Indian agents			do		
July 1, 1862	12	489	Indian agents			do		
April 8, 1864	13	39	Superintendent of Indian Affairs			do		
April 8, 1864	13	40	Indian agents		do			
March 2, 1833	4	622	Commissioner of Pensions					
March 3, 1835	4	779	Commissioner of Pensions					
March 3, 1837	5	187	Commissioner of Pensions					
March 4, 1840	5	369	Commissioner of Pensions			do		
January 20, 1843	5	597	Commissioner of Pensions					
January 11, 1846	9	3	Commissioner of Pensions					
January 19, 1849	9	341	Commissioner of Pensions					
April 29, 1816	3	324	Commissioner of Public Buildings			do		Abolished by act —.
August 26, 1852	10	30	Superintendent of Public Printing	do				
May 15, 1862	12	387	Commissioner of Agriculture			do		

September 22, 1789	1	70	Postmaster General					
August 4, 1790	1	178	Postmaster General					
March 3, 1791	1	218	Postmaster General					
February 20, 1792	1	234	Postmaster General					
May 8, 1794	1	357	Postmaster General	.....	.....	.....	do	.....	
March 2, 1799	1	733	Postmaster General					
April 30, 1810	2	593	Postmaster General					
March 3, 1825	4	102	Postmaster General					
July 2, 1836	5	87	Deputy postmasters	.....	do	.....	.....	
March 3, 1853	10	255	Assistant Postmasters General	.....	.....	do	.....	
April 30, 1798	1	553	Secretary of the Navy	.....	.....	do	.....	
July 31, 1861	12	282	Assistant Secretary of the Navy	.....	.....	do	.....	
July 5, 1862	12	510	Chiefs of bureaus in Navy Department	do	.....	.....	.....	
August 7, 1789	1	49	Secretary of War	.....	.....	do	.....	
May 8, 1792	1	280	Accountant of War Department	.....	.....	do	.....	Abolished by act of March 3, 1817.
February 24, 1855	10	612	Solicitor Court of Claims	.....	.....	do	.....	
August 6, 1856	11	30	Assistant solicitor Court of Claims	.....	.....	.....	.....	For four years, "unless sooner removed by the President."
March 3, 1863	12	766	Solicitor Court of Claims	.....	.....	do	.....	
March 3, 1863	12	766	Assistant solicitor Court of Claims	.....	do	do	.....	"Shall hereafter be appointed," &c.
March 3, 1863	12	766	Deputy solicitor Court of Claims	.....	.....	do	.....	
July 4, 1836	5	109	Principal clerk of public lands	.....	.....	do	.....	
July 4, 1836	5	109	Principal clerk of private land claims	.....	.....	do	.....	
July 4, 1836	5	110	Principal clerk of surveys	.....	.....	do	.....	
July 4, 1836	5	111	Recorder of General Land Office	.....	.....	do	.....	
July 4, 1836	5	111	Solicitor of same	.....	.....	do	.....	Abolished by act of ——.
July 4, 1836	5	111	Secretary to sign land patents	.....	.....	do	.....	
March 3, 1849	9	395	Secretary of the Interior	.....	.....	do	.....	
March 14, 1872	12	369	Assistant Secretary of the Interior	.....	.....	do	.....	
February 20, 1863	12	656	Solicitor of War Department	.....	.....	do	.....	Abolished by act of ——.
March 2, 1865	13	468	Solicitor of Navy Department	do	.....	.....	.....	
March 3, 1865	13	508	Commissioner of Freedmen's Bureau	.....	.....	do	.....	
March 3, 1865	13	508	Assistant commissioners of Freedmen's Bureau	.....	.....	do	.....	
March 3, 1835	4	774						
February 13, 1837	5	147						
July 3, 1852	10	11						
April 21, 1862	12	382	Superintendents, treasurers, and other officers of branch mints	.....	.....	do	.....	
March 3, 1863	12	770						
July 4, 1864	13	382						
March 2, 1867	14	434	Commissioner of Education	.....	.....	do	.....	
August 3, 1861	12	287	Assistant Secretary of War	.....	.....	do	.....	
February 20, 1865	13	431	Second Assistant Secretary of War	do	.....	.....	.....	
June 27, 1866	14	74	Commissioners to revise statutes	do	.....	.....	.....	
April 16, 1862	12	376	Commissioners Emancipation, District of Columbia	do	.....	.....	.....	
February 19, 1864	13	12	Warden of jail, District of Columbia	do	.....	.....	.....	
May 20, 1862	12	403	Commissioners to codify laws, District of Columbia	do	.....	.....	.....	
February 27, 1801	2	107						
May 17, 1848	9	229	Justices of peace for District of Columbia	do	.....	.....	.....	
February 27, 1801	2	107	Register of wills, District of Columbia	.....	.....	do	.....	
February 14, 1863	12	651	Register of deeds, District of Columbia	.....	.....	do	.....	
Treaty June 5, 1854	10	1090	Commissioner (reciprocity treaty)	.....	.....	do	.....	

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August 11, 1856	11	42	Commissioner, chief astronomer and surveyor to carry into effect treaty of June 15, 1846.	.....	.....	....do..	.....	
June 27, 1864	13	195	Commissioner (Hudson Bay and Puget Sound)	.....	.....	....do...	.....	
February 20, 1861	12	145	Commissioners under treaties with Colombia, &c	.....	.....	....do...	.....	
June 30, 1864	13	323						
March 3, 1851	9	631	Commissioner California Land Claims	.....	....do...	.....	.....	

Mr. CURTIS. Mr. Chief Justice, we now desire to put in evidence rather in a more formal manner than has been done heretofore, although the substantial facts have been brought before the Senate, we believe, by the honorable managers themselves, the proceedings which took place at the time of the removal of Mr. Pickering by Mr. Adams, accompanied by a certificate that the letters to and from various persons between the 29th of June, 1799, and the 1st of May, 1802, have been for many years missing from the files of the Department of State. The correspondence itself, therefore, cannot be produced from the originals, or from copies of the originals, but no doubt they are correct, as those letters were read the other day by the honorable managers from a volume of Mr. Adams's works. They are the same letters. The letters are not here; they are not in the department; but they are printed in that volume, and were read from the volume the other day.

Mr. Manager BUTLER. Wait a moment. We are not certain about this. [After an examination of the documents offered in evidence.] Do I understand the counsel for the President to say that these papers show anything different from what was shown by the managers?

Mr. CURTIS. No; I stated that in substance the matter was now before the Senate, but we wanted the formal documents to be put in.

Mr. Manager BUTLER. The only difficulty I find is this, that you do not put in all; you do not put in what was done on the 12th of May as well as the 13th of May, 1800.

Mr. CURTIS. We put in what there is here.

Mr. EVARTS. You have already put in the other.

Mr. Manager BUTLER. Very good.

Mr. CURTIS. We offer these documents from the Department of State.

Mr. Manager BUTLER. Very well.

The documents thus offered in evidence are as follows:

UNITED STATES OF AMERICA, *Department of State*:

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy, carefully examined and compared with the original resolution of the Senate, dated 13th May, 1800, and filed in this department, confirming John Marshall, of Virginia, to be Secretary of State, and Samuel Dexter, of Massachusetts, to be Secretary of the Department of War.

In testimony whereof, I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

[L. S.] Done at the city of Washington this 5th day of March, A. D. 1868, and of the independence of the United States of America the ninety second.

WILLIAM H. SEWARD.

UNITED STATES OF AMERICA, IN SENATE, *May* 13, 1800.

The Senate proceeded to consider the message of the President of the United States of the 12th instant, and the nominations contained therein of the Hon. John Marshall, esq., of Virginia, to be Secretary of State in the place of the Hon. Timothy Pickering, esq., removed; the Hon. Samuel Dexter, esq., of Massachusetts, to be Secretary of the Department of War, in the place of the Hon. John Marshall, nominated for promotion to the office of State.

Whereupon,

Resolved, That they do advise and consent to the appointments agreeably to the nominations respectively.

Attest: SAMUEL OTIS, *Secretary*.

The CHIEF JUSTICE. The executive clerk of the Senate desires to correct a statement made in respect to the nomination of Mr. Ewing. Mr. Clarke will make the correction.

D. W. C. CLARKE recalled.

The WITNESS. I stated in my examination that the nomination of Mr. Ewing was brought to the Senate on the 22d of February. I did so in consequence of a memorandum which I found at the bottom of my sheet. I find, by investigation since, that I made that memorandum from the fact that it was brought to

the Senate chamber on the 22d of February by Mr. Moore, but the Senate was not in session, and he returned with it to the Executive Mansion. He brought it up with one other message and the message of the President in relation to the removal of Mr. Stanton on the 24th, and it was then submitted to the Senate.

By Mr. CURTIS:

Q. I want to see if I correctly understand you. I understand your statement now to be that Colonel Moore brought it and delivered it to you on the 22d, but the Senate had adjourned?

A. No, sir. He brought it up on the 22d; he did not deliver it to me.

Q. He brought it?

A. He brought it on the 22d, but the Senate was not in session, and he took it back to the Executive Mansion.

Q. And on the 24th he returned, and then it was formally brought in?

A. That is it.

By Mr. Manager BUTLER:

Q. How do you know that he brought it here; of your own knowledge?

A. Only by the information of Colonel Moore.

Q. Then all you have been telling us is what Colonel Moore told you?

A. Yes, sir; that is, all in regard to the nomination.

Mr. Manager BUTLER. Very well, sir; we do not want any more of Colonel Moore's information from you.

Mr. CURTIS. We will call Colonel Moore.

WILLIAM G. MOORE recalled.

By Mr. CURTIS:

Q. (handing to the witness the message nominating Thomas Ewing, sen., as Secretary of War.) What is the document you hold in your hand?

A. The nomination to the Senate of Thomas Ewing, sen., of Ohio, to be Secretary for the Department of War.

Q. Did you receive that from the President of the United States?

A. I did.

Q. On what day?

A. On the 22d day of February, 1868.

Q. About what hour in the day?

A. I think it was after 12 o'clock.

Q. And before what hour?

A. And before one.

Q. Between twelve and one?

A. Between twelve and one.

Q. What did you do with it?

A. By the direction of the President I brought it to the Capitol to present it to the Senate.

Q. About what time did you arrive here?

A. I cannot state definitely, but I presume about a quarter past one.

Q. Was the Senate then in session, or had it adjourned?

A. It had, after a very brief session, adjourned.

Q. What did you do with the document in consequence?

A. I returned with it to the Executive Mansion, after a visit to the House of Representatives.

Q. Were you apprised before you reached the Capitol that the Senate had adjourned?

A. I was not.

Q. What did you do with the document subsequently?

A. I returned with it to the Executive Mansion, after having visited the House of Representatives.

Q. Was anything more done with the document by you; and if so, when, and what did you do?

A. I was directed by the President on Monday, the 24th day of February, 1868, to return and deliver it to the Senate.

Q. What did you do in consequence?

A. I obeyed the order.

Cross-examined by Mr. Manager BUTLER:

Q. Was that open and as it is now, or in a sealed envelope, when you took it?

A. In a sealed envelope.

Q. Did you put it in yourself?

A. I did not.

Q. Did you see it put in?

A. I did not.

Q. How do you know what was in the envelope?

A. It was, I believe, the only message I brought that day; I gave it to the clerk, who sealed it and handed it to me.

Q. And then did you unseal it again at all; or did you examine it to see what was in it until you left it here on the 24th?

A. I did not, to my recollection.

Q. Did you show it to anybody here in the House on that day?

A. No, sir; it was sealed.

Q. Have you spoken this morning with Mr. Clarke here upon this subject?

A. He asked me upon what date I had delivered the message. I told him the 24th.

Mr. CURTIS. I now offer in evidence, Mr. Chief Justice, a document which I desire to be read by the clerk.

Mr. Manager BUTLER. Allow me to see it before it is read.

Mr. CURTIS. Certainly.

(The document was handed to Mr. Manager Butler and examined by him.)

Mr. Manager BUTLER. We have no objection.

The CHIEF JUSTICE. The Secretary will read the document.

The Secretary read as follows:

UNITED STATES OF AMERICA, *Department of State:*

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy, carefully examined and compared with the original record of this department, authorizing "John Nelson, Attorney General, to discharge the duties of Secretary of State *ad interim* until a successor to A. P. Upshur shall be appointed," and that this appointment was made during the session of the Senate.

I further certify that the confirmation by the Senate of John C. Calhoun to succeed Mr. Nelson is a true copy of the original filed in this department.

In testimony whereof, I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington the 6th day of April, A. D. 1868, and of the independence of the United States of America the ninety-second.

[L. S.] WILLIAM H. SEWARD.

The Hon. John Nelson, Attorney General of the United States, will discharge the duties of Secretary of State *ad interim* until a successor to the Hon. A. P. Upshur shall be appointed.

The Department of State will be put into mourning for the death of the Hon. Abel P. Upshur, late Secretary of State; and all foreign envoys and ministers of the United States, and other officers connected with the Department of State, whether at home or abroad, will wear the usual badges in token of grief and respect for his memory, during the period of thirty days from the time of receiving this order.

JOHN TYLER.

FEBRUARY 29, 1844.

IN SENATE OF THE UNITED STATES,
March 6, 1844.

Resolved, That the Senate advise and consent to the appointment of John C. Calhoun, of South Carolina, to be Secretary of State in place of Abel P. Upshur, deceased, agreeably to the nomination.

Attest: ASBURY DICKINS, *Secretary.*

Mr. CURTIS. I now offer in evidence another document which I also wish to be read by the Clerk after it has been inspected. (The document was handed to the Managers.)

Mr. Manager BUTLER. We have no objection to this.

The CHIEF JUSTICE. The Secretary will read the document.

The Secretary read as follows:

UNITED STATES OF AMERICA, *Department of State:*

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy, carefully examined and compared with the original record of this department, authorizing Winfield Scott to act as Secretary of War *ad interim*, during the vacancy occasioned by the resignation of George W. Crawford, and that this appointment was made during the session of the Senate.

I further certify that the confirmation by the Senate of Charles M. Conrad as Secretary of War to succeed General Scott is a true copy of the original filed in this department.

In testimony whereof, I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this sixth day of April, A. D. 1868, and of the independence of the United States of America the ninety-second.

[L. S.] WILLIAM H. SEWARD.

I hereby appoint Major General Winfield Scott to act as Secretary of War *ad interim* during the vacancy occasioned by the resignation of the Hon. George W. Crawford.

MILLARD FILLMORE.

JULY 23, 1850.

[Extract.]

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
August 15, 1850.

Resolved, That the Senate advise and consent to the appointment of the following named persons agreeable to their nominations respectively:

* * * * * * * *

Charles M. Conrad, of the State of Louisiana, to be Secretary of War.

Attest: ASBURY DICKINS, *Secretary.*

Mr. CURTIS. I now offer in evidence three papers, all of which relate to the same transaction. I have put them in an envelope, so that they may be kept together.

(The papers were handed to the managers and examined by them.)

Mr. Manager BUTLER, (selecting one of the papers.) We object to this memorandum. We do not object to the other papers. The memorandum of Mr. Browning is not better than anybody else's memorandum.

Mr. CURTIS. It merely states a fact which appears by a comparison of the date of the commission with the date of the *ad interim* appointment. It is immaterial.

Mr. Manager BUTLER. Very good. We have no objection to the other papers.

The CHIEF JUSTICE. The Secretary will read the documents.

Mr. CURTIS. We offer those which are not objected to.

The Secretary read the documents, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 7, 1868.

I, O. H. Browning, Secretary of the Interior, do hereby certify that the annexed paper is a true copy from the records of this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department to be affixed the day and year above written.

[L. S.] O. H. BROWNING,
Secretary of the Interior.

EXECUTIVE MANSION,
Washington, January 10, 1861.

I hereby appoint Moses Kelly to be acting Secretary of the Interior until other arrangements can be made in the premises.

JAMES BUCHANAN.

Mr. Manager BUTLER. May I ask the counsel if they have any record there of what became of the Secretary of the Interior at the time this acting appointment was made; whether he had resigned or run away, or what?

Mr. CURTIS. I am not informed. I cannot speak either from the record or from recollection. There was a commission sent up which has not yet been read.

The Secretary read as follows:

UNITED STATES OF AMERICA, *Department of State:*

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy, carefully examined and compared with the original record in this department.

In testimony whereof, I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 6th day of April, A. D. 1868, and of the independence of the United States of America the ninety-second.

[L. S.] WILLIAM H. SEWARD.

ABRAHAM LINCOLN, *President of the United States of America:*

To all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, integrity, and abilities of Caleb B. Smith, of Indiana, I have nominated, and by and with the advice and consent of the Senate do appoint him to be Secretary of the Interior of the United States, and do authorize and empower him to execute and fulfil the duties of that office according to law, and to have and to hold the said office with all the powers, privileges, and emoluments thereunto of right appertaining unto him, the said Caleb B. Smith, during the pleasure of the President of the United States for the time being.

In testimony whereof, I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the 5th day of March, in the year of our Lord 1861, and of the independence of the United States of America the eighty-fifth.

[L. S.] ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD, *Secretary of State.*

Mr. CURTIS. I now offer in evidence a document which relates to the removal from office of the collector and appraiser of merchandise at the city of Philadelphia, and also a copy of the commissions issued to their successors.

(The documents were handed to the managers and examined by them.)

Mr. Manager BUTLER. Our objection to this, Mr. President, is that this is not an act of any President or any person having authority to discharge officers. What is offered is a letter of one McClintock Young, acting Secretary of the Treasury, directed to the appraiser in Philadelphia, in which he recites a fact. That is what is offered in evidence—the act of McClintock Young, acting Secretary of the Treasury—which he writes to the collector of customs at Philadelphia, asking him to hand a letter to Richard Coe, esq., saying that he is directed to say that he does not want his services any longer. I do not see how it bears on this issue. The fact that somebody was commissioned we do not object to; but we do object to this letter of Acting Assistant Secretary McClintock Young.

Mr. CURTIS. Do you want evidence of the fact that he was acting Secretary?

Mr. Manager BUTLER. No, sir; I have that fact among these commissions of my own.

Mr. CURTIS. The documents are certified regularly by the Secretary of the Treasury as coming from the records of that department. The documents themselves consist of two letters signed by McClintock Young, who it is admitted

was the acting Secretary of the Treasury at the time when he signed these letters. We offer them in evidence to show acts of removal of these treasury officers, the appraiser and the collector in Philadelphia, by the act of McClintock Young, Acting Secretary of the Treasury, who says that he proceeds "by the direction of the President."

Mr. Manager BUTLER. The difficulty we find is not removed. It is an attempt by McClintock Young, Acting Secretary of the Treasury, to remove an officer by reciting that he is directed by the President so to do. If this is evidence, we have to go on and try the question of the right of McClintock Young to do this act, to see whether an appraiser is one of the "inferior officers" that a Secretary of the Treasury may remove, or the President may remove without the advice and consent of the Senate; we have to go into a new series of investigations. It is not an act of the President; it is not an act of the head of a department; and it is remarkable as the only case that can be found of the kind so far as we know; and if it was evidence at all, it would rather prove the rule by being the exception.

Mr. CURTIS. I understand it to be admitted that McClintock Young was the Acting Secretary of the Treasury.

Mr. Manager BUTLER. Yes, sir; I have his appointment.

Mr. CURTIS. I take this act of his, therefore, as if it had been done by a Secretary of the Treasury.

Mr. Manager BUTLER. Yes, sir.

Mr. CURTIS. He says that he proceeds by the order of the President, and I take it to be well settled judicially and practically that wherever the head of a department says he acts by the order of the President he is presumed to tell the truth, and it requires no evidence to show that he acts by the order of the President. No such evidence is ever preserved, no record is ever made of the direction which the President gives to one of the heads of departments, as I understand, to proceed in a transaction of this kind. But when a head of a department says "by order of the President I say so and so" all courts and all bodies presume that he tells the truth.

The CHIEF JUSTICE. The Chief Justice thinks that this evidence is admissible. The act of a Secretary of the Treasury is the act of the President unless the contrary be shown. He will put the question to the Senate, however, if any senator desires it. [After a pause.] The evidence is admitted. Do you desire to have it read?

Mr. CURTIS. If you please, your honor.

The Secretary read as follows:

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *April* 7, 1868.

Pursuant to the act of Congress of the 22d of February, 1849. I hereby certify that the annexed are true and correct copies from the records of this department of the commissions issued to Richard Coe and Charles Francis Breuil, as appraisers of merchandise for the port of Philadelphia, in the State of Pennsylvania.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[L. S.] H. McCULLOCH,
Secretary of the Treasury.

Mr. CURTIS. It is only necessary to give the dates of those commissions; you need not read them at large.

The SECRETARY. The commission of Richard Coe is dated the 25th day of June, 1841; the commission of Charles Francis Breuil is dated the 30th day of August, 1842.

Mr. CURTIS. Now read the letters.

The Secretary read as follows:

TREASURY DEPARTMENT, *August* 17, 1842.

SIR: I am directed by the President to inform you that your services as appraiser of merchandise for the port of Philadelphia are no longer required.

I am very respectfully, &c.,

McCLINTOCK YOUNG,
Acting Secretary of the Treasury.

RICHARD COE, *Appraiser of Merchandise, Philadelphia.*

TREASURY DEPARTMENT, *August* 17, 1842.

SIR: I have to request that you will deliver the enclosed letter to Richard Coe, Esq., appraiser at Philadelphia.

I am, &c.,

McCLINTOCK YOUNG,
Acting Secretary of the Treasury.

COLLECTOR OF THE CUSTOMS, *Philadelphia.*

Mr. CURTIS. I now offer in evidence documents from the Navy Department.

(The documents were handed to the managers for examination.)

Mr. STEWART, (at 2 o'clock and 15 minutes, p. m.) I move that the Senate take a recess for 15 minutes.

Mr. SUMNER. I move an amendment to that, that business be resumed forthwith after the expiration of 15 minutes.

The CHIEF JUSTICE. The Chief Justice, before putting the question on that amendment, begs to remind senators how extremely difficult it is to resume the business of the Senate unless the senators are present. The Chief Justice will put the question on the amendment.

The amendment was rejected.

The CHIEF JUSTICE. The question now is on the motion of the senator from Nevada.

The motion was agreed to.

The CHIEF JUSTICE resumed the chair at the expiration of 15 minutes, but there not being many senators present business was not resumed till two o'clock and 45 minutes p. m., when the Chief Justice said:

Senators will please give their attention. Counsel for the President will proceed with the defence.

Mr. Manager BUTLER. At the adjournment I was about objecting to the papers offered from the Navy Department. The ground of my objection is this: the certificate appended does not certify them to be copies of recorks from the Navy Department, but simply certifies "that the annexed is a true statement from the records of this department," signed by "Edgar T. Welles, chief clerk," and then there is an attestation that he is chief clerk. Then the heading of the paper is "memoranda," so that the paper is not an official copy of the record but is a statement made up by the chief clerk of the Navy Department of certain matters which he has either been asked or volunteered to do; and the difficulty about it is that it is informal, and they leave out here many of the things which are necessary to ascertain what bearing this has on the case. For instance, Thomas Eastin, navy agent at Pensacola, it is stated, was, on the 19th of December, 1840, dismissed by direction of the President for failing to render his accounts, and Purser So-and-so, was ordered to take his place. It does not appear what then was done, whether the Senate was in session, and whether the President sent at the same moment an appointment to the Senate. All that appears is that on the 29th of April, 1841, the President appointed Jackson Morton navy agent at Pensacola. He might have sent in Jackson Morton's name at the very moment that he dismissed this man. *Non constat;* it does not appear at all.

I only put this as an illustration. These are not copies of records, but they are certified to be a statement made up from the records by somebody not under oath, and who has no right to make statements, and they are wholly illusory. Occasionally there are memoranda in pencil upon these papers made by other persons.

Mr. CURTIS. We can apply India-rubber there, and that would remove that objection.

Mr. Manager BUTLER. Yes, sir. The difficulty is not so much what is stated here as what is left out. Everything is left out that is of value to the understanding of this case. Here are memoranda made up from the records, that A B was removed, but the circumstances under which he was removed, who was nominated in his place, and when that person was nominated, do not appear. It only appears that somebody was appointed at Pensacola.

Mr. JOHNSON. Are the dates given, Mr. Manager?

Mr. Manager BUTLER. The dates are given in this way: it is stated that on the 19th of December, 1840, a person is removed, and then on the 5th of January one Johnston was informed that he had been appointed. He must have been nominated and gone through the Senate and been confirmed in the mean time. *Non constat* but that he was nominated at this very moment; and if he was nominated at the very moment the other man was removed, the value of it is gone as a precedent. Then Johnston was lost on the voyage, and on the 29th of April, 1841, another man was appointed; but the whole value, I say, is gone because they have not given us the record; they have only given us memoranda, and it is so stated, "memoranda of records." Who has any commission to make memoranda from the records for evidence before the Senate? And then in the certificate the word "copies" is stricken out, and the words are written in: "A true statement of the records"—a statement such as Mr. Edgar T. Welles chooses to make, or such as anybody else chooses to make. I never heard before that anybody had a right to come and certify memoranda of records, and put it in as evidence. That is one paper.

Then the next paper, although it purports to contain true copies of records from the office, consists of nothing but letters about the appointment and removal of officers, navy agents again; but being so removed and appointed, only a portion of the correspondence is given us. When the nominations were sent in is not given us. I do not mean to say that my friends on the other side chose to leave anything out; but whoever prepared this for them has chosen to leave out the material facts, whether the Senate was in session, or whether other names were sent in. Now, the question is if you are going to take excerpts from the records.

I want to call the attention of the Senate still further to the fact that all the officers who are covered by these papers they have offered are appointed under the act of May 15, 1820, for four years. That act provided that:

> All district attorneys, collectors of the customs, naval officers, and surveyors of the customs, navy agents, receivers of public moneys for lands, registers of the land offices, paymasters in the army, the apothecary general, the assistant apothecaries general, and the commissary general of purchases, to be appointed under the laws of the United States, shall be appointed for the term of four years, but shall be removable from office at pleasure.

So that their very tenure of office settles it that they are removable "at pleasure," so enacted by the law which creates them; and now the gentlemen are going to show that under that, in some particular instances, officers were removed at pleasure, but not to show how they were removed, the manner of their removal, and then to attempt to show that by memoranda made by Edgar T. Welles, certified by Gideon Welles to be chief clerk. Is that evidence?

Mr. CURTIS. I understand the substance of the objections made to these documents to be two. The first is that these are only memoranda from the records and not copies, not full and formal copies from the records. It is said that it is not proper to adduce in evidence such statements of the results shown by the records; that instead of giving a table containing the name of the officer, the office which he held, the day when removed, and the person by whose order he was removed there should be an extended copy of the entire act and all the papers relating to it. Well, in the first place, I wish the Senate to call to mind

that the only document of this character relating to removals from office which has been put in by the honorable managers is a document from the Department of State, which contains exactly this memorandum of facts:

Schedule B. List of appointments of heads of departments made by the President at any time during the session of the Senate:

Timothy Pickering, Postmaster General, June 1, 1794.

Samuel L. Southard, Acting Secretary of the Treasury, January 26, 1829.

And so on. That is, it is a list extracted out of the records in the Department of the Secretary of State containing the names of the officers, the offices they held, the date when they were removed, and the authority by which they were removed.

Mr. JOHNSON. How is it certified?

Mr. CURTIS. It is simply certified by the Secretary of State himself.

Mr. Manager BUTLER. In what language?

Mr. CURTIS. This is a copy which I hold in my hand, and I am not prepared to say how it is certified; but it is in evidence and can be seen. I think it will be found to be simply a letter from the Secretary of State saying that there were found on the records of his department these facts, not any formal certificate of extracts from the records. If, however, the Senate should think that it is absolutely necessary, or, under the circumstances of this case, proper to require these certified copies of the entire acts, instead of taking the names, dates, and other particulars from the records in the form which we have thought most convenient, and which certainly takes up less time and space than the other would, we must apply for and obtain them. If there is a technical difficulty of that sort it is one which we must remove.

Mr. JOHNSON. Will the counsel state what the act of Congress is which makes these certificates evidence?

Mr. CURTIS. There are several acts of Congress; but in regard to the Navy Department, if I recollect aright, it is in effect that copies of the records and extracts from the records may be certified. I think that is the law.

The substantial objection which the learned manager undertook to state was that this paper which we now offer would be illusory, and the reason is, because, although it shows the name of the officer, the office he held, the fact of his removal, and the date of the removal, it does not show whether the Senate was then in session, and it does not show what the President did in connection with or in consequence of that removal in the form of a nomination to the Senate. How can the records of the Department of the Navy show those facts? They appear here on your records, and we propose, when we have closed the offer of this species of proof, to ask the Senate to direct its proper officer to make a certificate from its records of the beginning and end of each session of the Senate from the origin of the government down to the present time. That is what we shall call for at the proper time, and that will supply that part of the difficulty which the gentleman suggests. The other part of the difficulty which he suggests is, that it does not appear that the President did not fill up these removals by immediate nominations when they were made during the session of the Senate. It does not appear either way. If he desires to argue that the President did fill them up by immediate nominations, he will find the nominations and put them in undoubtedly. The records of the Navy Department, from which this statement comes, can furnish no information on that subject, and therefore it is not defective in that particular.

Mr. Manager BUTLER. The counsel for the President, I think, judge well, that when they can find that we have taken any particular course that must be the right course and the one they ought to follow. We certainly accept that as being the very best exposition of the law so far as we are concerned. But the difficulty is this: We offer testimony sometimes that is not objected to; and I asked my learned friends, I think, in the case referred to, whether they objected to that evidence, and they made no objection. If they had, I might have been

more formal; but that does not meet the difficulty quite. The difficulty I find is that they go to the wrong sources of evidence. Evidence of the removal and appointment of officers and the affixing of the seal to commissions is to be sought for only in the State Department. No officer who is removed or appointed by and with the advice and consent of the Senate, who holds his commission under that tenure, can be appointed or can be removed without all the circumstances appearing in the State Department; and there is the place they should go for this evidence. If they would go to the State Department they would get it all; they would find out when he was appointed, when he was removed, when his successor was appointed, when he was nominated, and everything precisely as they have in the case of Mr. Pickering.

Mr. CURTIS, Does the honorable manager understand that under the laws of the United States all these officers must be commissioned by the Secretary of State, and that the facts appear in his department, including the officers under the Interior, the Treasury, the War, and the Navy Departments?

Mr. Manager BUTLER. With the single exception of the Treasury, I do.

Mr. CURTIS. I do not.

Mr. Manager BUTLER. I do so understand it, and it will so appear, I think. But at any rate when the gentleman takes these commissions he will find that the commissions all emanate with the seal of the United States and the signature of the Secretary of State upon them. The testimony that he offers is not the commissions of these officers; and to show that that is the fact I only appeal to his own papers here. Instead of sending us the commissions of these officers, what is the evidence of the appointment?

NAVY DEPARTMENT, *March* 24, 1838.

SIR: The President of the United States, by and with the advice and consent of the Senate, having appointed you navy agent for four years from the 22d of March, 1838, I have the pleasure to enclose herewith your commission, dated the 24th of March, 1838.

I am, respectfully, yours,

M. DICKERSON.

LEONARD JARVIS, Esq., *Navy Agent, Boston.*

The evidence that they give us of the appointment is a letter of the Secretary, reciting the fact of the commission. If they had gone to the State Department they would have found the record of the commission. Why I complain of it, and that is all the reason I complain of it, is that again it is illusory. If it was a mere matter of form I would not care about it. If my friend will tell me that they will put in the exact dates when these parties were nominated I shall have no objection; but they place either upon the Senate or upon me the burden of going to the records and looking up these dates and looking up the evidence to control their evidence. That is to say, the Senate allow them to put in memoranda of part of a transaction, and put upon the managers of the House of Representatives the burden of going and looking up the rest of it. I say it is not right to do so; that where they put in the transaction they ought to put in the whole record of the transaction, and then we can all see exactly what the transaction was.

Mr. President, I have so much respect for my learned friends that whenever they state a matter of law as they stated it to the learned senator from Maryland, that extracts from records might be certified, I am almost afraid to object; but I beg leave to read from Brightly's Digest the seventeenth section on page 267, although it is a very bad practice to read from digests:

All books, papers, documents, and records in the War, Navy, Treasury, and Post Office Departments, and the Attorney General's office, may be copied and certified under seal in the same manner as those in the State Department may now by law be, and with the same force and effect, and the said Attorney General shall cause a seal to be made and provided for his office, with such device as the President of the United States shall approve.

Mr. JOHNSON. What is the date of that act?

Mr. Manager BUTLER. That act is dated February 22, 1849.

Mr. JOHNSON. Thank you, sir.

Mr. Manager BUTLER. And that act refers to the act of September 15, 1789, which provides:

That all copies of records and papers in the office of the Department of State, authenticated under the seal of the said Department, shall be evidence equally as the original record or paper.

I have not seen any statute which gives any right to certify extracts of records. If these were extracts of entire records they would do; but these are memoranda; that is, the gloss, the interpretation, the collation, the *diegesis* of the clerk of that department of the records.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate.

The Chief Justice put the question, and declared that the noes appeared to have it.

Mr. SHERMAN. I call for the yeas and nays. I think proof of this kind ought not to be kept out on a technical ground.

Mr. HENDRICKS. I wish to inquire whether the objection on the part of the managers requires that the entire documents relating to the subject in the departments shall be produced; whether the objection goes upon that proposition?

The CHIEF JUSTICE. The rule requires that a question asked by a senator shall be reduced to writing.

Mr. HENDRICKS. The question I asked was for information of the managers themselves, whether the objection goes upon the ground that the documents are not certified in full?

The CHIEF JUSTICE. If there be no objection, the senator from Indiana can put his question. Otherwise, the rule requires that it shall be in writing.

Mr. Manager BUTLER. I did not understand the question.

The CHIEF JUSTICE. The senator from Indiana will repeat his question.

Mr. HENDRICKS. The question which I wished answered by the managers was whether it be required, in the progress of this trial, that the records shall be given in full so far as they relate to any particular question?

Mr. Manager BUTLER. That is what we desire, or, otherwise, it sets us to looking up the same record.

Mr. CONKLING. I wish to put a question to the counsel for the respondent, which I am reducing to writing, and will have prepared in a single moment.

The CHIEF JUSTICE. The counsel will please reduce their proposition to writing.

Mr. CONKLING. I beg the counsel for the respondent to answer the question which I send to the Chair.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from New York.

The Secretary read as follows:

Do the counsel for the respondent rely upon any statute other than that referred to?

Mr. CURTIS. I am not aware that there is any other statute bearing on it. By extracts from the records—of course I do not mean that any officer was authorized to state what he believed the substance of a record to be—I meant that he might extract out of the record a particular document.

Mr. CONKLING. Provided it was a copy so far as it went.

Mr. CURTIS. Provided it was a copy so far as it went. In that same connection, perhaps I ought to state, Mr. Chief Justice and senators, that we do not offer these documents as copies of the records relating to the cases which are named in the documents themselves. They are documents, as I stated at the beginning, of a similar character to that which the managers put in, containing the substance of each case, the name, the date, the office, the fact of removal. It is true as the honorable manager has said, that when he offered that he asked us if we objected. We said no; for we knew it would take, perhaps, weeks to make out all those records in full.

Mr. EDMUNDS. With permission, I should like to make an oral inquiry, to save time, of counsel.

The CHIEF JUSTICE. If there be no objection the senator from Vermont will put his inquiry without reducing it to writing.

Mr. EDMUNDS. I desire to know whether this is offered as touching any question or final conclusion of fact, or whether it is offered merely as giving us a history of practice under the statutes with a view to the law?

Mr. CURTIS. Entirely for the last purpose.

Mr. Manager BUTLER. After the statement of counsel, that this does not go to any issue of fact, but only of practice under the law, we have no objection to it.

The CHIEF JUSTICE. The objection on the part of the managers is withdrawn. If there be no objection on the part of the Senate the evidence will be admitted.

Mr. CURTIS. I wish there should be no misapprehension. This document goes to matters of fact; but those matters of fact are matters of practice under the law, which I supposed was what the senator meant.

Mr. EDMUNDS. That is what I understood.

Mr. Manager BUTLER. Then, if it is proof of matter of fact, we object that it is not proper evidence.

Mr. CURTIS. Very well.

The CHIEF JUSTICE. Gentlemen of counsel for the President, have you reduced your proposition to writing?

Mr. CURTIS. Yes, sir.

The CHIEF JUSTICE. The Secretary will read the proposition.

Mr. HOWARD. I desire to ask a question of the learned counsel for the accused.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Michigan.

Mr. EVARTS. Before that question is read, perhaps it may be of service that I should ask attention to what I have turned to in the record, and that is the letter of the Secretary of State, which, at page 351 of the record, introduced the schedule that was put in evidence by the managers.

Mr. JOHNSON. What is the schedule?

Mr. EVARTS. Of heads of departments. Mr. Manager Butler said:

It is accompanied with a letter simply describing the list, which I will read, as mere inducement.

Mr. CURTIS. We have no objection.

Mr. Manager BUTLER. I will read it:

DEPARTMENT OF STATE,
Washington, March 26, 1868.

SIR: In reply to the note which you addressed to me on the 23d instant, in behalf of the House of Representatives, in the matter of the impeachment of the President, I have the honor to submit herewith two schedules, A and B.

Schedule A presents a statement of all removals of the heads of departments made by the President of the United States during the session of the Senate, so far as the same can be ascertained from the records of this department.

Schedule B contains a statement of all appointments of heads of departments at any time made by the President without the advice and consent of the Senate, and while the Senate was in session, so far as the same appears upon the records of the Department of State.

I have the honor to be, very respectfully, your obedient servant,

WILLIAM H. SEWARD.

Hon. JOHN A. BINGHAM, *Chairman*.

Then follows the list, the production of the documents of which would have occupied a considerable length of time.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Michigan.

The Secretary read as follows:

Do the counsel regard these memoranda as legal evidence of the practice of the government, and are they offered as such?

Mr. CURTIS. The documents I offer are not full copies of any record. They

are, therefore, not strictly and technically legal evidence for any purpose. They are extracts of facts from those records. Allow me, by way of illustration, to read one, so that the Senate may see the nature of the documents:

NAVY AGENCY AT NEW YORK,
June 20, 1864.

Isaac Henderson was, by direction of the President, removed from the office of navy agent at New York, and instructed to transfer to Paymaster John D. Gibson, United States navy, all the public funds and other property in his charge.

We do offer that as technical legal evidence of the fact that is there stated; but having in view simply to prove, not the case with Mr. Henderson, with its merits and the causes of his removal, &c., all of which would appear on the records, but the practice of the government under the laws of the United States; instead of taking from the records the entire documents necessary to exhibit his whole case, we have taken the only fact which is of any importance in reference to this inquiry. If the Senate consider that they must adhere to the technical rule of evidence, we must go to the records and have the records copied in full, and, of course, for the same reason, read in full.

Mr. Manager BOUTWELL. The honorable counsel for the respondent must see that if they do not prove a case they do not prove any practice. The first thing to be done in order to prove a practice is to prove one or more cases going to show what the practice is. But the vital objection to this testimony which is now offered is, if my examination of it is thorough and accurate, that it relates to a class of officers who are and were, at the time the transaction spoken of in this memoranda occurred, under a special provision of law by which they were created, which takes them entirely out of the line of precedents for the purpose of this trial. That is the vital objection to the introduction of this testimony. As I have read the papers hastily, they all relate to navy agents and officers who were created by a statute of the year 1820, and in that statute a tenure of office was established for the officers so created—four years, removable at pleasure; and it is not necessary for me to go into any statement here of the reasons which likely controlled the Congress of the United States in 1820, which led them to make that provision. But having made that provision, created these officers, removable at pleasure, a practice shown by facts, few or many, does not tend in any degree to enlighten this tribunal upon the issue on which they are now called to pass, because these officers were created by a special statute, had a special tenure, and by that tenure were made removable at the pleasure of the President; and in various cases undoubtedly the President of the United States, acting in conformity to that statute, has removed those officers. Unless the counsel for the respondent are prepared to say that in this file of papers which they now submit there is evidence to show that a practice has prevailed relating to officers not enumerated in the statute of 1820, then I say it is but a waste of the time of this tribunal, knowing what those papers contain, and knowing what the statute is, to permit the introduction of any testimony showing a practice which, if prevailing and admitted, does not enlighten us at all upon the matters in issue here.

Mr. CURTIS. This objection, Mr. Chief Justice and Senators, has reference to the merits of this case and to the weight and effect which the evidence is to have, if it be admitted. We may have been under an entire misapprehension as to the views of the honorable managers who are conducting this prosecution respecting those merits; but unless we have been under such a misapprehension we have supposed they meant to attempt to maintain that even if Mr. Stanton at the time when he was removed held at the pleasure of the President, even if he was not within the tenure-of-office act, still, inasmuch as the Senate was in session, it was not competent for the President to remove him; and, secondly, that although Mr. Stanton might have been removed by the President, not being within the tenure-of-office act, his place could not be even temporarily supplied

by an order to General Thomas, because the Senate was in session, and there could be, therefore, no *ad interim* appointment made. It is with a view to meet that that we introduce this practice of the government. It is with a view to show that when the President had a right to remove, it mattered not whether the Senate was in session or not, that right might be exercised, and that if that right should be exercised, it mattered not whether the Senate was in session or not, he might make an *ad interim* appointment. If the learned managers will concede all those grounds to us, if they will agree that the sole question here is whether Mr. Stanton's tenure of office was fixed by that act, and if it was not fixed by that act, that the President might remove him during the session of the Senate, and might lawfully make an *ad interim* appointment during the session of the Senate, then we do not desire to put in this evidence.

Mr. SHERMAN. I should like to ask the honorable managers a simple question.

The CHIEF JUSTICE. If no objection be interposed, the senator from Ohio will put his question without reducing it to writing.

Mr. SHERMAN. It is whether the papers now offered in evidence contain the date of appointment and the character of the office?

Mr. EVARTS. That is a question which you put to us.

Mr. JOHNSON, (to Mr. Sherman.) You said "managers."

Mr. SHERMAN. I beg pardon.

Mr. Manager BUTLER. And to that we say that they only contain the date of the removal, but do not give us the date of the nomination, which may have been weeks and months before the date of the appointment, as nobody knows better than the Senate. That is the trouble about it.

Mr. CURTIS. These documents are the records of the Navy Department. Allow me to read once more, to give you an illustration of what they contain:

NAVY AGENCY AT NEW YORK.

1864, June 20.—Isaac Henderson was, by direction of the President, removed from the office of navy agent at New York, and instructed to transfer to Paymaster John D. Gibson, United States navy, all the public funds and other property in his charge.

That is the character of the document.

Mr. JOHNSON. Does it give the date?

Mr. CURTIS. It gives the date of the removal.

The CHIEF JUSTICE. The counsel for the President propose to offer in evidence two documents from the Navy Department, exhibiting the practice which has existed in that department in respect to removals from office. To the introduction of this evidence the honorable managers object. The Chief Justice thinks that the evidence is competent in substance, but that the question of form is entirely subject to the discretion of the Senate, and in the Senate alone. The whole question, therefore, is submitted to the Senate. Senators, you who are of opinion that this evidence should be received will, as your names are called, answer yea; those of the contrary opinion, nay.

The question being then taken by yeas and nays, resulted—yeas, 36; nays, 15; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Cole, Conkling, Corbett, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Henderson, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Stewart, Sumner, Trumbull, Van Winkle, Vickers, Willey, Wilson, and Yates—36.

NAYS—Messrs. Cameron, Cattell, Chandler, Conness, Cragin, Drake, Harlan, Howard, Morgan, Nye, Pomeroy, Ramsey, Thayer, Tipton, and Williams—15.

NOT VOTING—Messrs. Norton, Sprague, and Wade—3.

So the evidence was admitted.

Mr. CURTIS. Unless the honorable managers desire those documents to be read at length, we do not insist upon it on our part.

Mr. Manager BUTLER. We do not desire it.

Mr. CURTIS. Very well; but I suppose they will be printed. ("Certainly.")

The documents thus offered in evidence are as follows :

UNITED STATES NAVY DEPARTMENT,
April 9, 1868.

I hereby certify that the annexed are true statements from the records of this department.
EDGAR T. WELLES,
Chief Clerk.

Be it krown that Edgar T. Welles, whose name is signed to the above certificate, is now, and was at the time of so signing, chief clerk in the Navy Department, and that full faith and credit are due to all his official attestations as such.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Navy Department of the United States to be affixed, at the city of Washington, this 9th day of April, in the year of our Lord 1868, and of the independence of the United States the ninety-second.

[L. S.] G. WELLES, *Secretary of the Navy.*

NAVY AGENCY AT PENSACOLA.

Thomas Eastin, navy agent at Pensacola, was on 19th December, 1840, dismissed by direction of the President.

On the same day Purser Dudley Walker, United States navy, was instructed, until otherwise directed, to act as navy agent in addition to his duties as purser of the yard and station.

January 5, 1841.—George Johnston was informed that he had been appointed, by and with the advice and consent of the Senate, navy agent at Pensacola from December 23, 1840.

Johnston, it appears, was lost on the passage to Pensacola.

April 29, 1841.—The President appointed Jackson Morton navy agent at Pensacola.

NAVY AGENCY AT BOSTON.

February 1, 1838.—Purser John N. Todd, United States navy, was directed to assume the duties of navy agent for the port of Boston, and continue in the performance thereof until further orders from the department.

February 1, 1838.—D. D Brodhead, navy agent, Boston, was informed that his requisition for $10,000 had been received and the amount remitted to John N. Todd, purser of the Boston station, who had been directed to discharge the duties of navy agent until further orders.

The department alluded to reported embarrassments of his private affairs, and as the legal term of his appointment would shortly expire, stated that it felt compelled, under the circumstances of the case, to suggest to him the propriety of tendering at this time his resignation as navy agent.

March 3, 1838.—Daniel D. Brodhead, late navy agent at Boston, was requested to pay over to John N. Todd, acting navy agent at Boston, the amount of public funds remaining in his hands as agent.

Daniel D. Brodhead, having, in a letter dated Boston, February 28, 1838, tendered his resignation as navy agent, it was acknowledged and accepted by the department, March 5, 1838.

March 24, 1838.—Leonard Jarvis was informed of his having been appointed by the President, by and with the advice and consent of the Senate, navy agent for the port of Boston from March 22, 1838, and John N. Todd was instructed to pay over to him the amount of public funds in his hands as acting navy agent.

NAVY AGENCY AT NEW YORK.

June 20, 1864.—Isaac Henderson was, by direction of the President, removed from the office of navy agent at New York, and instructed to transfer to Paymaster John D. Gibson, United States navy, all the public funds and other property in his charge.

NAVY AGENCY AT PHILADELPHIA.

December 26, 1864.—James S. Chambers was removed from the office of navy agent at Philadelphia, and instructed to transfer to Paymaster A. E. Watson, United States navy, all the public funds and other property in his charge.

UNITED STATES NAVY DEPARTMENT, *April* 9, 1868.

I hereby certify that the annexed are true copies from the records of the department.
EDGAR T. WELLES, *Chief Clerk.*

Be it known that Edgar T. Welles, whose name is signed to the above certificate, is now, and was at the time of so signing, chief clerk in the Navy Department, and that full faith and credit are due to all his official attestations as such.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the Navy Department of the United States to be affixed at the city of Washington, this 9th day of April, in the year of our Lord 1868, and of the independence of the United States, the ninety-second.

[L. S.] G. WELLES, *Secretary of the Navy.*

NAVY DEPARTMENT, *December* 19, 1840.

SIR: The painful duty devolves upon me of informing you that having failed to settle your accounts as required by law and the frequent calls of the department, the President has directed that you be dismissed the service of the United States.

You will, therefore, upon the receipt of this communication, consider your functions as navy agent at Pensacola to have ceased.

Until the arrival of your successor, Purser Dudley Walker has been directed to act as navy agent, to whom you will turn over the funds, books, and papers belonging to the agency at Pensacola.

I am, respectfully, &c.,

J. K. PAULDING.

THOMAS EASTIN, Esq.,
Late Navy Agent, Pensacola.

NAVY DEPARTMENT, *December* 19, 1840.

SIR: I have directed $9,881 to be remitted to you, being the amount of your requisition of the 1st November.

You will, until otherwise directed, act as navy agent at Pensacola, in addition to your duties as purser of the yard and station.

A further remittance of $5,000 will be made to you for the use of the United States steamer Warren.

I am, respectfully, &c.,

J. K. PAULDING.

Purser DUDLEY WALKER,
Care Commodore A. J. Dallas, Navy-yard, Pensacola.

NAVY DEPARTMENT, *January*, 5, 1841.

SIR: The President of the United States, by and with the advice and consent of the Senate, having appointed you navy agent for the port of Pensacola, West Florida, for four years, from the 28th December, 1840, I have the pleasure to enclose herewith your commission, dated the 5th of January, 1841.

I am, respectfully, &c.,

J. K. PAULDING.

GEORGE JOHNSTON, Esq.,
Navy Agent, Washington.

NAVY DEPARTMENT, *April* 29, 1841.

SIR: The President of the United States having appointed you navy agent for the port of Pensacola, West Florida, I have the pleasure to enclose herewith your commission.

I enclose to you also a blank bond, which you will execute with at least two sureties, in the sum of $30,000, to be approved by the United States judge or district attorney for the district in which you reside, and return to this department as soon as practicable.

I am, respectfully, &c.,

GEORGE E. BADGER.

JACKSON MORTON, Esq.,
Navy Agent, Pensacola.

NAVY DEPARTMENT, *July* 16, 1841.

SIR: The President of the United States, by and with the advice and consent of the Senate, having appointed you navy agent for the port of Pensacola, Florida, from the 29th of April, 1841, I have the pleasure to enclose herewith your commission.

I am, respectfully, &c.,

GEORGE E. BADGER.

JACKSON MORTON, Esq., *Navy Agent, Pensacola.*

NAVY DEPAREMENT, *October* 2, 1841.

SIR: Jackson Morton, Esq., navy agent for Pensacola, has apprised this department of his intention to proceed immediately to that place to enter on the discharge of his duties.

Upon his arrival you will transfer to him all the moneys and property belonging to the agency, and take his receipt for the same, which will be a sufficient voucher in the settlement of your accounts in the office of the Fourth Auditor.

I am, respectfully, &c.,

J. D. SIMMS,
Acting Secretary of the Navy.

Purser D. WALKER, *Acting Navy Agent, Pensacola.*

NAVY DEPARTMENT, *February* 1, 1838.

SIR: Your requisition for $10,000 has been received, and the amount remitted to John N. Todd, purser of the Boston station, who has been directed to discharge the duties of navy agent until further orders.

The department regrets that the reported embarrassment of your private affairs, and the condition of the banks in Boston, particularly that in which you have kept your public accounts, renders this course necessary.

As the legal term of your appointment will shortly expire, the department feels compelled, under the circumstances of the case, to suggest to you the propriety of tendering at this time your resignation as navy agent.

I am, very respectfully, your obedient servant,

M. DICKERSON.

D. D. BRODHEAD, Esq., *Navy Agent, Boston.*

NAVY DEPARTMENT, *February* 1, 1838.

SIR: I have this day authorized to be remitted to you $10,000 under pay and sub.—

This remittance is made to you with a view to your assumption of the duties of navy agent for the port of Boston, in addition to your present duty, which you will do on receipt of this, and continue in the performance thereof until further orders from the department.

I am, respectfully, your obedient servant,

M. DICKERSON.

JOHN N. TODD, *Purser, United States Navy-yard, Boston.*

BOSTON, *February* 28, 1838.

SIR: Some time since I received a letter from you stating that Purser Todd was charged with the duties of navy agent in my place, and giving the reasons of the department therefor. Without concurring in the opinions of the department, but solely to relieve it and the government from any supposed responsibility or embarrassment in relation to my position, I have the honor to tender you my resignation as navy agent for this port, believing that you, as well as all others having official business with me, can bear testimony that I have faithfully and satisfactorily performed all my duties as a public officer.

I have the honor to be, with great respect, your obedient servant,

DANIEL D. BRODHEAD.

Hon. M. DICKERSON, *Secretary of the Navy, Washington, D. C.*

NAVY DEPARTMENT, *March* 3, 1838.

SIR: I request that you will pay over to John N. Todd, acting navy agent at Boston, the amount of public funds remaining in your hands as navy agent, for which his receipt will be to you a sufficient voucher.

When I last saw you you assured me that I should hear from you in 24 hours.

I regret very much being left in the condition I am as to the navy agent at Boston.

I am, very respectfully, your obedient servant,

M. DICKERSON.

DANIEL D. BRODHEAD, *Late Navy Agent, Boston.*

NAVY DEPARTMENT, *March* 5, 1838.

SIR: Your letter of the 28th ultimo, resigning your office of navy agent for the port of Boston, has been received, and your resignation is accepted.

I am, very respectfully, your obedient servant,

M. DICKERSON.

D. D. BRODHEAD, Esq., *Late Navy Agent, Boston.*

NAVY DEPARTMENT, *March* 24, 1838.

SIR: Leonard Jarvis, Esq., of Boston, has been appointed navy agent for that port in place of D. D. Brodhead, resigned. You will therefore pay over to Mr. Jarvis the amount of public money in your hands as acting navy agent, and his receipt will be to you a proper voucher in the settlement of your accounts.

So much of your requisition of the 13th instant as has been approved will be remitted to the new agent with as little delay as practicable.

I am, very respectfully, your obedient servant,

M. DICKERSON.

JOHN N. TODD, Esq., *Acting Navy Agent, Boston.*

NAVY DEPARTMENT, *March* 24, 1838.

SIR: You having been appointed navy agent for the port of Boston, I have this day authorized to be remitted to you $53,614 51, under various heads of appropriations, being the amount of the requisitions of the acting navy agent of the 13th instant, so far as the same were approved.

The acting navy agent, Purser John N. Todd, has been instructed to pay over to you the public money in his hands as agent.

Instructions with regard to your duties as navy agent will be transmitted to you by the Fourth Auditor of the Treasury.

I am, very respectfully, your obedient servant,

M. DICKERSON.

LEONARD JARVIS, Esq., *Navy Agent, Boston.*

NAVY DEPARTMENT, *March* 24, 1838.

SIR: The President of the United States, by and with the advice and consent of the Senate, having appointed you navy agent for four years from the 22d of March, 1838, I have the pleasure to enclose herewith your commission, dated the 24th of March, 1838.

I am, respectfully, yours,

M. DICKERSON.

LEONARD JARVIS, Esq., *Navy Agent, Boston.*

NAVY DEPARTMENT, *June* 20, 1864.

SIR: By direction of the President of the United States, you are hereby removed from the office of navy agent at New York, and you will immediately transfer to paymaster John D. Gibson, paymaster United States navy, all the public funds and other property in your charge.

Very respectfully,

GIDEON WELLES, *Secretary of the Navy.*

ISAAC HENDERSON, Esq., *Navy Agent, New York.*

NAVY DEPARTMENT, *June* 20, 1864.

SIR: You are hereby relieved from the inspection of provisions and clothing at the Brooklyn navy yard, and will at once assume the duties usually appertaining to the office of navy agent at the city of New York.

Mr. Henderson has been instructed to turn over to you the public funds and other property in his possession, for which you will receipt to him. You will not permit him to remove from the office any of the books, papers, or vouchers, until the further order of the department, but you will allow him to place in the office an agent (should he desire to do so) to protect his interests and see that the books and papers necessary to the settlement of his accounts are not used in a manner to destroy their value as vouchers. You will be careful to do nothing to affect in any way the liability of Mr. Henderson or his sureties to the government.

The chief of the bureau of provisions and clothing will explain to you in person the views of the department.

Very respectfully,

GIDEON WELLES, *Secretary of the Navy.*

Paymaster JOHN D. GIBSON,
United States Navy, Brooklyn, New York.

NAVY DEPARTMENT, *December* 26, 1864.

SIR: By direction of the President of the United States you are hereby removed from the office of the navy agent at Philadelphia, and you will immediately transfer to Paymaster A. E. Watson, United States navy, all the public funds and other property in your charge.

Very respectfully,

GIDEON WELLES, *Secretary of the Navy.*

JAMES S. CHAMBERS, Esq., *Navy Agent, Philadelphia.*

NAVY DEPARTMENT, *December* 26, 1864.

SIR: Mr. James S. Chambers, navy agent, Philadelphia, has been instructed to turn over to you the public funds and other government property in his possession, for which you will receipt to him, and you will at once assume the duties usually appertaining to the office of navy agent. You will not permit Mr. Chambers to remove from the office any of the books, papers, or vouchers, until the further order of the department, but you will allow him to place in the office an agent (should he desire to do so) to protect his interests and see that the books and papers necessary to the settlement of his accounts are not used in a manner to destroy their value as vouchers. You will be careful to do nothing to affect in any way the liability of Mr. Chambers or his sureties to the government.

Should Mr. Chambers reserve a portion of the funds in his possession to meet outstanding checks, the assistant treasurer has been requested not to honor them unless indorsed by you as correct. You will see that they have been given for actual government dues.

Your office will be kept open at least during the ordinary banking hours in Philadelphia.

Very respectfully,

GIDEON WELLES, *Secretary of the Navy.*

Paymaster A. E. WATSON,
United States Navy, Philadelphia.

Mr. CURTIS. There is one other document from the Navy Department which I suppose is not distinguishable from those that have just been admitted. It purports to be a list of all civil officers of that department appointed for four years under the statute of May 15, 1820, and removable from office at pleasure, who were removed as indicated, their terms of office not having expired. Then comes a list giving the name of the officer, the date of his original appointment, the date of his removal, and by whom removed, in a tabular form.

Mr. JOHNSON. Does it give the date of the appointment of his successor?

Mr. CURTIS. No; there is nothing said about his successor. It is merely the act of removal of the officer.

(The document was presented to the managers and examined by them.)

Mr. Manager BUTLER. We only want to call the attention of the Senate to the fact that it does not contain a very material thing which our schedule contains, to wit: a statement whether the Senate was or was not in session.

Mr. CURTIS. We shall get that in another form.

Mr. Manager BUTLER. Nor who was nominated in the place.

The CHIEF JUSTICE. The evidence is admitted unless there be some objection.

The document is (with the same attestation from the Navy Department as the two preceding ones) as follows:

TABLE B.

Civil officers appointed for four years under the statute of May 15, 1820, *and "Removable from office at pleasure," who were removed as indicated, their terms of office not having expired.*

NAVY AGENTS.

Names.	Date of original appointment.	Term.	Date of removal.	By whom removed.
R. Swartwout	17 October, 1818		18 March, 1827	The President.
Amos Binney	Not known		6 May, 1826	Do.
James Beatty	17 May, 1810		3 March, 1829	Do.
Miles King	27 March, 1816		4 March, 1829	Do.
J. M. Sherburne	25 June, 1828	4 years	1 July, 1829	Do.
N. Amory	31 October, 1827	do	11 July, 1829	Do.
George Harrison	21 November, 1799		3 March, 1833	Do.
John Laighton	27 April, 1830	4 years	29 April, 1841	Do.
John Thomas	11 October, 1833		31 August, 1841	Do.
R. C. Wetmore	18 March, 1841	4 years	1 July, 1844	Do.
I. V. Browne	20 September, 1841	do	1 April, 1845	Do.
S. McClellan	31 August, 1841	do	8 April, 1845	Do.
William B. Scott	8 October, 1848	do	5 June, 1849	Do.
Joseph Hale	19 June, 1846	do	27 June, 1849	Do.
S. W. Smith	8 July, 1846	do	do	Do.
Walker Anderson	3 July, 1848	do	24 September, 1849	Do.
George Layall	13 March, 1849	do	1 November, 1850	Do.
O. H. Ladd	28 June, 1852	do	5 April, 1853	Do.
William Hindman	do	do	do	Do.
B. D. Wright	10 August, 1850	do	12 April, 1853	Do.
E. O. Perrin	28 August, 1850	do	28 May, 1853	Do.
William Flinn	1 April, 1858	do	10 April, 1861	Do.
N. F. Ammidown	8 February, 1859	do	12 April, 1861	Do.
H. G. S. Key	27 February, 1860	do	16 April, 1861	Do.
H. F. Wardell	20 May, 1858	do	18 April, 1861	Do.
William Badger	do	do	1 May, 1861	Do.
William F. Russell	27 June, 1860	do	6 May, 1861	Do.
A. E. Smith	16 December, 1857	do	2 May, 1861	Do.
Isaac Henderson	19 July, 1861	do	20 June, 1864	Do.
J. S. Chambers	do	do	26 December, 1864	Do.

Mr. CURTIS sent a large mass of documents to the managers to be examined.

The CHIEF JUSTICE. Will the counsel state what he proposes to offer?

Mr. CURTIS. These are documents from the Department of State showing the removal of officers not only during the session of the Senate but during the recess, and covering all cases of vacancy, the purpose of the evidence being to show the practice of the government co-extensive with the necessity that arises out of the different cases—death, resignation, sickness, absence, removal. It differs from the schedule which has been put in by the learned managers, which covered certain heads of departments only, because that applies only to removals during the session of the Senate. It includes that, but it includes a great deal more matter.

Mr. Manager BUTLER. I have prepared for myself the same list. In order that the Senate may see exactly what the character is, and may judge then how far this may be competent, I call the attention of the Senate to one, the first one that opens, not by any manner the first in order, but the first one that happens:

MAY 27, 1836.

I hereby appoint C. A. Harris to perform the duties of Acting Secretary of War during the temporary absence of the Secretary for the Department of War.

ANDREW JACKSON.

Now I will turn over to the next page:

I hereby authorize and appoint Aaron O. Dayton, chief clerk of the Department of State, to discharge the duties of Secretary of State during the temporary absence of that officer from the seat of government.

M. VAN BUREN.

Mr. Manager BINGHAM. What is the date?

Mr. Manager BUTLER. June 28, 1837.

Again:

I authorize J. L. Martin, chief clerk of the Department of State, to perform the duties of Secretary of State during the absence of that officer from the seat of government.

MARTIN VAN BUREN.

That is dated October 16, 1840. Again:

WASHINGTON CITY, *July* 5, 1834.

I appoint John Boyle, chief clerk of the Navy Department, Acting Secretary of the Navy, to perform, during the absence of the Secretary of the Navy, the duties of the Secretary of the Navy Department.

ANDREW JACKSON.

There are but two exceptions in all these cases to the form I have given, in various modes of expression.

Mr. CURTIS. I suppose it is not a question now what is to be the effect of the evidence; but do you object to it?

Mr. Manager BUTLER. We object to it for any purpose. It is handed to me as a mass, and I want to state what it is, and then I will tell you what I object to; I cannot do so before. I have now given you all the forms with two single exceptions. The first exception is that frequently the language of the letter of appointment, like the one I have read, has been given to cover possible contingencies. For instance, Asbury Dickins is appointed to act as Secretary of the Treasury, "when the Secretary shall be absent," looking to the future, expecting that he would be absent on such a day. Then there are three other cases, one a case in President Monroe's time, where he appointed an acting Secretary, reciting the act of 1792. There is one in John Quincy Adams's time, reciting the act of 1792. There is one in General Jackson's time, reciting that the appointment was under the act of 1792. These are the only three in all this list that recite the act under which they are made. All the others are temporary, are in cases of death or temporary absences from the seat of government coming within the exact terms of the law of 1792 or 1795.

I have stated what these cases are. Now, the simple question is—I am not going to argue it—will the Senate permit a series of acts, done under the law, and exactly in conformity with the law of 1792 and 1795, reciting, where they

recited any law, the act of 1792, to be introduced as evidence upon the trial of a case for an act which is in violation of the act of March 2, 1867, and in violation of the act of February 20, 1863? Does it throw any light—that is to say, is there such a practice of the government shown by this as throws any light upon the question now in hearing? It goes to the country, it goes to the Senate, that here are a large lot of appointments. True; but these appointments are in conformity with the law, reciting the law when they recite any law at all, and always reciting the exact circumstances to which the law applies. Now, are these to go in for the purpose of justifying what is admitted in the answer to be a breach of the law, if the law is constitutional?

Mr. CURTIS. I do not wish to reply, Mr. Chief Justice. I take it for granted that the Senate will not settle any question as to the merits of this case under the acts of Congress when we are putting in evidence.

The CHIEF JUSTICE. The Chief Justice thinks that the evidence is admissible within the decisions already made. Of the value of it, when admitted, the Senate will judge. If any senator desires the question to be put to the Senate, the Chief Justice will be happy to put it. (After a pause.) The evidence is admitted.

Mr. CURTIS. We do not desire to have the documents read. They are very voluminous, and will take time, and it is quite unnecessary to read them, we think, or have them read.

The documents thus offered in evidence are attested by the Secretary of State in the usual form to be copied from the records of his department, and contain the letters of authority, designation, or appointment in the following cases:

On the 23d of November, 1819, Christopher Vanderventer, chief clerk of the War Department, was authorized by President Monroe, under the act of May 8, 1792, to perform the duties of Secretary of War during the illness of John C. Calhoun, secretary for that department.

On the 7th of March, 1825, President J. Q. Adams appointed Samuel L. Southard, Secretary of the Navy, to perform the duties of Secretary of War, that office having become vacant, until the vacancy should be filled.

On the 26th of January, 1829, President J. Q. Adams appointed Samuel L. Southard, Secretary of the Navy, under the authority conferred by the act of May 8, 1792, to perform the duties of Secretary of the Treasury until a successor should be appointed to Richard Rush, Secretary of the Treasury, he being unable to perform his duties by severe illness, or until the inability should cease.

On the 4th of March, 1829, President Jackson appointed James A. Hamilton to take charge of the Department of State until Governor Van Buren should arrive in the city.

On the 24th of April, 1829, President Jackson appointed Asbury Dickens Secretary of the Treasury until the return of Mr. Ingham to the city.

On the 7th of July, 1829, President Jackson appointed William B. Lewis acting Secretary of War during the absence of the Secretary.

On the 8th of July, 1829, President Jackson appointed Richard H. Bradford to take charge of the Navy Department and perform the duties thereof in the absence of the Secretary of the Navy.

On the 19th of August, 1829, President Jackson appointed William B. Lewis acting Secretary of War during the absence of the Secretary of War.

On the 7th of November, 1829, President Jackson appointed J. G. Randolph to perform the duties of Secretary of War until the return of the Secretary, John H. Eaton, he being absent.

On the 12th of June, 1830, President Jackson authorized Philip G. Randolph to act as Secretary of War while John H. Eaton, the Secretary, should be absent.

On the 8th of March, 1831, President Jackson authorized Philip G. Randolph to act as Secretary of War during the confinement of the Secretary by sickness.

On the 19th of March, 1831, President Jackson authorized John Boyle, chief clerk of the Navy Department, to act as Secretary of the Navy during the necessary absence of Mr. Branch, the Secretary, from the duties of the department.

On the 12th of May, 1831, President Jackson authorized John Boyle to take charge of the office of the Secretary of the Navy and perform its duties until a successor to Mr. John Branch, the Secretary, who had notified the President that he should leave the city "this day," could be appointed, and arrive and take charge of the office.

On the 16th of June, 1831, President Jackson authorized John Boyle, chief clerk of the Navy Department, to act as Secretary of the Navy during the absence from the seat of government of Levi Woodbury, the Secretary.

On the 18th of June, 1831, President Jackson authorized Philip G. Randolph, chief clerk in the War Office, to discharge the duties of that office until a successor to Major Eaton should be appointed.

On the 21st of June, 1831, President Jackson appointed Asbury Dickins, chief clerk of the Treasury Department, to perform the duties required by law of the Secretary of the Treasury until the arrival of Mr. McLane, appointed successor to Mr. Ingham.

On the 20th of July, 1831, President Jackson appointed Roger B. Taney, Attorney General, to take charge of the Department of War "on the 21st instant, and execute the duties thereof until the arrival of Governor Cass."

On the 10th of August, 1831, President Jackson authorized John Boyle, chief clerk of the Navy Department, to act as Secretary of the Navy in the absence of the Secretary, Levi Woodbury, from the seat of government.

On the 10th of August, 1831, President Jackson appointed Daniel Brent, chief clerk of the Department of State, to act as Secretary of State during the absence of the Secretary from the seat of government.

On the 12th of September, 1831, President Jackson authorized Roger B. Taney, Attorney General, to act as Secretary of War during the absence from the seat of government of Governor Cass.

On the 13th of September, 1831, President Jackson appointed Louis McLane, Secretary of the Treasury, to take charge of the War Department during the absence of Governor Cass, Secretary, and Roger B. Taney, acting Secretary.

On the 18th of October, 1831, President Jackson appointed Asbury Dickins, chief clerk of the Treasury Department, to perform the duties of Secretary of the Treasury during the absence of the Secretary.

On the 18th of October, 1831, President Jackson authorized Levi Woodbury, Secretary of the Navy, to take charge of the Department of War and perform the duties of Secretary of War, during the absence of the Secretary of War.

On the 17th of March, 1832, President Jackson authorized Asbury Dickins, chief clerk of the Treasury Department, to take charge of that department and perform the duties of Secretary of the Treasury during the indisposition of Mr. McLane.

On the 8th of June, 1832, President Jackson authorized John Robb, chief clerk of the War Department, to perform the duties of Secretary of War during the absence of the Secretary.

On the 16th of July, 1832, President Jackson appointed John Robb, chief clerk of the War Department, to act as Secretary of War during the absence of the Secretary.

On the 21st of July, 1833, President Jackson appointed Daniel Brent, chief clerk of the Department of State, to exercise the duties and perform the functions of Secretary of State "in the event of the absence from the seat of government of the Secretary during the present summer or approaching autumn, and during the continuance of such absence."

On the 23d of July, 1832, President Jackson appointed John Boyle to discharge the duties of Secretary of the Navy "in the absence of the Secretary at any time between this date and the 1st of October next."

On the 18th of July, 1833, President Jackson authorized Asbury Dickins, chief clerk of the Treasury Department, to perform the duties of Secretary of the Treasury in case of the absence from the seat of government or sickness of the Secretary.

On the 8th of November, 1832, President Jackson authorized Asbury Dickins, chief clerk of the Treasury Department, during the absence of the Secretary of the Treasury, to perform the duties of that office.

On the 12th of November, 1832, President Jackson authorized John Robb, chief clerk of the War Department, to act as Secretary of War during the absence of the Secretary.

On the 6th of May, 1833, President Jackson appointed Asbury Dickins, chief clerk of the Treasury Department, to perform the duties of the Secretary of the Treasury, in the absence of that officer from the seat of government.

On the 6th of May, 1833, President Jackson appointed John Robb acting Secretary of War during the absence of the Secretary.

On the 13th of May, 1833, President Jackson authorized Louis McLane, Secretary of the Treasury, to perform the duties and functions of Secretary of State during the absence of Edward Livingston from the seat of government.

On the 29th of May, 1833, President Jackson authorized Asbury Dickins, chief clerk of the Treasury Department, to perform the duties of Secretary of the Treasury for and during the absence of that officer from the seat of government.

On the 5th of June, 1833, President Jackson authorized Daniel Brent, chief clerk in the Department of State, to act as Secretary of State during the absence of the Secretary from the seat of government.

On the 6th of June, 1833, President Jackson appointed John Robb to be acting Secretary of War during the absence of the Secretary.

On the 5th of June, 1833, President Jackson appointed John Boyle to be acting Secretary of the Navy "during the absence at any time within the present year of the honorable Levi Woodbury."

On the 13th of June, 1833, President Jackson appointed Daniel Brent to perform the duties

of Secretary of State if the Secretary should "be at any time indisposed or absent from the seat of government."

On the 10th of August, 1833, President Jackson authorized Asbury Dickins, "should the Secretary of State be sick or absent from the seat of government before my return to Washington," to perform the duties during such sickness or absence.

On the 28th of September, 1833, President Jackson appointed John Robb acting Secretary of War in the absence of the Secretary.

On the 11th of November, 1833, President Jackson authorized Asbury Dickins, chief clerk of the Department of State, to perform the duties of Secretary of State during the absence of the Secretary from the seat of government.

On the 25th of June, 1834, President Jackson authorized McClintock Young to take charge of the Department of the Treasury until a successor to Mr. Taney, resigned, should be appointed.

On the 5th of July, 1834, President Jackson appointed John Boyle, chief clerk of the Navy Department, to be acting Secretary of the Navy during the absence of the Secretary.

On the 8th of July, 1834, President Jackson authorized Asbury Dickins, chief clerk of the Department of State, to perform the duties of Secretary of State in case of the death, absence from the seat of government, or sickness of the Secretary of State "during my absence."

On — ———, President Jackson authorized John Forsyth to discharge the duties of Secretary of War during the absence of the Secretary.

On — ———, President Jackson authorized M. Dickerson to discharge the duties of Secretary of War during the absence of the Secretary.

On the 8th of May, 1834, President Jackson appointed Mahlon Dickerson acting Secretary of War during the absence of the Secretary.

On the 11th of October, 1834, President Jackson appointed Asbury Dickins, chief clerk of the Department of State, to act as Secretary of State during the absence of that officer from the seat of government.

On the 19th of January, 1835, President Jackson authorized Mahlon Dickerson, Secretary of the Navy, to perform the duties of Secretary of War during the illness of that officer

On the 2d of May, 1835, President Jackson authorized Asbury Dickins to perform the duties of Secretary of State during the absence of Mr. Forsyth from the seat of government.

On the 7th of May, 1835, President Jackson appointed John Boyle, chief clerk of the Navy Department, to act as Secretary of the Navy during the absence of Mr. Dickerson from the seat of government.

On the 18th of May, 1835, President Jackson appointed Cary A. Harris to act as Secretary of War during the absence of the Secretary.

On the 6th of July, 1835, President Jackson appointed Asbury Dickins to act as Secretary of State during the absence of Mr. Forsyth.

On the 1st of July, 1835, President Jackson designated McClintock Young to perform the duties of Secretary of the Treasury "at any periods of absence by the present Secretary during the ensuing months."

On the 31st of August, 1835, President Jackson authorized Asbury Dickins to act as Secretary of State during the absence of Mr. Forsyth from the seat of government.

On the 28th of September, 1835, President Jackson authorized Asbury Dickins to act as Secretary of State during the absence of Mr. Forsyth from the seat of government.

On the 20th of October, 1835, President Jackson empowered McClintock Young to perform the duties of Secretary of State "while the present Secretary is absent from the city of Washington."

On the 23d of October, 1835, C. A. Harris was appointed by President Jackson to act as Secretary of War during the temporary absence of the Secretary.

On April 29, 1836, C. A. Harris was appointed by President Jackson to act as Secretary of War during the temporary absence of the Secretary.

On the 27th of May, 1836, President Jackson authorized C. A. Harris to act as Secretary of War during the temporary absence of the Secretary.

On the 7th of July, 1836, President Jackson empowered Asbury Dickins, chief clerk of the Department of State, to act as Secretary of State "in case of the death, absence from the seat of government, or inability of the Secretary during my absence from the seat of government."

On the 9th of July, 1836, President Jackson appointed John Boyle, chief clerk of the Navy Department, to discharge the duties of Secretary of the Navy during the absence of Mahlon Dickerson, Secretary, from the seat of government.

On the 18th of July, 1836, President Jackson authorized C. A. Harris to act as Secretary of War during the temporary absence of that officer from the seat of government.

On the 8th of September, 1836, President Jackson authorized C. A. Harris to act as Secretary of War during the temporary absence of that officer from the seat of government.

On the 5th of October, 1836, President Jackson authorized C. A. Harris to act as Secretary of War during the temporary absence of that officer from the seat of government.

On the 25th of October, 1836, President Jackson authorized Benjamin F. Butler, Attorney

General, to act as Secretary of War, that office having become vacant, until the vacancy should be filled.

On the 28th of June, 1837, President Van Buren authorized Aaron O. Dayton, chief clerk of the Department of State, to discharge the duties of Secretary of State during the temporary absence of that officer from the seat of government.

On the 20th of October, 1837, President Van Buren authorized McClintock Young to discharge the duties of Secretary of the Treasury "whenever that officer may be absent from the seat of government."

On the 27th of October, 1837, President Van Buren authorized John Boyle, chief clerk of the Navy Department, to act as Secretary of the Navy during the absence of the Secretary.

On the 21st of July, 1838, President Van Buren authorized John Boyle, chief clerk of the Navy Department, to act as Secretary of the Navy during the absence of the Secretary.

On the 1st of July, 1838, President Van Buren authorized McC. Young to act as Secretary of the Treasury during the absence of the Secretary, and in case of the illness or absence of Mr. Young, Samuel McKean to perform the duties.

On the 21st of July, 1838, President Van Buren authorized Aaron Vail, chief clerk of the Department of State, to discharge the functions of Secretary of State "in the event of the absence of the Secretary from the seat of government."

On the 6th of October, 1838, President Van Buren authorized John Boyle, chief clerk of the Navy Department, to act as Secretary of the Navy during the absence of the Secretary.

On the 24th of April, 1839, President Van Buren authorized McClintock Young to perform the duties of Secretary of the Treasury during the absence of the Secretary.

On the 8th of June, 1839, President Van Buren authorized Aaron Vail, chief clerk of the State Department, to act as Secretary of State during the absence of the Secretary from the seat of government.

On the 15th of June, 1839, President Van Buren authorized McClintock Young to act as Secretary "in the event of the sickness or absence of Levi Woodbury between this date and the 10th of October next."

On the 28th of August, 1840, President Van Buren authorized J. L. Martin, chief clerk of the Department of State, to perform the duties of Secretary of State during the absence of that officer from the seat of government.

On the 16th of October, 1840, President Van Buren authorized J. L. Martin, chief clerk of the Department of State, to perform the duties of Secretary of State during the absence of that officer from the seat of government.

On the 3d of March, 1841, President Van Buren appointed McClintock Young, chief clerk of the Treasury Department, to perform temporarily the duties of Secretary of the Treasury until a successor to Mr. Woodbury, resigned, should be sworn into office according to law.

On the 19th of March, 1841, President Harrison appointed John D. Simms Acting Secretary of the Navy during the absence of the Secretary from the seat of government.

On the 27th of April, 1841, President Tyler appointed Daniel Fletcher Webster, chief clerk of the Department of State, to perform the duties of Secretary of State in the absence of that officer from the seat of government.

On the 13th of September, 1841, President Tyler appointed McClintock Young to perform the duties of Secretary of the Treasury until a successor to Mr. Ewing, late Secretary, should be appointed, qualified, and enter upon the discharge of the duties of head of the Treasury Department.

On the 20th of October, 1841, President Tyler appointed William S. Derrick to perform the duties of Acting Secretary of State during the absence of Daniel Fletcher Webster, "now performing those duties," from the seat of government.

On the 30th of October, 1841, President Tyler appointed McClintock Young Acting Secretary of the Treasury.

On the 14th of December, 1842, President Tyler appointed McClintock Young to perform the duties of Secretary of the Treasury during the absence of Hon. Walter Forward from the city of Washington.

On the 30th of June, 1842, President Tyler appointed McClintock Young to perform the duties of Secretary of the Treasury during the absence of Hon. Walter Forward from the city of Washington.

On the 20th of July, 1842, President Tyler appointed McClintock Young to perform the duties of Secretary of the Treasury during the sickness of Hon. Walter Forward.

On the 1st of November, 1842, President Tyler appointed McClintock Young to perform the duties of Secretary of the Treasury during the absence of Hon. Walter Forward from the city of Washington.

On the 1st of March, 1843, President Tyler appointed McClintock Young to act as Secretary of the Treasury until a successor to Mr. Forward should be appointed and enter upon the discharge of his duties.

On the 7th of June, 1842, President Tyler appointed McClintock Young to perform the duties of Secretary of the Treasury "during the absence of the Secretary after the 8th instant."

On the 9th of May, 1843, President Tyler appointed Hugh S. Legaré to act as Secretary of State until a successor to Mr. Webster, late Secretary of State, should be appointed, qualified, and enter on the discharge of the duties.

On the 8th of June, 1843, President Tyler appointed William S. Derrick to perform the duties of Secretary of State during the absence of Mr. Legaré, acting Secretary.

On the 24th of June, 1843, President Tyler appointed Abel P. Upshur Secretary of State *ad interim* until a succeesor should be appointed.

On the 31st of May, 1843, President Tyler appointed Samuel Hume Porter Acting Secretary of War during the absence of the Secretary.

On the 17th of August, 1843, President Tyler appointed William S. Derrick Acting Secretary of State during the absence of A. P. Upshur from the seat of government.

On the 28th of August, 1843, President Tyler (John C. Spencer, Secretary of the Treasury, "intending to be absent from the seat of government on and after the 29th instant for two weeks") appointed McClintock Young to act as Secretary of the Treasury "during such period, should the Secretary be so long absent."

On the 29th of February, 1844, President Tyler appointed John Nelson, Attorney General, Secretary of State *ad interim* until a successor to Mr. Upshur should be appointed.

On the 2d of May, 1844, President Tyler appointed McClintock Young to perform the duties of Secretary of the Treasury until a successor to J. C. Spencer should be appointed and qualified.

On the 28th of September, 1844, President Tyler appointed Richard K. Crallé Acting Secretary of State during the absence of John C. Calhoun from the seat of government.

On the 2d of April, 1845, President Polk appointed John Y. Mason, Attorney General, to be Secretary of State *ad interim* during the temporary absence of James Buchanan, Secretary of that Department, from the seat of government.

On the 4th of August, 1845, President Polk appointed John Y. Mason, Attorney General, to be Acting Secretary of State during the temporary absence of Mr. Buchanan from the seat of government.

On the 31st of March, 1846, President Polk appointed Nicholas P. Trist to be Acting Secretary of State during the absence of Mr. Buchanan from the seat of government.

On the 2d of September, 1846, President Polk appointed Nicholas P. Trist to be Acting Secretary of State during the absence of Mr. Buchanan from the seat of government.

On the 7th of October, 1846, President Polk appointed McClintock Young to perform the duties of Secretary of the Treasury during the absence from the city of Robert J. Walker, Secretary of the Treasury.

On the 4th of March, 1847, President Polk appointed Nicholas P. Trist Acting Secretary of State during the absence of Mr. Buchanan from the seat of government.

On the 31st of March, 1847, President Polk appointed Nicholas P. Trist Acting Secretary of State during the absence of Mr. Buchanan from the seat of government.

On the 4th of August, 1847, President Polk appointed William S. Derrick to be Acting Secretary of State during the absence of Mr. Buchanan from the seat of government.

On the 22d of June, 1847, President Polk appointed John Y. Mason, Secretary of the Navy, to be Acting Secretary of State during the absence of Mr. Buchanan, "to take effect the 28th instant."

On the 21st of July, 1847, President Polk appointed McClintock Young to perform the duties of Secretary of the Treasury during the absence from the seat of government of Robert J. Walker, "he intending to be absent after the 22d instant."

On the 15th of October, 1847, President Polk appointed McClintock Young to perform the duties appertaining to the office of Secretary of the Treasury during the absence of Robert J. Walker.

On the 9th of December, 1847, President Polk appointed McClintock Young to perform the duties appertaining to the office of Secretary of the Treasury during the sickness of Robert J. Walker.

On the 10th of April, 1848, President Polk appointed John Appleton, chief clerk of the State Department, to be acting Secretary of State during the absence of the Secretary from the seat of government.

On the 26th of May, 1848, President Polk appointed Archibald Campbell, chief clerk of the War Department, to be Acting Secretary of War during the temporary absence of the Secretary from the seat of government.

On the 17th of August, 1848, President Polk appointed McClintock Young to act as Secretary of the Treasury during the temporary absence of Secretary Walker from the seat of government.

On the 2d of September, 1848, President Polk appointed Isaac Toucey, Attorney General, to act as Secretary of State during the temporary absence of the Secretary.

On the 2d of September, 1848, President Polk appointed John Y. Mason, Secretary of the Navy, to act as Secretary of War during the temporary absence of the Secretary.

On the 20th of November, 1848, President Polk appointed Isaac Toucey, acting Secretary of State during the temporary absence of Mr. Buchanan from the seat of government.

On the 6th of March, 1849, President Taylor appointed McClintock Young to act as Secretary of the Treasury until a successor to Mr. Walker should be duly appointed.

On the 8th of March, 1849, President Taylor appointed Reverdy Johnson Attorney General, to act as Secretary of War during the temporary absence of the Secretary from the seat of government.

On the 1st of October, 1849, President Taylor appointed William S. Derrick, chief clerk of the Department of State, to act as Secretary of State in the absence of the Secretary.

On the 8th of October, 1849, President Taylor appointed John D. McPherson Acting Secretary of War during the temporary absence of Mr. Crawford "for the ensuing ten days."

On the 20th June, 1850, President Taylor appointed John McGinnis, chief clerk of the Treasury Department, to act as Secretary of the Treasury during the absence of the Secretary from Washington.

On the 23d of July, 1850, President Fillmore appointed Major General Winfield Scott Secretary of War *ad interim* during the vacancy occasioned by the resignation of George W. Crawford.

On the 4th of October, 1850, President Fillmore appointed William S. Derrick, chief clerk of the State Department, to be Acting Secretary of State during the temporary absence of Mr. Webster from the seat of government.

On the 23d of December, 1850, President Fillmore appointed William S. Derrick, chief clerk of the State Department, to be Acting Secretary of State during the temporary absence of Mr. Webster from the seat of government.

On the 1st of March, 1851, President Fillmore appointed William L. Hodge to be Acting Secretary of the Treasury *ad interim* during the illness of the Secretary.

On the 31st of March, 1851, President Fillmore appointed William S. Derrick, chief clerk of the Department of State, to be Acting Secretary of State during the absence of Mr. Webster.

On the 10th of May, 1851, President Fillmore appointed William S. Derrick, chief clerk of the Department of State, to be Acting Secretary of State during the absence of Mr. Webster.

On the 13th of May, 1851, President Fillmore appointed C. M. Conrad, Secretary of War, to be Acting Secretary of the Navy *ad interim* during the absence of the Secretary.

On the 16th of June, 1851, President Fillmore appointed William L. Hodge, Assistant Secretary, to act as Secretary of the Treasury during the absence of the Secretary.

On the 20th of June, 1851, President Fillmore appointed William S. Derrick, chief clerk of the Department of State, to be Acting Secretary of State during the temporary absence of Mr. Webster.

On the 11th of July, 1851, President Fillmore appointed Charles M. Conrad, Secretary of War, to act as Secretary of the Navy during the temporary absence of Mr. Graham from the seat of Government.

On the 14th of July, 1851, President Fillmore appointed William S. Derrick, chief clerk of the Department of State, to be Acting Secretary of State during the absence of Mr. Webster.

On the 4th of August, 1851, President Fillmore appointed W. A. Graham, Secretary of the Navy, to be Acting Secretary of War during the temporary absence of Mr. Conrad.

On the 4th of August, 1851, President Fillmore appointed William L. Hodge to act as Secretary of the Treasury during the absence of the Secretary.

On the 3d of August, 1851, President Fillmore appointed W. A. Graham, Secretary of the Navy, to be Acting Secretary of the Interior during the absence of Secretary A. H. H. Stuart from the city.

On the 13th of September, 1851, President Fillmore appointed William A. Graham, Secretary of the Navy, to act as Secretary of War during the absence of that Secretary.

On the 13th of September, 1851, President Fillmore appointed William L. Hodge Acting Secretary of the Treasury during the absence of the Secretary.

On the 22d of September, 1851, President Fillmore appointed Major General Winfield Scott Acting Secretary of War during the temporary absence of the Secretary.

On the 25th of September, 1851, President Fillmore appointed John J. Crittenden, Attorney General, to perform the duties of Secretary of State until the return to the seat of government of Daniel Webster, Secretary of State.

On the 26th of November, 1851, President Fillmore appointed William L. Hodge to act as Secretary of the Treasury until the return of Secretary Corwin.

On the 20th of February, 1852, President Fillmore appointed William S. Derrick, chief clerk of the Department of State, Acting Secretary of State in the absence of Mr. Webster.

On the 21st of February, 1852, President Fillmore appointed William L. Hodge to be Acting Secretary of the Treasury in the absence of Secretary Corwin.

On the 1st of March, 1852, President Fillmore appointed William L. Hodge Acting Secretary of the Treasury in the absence of Secretary Corwin.

On the 19th of March, 1852, President Fillmore appointed William Hunter Acting Secretary of State in the absence of Mr. Webster.

On the 26th of April, 1852, President Fillmore appointed William L. Hodge Acting Secretary of the Treasury during the indisposition of Secretary Corwin.

On the 2d of November, 1850, President Fillmore appointed Charles M. Conrad, Secretary of War, to act as Secretary of the Navy during the absence of that Secretary.

On the 1st of May, 1852, President Fillmore appointed William Hunter to act as Secretary of State in the absence of Mr. Webster.

On the 19th of May, 1852, President Fillmore appointed William A. Graham, Secretary of the Navy, to act as Secretary of War in the absence of Mr. Conrad.

On the 24th of May, 1852, President Fillmore appointed William L. Hodge to act as Secretary of the Treasury in the absence of Secretary Corwin.

On the 10th of June, 1852, President Fillmore appointed William L. Hodge to act as Secretary of the Treasury in the absence of Secretary Corwin.

On the 6th of July, 1852, President Fillmore appointed William Hunter, chief clerk of the Department of State, to act as Secretary of State in the absence of Mr. Webster.

On the 19th of August, 1852, President Fillmore appointed John P. Kennedy Acting Secretary of War during the absence of Secretary Conrad.

On the 27th of August, 1852, President Fillmore appointed William L. Hodge Acting Secretary of the Treasury in the absence of Secretary Corwin.

On the 2d of September, 1852, President Fillmore appointed Charles M. Conrad, Secretary of War, to be Acting Secretary of State in the absence of Mr. Webster.

On the 4th of October, 1852, President Fillmore appointed William L. Hodge to be Acting Secretary of the Treasury, Mr. Secretary Corwin being unable by sickness to perform the duties of the office.

On the 28th of October, 1852, President Fillmore appointed William L. Hodge Acting Secretary of the Treasury in the absence of Mr Corwin.

On the 31st of December, 1852, President Fillmore appointed William L. Hodge to act as Secretary of the Treasury during the sickness of Mr. Corwin.

On the 15th of January, 1853, President Fillmore appointed William L. Hodge to act as Secretary of the Treasury during the sickness of Mr. Corwin.

On the 3d of March, 1853, President Fillmore appointed William L. Hodge to act as Secretary of the Treasury in the absence of Mr. Corwin.

Mr. CURTIS. I now offer documents from the Department of the Postmaster General. They are all in one envelope, (sending some papers in an envelope to the managers.)

The CHIEF JUSTICE. The counsel will state the nature of the documents.

Mr. CURTIS. They are documents which show the removals of postmasters during the session of the Senate and *ad interim* appointments to fill the places. I believe they are all of that character, though I am not quite sure. Some of them I know are.

Mr. Manager BUTLER. They are exactly of the same kind that the Senate has just admitted.

Mr. CURTIS. I should like to have those read. They are short.

The CHIEF JUSTICE. The Secretary will read the documents.

The Secretary read as follows:

I hereby appoint St. John B. L. Skinner to be Acting First Assistant Postmaster General *ad interim* in place of Horatio King, now Acting Postmaster General under the law.

JAMES BUCHANAN.

WASHINGTON, *February* 8, 1861.

POST OFFICE DEPARTMENT,
Washington, D. C., April 7, 1868.

I, Alexander W. Randall, Postmaster General of the United States of America, certify that the foregoing is a true copy of the original order on file in this department, together with extracts from the records in said case.

In testimony whereof I have hereunto set my hand and caused the seal of the Post Office [L. S.] Department to be affixed at the General Post Office in the city of Washington the day and year above written.

ALEX. W. RANDALL,
Postmaster General.

NEW ORLEANS POST OFFICE,
Orleans Parish, Louisiana, June 29, 1860.

SAMUEL F. MARKS, *Postmaster.* Let this office be placed temporarily in the hands of a special agent of the department, to be appointed by the Postmaster General, in place of Samuel F. Marks, removed.

JAMES BUCHANAN.

Hon. JOSEPH HOLT, *Postmaster General.*

JUNE 29, 1860.

Instructions sent to D. P. Blair, special agent, to take possession of the office and remove Deutzel, chief clerk.

D. P. Blair held the office from 9th July to September 4, 1860.

Defalcation of the late postmaster of New York city.

[Ex. Doc. No. 91, 36th Congress, first session, House of Representatives.]

Letter of Postmaster General Holt, transmitting report in reply to resolution of the House of the 5th of June, 1860.

Order of the President.

WASHINGTON, *May* 10, 1860.

New York post office, New York county, New York State—Isaac V. Fowler, postmaster; $75,000 bond.

Let this office be placed temporarily in the hands of a special agent of the Post Office Department, to be appointed by the Postmaster General, in place of Isaac V. Fowler, removed.

JAMES BUCHANAN.

Hon. JOSEPH HOLT, *Postmaster General.*

H. ST. GEORGE OFFUTT, *Special Agent.*

(See printed report for further proceedings.)

JANUARY 21, 1861.

Milwaukee post office, Wisconsin, Milwaukee county—Mitchell Steever, postmaster, (failed to pay draft.)

Let this office be placed temporarily in the hands of a special agent of the Post Office Department, to be appointed by the Post Office Department.

JAMES BUCHANAN.

JANUARY 25, 1861.

D. M. Bull, special agent, took charge 6th February, 1861, and subsequently handed over the same to W. A. Bryant, special agent, who remained in charge up to 31st March, 1861.

I hereby appoint St. John B. L. Skinner, now Acting First Assistant Postmaster General, to be Acting Postmaster General *ad interim* in place of Hon. Montgomery Blair, now temporarily absent.

ABRAHAM LINCOLN.

WASHINGTON, *September* 22, 1862.

[Each of these documents is attested by Postmaster General Randall according to the form before given.]

Mr. CURTIS. I now offer in evidence, reading from the published Executive Documents of the Senate, volume four, second session thirty-sixth Congress, page one, a message of President Buchanan to the Senate in respect to the office of Secretary for the Department of War, and the manner in which he had filled that office in place of Mr. Floyd, and accompanying that message is a list of the names of those persons, as shown by the records of the Department of State, who had discharged the duties of officers of the cabinet by appointment made in the recess, and those confirmed by the Senate, as well as those acting *ad interim*, or simply acting. This list is printed as an appendix to the message, and was sent into the Senate. I wish that message to be read.

Mr. Manager BUTLER. The difficulty that I find with this message, senators, is, that it is the message of Mr. Buchanan, and cannot be put in evidence any more than the declaration of anybody else. We should like to have Mr. Buchanan brought here under oath, and to cross-examine him as to this. There are a great many questions I should like to ask him about his state of mind at this time; whether he had that clearness of perception just then of his duties which would make his messages evidence. But there is a still further objection, and that is, that most of the message is composed of the statements of Mr. "J. S. Black"—Jeremiah S. Black—who refused to have anything to do with this case anyhow. [Laughter.] And I do not think that the statements of those

gentlemen, however respectable, are to be taken here as evidence. They may be referred to as public documents, perhaps, but I do not think they can be put in as evidence. How do we know how correctly Mr. Black made up this list or his clerks? Are you going to put in his statements of what was done, and put it upon us or yourselves to examine to see whether they are not all illusory and calculated to mislead? I do not care to argue it any further.

Mr. JOHNSON. What is it offered for?

Mr. CURTIS. I only wish the Senate to understand the purpose with which we offer this, and that will be, as I view it, argument enough. We offer it for the purpose of showing the practice of the government. This is an act done by the head of the government in connection with the Senate of the United States. We offer to show that act as a part of the practice of the government.

Mr. Manager BUTLER. The practice of the government! I object, once for all, to the practice of this government being shown by the acts of James Buchanan and Jeremiah S. Black. If you choose to take it, I have no objection.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate. Senators, you who are of the opinion that the evidence just offered shall be received will please say aye; those of the contrary opinion, no. [Putting the question.] The ayes appear to have it—the ayes have it. The evidence is admitted.

Mr. CURTIS. The message is short, and I desire it to be read.

The Secretary read as follows:

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES IN ANSWER TO A RESOLUTION OF THE SENATE RESPECTING THE VACANCY IN THE OFFICE OF SECRETARY OF WAR.

To the Senate of the United States:

In compliance with a resolution of the Senate, passed on the 10th instant, requesting me to inform that body, if not incompatible with the public interest, "whether John B. Floyd, whose appointment as Secretary of War was confirmed by the Senate on the 6th of March, 1857, still continues to hold said office, and if not, when and how said office became vacant; and further to inform the Senate how and by whom the duties of said office are now discharged; and if an appointment of an acting or provisional Secretary of War has been made, how, when, and by what authority it was so made, and why the fact of said appointment has not been communicated to the Senate," I have to inform the Senate that John B. Floyd, the late Secretary of the War Department, resigned that office on the 29th day of December last, and that on the 1st day of January instant Joseph Holt was authorized by me to perform the duties of the said office until a successor should be appointed or the vacancy filled. Under this authority the duties of the War Department have been performed by Mr. Holt from the day last mentioned to the present time.

The power to carry on the business of the government by means of a provisional appointment when a vacancy occurs is expressly given by the act of February 13, 1795, which enacts "that in case of vacancy in the office of Secretary of State, Secretary of the Treasury, or of the Secretary of the Department of War, or any officer of either of the said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed or such vacancy filled: *Provided*, That no vacancy shall be supplied, in manner aforesaid, for a longer period than six months."

It is manifest that if the power which this law gives had been withheld the public interest would frequently suffer very serious detriment. Vacancies may occur at any time in the most important offices which cannot be immediately and permanently filled in a manner satisfactory to the appointing power. It was wise to make a provision which would enable the President to avoid a total suspension of business in the interval, and equally wise so to limit the executive discretion as to prevent any serious abuse of it. This is what the framers of the act of 1795 did, and neither the policy nor the constitutional validity of their law has been questioned for sixty-five years.

The practice of making such appointments, whether in a vacation or during the session of Congress, has been constantly followed during every administration from the earliest period of the government, and its perfect lawfulness has never, to my knowledge, been questioned or denied. Without going back further than the year 1829, and without taking into the calculation any but the chief officers of the several departments, it will be found that provisional

appointments to fill vacancies were made to the number of one hundred and seventy-nine, from the commencement of General Jackson's administration to the close of General Pierce's. This number would probably be greatly increased if all the cases which occurred in the subordinate offices and bureaus were added to the count. Some of them were made while the Senate was in session; some which were made in vacation were continued in force long after the Senate assembled. Sometimes the temporary officer was the commissioned head of another department, sometimes a subordinate in the same department. Sometimes the affairs of the Navy Department have been directed *ad interim* by a commodore, and those of the War Department by a general. In most, if not all, of the cases which occurred previous to 1852 it is believed that the compensation provided by law for the officer regularly commissioned was paid to the person who discharged the duties *ad interim*. To give the Senate a more detailed and satisfactory view of the subject I send the accompanying tabular statement, certified by the Secretary of State, in which the instances are all set forth in which provisional, as well as permanent, appointments were made to the highest executive offices from 1829 nearly to the present time, with their respective dates.

It must be allowed that these precedents, so numerous and so long continued, are entitled to great respect, since we can scarcely suppose that the wise and eminent men by whom they were made could have been mistaken on a point which was brought to their attention so often Still less can it be supposed that any of them wilfully violated the law or the Constitution.

The lawfulness of the practice rests upon the exigencies of the public service, which require that the movements of the government shall not be arrested by an accidental vacancy in one of the departments; upon an act of Congress expressly and plainly giving and regulating the power; and upon long and uninterrupted usage of the Executive, which has never been challenged as illegal by Congress.

This answers the inquiry of the Senate so far as it is necessary to show "how and by whom the duties of said office are now discharged." Nor is it necessary to explain further than I have done "how, when, and by what authority" the provisional appointment has been made. But the resolution makes the additional inquiry "why the fact of said appointment has not been communicated to the Senate."

I take it for granted that the Senate did not mean to call for the reasons upon which I acted in performing an executive duty, nor to demand an account of the motives which governed me in an act which the law and the Constitution left to my own discretion. It is sufficient, therefore, for that part of the resolution to say that a provisional or temporary appointment like that in question is not required by law to be communicated to the Senate, and that there is no instance on record where such communication ever has been made.

JAMES BUCHANAN.

WASHINGTON, *January* 15, 1861.

UNITED STATES OF AMERICA, *Department of State:*

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed contains a correct list, duly examined and compared with the record in this department, of those persons who have been commissioned by the President of the United States as heads of departments, during the recess of the Senate, as confirmed by that body, as acting *ad interim*, or merely acting from March 4, 1829, to December 20, 1860, both inclusive.

In testimony whereof, I, J. S. Black, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 15th day of January, A. D. 1861, and of the independence of the United States of America the eighty-fifth.

[SEAL.] J. S. BLACK.

A list of the names of those persons, as shown by the records of the Department of State, who discharged the duties of officers of the cabinet, whether by appointment made in recess and those confirmed by the Senate, as well as those acting ad interim or simply acting.

Names.	Office.	Date of appointment.	Character of appointment.
Under President Jackson.			
James A. Hamilton	Secretary of State	March 4, 1829	Acting.
Martin Van Buren	Secretary of State	March 6, 1829	Regular.
Samuel D. Ingham	Secretary of the Treasury	March 6, 1829	Regular.
John Macpherson Berrien	Attorney General	March 9, 1829	Regular.
John Branch	Secretary of the Navy	March 9, 1829	Regular.
William T. Barry	Postmaster General	March 9, 1829	Regular.
John H. Eaton	Secretary of War	March 9, 1829	Regular.
Asbury Dickins	Secretary of the Treasury	April 24, 1829	Acting.
William B. Lewis	Secretary of War	July 7, 1829	Acting.
Richard H. Bradford	Secretary of the Navy	July 8, 1829	Acting.
William B. Lewis	Secretary of War	August 19, 1829	Acting.
J. G. Randolph	Secretary of War	November 7, 1829	Acting.
Philip G. Randolph	Secretary of War	June 12, 1830	Acting.
J. G. Randolph	Secretary of War	March 8, 1831	Acting.
John Boyle	Secretary of the Navy	March 19, 1831	Acting.
John Boyle	Secretary of the Navy	May 12, 1831	Acting.
Edward Livingston	Secretary of State	May 24, 1831	Regular.
Levi Woodbury	Secretary of the Navy	May 23, 1831	Regular.
John Boyle	Secretary of the Navy	June 16, 1831	Acting.
Philip G. Randolph	Secretary of War	June 18, 1831	*Ad interim.*
Asbury Dickins	Secretary of the Treasury	June 21, 1831	*Ad interim.*
Roger B. Taney	Attorney General	July 20, 1831	Regular.
Lewis Cass	Secretary of War	August 1, 1831	Regular.
Roger B. Taney	Secretary of War	July 20, 1831	Acting.
Louis McLane	Secretary of the Treasury	August 8, 1831	Regular.
John Boyle	Secretary of the Navy	August 10, 1831	Acting.
Daniel Brent	Secretary of State	August 10, 1831	Acting.
Roger B. Taney	Secretary of War	September 12, 1831	Acting.
Louis McLane	Secretary of War	September 13, 1831	Acting.
Asbury Dickins	Secretary of the Treasury	October 18, 1831	Acting.
Levi Woodbury	Secretary of War	October 18, 1831	Acting.
Asbury Dickins	Secretary of the Treasury	March 17, 1832	Acting.
John Robb	Secretary of War	June 8, 1832	Acting.
John Robb	Secretary of War	July 16, 1832	Acting.
Daniel Brent	Secretary of State	July 21, 1832	Acting.
John Boyle	Secretary of the Navy	July 23, 1832	Acting.
Asbury Dickins	Secretary of the Treasury	July 18, 1832	Acting.
Asbury Dickins	Secretary of the Treasury	November 8, 1832	Acting.
John Robb	Secretary of War	November 12, 1832	Acting.
John Boyle	Secretary of the Navy	March 28, 1833	Acting.
John Robb	Secretary of War	May 6, 1833	Acting.
Asbury Dickins	Secretary of the Treasury	May 6, 1833	Acting.
Louis McLane	Secretary of State	May 13, 1833	Acting.
Asbury Dickins	Secretary of the Treasury	May 29, 1833	Acting.
Louis McLane	Secretary of State	May 29, 1833	Regular.
William J. Duane	Secretary of the Treasury	May 29, 1833	Regular.
Daniel Brent	Secretary of State	June 5, 1833	Acting.
John Robb	Secretary of War	June 6, 1833	Acting.
John Boyle	Secretary of the Navy	June 5, 1833	Acting.
Daniel Brent	Secretary of State	June 13, 1833	Acting.
Asbury Dickins	Secretary of State	August 10, 1833	Acting.
Roger B. Taney	Secretary of the Treasury	September 23, 1833	Regular.
John Robb	Secretary of War	September 28, 1833	Acting.
Peter V. Daniel	Attorney General	October 22, 1833	Regular.
Asbury Dickins	Secretary of State	November 11, 1833	Acting.
Benjamin F. Butler	Attorney General	November 15, 1833	Regular.
McClintock Young	Secretary of the Treasury	June 25, 1834	*Ad interim.*
John Forsyth	Secretary of State	June 27, 1834	Regular.
Levi Woodbury	Secretary of the Treasury	June 27, 1834	Regular.
Mahlon Dickerson	Secretary of the Navy	June 30, 1834	Regular.
John Boyle	Secretary of the Navy	July 5, 1834	Acting.
Asbury Dickins	Secretary of State	July 8, 1834	Acting.
Benjamin F. Butler	Secretary of War	No date	Acting.
John Forsyth	Secretary of War	No date	Acting.
Mahlon Dickerson	Secretary of War	No date	Acting.
Mahlon Dickerson	Secretary of War	October 8, 1834	Acting.
Asbury Dickins	Secretary of State	October 11, 1834	Acting.
Mahlon Dickerson	Secretary of War	January 19, 1835	Acting.
Amos Kendall	Postmaster General	May 1, 1835	Regular.
Asbury Dickins	Secretary of State	May 2, 1835	Acting.
John Boyle	Secretary of the Navy	May 7, 1835	Acting.
Carey C. Harris	Secretary of War	May 18, 1835	Acting.

List of names—Continued.

Names.	Office.	Date of appointment.	Character of appointment.
Asbury Dickins	Secretary of State	July 6, 1835	Acting.
McClintock Young	Secretary of the Treasury	July 1, 1835	Acting.
Asbury Dickins	Secretary of State	August 31, 1835	Acting.
Asbury Dickins	Secretary of State	September 28, 1835	Acting.
McClintock Young	Secretary of the Treasury	October 20, 1835	Acting.
Carey C. Harris	Secretary of War	October 23, 1835	Acting.
Carey C. Harris	Secretary of War	April 29, 1836	Acting.
Asbury Dickins	Secretary of State	May 19, 1836	Acting.
Carey C. Harris	Secretary of War	May 27, 1836	Acting.
Asbury Dickins	Secretary of State	July 7, 1836	Acting.
John Boyle	Secretary of the Navy	July 9, 1836	Acting.
C. A. Harris	Secretary of War	July 18, 1836	Acting.
C. A. Harris	Secretary of War	September 8, 1836	Acting.
B. F. Butler	Secretary of War	October 25, 1836	*Ad interim.*
B. F. Butler	Secretary of War	March 3, 1837	Regular.
Under President Van Buren.			
Joel R. Poinsett	Secretary of War	March 7, 1837	Regular.
A. O. Dayton	Secretary of State	June 28, 1837	Acting.
McClintock Young	Secretary of the Treasury	October 20, 1837	Acting.
John Boyle	Secretary of the Navy	October 23, 1837	Acting.
James K. Paulding	Secretary of the Navy	June 25, 1838	Regular.
Felix Grundy	Attorney General	July 5, 1838	Regular.
John Boyle	Secretary of the Navy	July 21, 1838	Acting.
McClintock Young	Secretary of the Treasury	July 10, 1838	Acting.
Aaron Vail	Secretary of State	July 21, 1838	Acting.
McClintock Young	Secretary of the Treasury	April 24, 1839	Acting.
Aaron Vail	Secretary of State	June 8, 1839	Acting.
McClintock Young	Secretary of the Treasury	June 15, 1839	Acting.
Henry D. Gilpin	Attorney General	January 11, 1840	Regular.
John M. Niles	Postmaster General	May 19, 1840	Regular.
J. L. Martin	Secretary of State	August 26, 1840	Acting.
J. L. Martin	Secretary of State	October 16, 1840	Acting.
McClintock Young	Secretary of the Treasury	March 2, 1841	*Ad interim.*
J. L. Martin	Secretary of State	March 2, 1841	Acting.
Under Presidents Harrison and Tyler.			
Thomas Ewing	Secretary of the Treasury	March 5, 1841	Regular.
Daniel Webster	Secretary of State	March 5, 1841	Regular.
John Bell	Secretary of War	March 5, 1841	Regular.
George E. Badger	Secretary of the Navy	March 5, 1841	Regular.
John J. Crittenden	Attorney General	March 5, 1841	Regular.
Francis Granger	Postmaster General	March 6, 1841	Regular.
John D. Simms	Secretary of the Navy	March 9, 1841	Acting.
Daniel Fletcher Webster	Secretary of State	April 27, 1841	Acting.
McClintock Young	Secretary of the Treasury	September 13, 1841	*Ad interim.*
Walter Forward	Secretary of the Treasury	September 13, 1841	Regular.
A. P. Upshur	Secretary of the Navy	September 13, 1841	Regular.
Charles A. Wickliffe	Postmaster General	September 13, 1841	Regular.
Hugh S. Legare	Attorney General	September 13, 1841	Regular.
John McLean	Secretary of War	September 13, 1841	Regular.
John C. Spencer	Secretary of War	October 12, 1841	Regular.
William S. Derrick	Secretary of State	October 20, 1841	Acting.
McClintock Young	Secretary of the Treasury	October 30, 1841	Acting.
McClintock Young	Secretary of the Treasury	May 14, 1842	Acting.
McClintock Young	Secretary of the Treasury	June 30, 1842	Acting.
McClintock Young	Secretary of the Treasury	July 20, 1842	Acting.
McClintock Young	Secretary of the Treasury	November 1, 1842	Acting.
McClintock Young	Secretary of the Treasury	March 1, 1843	*Ad interim.*
John C. Spencer	Secretary of the Treasury	March 3, 1843	Regular.
James Madison Porter	Secretary of War	March 8, 1843	Regular.
McClintock Young	Secretary of the Treasury	June 8, 1843	Acting.
Hugh S. Legare	Secretary of State	May 9, 1843	*Ad interim.*
William S. Derrick	Secretary of State	June 8, 1843	Acting.
Abel P. Upshur	Secretary of State	June 24, 1843	*Ad interim.*
Samuel Hume Porter	Secretary of War	May 31, 1843	Acting.
William S. Derrick	Secretary of State	August 17, 1843	Acting.
John Nelson	Attorney General	July 1, 1843	Regular.
A. P. Upshur	Secretary of State	July 24, 1843	Regular.
David Henshaw	Secretary of the Navy	July 24, 1843	Regular.
McClintock Young	Secretary of the Treasury	August 28, 1843	Acting.
John Nelson	Secretary of State	February 29, 1844	*Ad interim.*
Thomas W. Gilmer	Secretary of the Navy	February 15, 1844	Regular.
William Wilkins	Secretary of War	February 15, 1844	Regular.
John Y. Mason	Secretary of the Navy	March 14, 1844	Regular.
John C. Calhoun	Secretary of State	March 6, 1844	Regular.
McClintock Young	Secretary of the Treasury	May 2, 1844	*Ad interim.*
George M. Bibb	Secretary of the Treasury	June 15, 1844	Regular.

List of names—Continued.

Names.	Office.	Date of appointment.	Character of appointment.
Under President Polk.			
James Buchanan	Secretary of State	March 6, 1845	Regular.
Robert J. Walker	Secretary of the Treasury	March 6, 1845	Regular.
William L. Marcy	Secretary of War	March 6, 1845	Regular.
Cave Johnson	Postmaster General	March 6, 1845	Regular.
John Y. Mason	Attorney General	March 6, 1845	Regular.
George Bancroft	Secretary of the Navy	March 10, 1845	Regular.
John Y. Mason	Secretary of State	April 2, 1845	Acting.
John Y. Mason	Secretary of State	August 4, 1845	Acting.
N. P. Trist	Secretary of State	March 31, 1846	Acting.
N. P. Trist	Secretary of State	September 2, 1846	Acting.
John Y. Mason	Secretary of the Navy	September 9, 1846	Regular.
McClintock Young	Secretary of the Treasury	October 7, 1846	Acting.
Nathan Clifford	Attorney General	October 17, 1846	Regular.
N. P. Trist	Secretary of State	March 11, 1847	Acting.
N. P. Trist	Secretary of State	March 31, 1847	Acting.
John Y. Mason	Secretary of State	June 28, 1847	Acting.
McClintock Young	Secretary of the Treasury	July 21, 1847	Acting.
William S. Derrick	Secretary of State	August 4, 1847	Acting.
McClintock Young	Secretary of the Treasury	October 15, 1847	Acting.
McClintock Young	Secretary of the Treasury	December 9, 1847	Acting.
John Appleton	Secretary of State	April 10, 1848	Acting.
Archibald Campbell, jr	Secretary of War	May 26, 1848	Acting.
Isaac Toucey	Attorney General	June 21, 1848	Regular.
Isaac Toucey	Secretary of State	September 2, 1848	Acting.
John Y. Mason	Secretary of War	September 2, 1848	
Isaac Toucey	Secretary of State	November 20, 1848	Acting.
Under Presidents Taylor and Fillmore.			
McClintock Young	Secretary of the Treasury	March 6, 1849	*Ad interim.*
John M. Clayton	Secretary of State	March 7, 1849	Regular.
William M. Meredith	Secretary of the Treasury	March 8, 1849	Regular.
George W. Crawford	Secretary of War	March 8, 1849	Regular.
William B. Preston	Secretary of the Navy	March 8, 1849	Regular.
James Collamer	Postmaster General	March 8, 1849	Regular.
Reverdy Johnson	Attorney General	March 8, 1849	Regular.
Thomas Ewing	Secretary of the Interior	March 8, 1849	Regular.
Reverdy Johnson	Secretary of War	March 8, 1849	Acting.
William S. Derrick	Secretary of State	October 1, 1849	Acting.
John D. McPherson	Secretary of War	October 8, 1849	Acting.
John McGinnis	Secretary of the Treasury	June 20, 1850	Acting.
Winfield Scott	Secretary of War	July 23, 1850	*Ad interim.*
Nathan P. Hall	Postmaster General	July 23, 1850	Regular.
Thomas Corwin	Secretary of the Treasury	July 23, 1850	Regular.
Daniel Webster	Secretary of State	July 22, 1850	Regular.
W. A. Graham	Secretary of the Navy	July 22, 1850	Regular.
John J. Crittenden	Attorney General	July 22, 1850	Regular.
Charles M. Conrad	Secretary of War	August 15, 1850	Regular.
Alexander H. H. Stuart	Secretary of the Interior	September 12, 1850	Regular.
W. S. Derrick	Secretary of State	October 4, 1850	Acting.
Allen A. Hall	Secretary of the Treasury	October 7, 1850	Acting.
W. S. Derrick	Secretary of State	December 6, 1850	Acting.
W. L. Hodge	Secretary of the Treasury	March 11, 1851	Acting.
W. S. Derrick	Secretary of State	March 31, 1851	Acting.
W. S. Derrick	Secretary of State	May 10, 1851	Acting.
C. M. Conrad	Secretary of the Navy	May 15, 1851	Acting.
W. L. Hodge	Secretary of the Treasury	June 16, 1851	Acting.
W. S. Derrick	Secretary of State	June 20, 1851	Acting.
C. M. Conrad	Secretary of the Navy	July 11, 1851	Acting.
W. S. Derrick	Secretary of State	July 14, 1851	Acting.
W. A. Graham	Secretary of War	August 4, 1851	Acting.
W. L. Hodge	Secretary of the Treasury	August 4, 1851	Acting.
W. A. Graham	Secretary of the Interior	August 4, 1851	Acting.
W. A. Graham	Secretary of War	September 13, 1851	Acting.
W. L. Hodge	Secretary of the Treasury	September 13, 1851	Acting.
Winfield Scott	Secretary of War	September 22, 1851	Acting.
J. J. Crittenden	Secretary of State	September 25, 1851	Acting.
W. L. Hodge	Secretary of the Treasury	November 26, 1851	Acting.
W. S. Derrick	Secretary of State	February 20, 1852	Acting.
W. L. Hodge	Secretary of the Treasury	February 21, 1852	Acting.
W. L. Hodge	Secretary of the Treasury	March 1, 1852	Acting.
William Hunter	Secretary of State	March 19, 1852	Acting.
William L. Hodge	Secretary of the Treasury	April 26, 1852	Acting.
C. M. Conrad	Secretary of the Navy	November 2, 1850	Acting.
William Hunter	Secretary of State	May 1, 1852	Acting.
C. M. Conrad	Secretary of the Navy	May 19, 1852	Acting.
William L. Hodge	Secretary of the Treasury	May 24, 1852	Acting.
William L. Hodge	Secretary of the Treasury	June 10, 1852	Acting.
William Hunter	Secretary of State	July 6, 1852	Acting.

List of names—Continued.

Names.	Office.	Date of appointment.	Character of appointment.
John P. Kennedy	Secretary of the Navy	July 22, 1852	Regular.
John P. Kennedy	Secretary of War	August 19, 1852	Acting.
W. L. Hodge	Secretary of the Treasury	August 27, 1852	Acting.
Samuel D. Hubbard	Postmaster General	August 31, 1852	Regular.
C. M. Conrad	Secretary of State	September, 2, 1852	Acting.
W. L. Hodge	Secretary of the Treasury	October 4, 1852	Acting.
W. L. Hodge	Secretary of the Treasury	October 28, 1852	Acting.
Edward Everett	Secretary of State	November 6, 1852	Regular.
W. L. Hodge	Secretary of the Treasury	December 31, 1852	Acting.
W. L. Hodge	Secretary of the Treasury	January 15, 1853	Acting.
William Hunter	Secretary of State	March 3, 1853	*Ad interim.*
W. L. Hodge	Secretary of the Treasury	March 3, 1853	Acting.
Under President Pierce.			
W. L. Marcy	Secretary of State	March 7, 1853	Regular.
James Guthrie	Secretary of the Treasury	March 7, 1853	Regular.
Robert McClelland	Secretary of the Interior	March 7, 1853	Regular.
Jefferson Davis	Secretary of War	March 7, 1853	Regular.
J. C. Dobbin	Secretary of the Navy	March 7, 1853	Regular.
James Campbell	Postmaster General	March 7, 1853	Regular.
Caleb Cushing	Attorney General	March 7, 1853	Regular.
P. G. Washington	Secretary of the Treasury	July 11, 1853	Acting.
J. C. Dobbin	Secretary of War	July 11, 1853	Acting.
A. D. Mann	Secretary of State	July 29, 1853	Acting.
P. G. Washington	Secretary of the Treasury	September 23, 1853	Acting.
A. D. Mann	Secretary of State	September 28, 1853	Acting.
P. G. Washington	Secretary of the Treasury	April 12, 1854	Acting.
William Hunter	Secretary of State	August 21, 1854	Acting.
Archibald Campbell	Secretary of War	August 29, 1854	Acting.
P. G. Washington	Secretary of the Treasury	October 5, 1854	Acting.
Archibald Campbell	Secretary of War	October 30, 1854	Acting.
P. G. Washington	Secretary of the Treasury	May 5, 1855	Acting.
Samuel Cooper	Secretary of War	May 26, 1855	Acting.
William Hunter	Secretary of State	July 21, 1855	Acting.
P. G. Washington	Secretary of the Treasury	August 6, 1855	Acting.
Archibald Campbell	Secretary of War	October 9, 1855	Acting.
Archibald Campbell	Secretary of War	January 19, 1857	Acting.
Samuel Cooper	Secretary of War	March 3, 1857	Acting.
Under President Buchanan.			
Lewis Cass	Secretary of State	March 6, 1857	Regular.
Howell Cobb	Secretary of the Treasury	March 6, 1857	Regular.
Jacob Thompson	Secretary of the Interior	March 6, 1857	Regular.
John B. Floyd	Secretary of War	March 6, 1857	Regular.
Isaac Toucey	Secretary of the Navy	March 6, 1857	Regular.
Aaron V. Brown	Postmaster General	March 6, 1857	Regular.
J. S. Black	Attorney General	March 6, 1857	Regular.
Philip Clayton	Secretary of the Treasury	April 23, 1857	Acting.
John Appleton	Secretary of State	June 1, 1857	Acting.
Philip Clayton	Secretary of the Treasury	June 28, 1858	Acting.
Philip Clayton	Secretary of the Treasury	July 13, 1858	Acting.
John Appleton	Secretary of State	August 20, 1858	Acting.
Joseph Holt	Postmaster General	March 14, 1859	Regular.
Philip Clayton	Secretary of the Treasury	April 26, 1859	Acting.
William R. Drinkard	Secretary of War	July 5, 1859	Acting.
Philip Clayton	Secretary of the Treasury	July 26, 1859	Acting.
Philip Clayton	Secretary of the Treasury	August 30, 1859	Acting.
Philip Clayton	Secretary of the Treasury	May 30, 1860	Acting.
William H. Trescott	Secretary of State	June 26, 1860	Acting.
Philip Clayton	Secretary of the Treasury	July 27, 1860	Acting.
Philip Clayton	Secretary of the Treasury	October 6, 1860	Acting.
Philip Clayton	Secretary of the Treasury	October 22, 1860	Acting.
Philip Clayton	Secretary of the Treasury	November 26, 1860	Acting.
Isaac Toucey	Secretary of the Treasury	December 10, 1860	*Ad interim.*
Philip F. Thomas	Secretary of the Treasury	December 12, 1860	Regular.
W. Hunter	Secretary of State	December 13, 1860	Acting.
J. S. Black	Secretary of State	December 13, 1860	Regular.
Edwin M. Stanton	Attorney General	December 20, 1860	Regular.

Mr. CURTIS. I now desire to move for an order on the proper officer of the Senate to furnish, so that we may put into the case, a statement of the dates of the beginning and end of each session of the Senate, including, of course, its executive sessions as well as its legislative, from the origin of the government down to the present time. That will enable us, by comparing those dates with

these facts which we put into the case, to see what was done within and what was done without the session of the Senate.

The CHIEF JUSTICE. The Chief Justice is of opinion that that is an application which can only be addressed to the Senate in legislative session. If the court desire it he will vacate the chair in order that the President *pro tempore* may take it.

Mr. CURTIS. I would state, Mr. Chief Justice, that we have now concluded our documentary evidence as at present advised; we may possibly desire hereafter to offer some additional evidence of this character, but as we now understand it we shall not.

Mr. JOHNSON. Mr. Chief Justice, I move that the Senate, sitting as a court of impeachment, adjourn until to-morrow at twelve o'clock.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned.

THURSDAY, *April* 16, 1868.

The Chief Justice of the United States took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives and the counsel for the respondent, except Mr. Stanbery, appeared and took the seats assigned them respectively.

The members of the House of Representatives, as in Committee of the Whole, preceded by Mr. E. B. Washburne, chairman of that committee, and accompanied by the Speaker and Clerk, appeared and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the journal of yesterday's proceedings.

The Secretary proceeded to read the journal, but was interrupted by

Mr. SHERMAN. I move that the reading of the journal be dispensed with.

The CHIEF JUSTICE. If there be no objection the reading of the journal will be dispensed with. There being no objection, it is so ordered.

Mr. SUMNER. Mr. President, I send to the Chair a declaration of opinion to be adopted by the Senate as an answer to the constantly recurring questions on the admissibility of testimony.

The CHIEF JUSTICE. The Secretary will read the paper submitted by the senator from Massachusetts.

The Secretary read as follows:

Considering the character of this proceeding; that it is a trial of impeachment before the Senate of the United States, and not a proceeding by indictment in an inferior court;

Considering that senators are, from beginning to end, judges of law as well as fact, and that they are judges from whom there is no appeal;

Considering that the reasons for the exclusion of evidence on an ordinary trial where the judge responds to the law and the jury to the fact are not applicable to such a proceeding;

Considering that according to parliamentary usage, which is the guide in all such cases, there is on trials of impeachment a certain latitude of inquiry and a freedom from technicality; and

Considering, finally, that already in the course of this trial there have been differences of opinion as to the admissibility of evidence:

Therefore, in order to remove all such differences and to hasten the despatch of business, it is deemed advisable that all evidence offered on either side not trivial or obviously irrelevant in nature shall be received without objection, it being understood that the same when admitted shall be open to question and comparison at the bar, in order to determine its competency and value, and shall be carefully sifted and weighed by senators in the final judgment.

Mr. CONNESS. Mr. President, I move to lay that paper on the table, and on that motion I ask for the yeas and nays.

The yeas and nays were ordered, and being taken resulted—yeas 33, nays 11; as follows:

YEAS—Messrs. Buckalew, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Davis, Dixon, Doolittle, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Harlan, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Saulsbury, Stewart, Thayer, Tipton, Williams, and Yates—33.

NAYS—Messrs. Anthony, Fowler, Grimes, Morton, Patterson of Tennessee, Sherman, Sumner, Van Winkle, Vickers, Willey, and Wilson—11.

NOT VOTING—Messrs. Bayard, Henderson, Hendricks, McCreery, Norton, Nye, Ross, Sprague, Trumbull, and Wade—10.

So the proposition was laid upon the table.

The CHIEF JUSTICE. Gentlemen of counsel for the President, you will please proceed with the defence.

Mr. EVARTS. Mr. Chief Justice and Senators, I am not able to announce the recovery of Mr. Stanbery, but I think had not the weather been so entirely unfavorable he would have been able to be out, perhaps, to-day. He is, however, convalescent, but, nevertheless, the situation of his health and proper care for his complete recovery prevents us from having much opportunity of consultation with him during the intervals of the sessions of this court. We shall desire to-day to proceed with such evidence as we think properly we can produce in his absence, and may occupy the session of the court with that evidence during the usual hours of its sitting. We shall not desire to protract, however, the examinations with any such object or view, and if before the close of the ordinary period of the session we should come to that portion of the testimony in which we regard Mr. Stanbery's presence as indispensable we shall submit that to the discretion of the court.

Mr. CURTIS. Mr. Chief Justice, I desire to offer in evidence two documents received this morning from the Department of State, of a character, I believe, entirely similar to some of those which were received yesterday. They are in continuation chronologically of what was put in yesterday, and merely complete the series.

Mr. Manager BUTLER. Under the decision of yesterday we do not object. We understand them to be the same thing. You do not desire them read, I suppose?

Mr. CURTIS. No, I do not desire them read.

Mr. JOHNSON. State what they are.

Mr. CURTIS. They are a continuation of the documents put in yesterday, so as to bring the evidence of the practice down to a more recent period.

The documents thus offered in evidence are attested by the Secretary of State in the usual form to be copied from the records of his department, and contain the letters of authority, designation, or appointment in the following cases:

On the 11th of July, 1853, President Pierce appointed Peter G. Washington to take charge of the Treasury Department "during the expected absence of the Secretary of the Treasury from the seat of government."

On the 11th of July, 1853, President Pierce appointed James C. Dobbin to be Acting Secretary of War in the absence of Jefferson Davis.

On the 29th of July, 1853, President Pierce appointed A. Dudley Mann, Assistant Secretary of State, to be acting Secretary of State during the temporary absence of Secretary W. L. Marcy from the seat of government.

On the 23d of September, 1853, President Pierce appointed Peter G. Washington to discharge the duties of Secretary of the Treasury during the absence of Secretary Guthrie from the seat of government.

On the 28th of September, 1853, President Pierce appointed A. Dudley Mann, Assistant Secretary of State, to be acting Secretary of State during the temporary absence of Mr. Marcy from the seat of government.

On the 12th of April, 1854, President Pierce appointed Peter G. Washington to discharge the duties of Secretary of the Treasury during the temporary absence of Secretary Guthrie from Washington.

On the 21st of August, 1854, President Pierce appointed William Hunter to perform the duties of Secretary of State during the absence of Mr. Marcy from the seat of government.

On the 29th of August, 1854, President Pierce appointed Archibald Campbell to be acting Secretary of War during the absence of the Secretary from the seat of government.

On the 5th of October, 1854, President Pierce appointed Peter G. Washington to discharge the duties of Secretary of the Treasury during the absence of Secretary Guthrie from Washington.

On the 30th of October, 1854, President Pierce appointed Archibald Campbell, chief clerk of the War Department, to be acting Secretary of War during the temporary absence of the Secretary.

On the 3d of May, 1855, President Pierce appointed Peter G. Washington to discharge the duties of Secretary of the Treasury during the absence of Secretary Guthrie from Washington.

On the 26th of May, 1855, President Pierce appointed Colonel Samuel Cooper, United States army, acting Secretary of War, during the temporary absence of the Secretary from the seat of government.

On the 21st of July, 1855, President Pierce appointed William Hunter, Assistant Secretary of State, to perform the duties of Secretary of State, Mr. Marcy being absent from the seat of government.

On the 6th of August, 1855, President Pierce appointed Peter G. Washington to discharge the duties of Secretary of the Treasury during the absence of Secretary Guthrie from Washington.

On the 9th of October, 1856, President Pierce appointed A. Campbell acting Secretary of War, during the temporary absence of the Secretary.

On the 19th of January, 1857, President Pierce appointed Archibald Campbell, acting Secretary of War, during the temporary absence of the Secretary.

On the 3d of March, 1857, President Pierce appointed Colonel Samuel Cooper, Adjutant General of the army, to be acting Secretary of War.

On the 23d of April, 1857, President Buchanan appointed Philip Clayton to discharge the duties of Secretary of the Treasury during the absence from Washington of Secretary Cobb.

On the 1st of June, 1857, President Buchanan appointed John Appleton to be acting Secretary of State during the absence of Secretary Cass from the seat of government.

On the 28th June, 1858, President Buchanan appointed Philip Clayton to perform the duties of Secretary of the Treasury during the absence of Secretary Cobb from Washington.

On the 13th of July, 1858, President Buchanan appointed Philip Clayton to discharge the duties of Secretary of the Treasury during the absence from Washington of Secretary Cobb.

On the 20th of August, 1858, President Buchanan appointed John Appleton, Assistant Secretary of State, to discharge the duties of Secretary of State during the absence of Secretary Cass from Washington.

On the 26th of April, 1859, President Buchanan appointed Philip Clayton to act as Secretary of the Treasury during the temporary absence of the Secretary of the Treasury.

On the 5th of July, 1859, President Buchanan appointed William K. Drinkard to be acting Secretary of War during the absence of the Secretary from his office.

On the 26th July, 1859, President Buchanan appointed Philip Clayton to act as Secretary of the Treasury during the temporary absence of Secretary Cobb from Washington, "from and after the 1st of August."

On the 30th of August, 1859, President Buchanan appointed Philip Clayton to act as Secretary of the Treasury during the absence from Washington of Secretary Cobb.

On the 30th May, 1860, President Buchanan appointed Philip Clayton to act as Secretary of the Treasury during the absence from Washington of Secretary Cobb.

On the 26th of June, 1860, President Buchanan appointed William H. Trescott to discharge the duties of Secretary of State during the absence of the Secretary of State from Washington.

On the 27th July, 1860, President Buchanan appointed Philip Clayton to discharge the duties of Secretary of the Treasury during the absence of Secretary Cobb from Washington.

On the 6th October, 1860, President Buchanan appointed Philip Clayton to discharge the duties of Secretary of the Treasury during the absence of Secretary Cobb from Washington.

On the 22d of October, 1860, President Buchanan appointed Philip Clayton to discharge the duties of Secretary of the Treasury during the absence of Secretary Cobb from Washington.

On the 26th of November, 1860, President Buchanan appointed Philip Clayton to discharge the duties of Secretary of the Treasury during the sickness of Secretary Cobb.

On the 13th of December, 1860, President Buchanan appointed William Hunter, chief clerk of the Department of State, to act as Secretary of State until an appointee should be regularly commissioned.

On the 10th of December, 1860, President Buchanan, by virtue of the act of Congress approved February 13, 1795, authorized Isaac Toucey, Secretary of the Navy, to perform the duties of Secretary of the Treasury, "now vacant by the resignation of Howell Cobb," until a successor should be appointed and the vacancy filled.

On the 2d of August, 1861, President Lincoln appointed Thomas A. Scott to act as Secretary of War during the temporary absence of Secretary Cameron from the seat of government.

On the 8th of August, 1861, President Lincoln appointed George Harrington to discharge

the duties of Secretary of the Treasury during the temporary absence from Washington of Salmon P. Chase.

On the 27th of August, 1861, President Lincoln appointed Frederick W. Seward, Assistant Secretary of State, to be acting Secretary of State during the temporary absence from the seat of government of William H. Seward.

On the 3d of September, 1861, President Lincoln appointed George Harrington to act as Secretary of the Treasury during the absence of S. P. Chase from Washington.

On the 26th of September, 1861, President Lincoln appointed William L. Hodge to be acting Secretary of the Treasury during the absence of the Secretary, "commencing from the 27th instant."

On the 2d of November, 1861, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of Salmon P. Chase from Washington.

On the 4th of November, 1861, President Lincoln appointed Frederick W. Seward, Assistant Secretary of State, to be acting Secretary of State during the temporary absence of William H. Seward from the seat of government.

On the 13th of November, 1861, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of S. P. Chase from Washington.

On the 18th of December, 1861, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasuary during the absence of S. P. Chase from Washington.

On the 4th of January, 1862, President Lincoln, "pursuant to the act of Congress in such case made and provided," the Secretary of State being absent from the seat of government, appointed Frederick W. Seward, Assistant Secretary, to be Secretary of State.

On the 28th of January, 1862, the Secretary of State being absent from the seat of government, President Lincoln, "pursuant to the authority in such case provided," authorized Assistant Secretary F. W. Seward to act as Secretary of State.

On the 6th of February, 1862, the Secretary of State being absent from the seat of government, President Lincoln, "pursuant to the authority in such case provided," authorized Assistant Secretary F. W. Seward to act as Secretary of State.

On the 9th of April, 1862, the Secretary of State being absent from the seat of government, President Lincoln, "pursuant to the authority in such case provided," authorized Assistant Secretary F. W. Seward to act as Secretary of State.

On the 11th of April, 1862, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of Salmon P. Chase from Washington.

On the 5th of May, 1862, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of Salmon P. Chase from Washington.

On the 14th of May, 1862, the Secretary of State being absent from the seat of government, President Lincoln authorized William Hunter, chief clerk of the Department of State, to perform the duties of Secretary until his return.

On the 19th of May, 1862, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of Salmon P. Chase from Washington.

On the 11th of June, 1862, President Lincoln authorized Frederick W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State, the Secretary of State being absent from the seat of government.

On the 30th of June, 1862, President Lincoln authorized Frederick W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State, the Secretary of State being absent from the seat of government.

On the 27th of August, 1862, President Lincoln authorized Frederick W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State, the Secretary of State being absent from the seat of government.

On the 8th of January, 1863, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of the Secretary, Salmon P. Chase.

On the 13th of March, 1863, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of the Secretary, Salmon P. Chase.

On the 18th of April, 1863, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of the Secretary, Salmon P. Chase.

On the 27th of April, 1863, President Lincoln, the Secretary of State being absent, appointed William Hunter, chief clerk of the Department of State, to perform the duties of Secretary of State until the return of the Secretary.

On the 21st of May, 1863, President Lincoln appointed George Harrington to perform the duties of Secretary of the Treasury during the absence of the Secretary, Salmon P. Chase.

On the 25th of May, 1863, President Lincoln, the Secretary of State being absent, authorized Frederick W. Seward, Assistant Secretary, to discharge the duties of Secretary of State.

On the 27th of July, 1863, President Lincoln appointed George Harrington to act as Secretary of the Treasury during the absence of the Secretary, Salmon P. Chase.

On the 15th of August, 1863, President Lincoln, the Secretary of State being absent, authorized Frederick W. Seward, Assistant Secretary, to act as Secretary of State.

On the 10th of October, 1863, President Lincoln appointed Lucius E. Chittenden to discharge the duties of Secretary of the Treasury during the absence of Salmon P. Chase, Secretary.

On the 2d of November, 1863, President Lincoln, the Secretary of State being absent, authorized Frederick W. Seward, Assistant Secretary, to act as Secretary of State.

On the 23d of December, 1863, President Lincoln, the Secretary of State being absent, authorized Frederick W. Seward, Assistant Secretary, to act as Secretary of State.

On the 11th of April, 1864, President Lincoln, the Secretary of State being absent, authorized Frederick W. Seward, Assistant Secretary, to act as Secretary of State.

On the 14th of April, 1864, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of the Secretary, Salmon P. Chase.

On the 27th of April, 1864, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of Secretary Salmon P. Chase.

On the 7th of June, 1864, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of Secretary Salmon P. Chase.

On the 30th of June, 1864, President Lincoln authorized George Harrington, Assistant Secretary of the Treasury, to perform all and singular the duties of Secretary of the Treasury until a successor to Mr. Chase, resigned, should be commissioned, or until further orders.

On the 11th of July, 1864, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of William P. Fessenden, Secretary.

On the 30th of July, 1864, President Lincoln appointed George Harrington to discharge the duties of Secretary of the Treasury during the absence of Secretary Fessenden.

On the 29th of August, 1864, President Lincoln authorized Frederick W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State during the absence of the Secretary, W. H. Seward.

On the 26th of September, 1864, President Lincoln authorized Frederick W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State during the absence of the Secretary, W. H. Seward

On the 17th of October, 1864, President Lincoln appointed George Harrington to act as Secretary of the Treasury during the absence of Secretary Fessenden.

On the 4th of November, 1864, President Lincoln authorized William Hunter, chief clerk of the Department of State, to act as Secretary of State until the return of the Secretary, he being absent.

On the 4th of January, 1865, President Lincoln authorized Frederick W. Seward, Assistant Secretary of State, to act as Secretary of State "during the present temporary absence of William H. Seward."

On the 1st of February, 1865, President Lincoln authorized Frederick W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State during the absence of William H. Seward.

On the 4th of March, 1865, President Lincoln authorized George Harrington, Assistant Secretary of the Treasury, to perform the duties of Secretary of the Treasury until a successor to Mr. Fessenden should be commissioned and qualified, or until further orders.

On the 10th of April, 1865, President Lincoln authorized Frederick W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State during the illness of William H. Seward.

On the 15th of April, 1865, President Johnson appointed William Hunter to perform the duties of Secretary of State until otherwise ordered, Secretary Seward being sick.

On the 26th of July, 1865, President Johnson appointed William Hunter to be acting Secretary of State in the absence of William H. Seward.

On the 15th of August, 1865. President Johnson authorized William Hunter to discharge the duties of Secretary of State in consequence of the absence of the Secretary from the seat of government.

On the 29th of September, 1865, President Johnson appointed William E. Chandler, Assistant Secretary, of the Treasury, to perform the duties of the Secretary of the Treasury during the absence of Secretary McCulloch.

On the 4th of October, 1865, President Johnson authorized William Hunter, chief clerk of the Department of State, to discharge the duties of Secretary of State until the return of the Secretary, he being absent.

On the 6th of November, 1865, President Johnson appointed William E. Chandler to discharge the duties of Secretary of the Treasury during the absence of Secretary McCulloch.

On the 20th of December, 1865, President Johnson appointed William E. Chandler to discharge the duties of Secretary of the Treasury during the absence of Secretary McCulloch.

On the 20th of December, 1865, President Johnson appointed William E. Chandler to discharge the duties of Secretary of the Treasury during the absence of Secretary McCulloch.

On the 30th of December, 1865, President Johnson authorized William Hunter to discharge the duties of Secretary of State, the Secretary being absent.

On the 15th of May, 1866, President Johnson authorized F. W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State, the Secretary being absent.

On the 4th of August, 1866, President Johnson appointed William E. Chandler to discharge the duties of Secretary of the Treasury during the temporary absence of Secretary McCulloch.

On the 10th of August, 1866, President Johnson authorized Henry Stanbery, Attorney General, to discharge the duties of Secretary of State during the absence of that Secretary.

On the 18th of September, 1866, President Johnson authorized Frederick W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State during the illness of William H. Seward.

On the 5th of October, 1866, President Johnson authorized Frederick W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State during the illness of William H. Seward.

On the 29th of October, 1866, President Johnson authorized William Hunter, Second Assistant Secretary of State, to discharge the duties of Secretary of State during the absence of William H. Seward.

On the 5th of November, 1866, President Johnson authorized William E. Chandler to perform the duties of Secretary of the Treasury during the temporary absence of Secretary McCulloch.

On the 20th of December, 1866, President Johnson authorized William E. Chandler to perform the duties of Secretary of the Treasury during the temporary absence of Secretary McCulloch.

On the 23d of April, 1867, President Johnson authorized Frederick W. Seward, Assistant Secretary of State, to act as Secretary of State during the absence of William H. Seward.

On the 1st of June, 1867, President Johnson authorized F. W. Seward, Assistant Secretary of State, to act as Secretary of State during the absence of Secretary W. H. Seward.

On the 23d of July, 1867, President Johnson authorized William Hunter, Second Assistant Secretary of State, to discharge the duties of Secretary of State during the absence of William H. Seward.

On the 16th of September, 1867, President Johnson authorized John F. Hartley to discharge the duties of Secretary of the Treasury during the temporary absence of Secretary McCulloch.

On the 9th of October, 1867, President Johnson authorized Frederick W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State during the absence of the Secretary, W. H. Seward, from the seat of government.

On the 13th of November, 1867, President Johnson appointed John F. Hartley to discharge the duties of Secretary of the Treasury during the absence of Secretary McCulloch "at any time in the month of November, 1867."

On the 11th of March, 1868, President Johnson appointed F. W. Seward, Assistant Secretary of State, to discharge the duties of Secretary of State during the absence from the seat of government of Secretary W. H. Seward.

Mr. CURTIS. I will now put in evidence, so that it may be printed in connection with this documentary evidence, statements furnished by the Secretary of the Senate under the order of the Senate; one showing the beginning and ending of each legislative session of Congress from 1789 to 1868; and the other being a statement of the beginning and ending of each special session of the Senate from 1789 to 1868.

Mr. Manager BUTLER. We have no objection.

The CHIEF JUSTICE. The evidence is received.

The documents are as follows:

Statement of the beginning and ending of each legislative session of Congress, from 1789 *to* 1868.

Congress.	Session.	Began.	Ended.	Congress.	Session.	Began.	Ended.
1st	1st	Mar. 4, 1789	Sept. 29, 1789.	9th	2d	Dec. 1, 1806	Mar. 3, 1807.
1st	2d	Jan. 4, 1790	Aug. 12, 1790.	10th	1st	Oct. 26, 1807	Apr. 25, 1808.
1st	3d	Dec. 6, 1790	Mar. 3, 1791.	10th	2d	Nov. 7, 1808	Mar. 3, 1809.
2d	1st	Oct. 24, 1791	May 8, 1792.	11th	1st	May 22, 1809	June 28, 1809.
2d	2d	Nov. 5, 1792	Mar. 2, 1793.	11th	2d	Nov. 27, 1809	May 1, 1810.
3d	1st	Dec. 2, 1793	June 9, 1794.	11th	3d	Dec. 3, 1810	Mar. 3, 1811.
3d	2d	Nov. 3, 1794	Mar. 3, 1795.	12th	1st	Nov. 4, 1811	July 6, 1812.
4th	1st	Dec. 7, 1795	June 1, 1796.	12th	2d	Nov. 2, 1812	Mar. 3, 1812.
4th	2d	Dec. 5, 1796	Mar. 3, 1797.	13th	1st	May 24, 1813	Aug. 2, 1813.
5th	1st	May 15, 1797	July 10, 1797.	13th	2d	Dec. 6, 1813	Apr. 18, 1814.
5th	2d	Nov. 13, 1797	July 16, 1798.	13th	3d	Sept. 19, 1814	Mar. 3, 1815.
5th	3d	Dec. 3, 1798	Mar. 3, 1799.	14th	1st	Dec. 4, 1815	Apr. 30, 1816.
6th	1st	Dec. 2, 1799	May 14, 1800.	14th	2d	Dec. 2, 1816	Mar. 3, 1817.
6th	2d	Nov. 17, 1800	Mar. 3, 1801.	15th	1st	Dec. 1, 1817	Apr. 20, 1818.
7th	1st	Dec. 7, 1801	May 3, 1802.	15th	2d	Nov. 16, 1818	Mar. 3, 1819.
7th	2d	Dec. 6, 1802	Mar. 3, 1803.	16th	1st	Dec. 6, 1819	May 15, 1820.
8th	1st	Oct. 17, 1803	Mar. 27, 1804.	16th	2d	Nov. 13, 1820	Mar. 3, 1821.
8th	2d	Nov. 5, 1804	Mar. 3, 1805.	17th	1st	Dec. 3, 1821	May 8, 1822.
9th	1st	Dec. 2, 1805	Apr. 21, 1806.	17th	2d	Dec. 2, 1822	Mar. 3, 1823.

Statement of the beginning and ending of each legislative session of Congress, from 1789 *to* 1868—Continued.

Congress.	Session.	Began.	Ended.	Congress.	Session.	Began.	Ended.
18th	1st	Dec. 1, 1823	May 27, 1824.	29th	2d	Dec. 7, 1846	Mar. 3, 1847.
18th	2d	Dec. 6, 1824	Mar. 3, 1825.	30th	1st	Dec. 6, 1847	Aug. 14, 1848.
19th	1st	Dec. 5, 1825	May 22, 1826.	30th	2d	Dec. 4, 1848	Mar. 3, 1849.
19th	2d	Dec. 4, 1826	Mar. 3*1827.	31st	1st	Dec. 3, 1849	Sept. 30, 1850.
20th	1st	Dec. 3, 1827	May 26, 1828.	31st	2d	Dec. 2, 1850	Mar. 3, 1851.
20th	2d	Dec. 1, 1828	Mar. 3, 1829.	32d	1st	Dec. 1, 1851	Aug. 31, 1852.
21st	1st	Dec. 7, 1829	May 31, 1830.	32d	2d	Dec. 6, 1852	Mar. 3, 1853.
21st	2d	Dec. 6, 1830	Mar. 3, 1831.	33d	1st	Dec. 5, 1853	Aug. 7, 1854.
22d	1st	Dec. 5, 1831	July 16, 1832.	33d	2d	Dec. 4, 1854	Mar. 3, 1855.
22d	2d	Dec. 3, 1832	Mar. 2, 1833.	34th	1st	Dec. 3, 1855	Aug. 18, 1856.
23d	1st	Dec. 2, 1833	June 30, 1834.	34th	2d	Aug. 21, 1856	Aug. 30, 1856.
23d	2d	Dec. 1, 1834	Mar. 3, 1835.	34th	3d	Dec. 1, 1856	Mar. 3, 1857.
24th	1st	Dec. 7, 1835	July 4, 1836.	35th	1st	Dec. 7, 1857	June 14, 1858.
24th	2d	Dec. 5, 1836	Mar. 3, 1837.	25th	2d	Dec. 6, 1858	Mar. 3, 1859.
25th	1st	Sept. 4, 1837	Oct. 16, 1837.	36th	1st	Dec. 5, 1859	June 25, 1860.
25th	2d	Dec. 4, 1837	July 9, 1838.	36th	2d	Dec. 3, 1860	Mar. 2, 1861.
25th	3d	Dec. 3, 1838	Mar. 3, 1839.	37th	1st	July 4, 1861	Aug. 6, 1861.
26th	1st	Dec. 2, 1839	July 21, 1840.	37th	2d	Dec. 2, 1861	July 17, 1862.
26th	2d	Dec. 7, 1840	Mar. 3, 1841.	37th	3d	Dec. 1, 1862	Mar. 3, 1863.
27th	1st	May 31, 1841	Sept. 13, 1841.	38th	1st	Dec. 7, 1863	July 4, 1864.
27th	2d	Dec. 6, 1841	Aug. 31, 1842.	38th	2d	Dec. 5, 1864	Mar. 3, 1865.
27th	3d	Dec. 5, 1842	Mar. 3, 1843.	39th	1st	Dec. 4, 1865	July 25, 1866.
28th	1st	Dec. 4, 1843	June 11, 1844.	39th	2d	Dec. 3, 1866	Mar. 2, 1867.
28th	2d	Dec. 2, 1844	Mar. 3, 1845.	40th	1st	March 4, 1867	Dec. 2, 1867.
29th	1st	Dec. 1, 1845	Aug. 10, 1846.	40th	2d	Dec. 2, 1867	.....

OFFICE SECRETARY OF THE SENATE, *April* 16, 1868.

I certify that the foregoing statement is correct as appears by the records of the Senate.

J. W. FORNEY, *Secretary.*

Statement of the beginning and ending of each special session of the Senate from 1789 *to* 1868.

Began.	Ended.
March 4, 1797	March 4, 1797.
March 4, 1801	March 5, 1801.
March 4, 1809	March 7, 1809.
March 4, 1817	March 6, 1817.
March 4, 1825	March 9, 1825.
March 4, 1829	March 17, 1829.
March 4, 1837	March 10, 1837.
March 4, 1841	March 15, 1841.
March 4, 1845	March 20, 1845.
March 5, 1849	March 23, 1849.
March 4, 1851	March 13, 1851.
March 4, 1853	April 11, 1853.
March 4, 1857	March 14, 1857.
June 15, 1858	June 16, 1858.
March 4, 1859	March 10, 1859.
June 26, 1860	June 28, 1860.
March 4, 1861	March 28, 1861.
March 4, 1863	March 14, 1863.
March 4, 1865	March 11, 1865.
April 1, 1867	April 20, 1867.

OFFICE SECRETARY OF THE SENATE,
April 16, 1868.

I certify that the foregoing statement is correct, as appears by the records of the Senate.

J. W. FORNEY, *Secretary.*

Mr. CURTIS. The Sergeant-at-arms will now please call Walter S. Cox.

WALTER S. COX sworn and examined.

By Mr. CURTIS:

Question. State what is your residence and what is your profession.

Answer. I reside in Georgetown, in this District. I am a lawyer by profession.

Q. How long have you been in the practice of the law?

A. Some twenty years, I think.

Q. In this city?

A. Yes, sir.

Q. In what courts?

A. In the courts of this District and, most of the time, in the Supreme Court of the United States.

Q. Were you connected professionally with the matter of General Thomas before the criminal court of this District or before a magistrate?

A. I was.

Q. When and under what circumstances did your connection with that matter begin?

A. On Saturday, the 22d of February——

Mr. Manager BUTLER. Stop a moment, please. If I heard the question correctly, the inquiry put to the witness was, when and under what circumstances did your connection with the case of Thomas before the Supreme Court, or the chief justice of the District, commence?

Mr. CURTIS. That was the question in substance.

Mr. Manager BUTLER. To that we must object. It is impossible to see how the employment of Mr. Cox to defend Mr. Thomas can have anything to do with this case. It stands in this way: we put in that Mr. Thomas said that if it had not been for the arrest he should have taken the War Office by force, as he had threatened. The defence then produced the warrant and affidavit and the record of his acquittal. I do not propose to argue it; but I ask the attention of the Senate to the question whether the employment of Mr. Cox by Mr. Thomas as counsel, the circumstances under which he was employed, and the declaration of Mr. Thomas to his counsel, can be put in evidence under any rule, even the one which the Senate has just voted should not be the governing rule of this body—the exception to evidence as too trivial—if it were not legally incompetent?

Mr. CURTIS. I understand the objection to be that we cannot show that General Thomas employed Mr. Cox as his counsel; that we cannot show declarations made by Mr. Thomas to Mr. Cox, as his counsel. We do not propose to prove either of those facts. If the gentleman will wait long enough to see what we do propose to prove, he will see that that objection is not applicable. (To the witness.) Will you now state, sir, when, and by whom, and under what circumstances you were employed in that matter?

Mr. Manager BUTLER. Stop one moment. I object. The question is, when, and by whom, and under what circumstances this gentleman was employed? If he was employed by the President, that is worse than the other, in my judgment, as a legal proposition. I desire that the question be put in writing, that we may have a ruling upon it; or, to save time, if the learned counsel will put in exactly what he proposes to prove by this witness, we can meet the whole of it.

The CHIEF JUSTICE. The Chief Justice sees no objection to the question as an introductory question, but will submit it to the Senate if it is desired. (After a pause, to the witness.) You can answer the question.

A. On Saturday, the 22d of February, a messenger called at my house with a carriage, and stated that Mr. Seward desired to see me immediately——

Mr. Manager BUTLER. I object to the declarations of any person there.

The CHIEF JUSTICE, (to the witness.) You need not state anything that Mr. Seward said to you.

The WITNESS. Nothing was said by Mr. Seward. The messenger stated further that he was directed to take me immediately to the President's House. I accompanied him to the President's House, and found the President and General Thomas there alone.

By Mr. CURTIS:

Q. At what hour, or about what hour?

A. At about five o'clock in the afternoon. After I was seated the President stated——

Mr. Manager BUTLER. Stop a moment. I object to the statement of the President at 5 o'clock in the afternoon. [Laughter.]

The CHIEF JUSTICE. Will the counsel for the President state the object of this testimony?

Mr. CURTIS rose.

Mr. Manager BUTLER. We desire that that may be put in writing, Mr. Chief Justice.

The CHIEF JUSTICE. The offer to prove will be put in writing if any senator requires it.

Mr. EDMUNDS. I ask that the offer to prove may be put in writing, that we may all understand precisely what the question is.

The CHIEF JUSTICE. The counsel will please put what they propose to prove in writing.

The offer was reduced to writing and sent to the desk.

The CHIEF JUSTICE. The Secretary will read the proposition.

The Secretary read as follows:

We offer to prove that Mr. Cox was employed professionally by the President, in the presence of General Thomas, to take such legal proceedings in the case that had been commenced against General Thomas as would be effectual to raise judicially the question of Mr. Stanton's legal right to continue to hold the office of Secretary for the Department of War against the authority of the President, and also in reference to obtaining a writ of *quo warranto* for the same purpose; and we shall expect to follow up this proof by evidence of what was done by the witness in pursuance of the above employment.

Mr. EDMUNDS. Mr. President, I should like to ask an oral question, if there be no objection.

The CHIEF JUSTICE. If there be no objection the senator from Vermont will ask his question.

Mr. EDMUNDS. I wish to ask at what date this interview is alleged to have taken place?

Mr. CURTIS. The 22d of February.

Mr. Manager BUTLER. This testimony is liable to two objections, if not more, but two sufficient, Mr. President and senators. The first is that after the act done, and after the matter was in course of impeachment, was in proceeding before the House, and after Mr. Stanton had, to protect himself, made an affidavit that he expected to be turned out of his office by force, the President sent, as is proposed to be proved, for Mr. Cox, the witness, and gave him certain directions. It is alleged that those directions were that he should prepare a *quo warranto*. I had supposed that such a *quo warranto* was to be filed by the Attorney General, if at all, but that that process had substantially gone out of use, and an information in the nature of a writ of *quo warranto* would have been the proper proceeding, and that information must be exhibited by the Attorney General.

Now, then, let us see just here how the case stands. The President had told General Sherman that the reason why he did not apply to lawyers, and why he took army officers into this trouble, was that it was impossible to make up a case. One of the senators asked him to repeat that answer, and he repeated it. The President said to him, "I am told by the lawyers that it is impossible to make up a case." After he had been told that, and after he had been convinced of that, he still went on to make the removal, and he undertakes to show to you here that he made the removal to make up a case which he himself declared was impossible to be made up. It is apparent that no case would by possibility have got into a court except for the declarations and the threats of this officer Thomas to turn by force Stanton out of the War Office. That having been done,

he sends for a very proper counsel, as I have no doubt the Senate will be quite convinced before we get through. He sends for a very proper counsel for Mr. Thomas, and having got him there he undertakes then to make up a case for the Senate, before which he was to be brought by impeachment. Now they say they expect to prove that the President wanted a case made up to go to the courts, and that in pursuance of that Mr. Cox so acted.

Mr. Cox cannot be allowed to testify to that for another reason. They themselves have put in the record (which imports absolute verity and cannot be contradicted by parol or other evidence) that General Thomas was dismissed upon the motion of his counsel. Upon the motion of his counsel the case was dismissed. Therefore we object, in the first place, that this declaration of the President to his lawyer after the fact and after he was in process of being impeached for that fact, shall not be put in evidence in view of the circumstances We object, then, that what was done in court shall not be proved except by the record, which I believe there is no lawyer in the Senate, and no layman either, will ever believe for a moment can be allowed. Then we object further on this matter that this whole proceeding was between other parties in the court. There is no evidence from the record, so far as it has been put in here, (and the whole record is put in,) that the President went into that court and asked to have that case carried on, that he showed his hand, or that he made himself apparent. He does not appear upon the record. He does not appear as employing counsel. It looks as though it was the case of General Thomas, and the court dealt with it as the case of General Thomas.

If the President had gone and asked that the case might be decided as a great constitutional question, *non constat* but that the court would have decided it, but they did not do so. All that appears on the record is that this gentleman or some other appeared as counsel for General Thomas; and the question was one whether General Thomas should be held under bonds or whether, under the circumstances, he was likely to appear and answer further when the grand jury sat, it being then found that there was no danger from his personal action by violence.

Mr. Evarts. Mr. Chief Justice and Senators, I will first notice some of the suggestions made by the learned and honorable manager that seem to us not to have any particular bearing upon the question of evidence now submitted to you, but which may be noticed. He says that the Attorney General alone can institute a *quo warranto*. The Attorney General has by law no official function in any court except the Supreme Court of the United States, and a *quo warranto* proceeding would need to be commenced in the court of the District. A *quo warranto* proceeding, as has heretofore been contended on the part of the managers, and in regard to which no dispute has arisen, can only be made, it is supposed by them, on the part of the government and not on the part of the officer who has been detruded from office. That is one thing; but the question whether that action of the government can be taken in any court only by the Attorney General is quite a different matter, and it might appear that if this adhesion of the Attorney General, or his approval that the proceeding should be taken by the professional advisers employed to that end, was necessary, we should be able to produce that proof.

Now, it is said that after the President told General Sherman that it was impossible to make up a case it is now impossible for us to show that he did attempt to make up a case. This is, I suppose, a new application of the doctrine of estoppel. It is impossible for us to see any other appropriateness in it. But the fact is simply this: that when, in advance of the official action of the President to or towards the removal of Mr. Stanton, and when General Sherman was asked to receive from the Chief Executive the authority to discharge the duties of this office *ad interim*, and when General Sherman was revolving in his own mind his duty as a citizen and as a friend and servant of the govern-

ment and sought to inquire why this matter which the President desired to test and to have his presence in the controversy to enable him to test, could not be tested by the lawyers alone, without bringing in a deposit of the *ad interim* authority in any officer, the President replied that it was impossible to make up a case except by such executive action as should lay the basis for judicial interference and determination. Then, in advance, the President did not anticipate the necessity of being driven to this judicial controversy, because, in the alternative of General Sherman's accepting this trust thus reposed in him, the President expected the retirement of Mr. Stanton, and thus by that acquiescence no need would arise for further controversy in court or elsewhere. That is the condition of the proof as it now stands before the Senate, or as we upon it shall contend that it now stands in the judgment of the Senate, in regard to what occurred between the President and General Sherman.

We have already seen in proof that General Thomas received from the President on the 21st of February this designation to take charge of the office from Mr. Stanton if he retired, and his report to the President in the first instance of what was regarded as an equivalent to an acquiescence by Mr. Stanton in this demand of the office and its surrender to the charge of General Thomas. It has then been shown in evidence that General Thomas was arrested on the morning of the 22d, and that before he went into court he communicated that fact to the President and received the President's response that that was as they wished it should be, to have the matter in court.

Now, we propose to show that on the afternoon of the same day, the matter then being in court, (and which the President had said was according to his desire, always supposing that there was not a retirement which rendered further controversy and trouble unnecessary to the parties and the country,) the President did take it up as his controversy between the Constitution and the law, to be determined by the highest judicial tribunal of the country by the most rapid method that the law and competent advisers as to the law should permit. And we are met by the novelty of objection that when the matter to be proved is not the state of the record between the United States and General Thomas in that criminal complaint, but the state of facts as regards the action and purpose of the President of the United States in attempting to produce before the tribunals of the country for solemn judicial determination the matter in controversy, as the record of the criminal charge made and dismissed does not contain the name and action of the President of the United States, in this behalf we cannot show what did occur and what was the action of the President.

The learned manager says it does not appear by the record that the President made this his controversy and attempted these objects and pursued this purpose. Certainly it does not; and if any lawyer can see how and why and in what possible method of application in the record of a prosecution of General Thomas by the United States for an infraction criminally of the civil tenure-of-office bill the action of the President should appear, we might, perhaps, be precluded by some of these suggestions and arguments; but still the matter would be wholly aside from the real point of inquiry here.

Now, Mr. Chief Justice and Senators, we are not to be judged by the measure of the proof that we are able to offer through this witness, as regards the effect and value of the entire evidence bearing upon this point as it shall be drawn from this witness and from other witnesses, and from other forms of testimony. We stand here definitely, and so as not to be misunderstood, on this proposition, that when the alternative, not expected by the President, of the resistance of Mr. Stanton to this form of resignation or retirement demanded or removal claimed, whatever you choose to call it, was presented, so that he was obliged to find resources in the law, which he had contemplated as a thing greatly to be desired, but impossible without the antecedent proceedings upon which a proper footing could be gained in the courts, he then did, with such

promptness and such decision, and such clear and unequivocal purpose as will be indicated in the evidence, assume immediately that service and that duty; and it will appear that the opportunity thus presented to him for a more rapid determination than a *quo warranto* or an information in the nature of a *quo warranto* would permit being seized, it was prevented by the action of Mr. Stanton, the prosecutor, and of the court, upon the movements of the prosecution to get the case out of court, as frivolous and unimportant in its proceeding against General Thomas, and becoming formidable and offensive when it gave an opportunity for the President of the United States by *habeas corpus* to get a prompt decision of the Supreme Court of the United States; and then to show that, this opportunity being thus evaded, the President proceeded as he might with instructions that the only other recourse of judicial determination by an information in the nature of *quo warranto* was resorted to.

Mr. Manager BUTLER. Mr. President, I am very glad for an opportunity afforded me by the remarks of the learned counsel for the President to deal a moment with the doctrine of estoppel. I premise that an argument has been founded to the prejudice of my cause by a use of remarks which I made, to which I want to call the attention of the Senate, as bearing upon what is the doctrine of estoppel which is put forward here now by the counsel who has just sat down. I will not be long. I pray you, senators, to remember that I have never referred to this argument, although it has been a sort of *vade mecum* with the counsel of the defence ever since it was delivered. When I was discussing the obloquy thrown upon Mr. Stanton about his deserting his office I said these words:

> To desert it now, therefore, would be to imitate the treachery of his accidental chief. But whatever may be the construction of the "tenure-of-civil-office act" by others, or as regards others, Andrew Johnson, the respondent, is concluded upon it.
>
> He permitted Mr. Stanton to exercise the duties of his office in spite of it, if that office were affected by it. He suspended him under its provision; he reported that suspension to the Senate with his reasons therefor, in accordance with its provisions; and the Senate, acting under it, declined to concur with him, whereby Mr. Stanton was reinstated. In the well-known language of the law, is not the respondent estopped by his solemn official acts from denying the legality and constitutional propriety of Mr. Stanton's position?

That is all I said. I never said, nor intended to say, nor do the words honestly bear out any man in assuming that I said, that the President was estopped from trying his case before the Senate of the United States and showing the unconstitutionality of the law, as was argued in the opening and as has been more than once referred to since. I said that, as between him and Mr. Stanton, Mr. Stanton's position was such that he was estopped from denying the legal propriety of that position or the constitutional propriety of it; and thereupon it was argued that I claimed on behalf of the managers of the House of Representatives that the President was estopped from trying his case or denying the constitutionality of the law here; and we have had a learned argument, starting from Coke and brought downward, to show that the doctrine of estoppel did not apply to the law. Who ever thought it did? I think there is only one point where the doctrine of estoppel should apply, senators, in this case, and that is that counsel should be estopped from misrepresenting the argument of their opponents and then making an argument to the prejudice of them. That is an application of the doctrine of estoppel that I want carried out through this trial.

I have not said that the President was estopped from showing that he attempted to put this man forward as his counsel by his declaration to General Thomas. I have only said that the fact that he spoke to Sherman and said to him, "It is impossible to make up a case," shows that he should not be allowed, after the fact, to attempt, if possible, to get up a defence by calling this counsel in.

It is asked what lawyer could suppose that it would appear of record that the President of the United States was engaged in this controversy? Fair dealing,

honesty of purpose, uprightness of action, frankness of political position, would have made it apparent. The President of the United States, if he employed counsel for Mr. Thomas in this case, should have sent his counsel into court, and they should have there said: "Mr. Chief Justice, we are appearing at the instance of the President of the United States for the purpose of trying a great constitutional question which he has endeavored to raise here, and for that purpose we want to get a decision of the Supreme Court of the United States." If then the chief justice of this District had refused to hear that case, there might be some ground for the harsh word "evasion" which the counsel has applied to him, for he says the question was evaded. By whom? It must have been by the chief justice of this District, for he alone made the decision. He says that Mr. Stanton had this case so conducted as to evade this decision. The record of the court shows that this man Thomas was discharged on the motion of his counsel. If they had not moved that he be discharged I venture to say he would not have been discharged; certainly there is no evidence that he would have been, and it is not to be supposed that he would have been. Now they have put in the fact that he was discharged at the motion of his own counsel, and they come back to us and tell us—what? That they want to show through Mr. Cox that the chief justice evaded this point, for nobody else made that decision If you allow Mr. Cox to come in and say what the President told him, if you can put in his declarations made to Mr. Cox, then I suppose we shall next have his declarations made to Mr. Merrick and Mr. Aiken, and all that class of counsel whom the President brings about him; and having got them in, we shall have to bring before you the chief justice to give his account of the matter, and we shall have to get up a side-bar issue to try whether the proceedings in the supreme court of this District were regular or otherwise. It is—I will not say designedly—but artistically contrived for the purpose of leading us away from the issue. We are to go to some other issue and some other point, and I never have heard in any court such a proposition.

A single word, now, about this matter of *quo warranto*. A reasonable degree of frankness on this question, I think, as it is a very plain one to lawyers, would not harm anybody. I undertake to say that every lawyer knows that an information in the nature of a *quo warranto* cannot be prosecuted, except in the name of the Attorney General, for any public office; and if any case can be found and shown in this country where it has been prosecuted differently I will beg my friend's pardon, and that is a thing I should not like to do upon this question.

Do they say that this *quo warranto*, whether by Cox or Stanbery, has ever been presented to any court? No; not at all. Has anybody ever heard of that writ of *quo warranto* until it becomes a necessity for this defence? Ay, and until I put it into that opening speech, which has taught my friends so much, if I may take their continual reference to it—up to that time had we ever heard of a *quo warranto* from any source? Has it ever been said here until since that time? Never, never. I will not object to any writ of *quo warranto*, or information in the nature of a *quo warranto*, filed in any court from a justice of the peace up to the Supreme Court of the United States, if they will show it was filed before the 21st day of February, or prepared, or that it has been filed since, until this man was impeached. But I want that to come from the record, and not from the memory of Mr. Cox.

You may say, senators, that I am taking too much time upon this matter; but it is really aiding you, because if you open this sort of declaration from the President he can keep the trial going on from now until next July, ay, and from next July until the following March, precisely as his defenders in the House of Representatives threatened they would if we carried on this impeachment. "Forewarned, forearmed," senators. His defenders in the House of Representatives when we were arguing this matter—it has gone into history—

said, "You may impeach him, but if you do we will make you take all the forms, and his official life will be ended before you can get through the forms of impeachment; we will protract it till next March." That was the threat, and then, in pursuance of that threat, although your summons required him to file his answer on the day of appearance, as every other summons did, he came into this Senate and asked for forty days. He got ten. He then first asked for delay, so that forty-three days have been expended since he ought to have filed his answer by the order, and thirty-three since he actually filed it, and of those but six on the part of the managers have been expended on the trial, and but a part of six have been expended on the trial by the counsel for the defence; and the rest, twenty-odd working days, with the whole country pausing while this is going on, with murders going on through the southern country unrebuked, twenty-odd days have been used up in lenity to him and his counsel, and now we are asked to go into entirely a side-bar issue. It is neither relevant, in my judgment, nor competent under any legal rule, and if it were here it could have no effect.

Mr. FERRY. Mr. President, I desire to put a question to the counsel for the President. I send it to the Chair.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Connecticut.

The Secretary read it, as follows:

Do the counsel for the President propose to contradict or vary the statement of the docket entries produced by them to the effect that General Thomas was discharged by Chief Justice Cartter on the motion of the defendant's counsel?

Mr. CURTIS. Mr. Chief Justice, I will respond to the question of the senator that the counsel do not expect or desire to contradict anything which appears on the docket entries. The evidence which we offer of the employment by the President of this professional gentleman for the purposes indicated is entirely consistent with everything that appears on the docket. This is evidence, not of declarations, as the senator must perceive, but of acts, because it is well settled, as all lawyers know, that there may be verbal acts as well as other bodily acts, and a verbal act is as much capable of proof as a physical act of a different quality or character. Now, an employment for a particular purpose of an agent, whether professional or otherwise, is an act, and may always be proved *valeat quantum* by the only evidence of which it is susceptible, namely, what was said by the party in order to create that employment, and that is what we desire to prove on this occasion.

The dismissal of General Thomas, which has been referred to, and which appears on the docket, was entirely subsequent to all these proceedings, and we shall show that that motion was made and that dismissal took place after it had become certain in the mind of Mr. Cox and his associate counsel that it was of no use further to follow or endeavor to follow these proceedings.

As to the argument, or rather the remarks, which have been addressed by the honorable manager to the Senate, I have nothing to say. It does not seem to me, however pertinent they may be, that they require any reply.

Mr. Manager WILSON. Mr. President, I beg the indulgence of the Senate for a moment, and I must ask the members of this body to pass upon what we regard to be the real question involved in the objection which has been interposed to the testimony now offered by the counsel for the respondent.

On the 21st day of February, 1868, the President of the United States issued an order removing Edwin M. Stanton from the office of the Secretary for the Department of War. On that same day he issued a letter of authority to Lorenzo Thomas directing him to take charge of the Department of War and to discharge the duties of the office of Secretary of War *ad interim*. The articles, based upon a violation of the tenure-of-office act, are founded upon these two acts of the President on the 21st day of February. The counsel for

the respondent now propose to break the force of those acts and that violation of the law by showing that on the 22d day of February, after the fact, the President employed an attorney to raise in the courts the question of the constitutionality of the tenure-of-office act.

Now, I submit to this honorable body that no act, no declaration of the President made after the fact can be introduced for the purpose of explaining the intent with which he acted. And upon this question of intent let me direct your minds to this consideration: the issuing of the orders referred to constitute the body of the crime with which the President stands charged. Did he purposely and wilfully issue an order to remove the Secretary of War? Did he purposely and wilfully issue an order appointing Lorenzo Thomas Secretary of War *ad interim?* If he did thus issue the orders, the law raises the presumption of guilty intent, and no act done by the President after these orders were issued can be introduced for the purpose of rebutting that intent. The orders themselves were in violation of the terms of the tenure-of-office act. Being in violation of that act, they constitute an offence under and by virtue of its provisions, and the offence thus being established must stand upon the intent which controlled the action of the President at the time that he issued the orders. If, after this subject was introduced into the House of Representatives, the President became alarmed at the state of affairs, and concluded that it was best to attempt by some means to secure a decision of the court upon the question of the constitutionality or unconstitutionality of the tenure-of-office act, it cannot avail him in this case. We are inquiring as to the intent which controlled and directed the action of the President at the time the act was done; and if we succeed in establishing that intent, either by proof or by presumption of law, no subsequent act can interfere with it or remove from him the responsibility which the law places upon him because of the act done.

Mr. EVARTS. Mr. Chief Justice and Senators, we have here the oft-repeated argument that the crime against the act of Congress was complete by the papers drawn and delivered by the President; that the law presumes that those papers were made with the intent that appears on their face, which, it is alleged, is a violation of that act; and as that would be enough in an indictment against the President of the United States to affect him with a punishment, in the discretion of the judge, of six cents fine, so by peremptory necessity it becomes in this court a complete and perfect crime under the Constitution, which must require his removal from office, and that anything beyond the intent that the papers should accomplish what they tend to accomplish is not the subject of inquiry here. Well, it is the subject of imputation in the articles; it is the subject of the imputation in the arguments; it is the subject, and the only subject, that gives gravity to this trial, and there was a purpose of injury to the public interest and to the public safety in this proceeding.

Now, we seek to put this prosecution in its proper place on this point, and to show that our intent was no violence, no interruption of the public service, no seizure of the military appropriations, nothing but the purpose by this movement either to procure Mr. Stanton's retirement, as was desired, or to have the necessary footing for judicial proceedings. If this evidence is excluded, then, when you come to the summing up of this cause, you must take the crime of the dimensions and of the completeness that is here avowed, and I shall be entitled before this court and before this country to treat this accusation as if the article had read that he issued that order for Mr. Stanton's retirement, and that direction to General Thomas to take charge *ad interim*, with the intent and purpose of raising a case for the decision of the Supreme Court of the United States between the Constitution and the act of Congress; and if such an article had been produced by the House of Representatives and submitted to the Senate it would have been a laughing stock of the whole country.

The gentlemen shall not make their arguments and escape from them at the

same breath. I offer this evidence to prove that the whole purpose and intent of the President of the United States, in his action in reference to the occupancy of the office of Secretary of War, had this extent and no more: to obtain a peaceable delivery of that trust from one holding it at pleasure to the Chief Executive, or, in the absence of that peaceable retirement, to have a case for the decision of the Supreme Court of the United States, and if the evidence is excluded you must treat every one of these articles as if the intent were limited to an open averment in the articles themselves that the intent of the President was such as I propose to prove it.

Mr. Manager BUTLER. I desire, Mr. Chief Justice, simply to read an authority to settle the question as to a *quo warranto*. I read from 5 Wheaton's Reports, page 291, the case of Wallace *vs.* Anderson:

Error to the circuit court of Ohio.

This was an information for a *quo warranto*, brought to try the title of the defendant to the office of principal surveyor of the Virginia military bounty lands north of the river Ohio, and between the rivers Scioto and Little Miami. The defendant had been appointed to the office by the State of Virginia, and continued to exercise its duties until the year 1818, during all which time his official acts were recognized by the United States. In that year he was removed by the governor and council of Virginia, and the plaintiff appointed in his place. The writ was brought, by consent of both parties, to try the title to the office, waiving all questions of form and of jurisdiction. * * * * * *

Mr. Chief Justice Marshall delivered the opinion of the court, that a writ of *quo warranto* could not be maintained except at the instance of the government; and as this writ was issued by a private individual, without the authority of the government, it could not be sustained, whatever might be the right of the prosecutor or of the person claiming to exercise the office in question. The information must therefore be dismissed.

Judgment reversed.

Mr. CURTIS. I wish to remark, Mr. Chief Justice, in reference to that authority, that it is undoubtedly the law in this District, and, so far as I know, in all the States, and certainly is the law in England, that there can be no writ of *quo warranto*, or information in the nature of such a writ, except in behalf of the public. But what officer is to represent the public, in whose name the information is to be filed, of course depends upon the particular statutes applicable to the case. These statutes, as lawyers know, differ in the different States. Under the laws of the United States all proceedings in behalf of the United States, in the circuit and district courts, are taken by the district attorneys in their own names; all proceedings in behalf of the United States in the Supreme Court are taken by the Attorney General in his name. In all cases of these public proceedings they are in the name and in behalf of the United States. What particular officer shall represent the United States depends on the court where the proceeding is had. Now, in reference to Mr. Cox, we expect to show an application by Mr. Cox to the district attorney to obtain his signature to the proper information and the obtaining of that signature.

The CHIEF JUSTICE. Senators, the counsel for the President offer to prove that the witness, Mr. Cox, was employed professionally by the President in the presence of General Thomas to take such legal proceedings in the case that had been commenced against General Thomas as would be effectual to raise judicially the question of Mr. Stanton's legal right to continue to hold the office of Secretary for the Department of War against the authority of the President, and also in reference to obtaining a writ of *quo warranto* for the same purpose, and they state that they expect to follow up this proof by evidence of what was done by the witness in pursuance of the above employment. The first article of impeachment, which may, perhaps, for this purpose, be taken as a sample of the rest, relating to the same subject, after charging that "Andrew Johnson, President of the United States," in violation of the Constitution and laws, issued the order which has been so frequently read for the removal of Mr. Stanton, proceeds:

"Which order was unlawfully issued with intent then and there to violate the act entitled 'An act regulating the tenure of certain civil offices,'" &c.

The article charges, first, that the act was done unlawfully, and then it

charges that it was done with intent to accomplish a certain result. That intent the President denies, and it is to establish that denial by proof that the Chief Justice understands this evidence now to be offered. It is evidence of an attempt to employ counsel by the President in the presence of General Thomas. It is the evidence so far of a fact; and it may be evidence also of declarations connected with that fact. This fact and these declarations, which the Chief Justice understands to be in the nature of facts, he thinks are admissible in evidence. The Senate has already, upon a former occasion, decided by a solemn vote that evidence of the declarations by the President to General Thomas and by General Thomas to the President, after this order was sent to Mr. Stanton, were admissible in evidence. It has also admitted evidence of the same effect on the 22d, offered by the honorable managers. It seems to me that the evidence now offered comes within the principle of those decisions; and, as the Chief Justice has already had occasion to say, he thinks that the principle of those decisions is right, and that they are decisions which are proper to be made by the Senate sitting in its high capacity as a court of impeachment, and composed, as it is, of lawyers and gentlemen thoroughly acquainted with the business transactions of life and entirely competent to judge of the weight of any evidence which may be submitted. He therefore holds the evidence to be admissible, but will submit the question to the Senate, if desired.

Mr. DRAKE. I ask a vote upon the question, sir, by yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 29, nays 21; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, and Willey—29.

NAYS—Messrs. Cameron, Cattell, Chandler, Conkling, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Morgan, Morrill of Vermont, Nye, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—21.

NOT VOTING—Messrs. Cole, Conness, Henderson, and Wade—4.

So the Senate decided the evidence offered by the counsel for the President to be admissible.

Mr. CURTIS, (to the witness.) Will you now answer what occurred between the President, General Thomas, and yourself, on that occasion?

A. In referring to the appointment of General Thomas as Secretary of War *ad interim*, the President stated that Mr. Stanton had refused to surrender possession of the Department to General Thomas, and that he desired the necessary legal proceedings to be instituted without delay to test General Thomas's right to the office and to put him in possession. I inquired if the Attorney General was to act in the matter, and whether I should consult with him. He stated that the Attorney General had been very much occupied in the Supreme Court and had not had time to look into the authorities, but that he would be glad if I would confer with him. I promised to do so, and stated that I would examine the subject immediately, and soon after took leave.

Q. When you left did you leave the President and General Thomas there?

A. I did.

Q. About what time in the day was it that you left?

A. I do not suppose I was there more than twenty minutes. I left home about five o'clock, I think, in a carriage. I was admitted immediately.

Q. State now anything which you did subsequently in consequence of this employment?

Mr. Manager BUTLER. Does the presiding officer rule that anything that Mr. Cox did afterward tends to show the President's intent?

The CHIEF JUSTICE. The Chief Justice considers it within the principle of the ruling of the Senate.

The WITNESS. After reflecting upon the subject, supposing that the President's desire was to have the questions in controversy——

Mr. Manager BUTLER. I take it the witness's suppositions are not to go in, are they, Mr. President?

The CHIEF JUSTICE, (to the witness.) State what was done.

Mr. CURTIS. In view of which he was acting.

Mr. Manager BUTLER. I never heard of any man's supposition being put in before.

The WITNESS. I came to the conclusion that——

Mr. Manager BUTLER. Now, your "conclusions!" The witness is asked what did he do, not what his conclusions were.

Mr. CURTIS. That is an act for a lawyer, a pretty important act for a lawyer, to come to a conclusion.

Mr. Manager BUTLER. It may or may not be.

The WITNESS. I am stating what course I determined to pursue.

Mr. Manager BUTLER. What the witness did is the only thing inquired about, and I wish him kept to that.

Mr. CURTIS. One thing was that he came to a conclusion. I want to know what that was.

Mr. Manager BUTLER. I object to the conclusion, and should like to have the ruling of the presiding officer upon that.

The WITNESS. On Monday——

Mr. Manager BUTLER. I wish to have that settled.

The CHIEF JUSTICE. The Chief Justice has no doubt that the witness may state his conclusions; but he will put the question to the Senate if desired. [After a pause, to the witness.] Go on.

The WITNESS. The proceeding by *quo warranto* being a very tedious one, which could not be brought to a conclusion within even a year, and General Thomas having been arrested for a violation of the tenure-of-office act, I thought the best mode of proceeding was in the first instance——

Mr. Manager BUTLER. I object now to his thoughts. Stop somewhere.

The CHIEF JUSTICE, (to the witness.) State your conclusions.

The WITNESS. I determined then to proceed in the first instance in the case of General Thomas. I had a brief interview with the Attorney General on Monday morning.

By Mr. CURTIS:

Q. To proceed how?

A. To proceed before the examining judge in that case, (as I was about to explain,) if the case was in proper condition for it, by applying to the Supreme Court of the United States for a writ of *habeas corpus*, so that the Supreme Court, upon the return of the writ, could examine and see whether——

Mr. Manager BUTLER. These are not acts that are now being given, Mr. President. They are thoughts and conclusions and reasonings of this party, what he would do if something else happened. I object.

The CHIEF JUSTICE. The Chief Justice supposes that the counsel employed by the President may state what course he pursued, and why he pursued it.

Mr. Manager BUTLER. You think he can put in his own determinations and reasonings?

The CHIEF JUSTICE. In reference to that matter, yes.

Mr. Manager BUTLER. I would like the judgment of the Senate upon that.

The CHIEF JUSTICE. The counsel will please put the question they address to the witness in writing, if any senator desires the judgment of the Senate; if not, the witness will proceed.

Mr. THAYER. I ask——

Mr. HOWARD. I ask that the question may be reduced to writing, so that we may understand it.

The CHIEF JUSTICE. The counsel will reduce their question to writing.

The question propounded to the witness by the counsel for the respondent was read, as follows:

State what conclusions you arrived at as to the proper course to be taken to accomplish the instructions given you by the President.

Mr. Manager BUTLER. That is not what I objected to, Mr. President, and asked to have a ruling upon. Conclusions I did not object to. I objected to his putting in his thoughts and his reasonings by which he came to his conclusions. What he did was one thing; what he thought, and what he determined, and what he wished, and what he hoped, depend so much on the state of his mind, whether he was loyally or disloyally disposed to the government, that I do not think it competent

The CHIEF JUSTICE. The Chief Justice will direct the witness to confine himself to the conclusions to which he came and the steps which he took.

The WITNESS. Having come to the conclusion, then, that the most expeditious way of raising the questions in controversy before the Supreme Court was to apply for a writ of *habeas corpus* in case General Thomas's case was in proper shape for that, I had a brief interview with the Attorney General on Monday morning, and this course met with his approval. I then proceeded to act in conjunction with the counsel whom General Thomas had engaged to act in his defence in the first instance.

By Mr. CURTIS:

Q. Who was that?

A. Mr. Merrick, of Washington. In order, however, to procure a writ of *habeas corpus* from the Supreme Court of the United States it was necessary that the commitment should be made by a court, and not by a judge at chambers or a justice of the peace; whereas General Thomas had been arrested and partially examined before one of the justices of the supreme court of the District of Columbia at chambers, and had been held to appear for further examination on Wednesday, the 26th of February. On Wednesday, the 26th, the criminal court was opened, if I recollect aright, the chief justice presiding, and he announced that he would then proceed to the examination of the case against General Thomas.

Mr. Manager BUTLER. I have the honor to object now, Mr. President, to any proceedings of any description in court being proved other than by the record of the court.

Mr. CURTIS. I ask the witness to state what he did in court. It may have resulted in a record, or it may not have resulted in a record. Until we know what he did we cannot tell whether it would result in a record or not. We do not know that it ever got into a court where there could be a record. It may have been an ineffectual attempt to get it into a court where there could be a record.

Mr. Manager BUTLER. Now, I call the attention of you, Mr. President and the Senators, to the ingenuousness of that speech. The witness has exactly testified that the court had opened, and was going on to say what was done in court, what Chief Justice Cartter announced in court, in the criminal court.

Mr. CURTIS. If the honorable manager will give way for a moment, I say—I intended to be so understood before—that here was the chief justice of the District sitting in a magisterial capacity; he also, as Mr. Cox has said, was there holding the criminal court. Now, we desire to prove that there was an effort made by Mr. Cox to get this case transferred from the chief justice in his capacity of a magistrate into and before the criminal court, and we wish to show what Mr. Cox did in order to obtain that.

Mr. Manager BUTLER. Now, then, I again say that we have found that we have got into court and the record has been produced here. The witness him-

self has said that Chief Justice Cartter announced that he was going to open the court. Now, if the Senate want to try Chief Justice Cartter, and whether he has done rightly or wrongly, I only desire that he should have counsel here to defend him. I never before heard the proceedings of a court or a magistrate sitting in a case undertaken to be proved in a tribunal where he was not on trial by the declarations of the counsel of the criminal who got beaten, or who succeeded, either.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate. Counsel will please reduce the question to writing.

The question having been reduced to writing was read by the Secretary, as follows:

What did you do toward getting out a writ of *habeas corpus* under the employment of the President?

Mr. Manager BUTLER. That is not the question we have been debating at all. I wish the proprieties of the place would allow me to characterize that as I think it ought to be; but that was not the question we were debating. I made an objection, Mr. President, that the witness should not state what took place in court, and now they put a general question which evades that.

Mr. EVARTS. Our general question is intended to draw out what took place in court.

Mr. Manager BUTLER. Then we object.

Mr. EVARTS. Very well; that we understand. We do not wish to be characterized about it, though.

The CHIEF JUSTICE. Senators, you who are of opinion that the question is admissible——

Mr. GRIMES called for the yeas and nays; and they were ordered.

Mr. HOWE. I wish to have the question reported again.

The Secretary read the question, as follows:

What did you do towards getting out a writ of *habeas corpus* under the employment of the President?

Mr. Manager BUTLER. I wish that the statement of counsel may be added to that, "this being intended to ask what the witness did in court."

Mr. EVARTS. It covers what he did everywhere, which includes "in court."

Mr. Manager BUTLER. That is another change.

Mr. EVARTS. No change whatever. The question has been read three times. It is intended to call out what the witness did toward getting out a writ of *habeas corpus*, and it covers what he did in court, which was the very place to do it.

Mr. CURTIS. If any change or addition is to be made to the question we do not wish to have any equivocation about the word "court," because that may have a double meaning. What was done or attempted to be done was before the magistrate; we meant by that in the court.

Mr. Manager BUTLER. A judge or magistrate sitting judicially, which is the court for all purposes.

Mr. CURTIS. "Sitting judicially," but not as a court.

The CHIEF JUSTICE. The Secretary will read the question once more.

The Secretary read as follows:

What did you do toward getting out a writ of *habeas corpus* under the employment of the President?

The Secretary proceeded to call the roll.

Mr. SHERMAN. Mr. Chief Justice, I desire to state that my friend from Missouri [Mr. Henderson] is sick and unable to attend in his place in the Senate to-day. He wished me to make that announcement.

The call of the roll having been concluded, the result was announced—yeas, 27; nays, 23; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler,

Frelinghuysen, Grimes, Hendricks, Johnson, McCreery, Morrill of Maine, Morgan, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, and Willey—27.

NAYS—Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Nye, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—23.

NOT VOTING—Messrs. Cole, Corbett, Henderson, and Wade—4.

So the Senate decided the question to be admissible.

Mr. CURTIS, (to the witness.) State now, Mr. Cox, what you did in order to obtain a writ of *habeas corpus*, pursuant to the instruction of the President?

A. When the chief justice announced that he would proceed as an examining judge to investigate the case of General Thomas, and not as holding court, our first application to him was to adjourn the investigation into the criminal court then in session, in order to have the action of that court. After some little discussion this request was refused. Our next effort was to have General Thomas committed to prison, in order that we might apply to that court for a *habeas corpus*, and upon his being remanded by that court, if that should be done, we might follow up the application by one to the Supreme Court of the United States; but the counsel who represented the government, Messrs. Carpenter and Riddle, applied to the judge then for a postponement of the examination——

Mr. Manager BUTLER. Stop a moment. Does this also include what was done by the other people there?

The CHIEF JUSTICE. It is an account of the general transaction, as the Chief Justice conceives, and comes within the rule. The witness will proceed.

The WITNESS. The chief justice having indicated an intention to postpone the examination, we directed General Thomas to decline giving any bail for further appearance, and to surrender himself into custody, and announce to the judge that he was in custody, and then presented to the criminal court an application for a writ of *habeas corpus*. The counsel on the other side objected that General Thomas could not put himself into custody, and they did not desire that he should be detained in custody. The chief justice also declared that he would not restrain General Thomas of his liberty, and would not hold him or allow him to be held in custody. Supposing that he must either be committed or finally discharged, we then claimed that he be discharged, not supposing that the counsel on the other side would consent to it, and supposing that would bring about his commitment, and that we should then have an opportunity of getting a *habeas corpus*. They made no objection, however, to his final discharge, and accordingly the chief justice did discharge him. Immediately after that I went, in company with the counsel whom he had employed, Mr. Merrick, to the President's house, and reported our proceedings and the result to the President. He then urged us to proceed——

Mr. Manager BUTLER. Stay a moment. Shall we have another interview with the President put in, Mr. President?

The CHIEF JUSTICE, (to the witness.) What date was this?

The WITNESS. On the 26th, immediately after the proceeding before the judge.

Mr. CURTIS. We propose to show that, having made his report to the President of the failure of this attempt, he then received from the President other instructions upon this subject to follow up the attempt in another way.

Mr. Manager BINGHAM. Do I understand—I ask for information of the counsel—that this interview with the President was on the 26th?

The WITNESS. It was.

Mr. Manager BINGHAM. Two days after he was impeached by the House of Representatives?

Mr. CURTIS. Yes.

Mr. Manager BINGHAM Two days after he was presented here?

Mr. CURTIS. Yes.

Mr. Manager BINGHAM. And you are asking for the President's declarations after he was arraigned here for this crime to prove his innocence? We ask the vote of the Senate on it.

Mr. CURTIS. We do not ask for declarations, Mr. Manager; we ask for acts.

Mr. Manager BINGHAM. Acts consisting in words two days after his arraignment at this bar. We ask the vote of the Senate on the question.

Mr. YATES. Mr. President, I ask for the vote of the Senate on this question.

The CHIEF JUSTICE. The Chief Justice thinks this evidence incompetent. The declarations of parties——

Mr. EVARTS. Mr. Chief Justice, will you allow us to say a word?

The CHIEF JUSTICE. Certainly.

Mr. EVARTS. If it is to turn on that point, which has not been discussed in immediate reference to this question, we desire to be heard. The offer which the Chief Justice and senators will remember was read, and upon which the vote of the Senate was taken for admission, included the efforts to have a *habeas corpus* proceeding taken, and also the efforts to have a *quo warranto*. The reasons why, and the time at which, and the circumstances under which the *habeas corpus* effort was made, and its termination, have been given. Thereupon the efforts were attempted at the *quo warranto*. It is in reference to that that the President gave these instructions. We suppose it is covered by the ruling already made.

Mr. Manager BUTLER. A single word, sir. The witness has informed the court that it was not done before because such a proceeding could not be brought to a decision under a year. The President was going to be impeached in the course of ten or fifteen days, and so he started a proceeding, if we are to believe this offer, which was to have a conclusion a year hence!

The CHIEF JUSTICE. The Chief Justice may have misapprehended the intention of the Senate; but he understands their ruling to be in substance this: that acts in respect to the attempt and intention of the President to obtain a legal decision, commencing on the 22d of February, may be pursued to the legitimate termination of that particular transaction; and, therefore, the Senate has ruled that Mr. Cox, the witness, may go on and testify until that particular transaction came to a close. Now, the offer is to prove conversations with the President after the termination of that effort in the supreme court of the District of Columbia. The Chief Justice does not think that is within the intent of the Senate; but he will submit the question to the Senate. Senators, you who are of the opinion that this testimony should be received will please say "ay;" those of the contrary opinion, "no." (Putting the question.) The question is determined in the negative. The evidence is not received.

Mr. CURTIS, (to the witness.) Mr. Cox, after you had reported to the President in the manner you have already stated, did you take any further step, did you do any further act in reference to raising the question of the constitutionality of the tenure-of-office act?

Mr. Manager BUTLER. Wait. If what the President did himself, after he was impeached, after the 26th of February, cannot be given in evidence, I do not see that what his counsel did for him may be. That is only one step further.

Mr. EVARTS. We may at least be allowed to put the question, Mr. Chief Justice.

Mr. Manager BUTLER. The question was put and I objected to it.

Mr. EVARTS. It has not been reduced to writing.

The CHIEF JUSTICE. The counsel for the President will reduce their question to writing.

The question having been reduced to writing, was read by the Secretary, as follows:

After you had reported to the President the result of your efforts to obtain a writ of *habeas*

corpus, did you do any act in pursuance of the original instructions you had received from the President on Saturday, to test the right of Mr. Stanton to continue in the office; and if so, state what the acts were?

The CHIEF JUSTICE. The Chief Justice thinks that this question is inadmissible within the last vote of the Senate; but will put the question to the Senate if any senator desires it.

Mr. DOOLITTLE. Mr Chief Justice, I should like to have that question put to the Senate; I think it a different one——

The CHIEF JUSTICE. No debate is allowable. Does the senator desire the vote of the Senate on the question?

Mr. DOOLITTLE. Yes, sir.

The CHIEF JUSTICE. The question will be read again.

The Secretary read the last question put by the counsel for the respondent.

Mr. SHERMAN. Now, I should like to have the fifth article read.

The CHIEF JUSTICE. The article of the impeachment, the reading of which is called for by the senator from Ohio, will be read.

The Secretary read article five, as follows:

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, and on divers other days and times in said year, before the 2d day of March, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and in pursuance of said conspiracy did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

The CHIEF JUSTICE. The Chief Justice will inquire of the counsel for the President whether they understand the question to be applicable to that article?

Mr. EVARTS. We certainly do.

The CHIEF JUSTICE Is it asked with a view to obtain evidence bearing upon that article of the impeachment?

Mr. EVARTS. Yes, any article whatever that indicates as part of his intent or within any time alleged to be with an unlawful purpose. We propose to show the lawful and peaceful purpose.

Mr. HOWE. Mr. President, if proper I should like to have the first question addressed to the witness on the stand read again.

The CHIEF JUSTICE The question upon which the ruling has just taken place?

Mr. HOWE. No, the offer to prove. I should like to have that read again.

The CHIEF JUSTICE. The offer which was made by the counsel, and which the Senate admitted, will be read by the Secretary.

The Secretary read as follows:

We offer to prove that Mr. Cox was employed professionally by the President in the presence of General Thomas, to take such legal proceedings in the case that had been commenced against against General Thomas as would be effectual to raise judicially the question of Mr. Stanton's legal right to continue to hold the office of Secretary for the Department of War against the authority of the President, and also in reference to obtaining a writ of *quo warranto* for the same purpose, and we shall expect to follow up this proof by evidence of what was done by the witness in pursuance of the above employment.

The CHIEF JUSTICE. The discussion and the ruling of the Chief Justice in respect to that question was in reference to the first article of the impeachment. Nothing had been said about the fifth article in the discussion, so far as the Chief Justice recollects. The question is now asked with reference to the fifth article and the intent alleged in that article to conspire. The Chief Justice thinks it is admissible with that view under the ruling upon the first offer. He will, however, put the question to the Senate if any senator desires it.

Mr. CONNESS. The vote of the Senate is asked.

The CHIEF JUSTICE. The senator from California asks for the vote of the Senate. Senators, you who are of the opinion that the question is admissible, and shall be put to the witness, will say ay——

Mr. HOWARD called for the yeas and nays; and they were ordered.

Mr. JOHNSON. I ask for the reading of the fifth article. I was not in when it was read.

The Secretary read the fifth article, as follows:

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, on the 21st day of February, in the year of our Lord 1868, and on divers other days and times in said year, before the 2d day of March, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled, "An act regulating the tenure of certain civil offices," passed March 2, 1867; and in pursuance of said conspiracy did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office.

The CHIEF JUSTICE. The Secretary will now read the question proposed to be put to the witness.

The Secretary read as follows:

After you had reported to the President the result of your efforts to obtain a writ of *habeas corpus*, did you do any other act in pursuance of the original instructions you had received from the President on Saturday to test the right of Mr. Stanton to continue in the office; and, if so, state what the acts were?

The question being taken by yeas and nays, resulted—yeas, 27; nays, 23; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Howe, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, and Willey—27.

NAYS—Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Morgan, Morrill of Vermont, Nye, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—23.

NOT VOTING—Messrs. Cole, Corbett, Henderson, and Wade—4.

So the question was decided to be admissible.

Mr. CURTIS, (to the witness.) Now you may state it, Mr. Cox.

The WITNESS. On the same day or the next, I forget which, I prepared an information in the nature of a *quo warranto*. I think a delay of one day occurred in the effort to procure certified copies of General Thomas's commission as Secretary of War *ad interim*, and of the order to Mr. Stanton. I then applied to the district attorney to sign the information in the nature of a *quo warranto*, and he declined to do so without instructions or a request from the President or the Attorney General. This fact was communicated to the Attorney General, and the papers were sent to him. We also gave it as our opinion to him that it would not be——

Mr. Manager BUTLER. Stop. We object to the opinion given by these gentlemen to the Attorney General as tending to show the President's motives or intent.

Mr. CURTIS. We do not insist upon it if the other side object. (To the witness.) You can now proceed to state anything that was done after this time.

The WITNESS. Nothing was done after this time by me. The papers were returned to me recently.

Mr. CURTIS, (to the managers) The witness is now yours, gentlemen, for cross-examination.

Mr. CONNESS. I move that the Senate take a recess for fifteen minutes.

The motion was agreed to; and at the expiration of the recess the Chief Justice resumed the chair and called the Senate to order.

WALTER S. COX cross-examined.

By Mr. Manager BUTLER:

Question. You stated that you had been practicing law here in Washington some twenty years?

Answer. Yes, sir.

Q. Here all the time?

A. Always.

Q. Was any other counsel associated with you by the President?

A. No, sir; not to my knowledge.

Q. Were you counsel in that case for the President or for General Thomas?

A. I considered myself counsel for the President.

Q. Did you so announce yourself to Chief Justice Cartter?

A. I did not.

Q. Then you appeared before him as counsel for Thomas?

A. I did in that proceeding.

Q. And he did not understand in any way, so far as you know, that you were desiring to do anything there on behalf of the President?

A. I had mentioned the fact to Judge Cartter privately, out of court, that I had been sent for and directed to take charge of or institute proceedings.

Q. As counsel for the President?

A. Yes, sir; that I had been sent for by the President.

Q. But did you tell him that you were coming into his court as counsel for the President?

A. I did not. I do not know whether, when I told him, I had then determined to proceed in that way.

Q. In any of the discussions or your action before the court did you inform either the court or the counsel on the other side that you desired to have the case put in train so that you could get a decision of the Supreme Court of the United States?

A. I do not think I did.

Q. Had either the court or the counsel any means of knowing that that was your purpose or the President's purpose, so far as you were concerned?

A. In no other way than from our application for the *habeas corpus* upon our announcement of General Thomas's surrender into custody, so far as I am advised.

Q. Nothing only what they might infer?

A. Precisely.

Q. They might infer that?

A. I had no conversation with them before the result.

Q. I am not speaking now of conversations with counsel outside of the court, but I am speaking of proceedings in court?

A. Precisely so.

Q. And so far as the proceedings in court were concerned—and I ask for nothing else—there was no intimation, direct or indirect, that there was any wish on the part of the President or the Attorney General to make a case to test the constitutionality or the propriety of any law?

A. There was none that I remember in the presence of the judge on the bench acting at that time—no other than private information.

Q. Your private information to the judge I have not asked for. Was there any in court to the counsel who appeared on the other side?

A. None.

Q. Then, so far as you know, the counsel on the other side could only treat this as a question of the rights of personal liberty of Mr. Thomas? [No answer.] Well, sir, it being your desire to have that question tested, and as you, appearing for the government, could do so by consent of the prosecutor, why did you not speak to the prosecutor's counsel and ask to have it put in train for that?

A. Because I did not think they would consent to it. We did not desire to let them know our object at the time.

Q. Then, as I understand you, you concealed your object from them?

A. We rather did, I think.

Q. Then they acted as they did act, whether rightly or wrongly, under that concealment, did they?

A. They seemed to divine the object before we got through and to endeavor to defeat it.

Q. And they only seemed to divine it from the course they took? That is the only reason they had for seeming to divine it?

A. Yes, sir.

Q. You say you prepared the papers for an information in the nature of a *quo warranto?*

A. Yes, sir.

Q. On what day was that?

A. That was either on Wednesday, the 26th, or the next day.

Q. The 26th or 27th of February?

A. Yes, sir; I think it was the 27th.

Q. That was after the President was impeached?

A. Yes, sir.

Q. Did you see the President between the time that you reported to him and the time when you prepared this paper?

A. I did not. I have never seen him since.

Q. You prepared that paper and carried it to the Attorney General, did you not?

A. First, to the district attorney, or rather I spoke to him without presenting the paper.

Q. You spoke to him and he said he must have some order from the Attorney General or the President before he could act?

A. Yes, sir.

Q. And then you went to the Attorney General?

A. I did not go in person; I sent the papers.

Q. Did you send a note with them?

A. I do not remember.

Q. You simply sent the papers?

A. I sent a message, either written or verbal; I do not know which.

Q. By whom?

A. I think by Mr. Merrick or Mr. Bradley; I cannot say which.

Q. What Bradley?

A. Joseph H.

Q. The elder or younger?

A. The elder.

Q. Was he concerned in the matter?

A. He appeared in court with us merely as an adviser, as a friend of General Thomas.

Q. Joseph H. Bradley appeared in the courts of the District?

A. He did not appear in his character as attorney of the court. He appeared in person, not in the character of an attorney.

Q. He appeared in person, but did not appear as an attorney?

A. Yes, sir.

Q. Did he say anything?

A. Nothing to the court or to the judge.

Q. Is this Mr. Bradley the same man who was disbarred?

A. The same.

Q. So that he could not appear. Now, since you sent those papers to the Attorney General, have you ever received them back?

A. I have.
Q. When?
A. A few days ago.
Q. By "a few days ago" when do you mean? Since you have been summoned as a witness?
A. I think not—just before, I believe.
Q. Just before?
A. I believe so.
Q. Preparatory to your being summoned as a witness?
A. Not that I am aware of.
Q. After or before this case was opened: before or after the trial began?
A. After.
Q. How long after?
A. I cannot say. I think it was four or five days ago, as near as I can come to it.
Q. Had you any communication with the Attorney General about them between the time you sent them and the time when you received them? I do not ask what the communication was; I only ask the fact whether you had any communication?
A. None in person.
Q. Had you any in writing?
A. No, sir.
Q. Then you had none in any way, if you had none either in person or in writing?
A. Yes, sir; through Mr. Merrick, to whom it was more convenient to see him than it was to me.
Q. So you can only know by what Mr. Merrick said?
A. That is all.
Q. Of that I will not ask you; you say the papers were returned to you. Where are they now?
A. I have them in my pocket.
Q. Were they not returned to you for the purpose of your having them when you should be called as a witness? Do you not so understand it?
A. No, sir; they came with a message.
Q. How soon before you were summoned?
A. Not more than a day or two, I think.
Q. On the same day?
A. I think a day or two before; I am not very sure.
Q. To your knowledge have those papers, up to the hour in which we are speaking, been presented to any judge of any court?
A. They have not.
Q. Up to the hour that we are speaking have you been directed either by the Attorney General or the President to present that application to any judge of any court?
A. The papers came to me with a direction that Mr. Merrick and myself should use our discretion.
Q. They came with a written message?
A. No; a verbal one, through Mr. Merrick to me, or rather it was communicated to him, and by him to me.
Q. But Mr. Merrick, if I understand you, was not associated with you in this proceeding as counsel for the President, because I asked you if the President had any other counsel?
A. He was not, as I understood it; he was counsel for General Thomas.
Q. Was this a movement on the part of General Thomas?
The WITNESS. Which movement?

Mr. Manager BUTLER. This movement for an information in the nature of a *quo warranto.*

A. It was not. It would be on the part of the United States on his relation.

Q. On the relation of General Thomas?

A. Yes, sir.

Q. Now, sir, have you received in writing, or verbally to yourself, any directions, either from the President or the Attorney General, to file those papers?

A. No positive directions.

Q. Any positive or unpositive from him to you?

A. Not immediately.

Q. I do not mean through Mr. Merrick.

A The only communication I received was through him.

Q. Now, sir, if you please, state from whom did Mr. Merrick bring you a direction or communication?

A. From the Attorney General.

Q. Who? Use names, if you please.

A. The Attorney General, Mr. Stanbery.

Q. Five days ago! Mr. Stanbery resigned as Attorney General, we have heard, some fortnight ago or more. How could it come to you from the Attorney General five days ago?

A. I mean Mr. Stanbery.

Q. You have never received any direction, even through Mr. Merrick, from the Attorney General, but some sort of direction from the President's counsel, through Mr. Merrick?

A. All I received was——

Q. Excuse me; just hear my question.

The WITNESS. Repeat it, if you please.

Mr Manager BUTLER. Have you received any communication, through Mr. Merrick or anybody else, from the Attorney General of the United States—not the resigned Attorney General of the United States?

A. I have not from any other person than Mr. Stanbery.

Q. And you have not received any from him, either verbally or otherwise, while he was Attorney General?

A. I have not.

Q. When you sent in the papers was he then Attorney General?

A. I believe so.

Q. Will you not think, and make yourself certain on that point?

A. I do not know when he resigned. If you can inform me when that was, I can answer.

Q. And the resignation made no difference in your action, so that you do not remember it?

A. I do not think he could have resigned at that time. I am very sure that the papers were sent to him within two or three days after the discharge of General Thomas.

Q. And were returned by him to you four or five days ago?

A. I cannot be precise as to that—five or six days, or four or five days

Q. Long after he resigned, at any rate?

A. I believe it was.

Q. So that when you told us that Mr. Merrick had brought a communication from the Attorney General you meant from Mr. Stanbery?

A. I did.

Q. And you have received no communication from the President or from the Attorney General as to what should be done with those proceedings?

A. No, sir.

Q Then, so far as you know, since you have prepared those papers, there

has not been any direction or any effort from the President or the Attorney General—leaving out Mr. Stanbery, for he is not Attorney General now—from the President or the Attorney General to have anything done with those papers?

A. There has been no direction, and there has been no——

Q. Communication?

A. Communication to me since the papers were forwarded to the office of the Attorney General.

Q. Now, sir, we will go to the court for a moment. Did not Mr. Merrick or yourself make the motion to have Mr. Thomas discharged?

A. We did.

Q. Had he not been in custody under his recognizance up to the time of that motion?

A. We claimed that he was, but the other side denied it.

Q. And to settle that question you moved his discharge?

A. Yes, sir.

Q. And that was granted?

A. It was.

Q. Did you make that motion?

A. I did.

Q. So that, in fact, General Thomas was discharged by the court from custody on the motion of the President's counsel?

Mr. CURTIS. He has not said "from custody."

The WITNESS. Discharged from further attendance.

By Mr. Manager BUTLER:

Q. Excuse me. If he was not discharged from custody, what was he discharged from?

A. He was discharged from the complaint, or from any further detention or examination, I suppose.

Q. From "further detention?" He could not be detained without being in custody?

A. Not very well.

Mr. Manager BUTLER. I thought not, when I was interrupted by the learned counsel on that point.

The WITNESS. He was discharged from the complaint, I presume.

Q. Then I will repeat the question at the point at which I was interrupted: whether, in fact, Mr. Thomas was not discharged from custody, from detention, from further being held to answer upon that complaint by the motion of the President's counsel?

A. He was.

Q. Now, then, was that information signed by any Attorney General, past, current, or to come, so far as you know?

A. It was not.

RICHARD T. MERRICK sworn and examined.

By Mr. CURTIS:

Q. Where do you reside?

A. In Washington city.

Q. And what is your profession?

A. I am a lawyer by profession.

Q. How long have you been in that profession?

A. Nineteen or twenty years, or over. In 1847 I was admitted.

Q. Were you employed professionally in any way in connection with the matter of General Thomas before Chief Justice Cartter?

A. I was employed by General Thomas on the morning of the 22d of February, to conduct the proceedings instituted against him, and which brought him before Chief Justice Cartter.

Q. In the course of that day, the 22d of February, did you have an interview, in company with General Thomas or otherwise, with the President of the United States?

A. After the action taken by the chief justice on the case sitting at chambers on the morning of the 22d, at the instance of General Thomas, I went to the President's House for the purpose of taking to the President the affidavit and the bond filed by General Thomas, and communicating to the President what had transpired in regard to the case.

Q. Did you communicate to him what had transpired?

A. I did.

Mr. Manager BUTLER. I did not understand what the question was.

Mr. CURTIS. The question is, did he communicate to the President what had transpired in regard to the case?

Mr. Manager BUTLER. I submit, Mr. President, that that is wholly immaterial. The Senate ruled in the President's acts in employing Mr. Cox as his counsel. Those were his acts. But what communication took place between him and Mr. Merrick, who very frankly tells us here he was employed by General Thomas as his counsel, I think cannot be evidence.

The CHIEF JUSTICE. The Chief Justice thinks the evidence is cumulative only, and is admissible. He will put the question to the Senate if any senator desires it. The counsel will reduce their question to writing.

Mr. Manager BUTLER. Upon the whole I will not press the objection.

The CHIEF JUSTICE. The objection is withdrawn.

Mr. CURTIS, (to the witness.) State whether you communicated to the President, in the presence of General Thomas, what had transpired in reference to the case?

A. My recollection is that I communicated what had transpired to the President in the absence of General Thomas in the first instance, for he was not at the Executive Mansion when I called; but during the interview General Thomas arrived, and the same communication was again made in a general conversation, in which the Attorney General, Mr. Stanbery, the President, General Thomas, and myself participated.

Q. I wish now you would state whether, either from the President himself, or from the Attorney General in his presence, you received any instructions or suggestions as to the course to be pursued by you in reference to General Thomas's case?

Mr. Manager BUTLER. Stay a moment.

By Mr. CURTIS:

Q. In the first place you may fix, if you please, the hour of the day when this occurred on the 22d.

The WITNESS. The manager signified to me to stop.

Mr. Manager BUTLER. What date was it?

The WITNESS. The 22d of February.

By Mr. CURTIS:

Q. Now, the hour of the day, as near as you can fix it?

A. I think the proceedings before Chief Justice Cartter at chambers took place between 10 and half-past 10 o'clock; to the best of my recollection about 10 o'clock. Immediately after they terminated, (and they extended through only a very brief period, for it was simply to give a bond,) I ordered copies of the papers to be made, and as soon as they were made I took them to the Executive Mansion. I think it occupied probably from 30 minutes to an hour to make the copies, and my impression is that I reached the Executive Mansion by noon.

Q. Now, you can answer the residue of the question, whether you received either from the President himself, or the Attorney General in the presence of

the President, any directions or suggestions as to the course to be taken by you as counsel in that case.

Mr. Manager BUTLER. Do you ask now for the conversations?

Mr. CURTIS. I ask for suggestions or directions to this gentleman. I do not go outside of those.

Mr. Manager BUTLER. I think those are conversations, and I do not think they can be put in. This was not employing, as was the other case, a counsel to do anything; but it was giving directions as to how Thomas's counsel should try his case.

Mr. CURTIS. I suppose it depends entirely upon what was said. They might amount to verbal acts, as they are called in the books; and if this gentleman so received and acted upon them I suppose they then pass out of the range of mere talk or declarations. The question is whether he received instructions or suggestions from the President or the Attorney General.

Mr. Manager BUTLER. It will be perceived that the difficulty is this: it is not a mere question of the difference between acts and declarations, although declarations make it a remove further off; but my proposition is that the President's acts in directing General Thomas's counsel to defend General Thomas, his client, not being employed by him, the President, cannot be evidence, whether regarded as acts or declarations. That is all.

Mr. EVARTS. It does not follow that these instructions were to defend Mr. Thomas. The point of the inquiry is that the instructions were to make investigations in this proceeding whether steps could be taken in behalf of the President. You cannot anticipate what the answer is to be by the objections. We offer to show that the Attorney General, in the presence of the President, after this report of the situation that was opened by the existence of this case of General Thomas, gave certain directions to this gentleman of the profession in reference to grafting upon that case the means of having a *habeas corpus*.

Mr. Manager BUTLER. I do not propose to argue it. The statement of it is enough. General Thomas's lawyer goes to the President; the President has no more right to direct General Thomas's lawyer than he has to direct me; and thereupon they do not offer even the declarations of the President, but they offer now the declarations of the President's lawyer, Attorney General Stanbery, and you are asked to allow his counsel to put in his declarations as part of this defence. If that is allowed to go in no argument on earth can be of any avail.

The CHIEF JUSTICE. The counsel will please reduce their question to writing.

(The offer of proof was reduced to writing and sent to the desk.)

The CHIEF JUSTICE. The Secretary will read the question propounded by the counsel for the President.

The Secretary read as follows:

We offer to prove that about the hour of 12, noon, on the 22d of February, upon the first communication to the President of the situation of General Thomas's case, the President, or the Attorney General in his presence, gave the attorneys certain directions as to obtaining a writ of *habeas corpus* for the purpose of testing judicially the right of Mr. Stanton to continue to hold the office of Secretary of War against the authority of the President.

The CHIEF JUSTICE. The Chief Justice thinks this evidence admissible within the rule already determined by the Senate. He will submit the question to the Senate if any senator desires it. [After a pause.] The witness may answer the question.

The WITNESS. I should like to have the question read.

Mr. CURTIS. The question is, whether the President, or the Attorney General in his presence, gave you any instructions in respect to proceedings to obtain a writ of *habeas corpus* to test the right of Mr. Stanton to hold the office of Secretary contrary to the will of the President?

A. The Attorney General, upon learning from me the situation of the case, asked if it was possible in any way to get it to the Supreme Court immediately.

I told him I was not prepared to answer that question. He then said: "Look at it and see whether you can take it up to the Supreme Court immediately upon a *habeas corpus* and have a decision from that tribunal." I told him I would.

Q. Subsequent to this time did you come in communication with any gentleman acting as counsel for the President in reference to this matter, and who was that gentleman, if any?

Mr. JOHNSON. What is the question? We did not hear it.

Mr. CURTIS. The question is, whether, subsequent to this time, he came into communication with any other legal gentleman acting as counsel for the President, and who he was?

A. I examined the question as requested by the Attorney General, and on the evening or afternoon of the 22d, and I think within two or three hours after I had seen him, I wrote him a note.

Mr. Manager BUTLER. We will not have the contents of that note unless it is ruled in.

The WITNESS. I paused, sir, that you might object.

By Mr. CURTIS:

Q. Stating the result of that examination?

A. Stating the result of that examination.

Mr. Manager BUTLER. Whatever was in that note you will not state it.

The WITNESS. That was all the contents.

Mr. Manager BUTLER. Nothing will be stated unless the Senate rules it in.

By Mr. CURTIS:

Q. You wrote him a note on this subject?

A. I wrote him a note on this subject, and on the following Monday or Tuesday, this being Saturday, I met Mr. Cox, who was the counsel of the President, as I understood, and in consultation with him I communicated to him the conclusions to which I had arrived in the course of my examination on the Saturday previous, and we, having come to the same conclusion, agreed to conduct the case together in harmony with a view of accomplishing the contemplated result of getting it to the Supreme Court on a *habeas corpus*.

Q. State now anything which you and Mr. Cox did for the purpose of accomplishing that result.

A. Having formed our plan of proceeding, we went into court on the day on which, according to the bond, General Thomas was to appear before Judge Cartter at chambers.

Mr. JOHNSON. What day was that?

The WITNESS. That was, I think, on Wednesday, the 26th, if I am not mistaken. Shall I state what transpired?

Mr. CURTIS. Yes, so far as it regards your acts.

Mr. Manager BUTLER. I respectfully submit once again, Mr. President, that the acts of General Thomas's counsel, under the direction of the Attorney General, after the President was impeached, cannot be put in evidence.

The WITNESS, (to counsel.) Will you allow me to make a correction?

Mr. CURTIS and Mr. EVARTS. Certainly.

The WITNESS. You asked when I next came in contact with any one representing the President. I should have stated that on Tuesday night, by appointment, I had an interview with the Attorney General upon the subject of this case, and the proceedings to be taken on the following day.

Mr. Manager BUTLER. I do not see that that alters the question, which I desire may be reduced to writing, if it is ever to be done, before I argue it; because I have argued one or two questions here, and then another question appeared when it came to be reduced to writing.

The CHIEF JUSTICE. The counsel will please reduce their question to writing.

The question was reduced to writing, and read by the Secretary, as follows:

What, if anything, did you and Mr. Cox do in reference to accomplishing the result you have spoken of?

Mr. Manager BUTLER. Does that include what was done in court?

Mr. CURTIS It includes what was done by the chief justice as a magistrate or in court, if it is so termed.

Mr. Manager BUTLER. I suppose that that must be termed a court?

Mr. EVARTS. It is the same question which was put to the other witness.

Mr. Manager BUTLER. No; it is another person.

The CHIEF JUSTICE. Does the manager object to the question as proposed?

Mr. Manager BUTLER. Yes, sir.

The CHIEF JUSTICE. The Chief Justice thinks it is competent, but he will put the question to the Senate if any senator desires it. (After a pause, to the witness.) Answer the question.

The WITNESS, (to the Secretary.) Read me the question?

The Secretary read the question.

The WITNESS. To answer that question it is necessary that I should state what transpired before the judge at chambers and in court on Wednesday; for all that we did was done to accomplish that result.

Mr. CURTIS. Go on.

The WITNESS. Shall I state it?

Mr. CURTIS. Yes.

A. We went into the room in the City Hall in which the criminal court holds its session, in the morning. Chief Justice Cartter was then holding the term of the criminal court, and the criminal court was regularly opened. After some business in the criminal court was discharged, the chief justice announced that he was ready to hear the case of General Thomas. The question was then suggested whether it was to be heard in chambers or before the court. The chief justice said he would hear it as at chambers, the criminal court not having then been adjourned. The case was thereupon called up. The counsel appearing for Mr. Stanton or for the government, Messrs. Carpenter and Riddle, moved that the case be continued or postponed until the following day, on the ground of the absence of one or two witnesses, I think, and on the additional plea of Mr. Carpenter's indisposition. To that motion, after consultation with my associate, Mr. Cox, and Mr. Joseph H. Bradley, who appeared in person as advisory counsel for General Thomas, I rose and objected to the postponement, stating that I was constrained to object, notwithstanding the plea of personal indisposition, to which I always yielded; but I objected now for the reason that this was a case involving a question of great public interest, which the harmonious action of the government rendered it necessary should be speedily determined. I elaborated the view. Mr. Carpenter replied, representing that there could be no detriment to the public service, and he earnestly urged the court to a postponement. The chief justice thereupon said—I think he remarked that it was the first time he knew of a case in which the plea of a personal indisposition of counsel was not acceded to by the other side; that it was generally sufficient, and went on to remark upon the motion further in such a manner that I concluded he would continue the case until the following day; and as soon as we saw that he would continue the case until the following day we brought forward a motion that it be then adjourned from before the chief justice at chambers to the chief justice holding the criminal court. That question was argued by counsel and overruled by the court.

Mr. JOHNSON. By the court?

The WITNESS. By the judge at chambers, not by the court. I then submitted to the judge ——

Mr. Manager BUTLER. Mr. President, I wish it simply understood, that I may clear my skirts of this matter, that this all goes in under our objection, and under the ruling of the presiding officer.

The CHIEF JUSTICE. It goes in under the direction of the Senate of the United States. (To the witness.) Proceed, sir.

The WITNESS. We then announced to the judge that General Thomas's bail had surrendered him, or that he was in custody of the marshal, and the marshal was advancing toward him at the time. I think that Mr. Bradley or Mr. Cox handed me, while on my feet, and while I was making that announcement, the petition for a *habeas corpus*, which I then presented to the criminal court, which having opened in the morning, had not yet adjourned, and over which Chief Justice Cartter was presiding. I presented the *habeas corpus* to the criminal court.

Mr. CURTIS. The petition?

The WITNESS. The petition for a *habeas corpus* to the criminal court, representing that General Thomas was in custody of the marshal, and asked that it should be heard.

Mr. Manager BUTLER. Was that petition in writing?

The WITNESS. That petition was in writing, I believe. As I said, it was handed to me by one of my associates, and if my recollection serves me aright I have seen the petition since, and it was not signed. When handed to me General Thomas and Mr. Bradley were sitting immediately behind me, and after reading it I laid it down, and I believe it was taken up by some of the reporters and not regained for half an hour.

By Mr. CURTIS:

Q. Well, sir, after you had read it what occurred?

A. After I had read it a discussion arose upon the propriety of the petition and the regularity of the time, in regard to the time of its presentation. The counsel upon the other side contended that General Thomas was not in custody, and that it was a remarkable case—I remember that expression, I think, of Mr. Carpenter's—for an accused party to insist upon putting himself in jail or in custody. We contended that he was in custody. The chief justice ruled that he was not in custody at all, and that he did not purpose to put him in custody.

The counsel upon the other side further stated that they desired neither that he should be put in custody nor that he should give bond, because they were certain, from his character and position, that he would be here to answer any charge that might be brought against him. The chief justice replied that, in view of the statements made by the counsel, he should neither put him in custody nor demand bond, and was himself satisfied there was no necessity for pursuing either course. We then remarked, "If he is not in custody and not under bond he is discharged." I think some one said, "He is then discharged;" and thereupon, in order that there might be a decision in reference to the alternatives presented of his being placed in custody or discharged upon the record, we moved for his discharge in order to bring up the question officially of his commitment. He was thereupon discharged.

Mr. CURTIS. I believe that is all we wish to examine Mr. Merrick upon.

Cross-examined by Mr. Manager BUTLER:

Q. Were you counsel, Mr. Merrick, for Surratt?

A. I was, sir.

Q. Was Mr. Cox?

A. He was not.

Q. Was Mr. Bradley, who was advisory counsel in this proceeding?

A. He was.

Q. When you got to the Executive Mansion that morning, Thomas was not there, you tell us?

A. I think not. That is my recollection.
Q. Did you learn whether he had been there?
A. I do not recollect whether I did or not. Had I so learned I probably should have recollected it.
Q. Did you not learn that Thomas was then over at the War Department?
A. I do not recollect that I did, and think I did not.
Q. Did you not learn when he returned that he had come from the War Department?
A. I do not recollect.
Mr. Manager BUTLER. I will not tax your want of recollection any further. [Laughter.]

EDWIN O. PERRIN sworn and examined.

By Mr. EVARTS:

Question. Where do you reside?
Answer. I reside on Long Island, near Jamaica.
Q. How long have you been a resident of that region?
A. I have been a resident of Long Island over ten years.
Q. Previous to that time where had you resided?
A. Memphis, Tennessee.
Q. Are you personally acquainted with the President of the United States?
A. I am.
Q. And how long a time have you been so personally acquainted with him?
A. I knew Mr. Johnson in Tennessee for several years before I left the State, having met him more particularly upon the stump in political campaigns, I being a whig and he a democrat.
Q. And has that acquaintance continued until the present time?
A. It has.
Q. Were you in the city of Washington in the month of February last?
A. I was.
Q. And for what period of time?
A. I came here, I think, about the 1st day of February, or near that time, and remained until about the 1st of March or last of February.
Q. During that time were you at a hotel or at a private residence?
A. At a private boarding house.
Q. Did you have an interview with the President of the United States on the 21st of February?
A. I did.
Q. Alone, or in company with whom?
A. In company with a member of the House of Representatives.
Q. Who was he?
A. Mr. Selye, of Rochester, New York.
Q. How did it happen that you made this visit?
Mr. Manager BUTLER. I pray judgment on that.
Mr. EVARTS. It is merely introductory. It is nothing material. You have no ground to object, as the answer will show.
Mr. Manager BUTLER. Very well.
The WITNESS. Mr. Selye said that while he knew the President he never had been formally presented to him; and understanding that I was a friend of the President, and well acquainted with him, he asked me if I would not go up with him to the President's and introduce him.

By Mr. EVARTS:

Q. When did this occur?
A. On the 20th.
Q. The day before?
A. The day before—on the 20th.

Q. Your visit, then, on the 21st was on this inducement?

A. I made the appointment for the next day. I informed Mr. Selye that it was cabinet day, and it would be no use to go until after two o'clock, as we probably would not be permitted to enter, and appointed two o'clock, at his rooms in Twelfth street, to meet him for that purpose.

Q. You went there, and you took up Mr. Selye?

A. I went to Mr. Selye's room. He called a carriage, and we got in and drove to the President's house, a little after two o'clock, or perhaps nearly three. I did not note the hour.

Q. Did you have any difficulty in getting in?

A. We had. Mr. Kershard, the usher at the door, when I handed him Mr. Selye's card and mine, said that the President had some of his cabinet with him yet, and no one would be admitted. I told him I wished that he would go in and say to the President or say to Colonel Moore, with my compliments——

Mr. Manager BUTLER. Excuse me; are you going to put in Colonel Moore?

Mr. EVARTS. It is no matter; we are only getting at the fact how he got in. (To the witness.) Was the fact that Mr. Selye was a member of Congress mentioned?

A. That was mentioned, that Mr. Selye was a member of Congress.

Q. And so you got in?

A. And so we got in.

Q. Then you went up-stairs; and were you immediately admitted, or otherwise?

A. We were up-stairs then when this took place; in the ante-room near the President's reception room.

Q. Very well; then you went in after a while?

A. Yes, sir; we went in.

Q. Was the President alone when you went in?

A. He was alone.

Q. And did you introduce Mr. Selye?

A. I introduced Mr. Selye.

Q. As a member of Congress?

A. As a member of Congress from the Rochester district.

Q. Before this time had you heard that any order for the removal of Mr. Stanton had been made?

A. I had heard nothing of it.

Q. Nor had Mr. Selye, so far as you know?

A. He had not. I found him lying down when I got to his room, about two o'clock, and he complained of being unwell.

Q. So far as you know, he had heard nothing of it?

A. So far as I know, he had heard nothing of it.

Q. Did you then hear from the President of the removal of Mr. Stanton?

Mr. Manager BUTLER. Stay a moment. We feel it our duty to object to the statement of the President to this person or Mr. Selye or anybody else, declarations made to parties in the country generally. There can be no end to this kind of evidence; everybody may be brought here. Where are we to stop, if there is to be any stop? If not, the time of the country will be consumed in hearing every conversation between the President and every person that he chooses to introduce.

Mr. EVARTS. If the evidence is proper the time to have considered about the public interest was when the trial was commenced or promoted. We are not to be excluded from a defence because it takes time to put it in. Of course it would be more convenient to stop a cause at the end of the prosecution's case and save the time of the country or of the court. We are reducing to writing our offer.

Mr. Manager BUTLER. The question simply is what was said between the

President and Mr. Selye and Mr. Perrin. That is the question that I had the honor to object to.

Mr. EVARTS. We are reducing it to form in order that it may be passed upon.

The offer, having been reduced to writing, was read by the Secretary, as follows:

We offer to prove that the President then stated that he had issued an order for the removal of Mr. Stanton and the employment of General Thomas to perform the duties *ad interim;* that thereupon Mr. Perrin said, "Supposing Mr. Stanton should oppose the order;" the President replied, "There is no danger of that, for General Thomas is already in the office." He then added, "It is only a temporary arrangement; I shall send in to the Senate at once a good name for the office."

Mr. Manager BUTLER. I find it, Mr. President and Senators, my duty to object to this. There is no end to declarations of this sort. The admission of those to Sherman and to Thomas was advocated on the ground that the office was tendered to them and that it was a part of the *res gestæ*. This is mere narration, mere statement of what he had done and what he intended to do. It never was evidence and never will be evidence in any organized court, so far as any experience in court has taught me. I do not see why you limit it. If Mr. Perrin, who says that he has heretofore been on the stump, can go there and ask him questions, and the answers can be received, why not anybody else? If Mr. Selye could go there, why not everybody else? Why could he not make declarations to every man, ay, and woman, too, and bring them in here, as to what he intended to do and what he had done to instruct the Senate of the United States in their duties sitting as a high court of impeachment?

Mr. EVARTS. Mr. Chief Justice, I am not aware that the credit of this testimony is at all affected by the fact that Mr. Perrin has been engaged in political canvasses, nor do I suppose that it assists us in determining whether this should be admitted, because a declaration might be made even to a female. The question, then, is, whether the declaration, at this time and under these circumstances, of the President's intent in what he had done was and is proper to be heard.

It will be observed that this was an interview between the President of the United States and a member of Congress, one of "the grand inquest of the nation," holding, therefore, an official duty and having access, by reason of his official privilege, to the person of the President; that at this hour of the day the President was in the attitude of supposing, upon the report of General Thomas, that Mr. Stanton was ready to yield the office, desiring only the time necessary to accommodate his private convenience, and that he then stated to these gentlemen, "I have removed Mr. Stanton and appointed General Thomas *ad interim*," which was their first intelligence of the occurrence; that upon the suggestion, "Will there not be trouble or difficulty?" the President answered (showing thus the bearing on any question of threats or purpose of force as to be imputed to him from the declarations that General Thomas was making at about the same hour to Mr. Wilkeson) that there was no occasion for or "no danger of that, as General Thomas was already in." Then, as to the motive or purpose entertained by the President at the time of this act of providing anybody that should control the War Department or the military appropriations, or by combination with the Treasury Department suck the public funds, or to have, though I regret to repeat the words as used by the honorable manager, a tool or a slave to carry on the office to the detriment of the public service, we propose to show that at the very moment he asserts, "This is but a temporary arrangement; I shall at once send in a good name for the office to the Senate."

Now, you will perceive that this bears upon the President's condition of purpose in this matter, both in respect to any force as threatened or suggested by anybody else being imputable to him at this time, and upon the question of whether this appointment of General Thomas had any other purpose than what

appeared upon its face, a nominal appointment, to raise the question of whether Mr. Stanton would retire or not, and determined, as it seemed to be for the moment, by the acquiescence of Mr. Stanton, was then only to be maintained until a name was sent into the Senate, as by proof hitherto given we have shown was done on the following day before one o'clock.

Mr. JOHNSON. Mr. Chief Justice, I ask that the question be read.

The CHIEF JUSTICE. The proposal of the counsel for the President will be read.

The Secretary read as follows:

We offer to prove that the President then stated that he had issued an order for the removal of Mr. Stanton and the employment of Mr. Thomas to perform the duties *ad interim*; that thereupon Mr. Perrin said, "Supposing Mr. Stanton should oppose the order." The President replied: "There is no danger of that, for General Thomas is already in the office." He then added: "It is only a temporary arrangement; I shall send in to the Senate at once a good name for the office."

Mr. Manager WILSON. Mr. President, as this objection is outside of any former ruling of the Senate, and is perfectly within the rule laid down in Hardy's case, I wish to call the attention of the Senate to that rule again, not for the purpose of entering upon any considerable discussion, but to leave this objection under that rule to the decision of the Senate:

Nothing is so clear as that all declarations which apply to facts, and even apply to the particular case that is charged, though the intent should make a part of that charge, are evidence against a prisoner, and are not evidence for him, because the presumption upon which declarations are evidence is, that no man would declare anything against himself unless it were true; but every man, if he was in a difficulty, or in the view to any difficulty, would make declarations for himself.—24 *State Trials*, p. 1096.

If this offer of proof does not come perfectly within that rule, then I never met a case within my experience that would come within its provisions. I leave this objection to the decision of the Senate upon that rule.

Mr. EVARTS. It may truly be said, I suppose, Mr. Chief Justice and Senators, that the question now proposed is not entirely covered by any previous ruling of the Senate, because there were circumstances in regard to the attitude of the persons between whom and the President those conferences took place that are not precisely reproduced here in the relation of a member of Congress toward the President. But, Senators, you will perceive that before the controversy arose, and at a time when, in the President's opinion, there was to be no controversy, he made this statement in the course of his proper intercourse with this member of Congress, thus introduced to him, concerning his public action. It is applicable in reference both to the point of why the appointment of General Thomas was made and with what limitation of purpose in so appointing him, and as bearing also upon the question of whether he was using or justifying force. May not declarations that are drawn from supposed coadjutors of his, with a view of fixing upon him the responsibility of the same, be rebutted by his statements at the same period in this open and apparently truthful manner, unconnected with any agitation or any questions of difficulty or any *lis mota?* And then it is important, as bearing upon this precise fact, that the next day having sent in, as we have proved, the nomination of Mr. Ewing, sr., of Ohio, for the place of Secretary of War, to show that that was not a purpose or an act that was formed after the occasion of difficulty or after the appearance of danger or threat to himself; but that at the very moment that he was performing the act of removing Mr. Stanton and appointing General Thomas, and had supposed that it had quietly been acceded to, he then and there had the purpose not of making an appointment of General Thomas that was to hold, which should supersede proper action of the Senate; but at the very moment, having used this necessary appointment for the purpose of testing the question of the Constitution and of the law, he then proposed to send to the Senate of the United States a nomination for the office.

Mr. Manager BUTLER. Mr. President, there are one or two new facts now put in, or pretended facts, upon which this evidence is pressed. The more material one is that this was before any controversy arose between the President and Congress upon the subject of Mr. Stanton. If that were so, then it might possibly have some color of a shadow of a shade of bearing. But had there not been a controversy going on? Had he not known that the Senate had restored Mr. Stanton? Had he not tried to get him out and had they not put him back? Had he not been beseeching and beseeching General Sherman to take the office weeks, ay, months before, and had not General Sherman told him, "I cannot take it without getting into difficulty; there will be trouble; why mix me, an army officer, up in this trouble?" And yet the President's counsel rise here in their place and put this evidence before you, because it was his declaration before any controversy arose or was likely to arise!

Another proposition is put in here, and that is that this must be evidence because it was said to a member of Congress. I am aware that we have many rights, privileges, and appurtenances belonging to our official position, but I never was aware before that one of them was that what was said to us was evidence because it was said to us by anybody. I have had a great many things said to me that I should be very unwilling to have regarded as evidence. For instance, here is a written declaration sent to me to-day. "Butler, prepare to meet your God." [Laughter.] "The avenger is abroad on your track." "Hell is your portion." [Laughter.] Now, I trust that is not evidence because it is said to a member of Congress. And yet it is just as pertinent, just as competent, in my judgment, as this declaration. We are to have these kinds of declarations made to us by the enemies of the country, and we are to sit here and admit the President's declarations in justification of his conduct, which brings out such a condition of this country.

I did not mean, by any manner of means, when I was up before, to suggest that the fact of this being made to a gentleman who is on the stump would make it more or less competent; only to show that so far as the evidence goes, so far as they choose to put in his profession, it is utterly outside of this case. I do not think it would make it more or less evidence because it should have been made to a woman; I was only foreseeing what might come—quite as probable as this—that some of the lady friends—I beg pardon—the woman friends of the President might have gone to the White House on that day and he might have told them what his purpose was. It would be just as much evidence, in my judgment, as this; and it was only in that view, to show the innumerableness of the persons to whom these competent declarations could be made, that I brought up the illustration which produced the answer on the part of the learned counsel.

Mr. EVARTS. The *his mota*, Mr. Chief Justice and Senators, so far as it has been alluded to as bringing discredit upon the President's statements, is the controversy between Congress and himself in regard to the removal of Mr. Stanton. What political differences there are or may have been between the President and the houses of Congress, it is of no consequence to inquire; nor is it of the least consequence to inquire into the period during which the suspension of Mr. Stanton had taken place, for that certainly was within any view of the law that can be suggested. I referred, therefore, as has often been referred, to the controversy produced by the threat of the House and its very prompt execution of impeachment; and that had not occurred in any point to ask the President's attention at the moment of this statement. It was therefore a statement by him unaffected by any such considerations as those.

The CHIEF JUSTICE. Senators, the Chief Justice is unable to determine the precise extent to which the Senate regards its own decisions as applicable. He has understood the decision to be that, for the purpose of showing intent, evidence may be given of conversations with the President at or near the time of

the transaction. It is said that this evidence is distinguishable from that which has been already introduced. The Chief Justice is not able to distinguish it; but he will submit directly to the Senate the question whether it is admissible or not.

Mr. CONNESS. I ask for the yeas and nays on that question.

The yeas and nays were ordered.

The question being taken by yeas and nays, resulted—yeas, 9; nays, 37; as follows:

YEAS—Messrs. Bayard, Buckalew, Davis, Dixon, Doolittle, Hendricks, McCreery, Patterson of Tennessee, and Vickers—9.

NAYS—Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett Cragin, Drake, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Harlan, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Nye, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Thayer, Tipton, Trumbull, Van Winkle, Willey, Williams, Wilson, and Yates—37.

NOT VOTING—Messrs. Anthony, Cole, Edmunds, Henderson, Norton, Saulsbury, Sumner, and Wade—8.

So the Senate decided the question to be inadmissible.

Mr. EVARTS. This evidence being excluded, we have no other questions to ask of the witness.

Mr. Manager BUTLER. We have none, sir.

Mr. EVARTS. We have reached a point, Mr. Chief Justice and Senators, at which it will be convenient to us that we should not be required to produce more evidence to-day.

Mr. Manager BUTLER. Mr. President, I hope upon this movement for delay the President's counsel will be called upon to go on with their case, and I have only to put to them the exact thing that the President's counsel, Cox and Mr. Merrick, used in the case of General Thomas before the criminal court of this District, according to Merrick's testimony. It is always ungracious to object to delay because of the sickness of counsel. We should have been glad to have Mr. Stanbery here, but these gentlemen present can try this case. There are four of them. When a motion to postpone the case of Thomas before Chief Justice Cartter was made—to postpone the case because of the sickness of Mr. Carpenter, for a single day, the President's counsel, arguing his case, trying his case before the court, said "No; a case involving so much of public administration cannot wait for the sickness of counsel." "I thank thee, Jew, for teaching me that word." The President's counsel there well told us what we ought to do. In the case of Mr. Thomas the President could not wait for sick men or sick women. The case must go through. We cannot wait now, on the same ground, for the sickness of the learned Attorney General; and why should we? Why should not this President be called upon now to go on? We have been here thirty-three working days since the President actually filed his answer, and we, the managers, have used but six days of them, and the counsel but part of seven. Twenty-one of them have been given to delays on motion of the President, and there have been four adjournments on the days we have worked earlier than the usual time of adjournment, in order to accommodate the President.

Now, the whole legislation of this country is stopping; the House of Representatives has to be, day by day, here at your bar. The taxes of the country cannot be revised because this trial is in the way. The appropriations for carrying on the government cannot be passed because this trial is in the way. Nothing can be done, and the whole country waits upon us and our action, and it is not time now for the exhibitions of courtesy. Larger, higher, greater interests are at stake than such questions of ceremony. Far be it from me not to desire to be courteous, and not to desire that we should have our absent and sick friend here to take part with us; but the interests of the people are greater than the interests of any one individual. Gentlemen of the Senate, this is the closing up of a war wherein three hundred thousand men laid down their lives

to save the country. In one day we sacrificed them by tens and twenties of thousands on the field of battle, and shall the country wait now in its march to safety because of the sickness of one man and pause for an indefinite time—because the duration of sickness is always indefinite? More than that, I have here in my hand testimony of what is going on this day and this hour in the south.

Mr. CURTIS. We object to the introduction of any testimony.

Mr. EVARTS. We object to the relevancy of it here.

Mr. Manager BUTLER. The relevancy of it is this, that while we are waiting for the Attorney General to get well, and you are asked to delay this trial for that reason, numbers of our fellow-citizens are being murdered day by day. There is not a man here who does not know that the moment justice is done on this great criminal these murders will cease.

Mr. CURTIS rose.

Mr. Manager BUTLER. I cannot be interrupted. This is the great fact which stands here before us, and we are asked, "Why stand ye here idle?" by every true man in the country. Mr. Chief Justice, in Alabama your register of bankruptcy, appointed by yourself, General Spencer, of Tuscaloosa, is driven to-day from his duties and his home by the Ku-Klux Klan, upon fear of his life, and I have the evidence of it lying on our table; and shall we here delay this trial any longer, under our responsibility to our countrymen, to our consciences, and to our God, because of a question of courtesy? While we are being courteous the true Union men of the south are being murdered, and on our heads and on our skirts is this blood if we remain any longer idle.

Again, sir, since you have begun this trial—I hold the sworn evidence of what I say in my hand—since the 20th day of February last, and up to the 4th day of this present April—and no gold had been sold by the Treasury prior to that time since December 12—$10,800,000 of your gold has been sold at a sacrifice to your treasury, and by whom? More than one-half of it, $5,600,000, by one McGinnis, whom the Senate would not permit to hold office; and over $10,000 in currency, of which I have the official evidence here, under the sworn oath of the Assistant Treasurer at New York, has been paid to him, after the Senate had refused to have him hold any office, and had rejected him as a minister to Sweden. He now takes charge of the sale of your gold, by order of the Executive, as a broker, and we are to wait day by day while he puts into his pocket from the treasury of the country money by the thousands, because this gold is sold from one and one-eighth per cent. to three per cent. lower than the market rates, at different dates, as taken from the best tables. The commissions alone amount to what I have said, supposing the gold to be sold honestly by this rejected diplomat.

Worse still, sir; I have here from the same source the fact that since the 1st day of January last there have been bought in the city of New York alone, on behalf of the Treasury, $27,058,100 of the bonds of the United States, by men who return them from three-eighths, one-half, five-eighths, to three-quarters per cent. above the market price, and since February 20, $14,181,600 worth.

Mr. Manager LOGAN. Below.

Mr. Manager BUTLER. No; I mean what I say, above. I never make mistakes in such matters. I know what I say. From the 3d of January to the 28th of January, by such purchases, the price of bonds was run up and the people were made to pay that difference—run up from one hundred and four and three-quarters to one hundred and eight per cent., and still the purchases went on, and they have gone on from that day of February down to the 4th of April, when the managers of impeachment on the part of the House of Representatives felt it their duty to take this testimony of the assistant treasurer at New York under oath.

Now, I say, for the safety of the finances of the people, for the progress of

the legislation of the people, for the safety of the true and loyal men, black and white, in the south who have perilled their lives for four years; yea, five years; yea, six years; yea, seven years, in your behalf; for the good of the country, for all that is dear to any man and patriot, I pray let this trial proceed; let us come to a determination of this issue. If the President of the United States goes free and acquit, then the country must deal with that state of facts as it arises; but if he, as the House of Representatives instructs me, and as I believe, is guilty; if on his head rests the responsibility; if from his policy, from his obstruction of the peace of the country, all this corruption and all these murders come, in the name of Heaven let us have an end of them and see to it that we can sit at least four hours a day to attend to this, the great business of the people.

Sir, it may be supposed here that I am mistaken as to time wasted; but let us see; let me give you day and date. The articles of impeachment were presented on March 4, and the summons was returnable March 13, at which time the President, by its terms, was requested to answer. Delay was given, on his application for forty days, to the 23d—ten days, when the answer was filed, and a motion was made for thirty days' delay, which failed. Then a motion for a reasonable time after replication was filed, which was done on the 24th. Time was given, on motion of the President's counsel, until the 30th—six days. On that day the managers opened their case, and proceeded without delay with their evidence till April 4—six days. Then, at the request of the President's counsel, adjourned to April 9—five days. Mr. Curtis opened a part of a day, and asked for an adjournment till the 10th, wherein we lost half a day. They continued putting in evidence till the 11th (12th being Sunday) and 13th. Because of sickness, adjourned again over till Wednesday, 14th. Wednesday adjourned early, because counsel could go no further. Thursday, now another motion to adjourn, because counsel cannot go on. Thirty-four days since the President filed his answer; six days used by the managers in putting in their case; parts of seven used by the counsel for the President, and twenty-one given as delay to the President on his motion.

I do not speak of all this to complain of the Senate, but only that you and the country may see exactly how courteous and how kind you have been to the criminal and to his counsel. Yielding to the request of the counsel who opened you lost half a day. Then the opening consumed parts of two days. On the next day they said they were not quite ready to go through with General Sherman, and you again adjourned earlier than usual. Then we lost almost all of Monday in discussing the questions which were raised. We adjourned early on Monday, as you remember, and on the next day there was an adjournment almost immediately after the Senate met, because of the learned Attorney General. Now, all we ask is that this case may go on.

If it be said that we are hard in our demands that this trial go on, let me contrast for a moment this case with a great State trial in England, at which were present Lord Chief Justice Eyre, Lord Chief Baron McDonald, Baron Hotham, Mr. Justice Buller, Sir Nash Grose, Mr. Justice Lawrence, and others of her Majesty's judges in the trial of Thomas Hardy for treason. There the court sat from 9 o'clock in the morning until 1 o'clock at night, and they thus sat there from Tuesday until Friday night at 1 o'clock, and then, when Mr. Erskine, afterward Lord Chancellor Erskine, asked of that court that they would not come in so early by an hour the next day because he was unwell and wanted time, the court after argument refused it, and would not give him even that hour in which to reflect upon his opening which he was to make, and which occupied nine hours in its delivery, until the jury asked it, and then they gave him but a single hour, although he said upon his honor to the court that every night he had not got to his house until between 2 and 3 o'clock in the morning, and he was regularly in court at 9 o'clock on the following morning.

That is the way cases of great consequence are tried in England. That is

the way other courts sit. I am not complaining here, senators, understand me. I am only contrasting the delays given, the kindnesses shown, the courtesies extended in this greatest of all cases, and where the greatest interests are at stake, compared with every other case ever tried elsewhere. The managers are ready. We have been ready; at all hazards and sacrifices we would be ready. We only ask that now the counsel for the President shall be likewise ready, and go on without these interminable delays with which, when the House began this impeachment, the friends of the President there rose up and threatened. You will find such threats in the Globe. Mr. James Brooks, of New York, said, in substance: "You can go on with your impeachment, but I warn you that we will make you go through all the forms, and if you go through all the forms we will keep it going until the end of Mr. Johnson's term, and it will be fruitless." Having thus threatened you, senators, I had supposed that you would not allow the threat to be carried out, as it is attempted to be carried out, by these continued delays.

Mr. President and Senators, I have thus given you the reasons pressing upon my mind why this delay should not be had; and I admit I have done it with considerable warmth, because I feel warmly. I open no mail of mine that I do not take up an account from the south of some murder, or worse, of some friend of the country. I want these things to stop Many a man whom I have known standing by my side for the Union I can hear of now only as laid in the cold grave by the assassin's hand. This has stirred my feelings, I admit. The loss of my friends, the loss to the country of those who have stood by it, has, perhaps, very much stirred my heart, so that I have not been able, with that coolness with which judicial proceedings should be carried on, to address you upon this agonizing topic. I say nothing of the threats of assassination made every hour and upon every occasion, even when objection to testimony is made by the managers. I say nothing of the threats made against the lives of the great officers of the Senate and against the managers. We are all free. There is an old Scotch proverb in our favor: "The threatened dog a' lives the longest." We have not the slightest fear of these cowardly menaces; but all these threats, these unseemly libels on our former government, will go away when this man goes out of the White House.

Mr. CONNESS. Mr. President, I offer the following order:

Ordered, That on each day hereafter the Senate, sitting as a court of impeachment, shall meet at 11 o'clock a. m.

Mr. SUMNER I send to the Chair a substitute for that order.

The CHIEF JUSTICE. The Secretary will read the substitute proposed by the senator from Massachusetts.

The Secretary read as follows:

That, considering the public interests which suffer from the delay of this trial, and in pursuance of the order already adopted to proceed with all convenient despatch, the Senate will sit from 10 o'clock in the forenoon to 6 o'clock in the afternoon, with such brief recess as may be ordered.

Mr. TRUMBULL. I rise to a question of order, whether it is in order to consider these propositions to-day under the ruling of the Chair

The CHIEF JUSTICE. They are not in order if anybody objects.

Mr. TRUMBULL. I object to their consideration.

The CHIEF JUSTICE. They will go over until to-morrow.

Mr. EVARTS. Mr. Chief Justice and Senators, I am not aware how much of the address of the honorable manager is appropriate to anything that has proceeded from me. I, at the opening of the court this morning, stated how we might be situated, and added that when that point of time arrived I should submit the matter to the discretion of the Senate. I have never heard such a harangue before in a court of justice; but I cannot say that I may not hear it again in this court. All these delays and the ill consequences seem to press upon the honorable managers except at the precise point of time when some of

their mouths are open occupying your attention with their long harangues. If you will look at the reports of the discussions on questions of evidence, as they appear in the newspapers, while all that we have to say is embraced within the briefest paragraphs, long columns are taken up with the views of the learned managers, and hour after hour is taken up with debates on the production of our evidence by these prolonged discussions, and now twenty minutes by the watch with this harangue of the honorable manager about the Ku-Klux Klan. I have said what I have said to the Senate.

Mr. CAMERON. Mr. President, I should like to inquire whether the word "harangue" be in order here?

Mr. Manager BUTLER. So far as I am concerned it is of no consequence.

Mr. DOOLITTLE. Mr. Chief Justice, I should like to know whether the harangue itself was in order, not the word?

Mr. FERRY. Mr. President, I move that the Senate, sitting as a court of impeachment, adjourn.

Mr. SUMNER. I move that the adjournment be until 10 o'clock.

Mr. TRUMBULL. That is not in order.

The CHIEF JUSTICE. It is not in order. The motion to adjourn is, under the rule, to the usual time.

Mr. SUMNER. On that I ask for the yeas and nays.

The yeas and nays were not ordered.

The motion was agreed to, and the Senate, sitting for the trial of the impeachment, adjourned until to-morrow at 12 o'clock.

FRIDAY, *April* 17, 1868.

The Chief Justice of the United States took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives and the counsel for the respondent, except Mr. Stanbery, appeared and took the seats assigned to them respectively.

The members of the House of Representatives, as in Committee of the Whole, preceded by Mr. E. B. Washburne, chairman of that committee, and accompanied by the Speaker and Clerk, appeared and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the journal of yesterday's proceedings.

Mr. STEWART. I move that the reading of the journal be dispensed with.

The CHIEF JUSTICE. If there be no objection it will be so ordered. The Chair hears none. It is so ordered. During the sitting of yesterday the senator from California [Mr. Conness] offered an order that the Senate, sitting as a court of impeachment, meet hereafter at 11 o'clock a. m. That will be before the Senate unless objected to. The Secretary will read the order.

The Secretary read as follows:

Ordered, That on each day hereafter the Senate, sitting as a court of impeachment, shall meet at 11 o'clock a. m.

The CHIEF JUSTICE. Does the senator from Massachusetts desire to offer his amendment?

Mr. SUMNER. I did offer it, Mr. President, yesterday.

The CHIEF JUSTICE. The amendment offered by the senator from Massachusetts will be read.

The Secretary read the amendment, as follows:

Strike out all after the word "ordered" and insert:

That considering the public interests which suffer from the delay of this trial, and in pursuance of the order already adopted to proceed with all convenient despatch, the Senate will sit

from 10 o'clock in the forenoon to 6 o'clock in the afternoon, with such brief recess as may be ordered.

Mr. SUMNER. On that I should like to have the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas, 13; nays, 30; as follows:

YEAS—Messrs. Cameron, Chandler, Cole, Corbett, Harlan, Morrill of Maine, Pomeroy, Ramsey, Stewart, Sumner, Thayer, Tipton, and Yates—13.

NAYS—Messrs. Anthony, Cattell, Conness, Davis, Dixon, Doolittle, Drake, Ferry, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Vermont, Morton, Patterson of New Hampshire, Patterson of Tennessee, Ross, Saulsbury, Sherman, Trumbull, Van Winkle, Vickers, Willey, Williams, and Wilson—30.

NOT VOTING—Messrs. Bayard, Buckalew, Conkling, Cragin, Edmunds, Henderson, McCreery, Norton, Nye, Sprague, and Wade—11.

So the amendment was rejected.

The CHIEF JUSTICE. The question recurs on the order proposed by the senator from California.

Mr. CONNESS. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. CONNESS. Now let it be read.

The Secretary read as follows:

Ordered, That on each day hereafter the Senate, sitting as a court of impeachment, shall meet at 11 o'clock a. m.

The question, being taken by yeas and nays, resulted—yeas, 29; nays, 14; as follows:

YEAS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Thayer, Tipton, Willey, Williams, Wilson, and Yates—29.

NAYS—Messrs. Anthony, Davis, Dixon, Doolittle, Fowler, Grimes, Hendricks, Johnson, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, and Vickers—14.

NOT VOTING—Messrs. Bayard, Buckalew, Edmunds, Fessenden, Henderson, McCreery, Morton, Norton, Nye, Sprague, and Wade—11.

So the order was adopted.

Mr. FERRY. I send an order to the Chair.

The CHIEF JUSTICE. The Secretary will read the order proposed by the senator from Connecticut.

The Secretary read as follows:

Whereas there appear in the proceedings of the Senate of yesterday, as published in the Globe of this morning, certain tabular statements incorporated in the remarks of Mr Manager Butler upon the question of adjournment, which tabular statements were neither spoken of in the discussion, nor offered or received in evidence: Therefore,

Ordered, That such tabular statements be omitted from the proceedings of the trial as published by rule of the Senate.

Mr. Manager BUTLER. Is that a matter for discussion?

The CHIEF JUSTICE. The order will be for present consideration unless objected to.

Mr. FERRY. I ask its present consideration.

The CHIEF JUSTICE. There is no objection. It is before the Senate.

Mr. Manager BUTLER. I only desire to say, sir, that I stated the effect of the tabular statements yesterday. I did not read them at length, because it would take too much time.

Mr. HENDRICKS. Mr. President, I rise to a question of order and propriety. I wish to know whether it is the right of any senator to defend the Secretary of the Treasury against attacks that are made here upon him, or whether our mouths are closed while these attacks are made; and, if it is not the province and right of a senator to defend him in his office, whether it is the right of the manager to make an attack upon him?

The CHIEF JUSTICE. The question of order is made by the resolution proposed by the senator from Connecticut. Upon that question of order, if the

Senate desire to debate it, it will be proper to retire for consultation. If no senator moves that order, the Chair conceives that it is proper that the honorable manager should be heard in explanation.

Mr. Manager BUTLER. I wish to say, sir, that I did not read the tables because they would be too voluminous. I had them in my hands; I made them a part of my argument; I read the conclusions of them, and stated the inferences to be drawn from them, and I thought it was due to myself and due to the Senate that they should be put exactly as they were, and I therefore incorporated them in the Globe. To the remark of the honorable senator, I simply say that I made no attack on the Secretary of the Treasury; I said nothing of him; I did not know that he was here at all to be discussed; but I dealt with the act as the act of the Executive simply, and whenever called upon to show I can show the reasons why I dealt with that.

The CHIEF JUSTICE. The Secretary will read the order submitted by the senator from Connecticut.

The Secretary again read the order.

Mr. ANTHONY. Mr. President, I understood the senator from Indiana to inquire if under the rules he could be permitted to make an explanation, or to make a defence of the Secretary of the Treasury?

The CHIEF JUSTICE. The rules positively prohibit debate.

Mr. ANTHONY. But by unanimous consent I suppose the rule could be suspended.

Mr. WILLIAMS. I object.

The CHIEF JUSTICE. Objection is made. Senators, you who are in favor of agreeing to the order proposed by the senator from Connecticut will please say ay; those of the contrary opinion, no. [Putting the question.] The ayes appear to have it. The ayes have it, and the order is adopted.

The CHIEF JUSTICE. Gentlemen of counsel for the President, you will please proceed with the defence.

Mr. CURTIS. The Sergeant-at-arms will call William W. Armstrong.

WILLIAM W. ARMSTRONG sworn and examined.

By Mr. CURTIS:

Question. Please state your name in full.

Answer. William W. Armstrong.

Q. Where do you reside?

A. I reside in Cleveland, Ohio.

Mr. DRAKE. I ask permission to make a suggestion to the Chair, in reference to our hearing on this side of the chamber. Will the Chair instruct the witness to turn his face in this direction?

Mr. EVARTS. Mr. Chief Justice, if we may be allowed a suggestion, there is not so much silence in the chamber as would be possible, and we must take witnesses with such natural powers as they possess.

Mr. CURTIS, (to the witness.) Speak as loud as you can.

The CHIEF JUSTICE. Conversation in the Senate chamber must be suspended

By Mr. CURTIS:

Q. Repeat, if you please, what is your residence?

A. Cleveland, Ohio.

Q. What is your occupation or business?

A. I am one of the editors and proprietors of the Cleveland Plaindealer.

Q. Were you at Cleveland at the time of the visit made to that city by President Johnson in the summer of 1866?

A. I was.

Q. Were you present at the formal reception of the President by any committee or body of men?

A. I was.

Q. State by whom he was received.

A. The President and his party arrived at Cleveland about half-past 8 o'clock in the evening, and were escorted to the Kennard House. After partaking of a supper the President was escorted on to the balcony of the Kennard House, and there was formally welcomed to the city of Cleveland, on behalf of the municipal authorities and the citizens, by the president of the city council.

Q. Did the President respond to that address of welcome?

A. He did.

Q. What was the situation of this balcony in reference to the street, in reference to its exposure and publicity, and whether or not there was a large crowd of persons present?

A. There was a very large crowd of persons present, and there were quite a large number of people on the balcony.

Q. How did it proceed after the President began to respond?

A. For a few moments there were no interruptions, and I judge from what the President said that he did not intend——

Mr. Manager BUTLER. Excuse me. Stop a moment, if you please. I object to what the witness supposed were the President's intentions.

By Mr. CURTIS:

Q. From what you heard and saw was the President in the act of making a continuous address to the assembly, or was he interrupted by the crowd, and describe how the affair proceeded?

A. Well, sir, the President commenced his speech by saying that he did not intend to make a speech. I think, to the best of my recollection, he said that he had simply come there to make the acquaintance of the people, and bid them good-bye. I think that was about the substance of the first paragraph of his speech. He apologized for the non-appearance of General Grant, and then proceeded with his speech.

Q. How did he proceed, sir? Was it a part of his address, or was it in response to calls made upon him by the people? Describe what occurred.

A. Well, sir, I did not hear all of the speech.

Q. Did you hear calls upon him from the crowd, and interruptions?

A. I did, quite a number of them.

Q. From what you saw and heard the President say, and all that occurred, was the President closing his remarks at the time when these interruptions began?

A. That I cannot say.

Q. Can you say whether these interruptions and calls upon the President were responded to by his remarks?

A. Some of them were.

Q. Were the interruptions kept up during the continuance of the address, or was he allowed to proceed without interruption?

A. They were kept up very nearly to the conclusion of the President's speech.

Q. What was the character of the crowd? Was it orderly or disorderly?

A. Well, sir, the large majority of the crowd were orderly.

Q. As to the rest?

A. There was a good deal of disorder.

Q. Was that disorder confined to one or two persons, or did it affect enough to give a character to the interruptions?

A. I have no means of ascertaining how many were engaged in the interruptions.

Q. That is not what I asked you. I ask you whether there was enough to give a general character to the interruptions?

A. There were quite a number of voices. Whether they were all from the same persons or not I am not able to say.

Cross-examined by Mr. Manager BUTLER:

Q. F. W. Pelton, esq., was the president of the city council, was he not?

A. I believe so.

Q. Was not his address on the balcony to the President simply in the hearing of those who were on the balcony, and did not the President after he had received that welcome address then step forward to speak to the multitude?

A. I believe that after Mr. Pelton addressed the President several of the distinguished gentlemen who accompanied the party were presented, and then, in response to calls, the President presented himself.

Q. Presented himself in response to the crowd?

A. In response to the——

Mr. CURTIS. In response to what?

The WITNESS. In response to the calls.

By Mr. Manager BUTLER:

Q. Would you say that this was a correct or incorrect report of that proceeding:

About 10 o'clock, the supper being over, the party retired to the balcony, where the President was formally welcomed to the Forest City by F. W. Pelton, esq., president of the city council, as follows:

"Mr. PRESIDENT: On behalf of the municipal authorities of the city I cordially extend to you the hospitalities of the citizens of Cleveland. We recognize you as the Chief Magistrate of this now free republic and the chosen guardian of their rights and liberties. We are grateful for the opportunity afforded by your visit to our city to honor you as our Chief Magistrate, and again I extend to you and to the distinguished members of your party a hearty welcome."

Was that about the substance of Mr. Pelton's address?

A. That was about the substance, I think.

Q. Then:

The President and several members of his party then appeared at the front of the balcony and were introduced to the people?

A. Yes, sir.

Q. Then:

The vast multitude that filled the streets below was boisterous, and sometimes bitter and sarcastic in their calls, interludes, and replies, though sometimes exceedingly apt.

Would you say that was about a fair representation?

A. I do not think there were any calls or any interruptions of the President's speech until after he had proceeded some five or ten minutes.

Q. But, whenever they did come, would that be a fair representation of them?

A. What is your question, sir?

Q. "The vast multitude that filled the streets below was boisterous, and sometimes bitter and sarcastic in their calls?"

A. They were to some extent.

Q. "They listened with attention part of the time, and at other times completely drowned the President's voice with their vociferations." Was that so?

A. Yes, sir, that was so.

Q. "After all the presentations had been made, loud calls were made for the President, who appeared and spoke as follows:" Now I will only read the first part to see if you will agree with me as to how soon the interruptions came.

FELLOW-CITIZENS: It is not for the purpose of making a speech that I now appear before you. I am aware of the great curiosity which prevails to see strangers who have notoriety and distinction in the country. I know a large number of you desire to see General Grant, and to hear what he has to say. [A voice: "Three cheers for Grant."]

Was not that the first interruption?

A. That was the first interruption.

Q. "But you cannot see him to-night. He is extremely ill." Now, then, was there any interruption after that until he spoke of Stephen A. Douglas, and was not that simply the introduction of applause?

A. There were three cheers, I believe, given for Stephen A. Douglas at that time.

Q. Then he went on without interruption, did he not, until these words came in:

I come before you as an American citizen simply, and not as the Chief Magistrate clothed in the insignia and paraphernalia of state; being an inhabitant of a State of this Union. I know it has been said that I was an alien.

Was not that the next interruption?

A. I do not remember that paragraph in the speech.

Q. You do not remember whether that was there or not? Now, sir, do you remember any other interruption until he came to the paragraph—

There was, two years ago, a ticket before you for the Presidency. I was placed upon that ticket with a distinguished citizen, now no more.

Then did not the voices come in, "Unfortunate!" "Too bad?"

A. I did not hear them.

Q. Do you know whether they were or were not said?

A. I do not.

Mr. Manager BUTLER. I will not trouble you any further.

BARTON ABLE sworn and examined.

By Mr. CURTIS:

Question. State your full name.

Answer. Barton Able.

Q. Where do you reside?

A. In St. Louis.

Q. What is your occupation?

A. I am engaged in the mercantile business, and collector of internal revenue for the first district of Missouri.

Q. Were you at St. Louis in the summer of 1866, at the time when President Johnson visited that city?

A. Yes, sir.

Q. Were you upon any committee connected with the reception of the President?

A. I was upon the committee of reception from the Merchants' Union Exchange.

Q. Where did the reception take place?

A. The citizens of St. Louis met the President and party at Alton, in Illinois, some 24 miles above St. Louis. My recollection is that the mayor of the city received him at the Lindell Hotel, in St. Louis.

Q. You speak of being on a committee of some mercantile association. What was that association?

A. The merchants and business men of the city had an exchange for doing business, where they met daily.

Q. Not a political association?

A. No, sir.

Q. Did the President make a public address or an address to the people in St. Louis while he was there?

A. He made a speech in the evening at the Southern Hotel to the citizens.

Q. Were you present at the hotel before the speech was made?

A. Yes, sir.

Q. As one of the committee you have spoken of?

A. Yes, sir.

Q. Please to state under what circumstances the President was called upon to speak?

A. I was in one of the parlors of the hotel with the committee and the President, when some of the citizens came in and asked him to go out and respond to a call from the citizens to speak. He declined, or rather said that he did not

care to make any speech. The same thing was repeated two or three times by other citizens coming in, and he finally said that he was in the hands of his friends, or of the committee, and if they said so he would go out and respond to the call, which he did do.

Q. What did the committee say? Did they say anything?

A. A portion of the committee, two or three of them, said, after some consultation, that they presumed he might as well do it. There was a large crowd of citizens on the outside in front of the hotel.

Q. Did the President say anything before he went out as to whether he went out to make a long speech or a short speech, or anything to characterize the speech he intended to make?

A. My understanding of it was that he did not care to make a speech at all.

Mr. CURTIS. That you have already explained.

Mr. Manager BUTLER. Mr. Able, please not give your opinion, but give facts.

By Mr. CURTIS:

Q. You have already explained that he manifested reluctance, and how he manifested it. Now, I want to know if he said anything as to his purpose in going out? If so, I should like to have you state it, if you remember.

A. I understood from his acceptance that his intention was to make a short speech when he went out.

Q. Did you or not hear what he said, or were you in a position so that you could hear what he said?

A. I heard his conversation with the committee.

Q. I do not mean that; I mean after he went out and began to speak?

A. Very little of it.

Q. Was it a large crowd or a small one?

A. A large crowd.

Q. Were you present far enough to be able to state what the demeanor of the crowd was toward the President?

A. I heard from the inside—I was not on the balcony of the hotel at all; but I heard from the parlor one or two interruptions. I do not recollect but one of them.

Q. You remained in the parlor all the time, I understand you?

A. Between the parlor and the dining-room, where the banquet was spread.

Q. You were not on the balcony?

A. No, sir.

Cross-examined by Mr. Manager BUTLER:

Q. You met the President at Alton, and you, yourself, as one of this committee, made him an address on board the steamer where he was received, did you not?

A. I introduced him to the committee of reception from St. Louis.

Q. The committee of reception from St. Louis met him, then, on board the steamer?

A. On board the steamer.

Q. And you introduced him with a little speech?

A. Yes, sir.

Q. Then Captain Eads, who was the chairman of the citizens or the spokesman of the citizens, made him an address, did he?

A. Yes, sir.

Q. An address of welcome, and to that the President made a response, did he?

A. Yes, sir.

Q. And in that address he was listened to with propriety by them, as became his place and the ceremony?

A. I observed nothing to the contrary.

Q. You so supposed. Then you went to the Lindell Hotel?

A. I did not go to the Lindell Hotel at the time

Q. The President went, did he not?

A. Yes, sir; the President was entertained at the Lindell Hotel.

Q. And *en route* to the Lindell Hotel he was escorted by a procession, was he not, of the military and civic societies?

A. From the landing; yes, sir.

Q. A procession of the benevolent societies?

A. I do not recollect what societies they were. There was a very large turn out; perhaps most of the societies of the city were present.

Q. Were you at the Lindell Hotel at all?

A. Yes, sir.

Q. When he got there he was received by the mayor, was he not?

A. I was not there when he arrived at the Lindell Hotel.

Q. Were you there when he was received by the mayor?

A. No, sir.

Q. You do not know whether the mayor made him a speech of welcome or not there?

A. Only from what I saw in the press.

Q. Nor do you know whether the President responded there?

A. I was not present.

Q. What time in the day was this when he got to the Lindell Hotel, as near as you can say?

A. It was in the afternoon when they left the steamboat landing. I do not know what time they were at the hotel, because I was not present on their arrival.

Q. Can you not tell about what time they got there?

A. Well, it was probably between 1 and 5 o'clock.

Q. After that did you go with the President from the Lindell Hotel to the Southern Hotel?

A. I do not recollect whether I accompanied him from the one hotel to the other or not.

Q. He did go from the one to the other?

A. Yes, sir.

Q. There was to be a banquet for him and his suite at the Southern Hotel that night, was there not?

A. Yes, sir.

Q. At which there was intended to be speaking to him and by him, I suppose?

A. There were to be toasts and responses; yes, sir.

Q. And what time was that banquet to come off?

A. I do not recollect the exact hour; I think somewhere about 9 o'clock.

Q. At the time the President was called upon by the crowd were you waiting for the banquet?

A. When the President was called upon by the crowd I do not think the banquet was ready. He was in the parlors with the committee of citizens.

Q. The citizens being introduced to him, I suppose?

A. Yes, sir.

Q. He then went out on to the balcony. Did you hear any portion of the speech?

A. Only such portions of it as I could catch from the inside occasionally. I did not go on to the balcony at all.

Q. Could you see on to the balcony where he stood from where you were?

A. I could see on to the balcony, but I do not know whether I could see precisely where he stood or not.

Q. While he was making that speech, and when he came to the sentence, "I will neither be bullied by my enemies nor overawed by my friends," was there anybody on the balcony trying to get him back?

A. I could hardly answer that question. I was not there to see.

Q. You said you could see on to the balcony, but you were not certain that you could see him. You might have seen such an occurrence as that?

A. I did not.

Q. You did not see. Can you tell whether it was so or not, from your own knowledge?

A. I should think if I could not see it I could not tell.

Q. I only wanted to make certain upon that point.

A. Well, sir, I am positive on that point.

Q. You have no knowledge on the subject. Who was on the balcony beside him?

A. I suppose the balcony will hold perhaps two hundred people. There was a good many people on there; I could not tell how many.

Q. Give me some one of the two hundred, if you know anybody who was there?

A. I think Mr. Howe was there. My recollection is that the President walked out with Mr. Howe.

Q. Was General Frank Blair there at any time?

A. I have no recollection of it, if he was.

Q. Did the President afterward make a speech at the banquet?

A. A short one.

Q. Was the crowd a noisy and boisterous one after awhile?

A. I heard a good deal of noise from the crowd from where I stood—I stood inside—or where I was moving about, for I was not standing still a great portion of the time.

GEORGE KNAPP sworn and examined.

By Mr. CURTIS:

Question. What is your full name?

Answer. George Knapp.

Q. Where do you reside?

A. St. Louis.

Q. What is your business?

A. I am one of the publishers and proprietors of the Missouri Republican.

Q. Were you in St. Louis at the time the President visited that city in the summer of 1866?

A. I was.

Q. Were you present at the Southern Hotel before Mr. Johnson went out to make a speech to the people?

A. I was.

Q. Were you in the room where the President was?

A. I was.

Q. Please state what occurred between the President and citizens, or the committee of citizens, in respect to his going out to make a speech.

A. The crowd on the outside had called repeatedly for the President, and some conversation ensued between those present. I think I recollect Captain Able and Captain Taylor and myself at any rate were together. The crowd continued to call. Probably some one suggested, I think I suggested, that he ought to go out. Some further conversation occurred, I think, between him and Captain Able——

Q. The gentleman who has just left the stand?

A. Yes, sir; Captain Barton Able, and I think I said to him that he ought to go out and show himself to the people and say a few words at any rate. He seemed reluctant to go out, and we walked out together. He walked out on the balcony, and we walked out with him, and he commenced addressing the assembled multitude, as it seemed.

Q. What was the character of the crowd? Was it a large crowd, a large number of people?

A. I do not think I looked at the crowd. I do not think I got far enough on the balcony to look on the magnitude of the crowd. I think I stood back some distance.

Q. About what number of people were on the balcony itself?

A. I suppose there were probably fifteen or twenty; there may have been twenty-five.

Q. Could you hear the cries from the crowd?

A. I could not.

Q. What was the character of the proceedings so far as the crowd was concerned?

A. Well, I do not recollect distinctly. My impressions are that occasional or repeated questions were apparently put to the President, but I do not now exactly recollect what they were.

Q. Was the crowd orderly or otherwise, so far as you could hear?

A. At times it seemed to be somewhat disorderly; but of that I am not very sure.

Cross-examined by Mr. Manager BUTLER:

Q. Did you go on to the balcony at all?

A. Yes, sir. I stepped out. It is a wide balcony; it is probably twelve or fifteen feet; it covers the whole of the side wall. I stepped out. I think I was probably only two or three feet back of the President part of the time while he was speaking. Then there are a number of doors or windows leading out to this balcony. You could stand in these windows or doors and hear every word that was said.

Q. Did you listen to the speech so as to hear every word that was said?

A. I am not sure that I staid during the whole time. I listened pretty attentively to the speech while I stood there, but whether I stood there during the whole time or not I do not now recollect.

Q. You told us there were from fifteen to twenty persons, if I understood you aright, on the balcony?

A. That is my impression. I am not certain about that, because I did not pay any attention to the number.

Q. How many would the balcony hold?

A. I suppose the balcony would hold one hundred.

Q. Then it was not at all crowded on the balcony?

A. I do not recollect, I say, about that, whether it was or not. I did not charge my mind with it, nor do I now recollect. The parlors were full. There was a crowd there waiting to go into the banquet, and I think it is very likely that a large number of them crowded on the balcony to hear the speech. Whether it was crowded or not I do not recollect.

Q. Who were present at the time so as to remember distinctly when he said he would not be overawed by his friends or bullied by his enemies? Do you remember that phrase?

A. I do not recollect it.

Q. This confusion in the crowd sometimes prevented his going on, did it not?

A. I think it likely; but in that I must only draw from my present impression. I do not recollect.

Q. Did you hear him say anything about "Judas;" do you remember?

A. No, sir; I do not recollect.

Q. You do not recollect that about Judas? Did you hear him say anything about John Bull, and about attending to him after a while?

A. I have no recollection as to the points of the speech.

Q. Then, so far as you know, all you know that would be of advantage to us

here is that you were present when some of the citizens asked the President to go out and answer the calls of the crowd?

A. Yes; some citizens then present in the parlor asked him.

Q. While the banquet was waiting? At what time was the banquet to take place?

A. I think it was to take place at eight o'clock.

Q. What time had this got to be?

A. I do not recollect that.

Q. Was it not very near eight o'clock at that time?

A. I think when the President went out it was near the time the banquet was to take place; and I think, also, I know, in fact, that while the President was speaking several persons, in speaking about it, said it was time for the banquet to commence, or something to that effect.

Q. The banquet had to wait for him while the crowd outside got the speech?

A.. I do not know that.

Q. Was not that your impression at the time?

A. I think the hour, probably, had passed; but in attending banquets it often happens that they do not take place exactly at the hour fixed.

Q. It appears that this did not; but was that because they waited for the President or because the banquet was not ready?

A. I think it was because they waited for the President.

Q. Did you publish that speech the next morning in your paper?

A. Yes, sir; it was published.

Q. Did you again republish it on Monday morning?

A. Yes, sir.

Q. While your paper is called the Republican it is really the Democrat, and the Democrat is the Republican?

A. The Republican was commenced in early times, for I have been connected with it over forty years myself, and at the time——

Mr. Manager BUTLER. I do not care to go back forty years at this time.

The WITNESS. You asked why it was called——

By Mr. Manager BUTLER:

Q. Not why, but as to the fact. Was it in fact the democratic paper at that time when the President was there?

A. Yes, sir.

Q. And the St. Louis Democrat, so called, was really the republican paper?

A. Yes, sir.

Q. Now, in the democratic paper, called by the name of Republican, the speech was published on Sunday and on Monday?

A. Yes, sir.

Q. Has it never been republished since?

A. No, sir; not to my knowledge.

Q. State whether you caused an edition of the speech to be corrected or Monday morning's publication?

A. I met our principal reporter, Mr. Zider——

Q. Please do not state what took place between you and your reporter; it is only the fact I want, not the conversation. Did you cause it to be done?

A. I gave directions to Mr. Zider, after complaining about the report of the speech——

Q. Excuse me; I have not asked you about your directions.

A. I did. I gave directions on reading the speech——

Q. Please answer the question.

A. Well, I gave directions to have it corrected, if that is your question.

Q. Were your directions followed so far as you know?

A. I do not recollect the extent of the corrections. I never read the speech afterward, and I have forgotten.

Q. Did you ever complain afterward to any man, Mr. Zider or any other, that the speech was not as it ought to be as it was published on Monday morning in the Republican?

A. I cannot draw the distinction between Monday and Sunday. I have repeatedly spoken of the imperfect manner in which I conceived the speech was reported and published in the Republican on Sunday. Whether I spoke of its imperfections for Monday or not I do not recollect.

Q. Will you not let me call your attention, Mr. Witness? You say that you directed a revised publication on Monday, and it was so published. Now, did you ever complain after that revised publication was made to anybody that that publication was not a true one within the next three months following?

A. It is possible I might have complained on Monday morning, if the corrections were not made, but I do not recollect.

Q. Excuse me; I did not ask for a possibility.

A. I tell you I do not recollect.

Q. But it is possible you did not?

A. That, I say again, I cannot recollect.

Q. Now, sir, will you say that in any important particular the speech as published in your paper differs from the speech as put in evidence here?

A. I could not point out a solitary case, because I have not read the speech as put in evidence here, nor have I read the speech since the morning after it was delivered; so I know nothing about what you have put in evidence here.

HENRY F. ZIDER sworn and examined.

By Mr. CURTIS:

Question. Where did you reside in the summer of 1866 when the President visited St. Louis?

Answer. At St. Louis, Missouri.

Q. What was then your business?

A. I was then engaged as short-hand writer and reporter for the Missouri Republican, a paper published at St. Louis.

Q. Had you anything to do with making a report of the speech of the President delivered from the balcony of the Southern Hotel?

A. I made a short-hand report of the speech. I was authorized to employ all the assistance that I needed, for it was known that the President was to be received at St. Louis. I employed Mr. Walbridge and Mr. Allen to assist me. Mr. Walbridge wrote out the report for publication in the Sunday morning Republican. I went over the same report on Sunday afternoon and made several alterations in it for the Monday morning paper.

Q. The Monday morning Republican?

A. Yes, sir. I made the corrections from my own notes.

Q. Did you make any corrections except those which you found were required by your own notes?

A. There were three or four corrections that the printers did not make that I had marked on the proof sheets that I made on the paper the following morning in the counting-room.

Q. With those exceptions, did you make any corrections except what were called for by your own notes?

A. Those were called for by my own notes.

Q. But they were not in fact made?

A. They were not in fact made in the printed copy on Monday.

Q. Now, answer my question whether the corrections were called for by your own notes?

A. Oh, yes; all of them.

Q. Have you compared the report which you made, and which was published

in the Republican on Monday, with the report published in the St. Louis Democrat?

A. I have more particularly compared the report published in the Monday Democrat with the Sunday Republican.

Q. You compared those two?

A. Yes, sir. There are about sixty changes.

Mr. JOHNSON. Differences?

The WITNESS. Yes, sir.

By Mr. CURTIS:

Q. Describe the character of those differences.

Mr. Manager BUTLER. "State the differences." I object to that.

Mr. CURTIS. Do you want him to repeat the sixty differences?

Mr. Manager BUTLER. Certainly; if he can.

By Mr. CURTIS:

Q. Have you a memorandum of those differences?

A. I have.

Q. Read it, if you please.

Mr. Manager BUTLER. Before he reads it, I should like to know when it was made.

By Mr. CURTIS:

Q. When did you make this comparison?

The WITNESS. The exact date?

Mr. CURTIS. If you can give it to us.

A. (After consulting a memorandum book.) Saturday, April 11.

Q. When did you make the memorandum?

A. On the Sunday following.

By Mr. Manager BUTLER:

Q. Last Sunday?

A. Yes, sir.

Q. This month?

A. Yes, sir.

By Mr. CURTIS:

Q. From what did you make the memorandum?

A. I had been before the board of managers twenty-four days, and was discharged and had just returned to St. Louis. I got telegraphic despatches stating that I was summoned again to appear before the Senate. I then went to the Republican office, took the bound files of the Republican and the bound files of the Democrat for the latter part of 1866, and in company with Mr. James Monoghan, one of the assistant editors, I made a comparison of the two papers, noted the differences, compared those differences twice afterward to see that they were accurate. That was on Saturday. I started for Washington on Sunday afternoon at 3 o'clock, the first through train.

Q. When was this paper that you call the memorandum, which contains the differences, made?

A. On Saturday.

Q. Was it made at the same time when you made this comparison, or at a different time?

A. The same day.

Mr. CURTIS. Now, you can tell us the nature of the differences; or, if the honorable manager desires that all those differences should be read, you can read them.

Mr. Manager BUTLER. Stay a moment. Any on which you rely we should like to have read.

Mr. CURTIS. We rely on all of them, more or less.

Mr. Manager BUTLER. Then all of them, more or less, we want read.

Mr. CURTIS. We should prefer to save time by giving specimens; but then, if you prefer to have them all read, we will have them read.

Mr. Manager BUTLER. There is a question back of this, I think, and that is, that we have not the standard of comparison. Surely, then, this cannot be evidence. This witness goes to the Republican office and there takes a paper—he cannot tell whether it was the true one or not, whether made properly or not, or what edition it was—and he compares it with a copy of the Democrat, and having made that comparison he now proposes to put in the results of it. I do not see how that can be evidence. He may state anything that he has a recollection of; but to make the memorandum evidence, to read the memorandum, never was such a thing heard of, I think. Let me restate it and I have done. He goes to the Republican office, gets a Republican; what Republican, how genuine, what edition it was, is not identified; he says it was in a bound volume. He takes the Democrat, of what edition we do not know, and compares that, and then comes here and attempts to put in the results of a comparison made in which Monaghan held one end of the matter and he held the other. Now, can that be evidence?

Mr. CURTIS. I want to ask the witness a question, and then I will make an observation on the objection. (To the witness.) Who made the report in the Republican which you examined—the one which you examined and compared with the report in the Democrat; who made that report?

A. Mr. Walbridge made that report on Saturday night, September 8, 1866. It was published in the Sunday morning Republican of September 9, 1866.

By Mr. CURTIS:

Q. Have you looked at the proceedings in this case to see whether that has been put in evidence?

A. The Sunday morning Republican was mentioned in Mr. Walbridge's testimony, in which he states that he made one or two simple corrections for the Monday morning Democrat.

Q. Now, I wish to inquire, Mr. Zider, whether the report which you saw in the files of the Republican, and which you compared with the report in the Democrat, was the report which Mr. Walbridge made?

A. Undoubtedly it was.

Mr. CURTIS. Now, Mr. Chief Justice, it is suggested by the learned manager——

Mr. Manager BUTLER. I will save you all trouble. You may put it in as much as you choose. I do not care, on reflection, if you leave it unread. It is of no consequence.

Mr. CURTIS. We will simply put it into the case to save time, and have it printed.

Mr. Manager BUTLER. I think there should not be anything printed that is not read. We have got a very severe lesson upon that.

Mr. CURTIS. We understood you to dispense with the reading.

The CHIEF JUSTICE. If the honorable manager desires to have the paper read it will be read.

Mr. Manager BUTLER. I do not desire it to be read.

Mr. EVARTS. Is it to go in as evidence, Mr. Chief Justice, or not?

The CHIEF JUSTICE. Certainly.

Mr. Manager BUTLER. It may go in for aught I care.

Mr. CURTIS. That is all, Mr. Zider.

The paper thus admitted in evidence, containing a memorandum of the dif-

ferences between the two reports of President Johnson's speech at St. Louis, is as follows:

Sunday REPUBLICAN, September 9, 1866.	DEMOCRAT, Monday, September 10, 1866.
I *am*	I *was*
Questions *which*	Questions *that*
that we have	⋀ we have
as *this* we have	as *those* we have
that they *then* knew	that they *there* knew
its *power* having expired	its *powers* having expired
of ⋀ population	of *the* population
without the *will* of the people	without the *consent* of the people.
⋀ then when	*And* then when
it *does not* provoke me	it *don't* provoke me
things that *have* been done	things that *has* been done
that *were* intended	that *was* intended
to be enforced *upon*	to be enforced *on*
abandoned the *party*	abandoned the *power*
that I was a traitor	that I was a t-r-a-i-t-o-r
Judas Iscariot ⋀	*Judas*—Judas Iscariot
a traitor	a *t-r-a-i-t-o-r*
Judas Iscariot! Judas!	*Judas*, Judas Iscariot, Jud-a-a-s
the twelve apostles	*and these* twelve apostles
he *never could* have	he *couldn't* have
and *that* try to stay	and ⋀ try to stay
when there *were*	when there *ware*
there *was* a Christ	there *ware* a Christ
there *were* unbelievers	there *ware* unbelievers
to-day *who* would	to-day ⋀ would
——————— ⋀	Now what is the plan?
for years	*four* years
bear all the *expenses*	bear all the *expense*,
——————— ⋀	So much for this question.
Yes, yes,	*Y-a-s, Y-a-s;*
⋀ a decided majority	*as* decided a majority
What?	*Wha-t?*
Stimulating this	*elevating themselves*
So far as offences are concerned	*So far as the Fenians are concerned*
Upon this subject of *offences*	Upon this subject of *Fenians*,
and *battled* more for	and *sacrificed* more for
It has been my peculiar misfortune ⋀	It has been my peculiar misfortune *always*
to have fierce opposition	to have fierce opposition
(a voice, why didn't you do it)	⋀———————
The law was executed,	———————
The law was executed,	———————
to *give* somebody else a bounty	to *vote* somebody else a bounty
he can get $50 bounty	⋀ can get $50 bounty,
(*Great* cheering)	(*Loud* cheering)
are ⋀ entitled to	are *constitutionally* entitled to
equal representation in the	equal suffrage in the
Congress of the United	Senate and no power has
	the
States without violating	right to deprive them of it
the Constitution. (Cheers.)	without violating the Constitution. (Cheers.)
Among *this* people. I	Among *the* people. I have
have	
labored for it I am for it	labored for it. Now I
now. I deny	deny.
manner pointed *out* by	manner pointed ⋀ by
and sometimes having⋀	and sometimes *having*
re-	*sinned* and having re-
pented makes him a better	pented
man than he was	makes him a better man
before	than he was before
Yes, I have,	Y-a-s, I have
Yes I have.	Y-a-s, I have
(Voice "bully for you"⋀	Voice (bully for you *old*
and *cheers*)	*fellow* and *laughter*)
on either side	on the *other* side

a kind of over-righteous- ness *—over righteousness—* better than anybody else and *although* wanting He went upon the cross and there was ∧ nailed by	a kind of over righteous- ness—better than any- body else and *always* wanting. He went upon the cross and there was *painfully* nailed by
unbelievers ∧ and there shed his blood that you and I might live (cheers)	*these* unbelievers *that I* *have spoken of here to-night* and there shed his blood that you and I might live (cheers)
nor the judge ∨	nor the judge (voice "nor the Moses.")
I know there *are* some that talk And manage *all* the affairs of state The people of Missouri as well as other States know that *all* my efforts have all this traduction and de- traction that *have* let us fight *the* enemies And in parting with you now *I* leave the government in your hands	I know there *is* some that talk And manage ∧ the affairs of state. The people of Missouri as well as other States know that ∧ my efforts have all this traduction and detraction that *has* let us fight ∧ enemies And in parting with you now ∧ leave the government in your hands,
recognized.	*re-cog-nized.*

Cross-examined by Mr. Manager BUTLER:

Q. How long have you been troubled with your unfortunate affliction?

A. To what do you refer?

Q. I understood you were a little deaf. Is that so?

A. I have been sick the greater part of this year, and was compelled to come here a month ago almost, before I was able to come. I have not got well yet.

Q. Did you hear my question?

A. Yes.

Q. How long have you been deaf, if you have been deaf at all?

A. Partially deaf for the last two years, I should think.

Q. About what time did it commence?

A. I cannot state that.

Q. As near as you can. You know when you became deaf, do you not?

A. I know I was not deaf when you made your St. Louis speech, in 1866.

Q. That is a very good date to reckon from; but as these gentlemen do not all know when that was, and you and I do, suppose you try it by the almanac, and tell us when that was?

A. That was on the 13th of October, 1866.

Q. You were not deaf then?

A. No.

Q. How soon after that did you become deaf?

A. Perhaps a month. [Laughter.]

Q. You are quite sure it was not at that time?

A. Quite sure it was not that time, because I heard some remarks the crowd made which you did not. [Laughter.]

Q. I have no doubt you heard very much that I did not. Now, suppose we confine ourselves to this matter. About a month after that you became deaf?

A. Partially.

Q. Partially deaf, as now?

A. I recovered from that sickness. I became sick again the first part of this year.

Q. Now, will you have the kindness to state whether you have your notes?

The WITNESS. Of the President's speech?

Mr. Manager BUTLER. Yes, sir.

A. I have not.

Q. When did you see them last?

A. The last recollection I have of them is when Mr. Walbridge was summoned before the Reconstruction Committee to give testimony on the New Orleans riot.

Q. Did you and he then go over that speech together?

A. We went over only a part of it.

Q. The part that referred to New Orleans?

A. Yes, sir.

Q. But the part that referred to New Orleans you went over with him?

A. I did.

Q. Was there any material difference between you and him when you had your notes together in that part of the speech, and if so, state what?

A. There was.

Q. What was it?

A. He asked me to compare notes with him——

Q. Excuse me; I am not asking what he said. I am asking what difference there was between your report and his report upon that comparison; what material difference.

Mr. EVARTS. I submit, Mr. Chief Justice, that as he is asked the precise question what the difference was that arose upon that comparison, he is to be permitted to state what it was and how it arose.

Mr. Manager BUTLER. I have not asked any difference that arose between him and Mr. Walbridge. Far be it from me to go into that. I have asked what the difference was between the two speeches.

Mr. EVARTS. As it appeared in that comparison.

Mr. Manager BUTLER. As found at that time.

The WITNESS. That is what I was going to answer. If you will possess your soul in patience a moment I will answer.

The CHIEF JUSTICE. The witness will confine himself entirely to what is asked and make no remarks.

The WITNESS. When we proceeded to compare that part relating to the New Orleans riot, Mr. Walbridge read from his notes; I looked on, and when he came to this passage, as near as I can remember, "When you read the speeches that were made, and take up the facts, if they are as stated, you will find that speeches were made incendiary in their character, exciting that population called the black population to take up arms and prepare for the shedding of blood," I called Mr. Walbridge's attention to the qualifying words, "if the facts are as stated." He replied to me, "You are mistaken; I know I am right," and went on. As he was summoned to swear to his notes, and not to mine, I did not argue the question with him further, but let him go on.

By Mr. Manager BUTLER:

Q. What other difference was there?

A. There was another difference.

Q. In the New Orleans matter?

A. Yes, sir; the President's words, I think, were that they there knew a convention was to be called which was extinct by reason of its power having expired. There was a difference in the words "by reason of."

Q. What was that difference?
A. The words "by reason of."
Q. Were they in or out of Walbridge's report?
A. They were in my report.
Q. And were not in Walbridge's report?
A. They were not.
Q. Any other difference?
A. No other. That was as far as we proceeded with the report as to the New Orleans riot. The latter part of the report was not compared at all, nor was the first part.
Q. Now, have you the report as it appeared in the Republican of Monday morning before you?
A. I have.
Q. Let me read the first few sentences of the report put in evidence, and tell me how many errors there are in that. Have you it?
A. [The witness produced a new paper.] Yes, sir; I have it.
Q. Now, I will read from the report put in evidence here:

Fellow-citizens of St. Louis: In being introduced to you to-night, it is not for the purpose of making a speech. It is true I am proud to meet so many of my fellow-citizens here on this occasion, and under the favorable circumstances that I do. [Cry, "How about British subjects?"] We will attend to John Bull after a while, so far as that is concerned. [Laughter and loud cheers.] I have just stated that I was not here for the purpose of making a speech."

The WITNESS. "*Am* not here."
Mr. Manager BUTLER. The difference is here "I was," and there "I am." Now, do you know that the President used the word "am" instead of "was?"
A. Of course I do.
Q. I will read on:

I was not here for the purpose of making a speech; but after being introduced, simply to tender my cordial thanks for the welcome you have given me in your midst. [A voice, "Ten thousand welcomes;" hurrahs and cheers.] Thank you, sir. I wish it was in my power to address you under favorable circumstances upon some of the questions that agitato and distract the public mind at this time"——

A. "Questions *which* agitate."
Q. "*Which* agitate" instead of "*that* agitate?"
A. Yes.
Q. And then it goes on:

Questions that have grown out of a fiery ordeal we have just passed through, and which I think as important as those we have just passed by. The time has come when it seems to me that all ought to be prepared for peace—the rebellion being suppressed, and the shedding of blood being stopped, the sacrifice of life being suspended and stayed, it seems that the time has arrived when we should have peace; when the bleeding arteries should be tied up. [A voice, "New Orleans;" "Go on."]

It is so far all right except those two corrections?
A. Yes, sir.
Q. Now we will try another part.
The WITNESS. Go over the New Orleans part, if you please. I wish to make a correction in that part.
Q. Are you dealing with a memorandum?
A. It is the official proceedings.
Q. You are comparing yourself with the official proceedings as you go on, where you have noted these corrections?
A. Yes, sir, in the official proceedings.
Q. Then you are going on with a copy of the official proceedings and noting the differences?
A. Yes; but I can make the memoranda without the official proceedings before me. Do you want it? (Offering the printed official report of the trial, with manuscript corrections, to the honorable manager.)
Mr. Manager BUTLER. No; I do not care for it. You told me that you wished

I should go on with the New Orleans part. Why do you wish anything about it?

The WITNESS. You were proceeding to make corrections, and when you came to the New Orleans part you stopped.

By Mr. Manager BUTLER:

Q. Well, I will take this portion of it——

The WITNESS. Any portion.

Q. "Judaas, Judas Iscariot, Judaas?"

A. One Judas too many there. [Laughter.]

Q. "There was a Judas once." You are sure he did not speak Judas four times, are you?

A. Yes, sir.

Q. How many times did he speak it?

A. Please read it again.

Q. I asked how many times he did speak Judas?

A. Three times.

Q. Well, I believe we have got "Judaas, Judas Iscariot, Judaas." That is only three times. Why did you say one too many?

A. You have it four times there.

Q. I beg your pardon. I have only said it three times. "Judaas, Judas Iscariot, Judaas."

The WITNESS. Are not those words italicised there?

Mr. Manager BUTLER. Yes, sir.

The WITNESS. Are they not stretched out to make it appear ridiculous?

Mr. Manager BUTLER. I really think two of the Judases are spelt with the pronunciation—"J-u-d-a-a-s."

The WITNESS. Yes, and italicised.

Q. Do you mean to say that the President did not speak those words with emphasis?

A. I mean to say that he did not speak them in that way.

Q. I read:

There was a Judas once, one of the twelve apostles. Oh! yes, and these twelve apostles had a Christ. [A voice, "And a Moses, too." Great laughter.] The twelve apostles had a Christ, and he could not have had a Judas unless he had had twelve apostles.

See if I am right.

A. The word "yes" should not be stretched out with dashes between each letter, as there.

Mr. Manager BUTLER. The "yes" is not here stretched out. Is there any other question you would like to ask me, sir? [Laughter.]

The WITNESS. All I wish is that you shall read it as it is there.

Mr. Manager BUTLER. Now, sir, will you attend to your business and see what differences there are as I read?

If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? [Hisses and cheers.] Are these the men that set up and compare themselves with the Saviour of men, and everybody that differs with them in opinion, and try to stay & arrest their diabolical and nefarious policy, is to be denounced as a Judas.

A. "And that try."

Q. "Differ with them in opinion, and *that* try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas. ['Hurrah for Andy,' and cheers."] Am I right so far, sir?

A. I think so.

Q. Is that a fair specimen of the sixty corrections?

A. There are four in the next three lines.

Q. Is that a fair specimen of the sixty corrections? Answer the question.

Mr. EVARTS. Mr. Chief Justice, I suppose the corrections, the whole of which we have put in evidence, will show for themselves.

Mr. Manager BUTLER. I am cross-examining the witness.

Mr. EVARTS. It has nothing to do with the matter of evidence.

Mr. Manager BUTLER. I am asking a question of the witness on cross-examination, and I prefer that he should not be instructed.

Mr. EVARTS. No instruction. We thought we should save time by putting in the memorandum; but it seems that the cross-examination is to go over every item. We insist that it be confined to questions that are proper. Whether this is a fair specimen or not, compared with the whole paper, will appear by the comparison the court make between the two pieces of evidence.

Mr. Manager BUTLER. I am testing the credibility of this witness, and I do not care to have him instructed.

The CHIEF JUSTICE. If the question is objected to, the honorable manager will please put it in writing.

Mr. Manager BUTLER. I will put it in writing if the Chief Justice desires.

Mr. EVARTS. It is no question of credibility; it is a mere question of judgment asked of him between two papers, whether one is a fair specimen of the other.

Mr. Manager BUTLER. I will put the question in writing if the Chief Justice desires. The question is this: whether all the corrections which you have indicated in answer to my questions are of the same average character with the other corrections of the sixty?

The WITNESS. There are two or three corrections in that which you have read.

The CHIEF JUSTICE. Is the question objected to?

Mr. EVARTS. We object to the question. It requires a re-examination of the whole subject.

The CHIEF JUSTICE. The question will be put in writing, objection being made.

Mr. Manager BUTLER. I will pass from that rather than take time, because I shall be accused of having taken up too much time. (To the witness.) Mr. Witness, you have told us that in the next few lines there were corrections, I think four in the next three lines. Now I will read the succeeding lines:

> In the days when there ware twelve apostles and when there ware a Christ, while there ware Judases, there ware unbelievers, too. Y-a-s; while there were Judases, there ware unbelievers. [Voices: "Hear." "Three groans for Fletcher."] Yes, oh yes! unbelievers in Christ.

The WITNESS. Do you wish me to make corrections there?

Mr. Manager BUTLER. I want you to stop me when there is anything wrong.

The WITNESS. "In the days when there ware;" *were* is right.

Mr. Manager BUTLER. It reads in mine "*ware*," and in yours it reads "*were?*"

A. Yes; and then in the next line there is a "*ware*" again. It should be "*were.*"

Q. What is the next?

A. There is another "*ware.*"

Q. That is, it should be "*were*" instead of "*ware?*"

A. Yes, sir.

Q. Those are the three corrections you want to make there? Are those the only corrections there?

A. Then there is one before "unbelievers."

Q. What is it?

A. "*Were*" for "*ware.*"

Q. Are those all?

The WITNESS. Does it read in yours "Voices, 'Hear!' 'Three groans for Fletcher?'"

Mr. Manager BUTLER. Yes, sir. It is all right, is it not? What is the trouble with that?

The WITNESS. There are four "wares" there, are there not?

Mr. Manager BUTLER. What do you mean by "wares?" We have corrected the "*e*" for the "*a*;" that is the whole change.

The witness. Yours reads "there *ware* a Christ;" the "*ware*" should be "*was*."

Q. Then all your corrections are of pronunciation and grammar, are they not?

A. The President did not use those words.

Q. Do you say that the President does not pronounce "*were*" broadly, as is sometimes the southern fashion?

A. I say that he did not use it as used in that paper.

Q. Did he not speak broadly the word "were" when he used it?

A. Not so that it could be distinguished for "ware."

Q. Then it is a matter of how you would spell pronunciation that you want to correct, is it?

A. The tone of voice cannot be represented in print.

Q. And still you think "*were*" best represents his tone of voice, do you?

A. I think it did.

Q. Although it cannot be represented in print. Now, sir, with the exception of these corrections in pronunciation and grammar, is there any correction as the speech was printed in the Democrat on Monday from that which was printed in the Republican?

A. Of what date?

Q. The Republican of Sunday.

A. Yes, sir.

Q. Or of Monday? With the exception of corrections of grammar and pronunciation, is there any correction of substance between the two reports as printed that morning?

A. Specify which papers you want compared, the Sunday Republican and Monday Democrat, or the Monday Republican and Monday Democrat?

Q. The Monday Republican and Monday Democrat.

A. Yes, sir.

Q. What are they as printed?

A. One is "Let the government be restored. I have labored for it. I am for it now. I deny this doctrine of secession, come from what quarter it may."

Q. What is the change as printed?

A. "Let the government be restored. I have labored for it." So far it is the same in both papers; and then the words "I am for it now" are omitted in the Democrat, and the punctuation is changed so as to begin the next sentence "Now, I deny this doctrine of secession," and then words are omitted and the punctuation changed.

Q. There are four words omitted, "I am for it" before "now." What else?

A. Speaking of the neutrality law he said, "I am sworn to support the Constitution and to execute the law." Some one hollooed out "Why didn't you do it?" and he answered, "The law was executed; the law was executed." Those words "Why didn't you do it," and "The law was executed; the law was executed," are omitted in the Democrat.

Q. What else of substance?

A. I do not know that I can point out any others without the memorandum.

Q. Use the memorandum to point out substance, not grammar, not punctuation, not pronunciation.

A. (Referring to the memorandum.) One expression he used was, "Allow me to ask if there is a man here to-night who in the dark days of Know-Nothingism stood and battled more for their rights"——

Q. What is the word left out or put in there?

A. The word "sacrificed" is used in the Democrat, and the word "battled" is the one that was employed.

Mr. Manager BUTLER. I will not trouble you, further, sir.

The WITNESS. Oh, I can point out more.

Mr. Manager BUTLER. That is all, sir.

Mr. CURTIS. We now desire, Mr. Chief Justice, to put in evidence a document certified from the Department of State.

(The document was handed to the managers.)

The CHIEF JUSTICE. The counsel will state the object of this evidence.

Mr. CURTIS. It is the commission issued by President Adams to General Washington, constituting him lieutenant general of the army of the United States. The purpose is to show the form in which commissions were issued at that date to high military officers, and we have selected the most conspicuous instance in our history as regards the person, the office, and the occasion.

Mr. Manager BUTLER. There were two commissions issued to General Washington, two appointments made. Was this the one he accepted, or the one he rejected; do you remember?

Mr. EVARTS. We understood it to be the one actually issued and received by him.

Mr. Manager BUTLER. And accepted by him?

Mr. EVARTS. We suppose so.

Mr. CURTIS. We understand so.

Mr. EVARTS. We desire to have the commission read.

Mr. Manager BUTLER. I see no objection to it. I thought perhaps you could tell me what I inquired about.

Mr. EVARTS. Will the clerk be good enough to read it?

The CHIEF JUSTICE. The Secretary will read the paper.

The chief clerk read the following commission, which is accompanied by a certificate from the Secretary of State, that it is a carefully compared and exact copy of the original on file in his department:

John Adams, President of the United States of America, to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of George Washington, I have nominated and, by and with the advice and consent of the Senate, do appoint him lieutenant general and commander-in-chief of all the armies raised or to be raised for the service of the United States. He is therefore carefully and diligently to discharge the duty of lieutenant general and commander-in-chief, by doing and performing all manner of things thereunto belonging. And I do strictly charge and require all officers and soldiers under his command to be obedient to his orders as lieutenant general and commander-in-chief. And he is to observe and follow such orders and directions from time to time as he shall receive from me or the future President of the United States of America. This commission to continue in force during the pleasure of the President of the United States for the time being.

Given under my hand at Philadelphia, this 4th day of July, in the year of our Lord 1798, and in the twenty-third year of the independence of the United States.

[SEAL.] JOHN ADAMS.

By command of the President of the United States of America:

JAMES McHENRY,
Secretary of War.

Mr. CURTIS. I now desire, Mr. Chief Justice, to put in a document from the Department of the Interior, showing the removals of superintendents of Indian affairs, and of Indian agents, of land officers, receivers of public moneys, surveyors general, and certain miscellaneous officers who are not brought under any one of those classes. The document which I hold shows the date of the removal, the name of the officer, the office he held, and also contains a memorandum whether the removal was during the recess of the Senate or in the session of the Senate.

Mr. Manager BUTLER. I have but one objection to this species of evidence without anybody brought here to testify to it, and that is this: I have learned that in the case of the Treasury Department, which I allowed to come in without objection, there were other cases not reported where the power was refused to

be exercised. I do not know whether it is so in the Interior Department or not. But most of these cases, upon our examination, appear to be simply under the law fixing their tenure during the pleasure of the President for the time being, and some of them are inferior officers originally made appointable by the heads of departments. If the presiding officer thinks they have any bearing we have no objection.

Mr. CURTIS. I understand the matter of the application of the law to these offices somewhat differently from that which is stated by the honorable manager. I have not had an opportunity minutely to examine these lists, for they were only handed to me this morning; but I understand that a very large number of these officers held for a fixed tenure of four years. That, however, must be a matter of argument hereafter.

Mr. Manager BUTLER. What class of officers do you speak of?

Mr. CURTIS. Receivers of public moneys is one of the classes.

Mr. JOHNSON. What is the date of the first removal and of the last?

Mr. CURTIS. These tables, I think, extend through the whole period of the existence of that department. I do not remember the date when the department was established, but I think they run through the whole history of the department.

The CHIEF JUSTICE. No objection is made to the reception of this document in evidence.

The document is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 17, 1868.

I, Orville H. Browning, Secretary of the Interior, do hereby certify that the annexed thirteen sheets contain full, true, complete, and perfect transcripts from the records of this department, so far as the same relate to the removals from office of the persons therein named.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department to be affixed the day and year above written.

[L. S.] O. H. BROWNING, *Secretary of the Interior.*

A.—*Removals of superintendents of Indian affairs and of Indian agents.*

Date.	Name.	Office.
March 13, 1849	Thomas P. Harvey	Superintendent at Saint Louis, Missouri.*
June 9, 1866	W. H. Albin	Central superintendency.*
April 18, 1853	Elias Murray	North superintendency.*
March 13, 1857	Francis Huebschman	North superintendency.*
March 27, 1861	W. J. Cullen	North superintendency.*
October 29, 1866	E. B. Taylor	North superintendency.*
April 8, 1853	John Dresman	South superintendency.†
March 3, 1855	Thomas S. Drew	South superintendency.*
March 17, 1857	C. W. Dean	South superintendency.*
April 1, 1861	Elias Rector	South superintendency.*
March 16, 1863	J. L. Collins	New Mexico superintendency.*
March 3, 1865	Michael Steck	New Mexico superintendency.†
March 17, 1866	Filipe Delgado	New Mexico superintendency.†
August 9, 1866	G. W. Leihy	Arizona superintendency.*
March 31, 1854	E. F. Beale	California superintendency.†
April 16, 1861	A. D. Rightmire	Southern District California superintendency.*
August 10, 1863	G. M. Hanson	North District California superintendency.*
March 22, 1865	Austin Wiley	North District California superintendency.*
March 17, 1853	Anson Dart	Oregon superintendency.†
June —, 1856	Joel Palmer	Oregon superintendency.†
March 22, 1859	J. W. Nesmith	Oregon superintendency.*
June 30, 1861	E. R. Geary	Oregon superintendency.*
March 28, 1863	W. H. Rector	Oregon superintendency.†
July 16, 1861	W. W. Miller	Washington Territory superintendency.†
March 6, 1862	B. F. Kendall	Washington Territory superintendency.†
March 30, 1864	C. H. Hale	Washington Territory superintendency.†
September 25, 1866	W. H. Waterman	Washington Territory superintendency.*
April 18, 1853	W. P. Richardson	Great Nemaha agency.*
March 25, 1861	Daniel Vanderslice	Great Nemaha agency.†
April 15, 1867	R. W. Turnas	Omaha agency.†
May 27, 1861	C. H. Mix	Winnebago agency.†
September 7, 1865	St. A. D. Balcombe	Winnebago agency.*

* During the recess. † Senate consented to appointment of his successor.

A.—*Removals of superintendents, &c.*—Continued.

Date.	Name.	Office.
April 29, 1861	James L. Gillis	Pawnee agency.*
March 16, 1862	H. W. De Puy	Pawnee agency.†
August 13, 1856	R. G. Murphy	St. Peter's agency.†
September 11, 1857	Charles E. Flanders	St. Peter's agency.*
March 23, 1861	Joseph R. Brown	St. Peter's agency.†
September 29, 1864	W. W. Ross	Pottawatomie agency.*
January 4, 1866	William Daily	Ottoe and Missouria agency.†
April 27, 1859	R. C. Miller	Upper Arkansas agency.*
April 18, 1861	M. C. Dickey	Kansas agency.*
June 3, 1858	Royal Baldwin	Kickapoo agency.†
May 7, 1864	C. D. Keith	Kickapoo agency.†
March 16, 1865	Abram Bennett	Kickapoo agency.*
March 27, 1861	Thomas B. Sykes	Delaware agency.†
April 18, 1864	Fielding Johnson	Delaware agency.†
June 3, 1858	A. Arnold	Shawnee agency.†
March 13, 1859	Francis Tymony	Sac and Fox agency.*
April 3, 1858	Max. McCauslin	Osage River agency.†
April 15, 1861	Seth Clover	Osage River agency.*
October —, 1850	F. Fitzpatriek	Upper Platte agency.*
April 14, 1862	J. A. Cady	Upper Platte agency.†
August 3, 1866	Vital Jarot	Upper Platte agency.*
May 29, 1849	R. C. S. Brown	Cherokee agency.*
April 5, 1861	R. J. Cowart	Cherokee agency.*
March 6, 1862	John Crawford	Cherokee agency.†
September 25, 1866	Justin Harland	Cherokee agency.*
April 18, 1853	William Wilson	Choctaw agency.*
July 31, 1861	D. H. Cooper	Choctaw and Chickasaw agency.†
August 22, 1866	Isaac Colman	Choctaw and Chickasaw agency.*
March 16, 1865	P. P. Elder	Neosho agency.*
July 6, 1858	A. H. McKissack	Wichita agency.*
July 26, 1860	Samuel A. Blain	Wichita agency.†
April 19, 1861	Matthew Leeper	Wichita agency.*
March 6, 1862	J. J. Humphreys	Wichita agency.†
April 5, 1849	James Logan	Creek agency.*
April 18, 1853	P. H. Raiford	Creek agency.*
April 5, 1861	W. H. Garrett	Creek agency.*
April 16, 1861	William Quesenbury	Creek agency.†
June 9, 1865	G. A. Cutler	Creek agency.*
March 11, 1852	Elias Wampole	Warm Springs (Oregon) agency.†
June 13, 1861	A. P. Dennison	Warm Springs (Oregon) agency.*
November 2, 1854	S. H. Culver	Grande Ronde (Oregon) agency.*
July 16, 1861	J. F. Miller	Grande Ronde (Oregon) agency.†
July 10, 1851	H. H. Spalding	Siletz (Oregon) agency.*
August 13, 1856	E. A. Starling	Siletz (Oregon) agency.*
July 16, 1861	Daniel Newcomb	Siletz (Oregon) agency.†
January 21, 1863	Benjamin R. Biddle	Siletz (Oregon) agency.†
July 17, 1861	Wesley B. Gasnell	Umatilla (Oregon) agency.†
September 1, 1852	A. R. Wooley	An Indian agent in New Mexico.†
May 1, 1853	Michael Steck	An Indian agent in New Mexico.*
May 13, 1857	Lorenzo Labadi	An Indian agent in New Mexico.*
March 21, 1865	José A. Mansinares	An Indian agent in New Mexico.*
May 3, 1853	E. H. Wingfield	An Indian agent in New Mexico.*
July 26, 1861	Michael Steck	An Indian agent in New Mexico.†
April 30, 1861	J. T. Russell	An Indian agent in New Mexico.†
June 21, 1866	Toribio Romero	An Indian agent in New Mexico.†
July 22, 1852	R. H. Weightman	An Indian agent in New Mexico.†
April 11, 1853	S. M. Baird	An Indian agent in New Mexico.†
April 30, 1861	S. F. Kendrick	An Indian agent in New Mexico.*
March 24, 1865	John Ward	An Indian agent in New Mexico.*
August 4, 1862	W. F. M. Arny	An Indian agent in New Mexico.*
March 21, 1865	L. J. Keithly	An Indian agent in New Mexico.*
April 18, 1853	R. B. Laubdin	Crow Creek agency.*
March 28, 1861	A. H. Redfield	Yaneton agency.†
July 16, 1861	J. S. Gregory	Ponca agency.†
April 26, 1861	Andrew Humphreys	Uintah Valley (Utah) agency.*
June 7, 1864	F. W. Catch	Uintah Valley (Utah) agency.†
September 22, 1865	Charles Hutchings	Flathead (Montana) agency.*
April 7, 1862	Luther L. Pease	Blackfeet (Montana) agency.†
October 13, 1863	H. W. Reed	Blackfeet (Montana) agency.*
March 14, 1861	R. H. Lansdale	Yakama (Washington Territory) agency.*
June 7, 1864	A. A. Bancroft	Yakama (Washington Territory) agency.†
May 11, 1865	Simeon Whitely	Indian agent in Colorado.*
September 21, 1866	William Bryson	Smith river (California) agency.*
April 23, 1853	William Sprague	Mackinac (Michigan) agency.*
March 25, 1861	A. M. Fitch	Mackinac (Michigan) agency.†
March 23, 1861	J. W. Lynde	Chippewas of the Mississippi.†
April 20, 1865	A. C. Morrill	Chippewas of the Mississippi.*
November 9, 1866	Edwin Clark	Chippewas of the Mississippi.*
April 18, 1853	J. S. Watrous	Chippewas of Lake Superior.*
March 25, 1861	Cyrus K. Drew	Chippewas of Lake Superior.†

* During the recess. † Senate consented to appointment of his success.

B.—*Registers of land offices removed during the recess of the Senate.*

Date.	Name of officer.	Location of office.	State.
April 5, 1849	John Gardner	Winamac	Indiana.
April 7, 1849	Thomas Tiger	Fort Wayne	Indiana.
April 12, 1849	J. H. McBride	Springfield	Missouri.
April 12, 1849	Abraham Edwards	Kalamazoo	Michigan.
April 14, 1849	John F. Reed	Jeffersonville	Indiana.
May 8, 1849	John Bruton	Clarksville	Arkansas.
May 8, 1849	John Miller	Batesville	Arkansas.
May 8, 1849	E. P. Dickson	Fayetteville	Arkansas.
May 8, 1849	B. P. Jett	Washington	Arkansas.
May 8, 1849	Hiram Smith	Champagnole	Arkansas.
May 8, 1849	Henry L. Biscoe	Helena	Arkansas.
May 8, 1849	S. B. Farwell	Dixon	Arkansas.
May 9, 1849	B. R. Cowherd	Jackson	Arkansas.
May 9, 1849	J. B. Hunt	Sault Ste. Marie	Michigan.
May 12, 1849	J. W. Rush	Crawfordsville	Indiana.
May 12, 1849	J. S. Mayes	Vincennes	Indiana.
May 18, 1849	C. D. Strickland, jr	Greensburg	Louisiana.
May 18, 1849	Bernhart Henn	Fairfield	Iowa.
May 18, 1849	Charles Neally	Iowa City	Iowa.
May 18, 1849	Warner Lewis	Dubuque	Iowa.
May 21, 1849	J. W. Barrett	Springfield	Illinois.
May 21, 1849	John Barlow	Genesee	Michigan.
May 24, 1849	Albert W. Parris	Mineral Point	Wisconsin.
May 31, 1849	Elisha Taylor	Detroit	Michigan.
June 4, 1849	D. P. Richardson	Monroe	Louisiana.
June 4, 1849	M. McIntire	Opelousas	Louisiana.
June 4, 1849	J. C. Sloo	Shawneetown	Illinois.
June 11, 1849	Thomas J. Hodson	Tallahassee	Florida.
June 14, 1849	George H. Walker	Milwaukee	Wisconsin.
June 14, 1849	Hugh P. Caperton	Lebanon	Alabama.
June 25, 1849	John Taylor	Defiance	Ohio.
June 25, 1849	R. K. McLaughlin	Vandalia	Illinois.
July 12, 1849	Lewis St. Martin	New Orleans	Louisiana.
July 12, 1849	Benjamin Sherman	Ionia	Michigan.
July 12, 1849	William E. Russell	Danville	Illinois.
July 16, 1849	Harmon Alexander	Palestine	Illinois.
July 27, 1849	Samuel Holmes	Quincy	Illinois.
October 10, 1849	Nathaniel Bolton	Indianapolis	Indiana.
October 10, 1849	Jacob Freaman	Kaskaskia	Illinois.
October 10, 1849	Franklin Cannon	Jackson	Missouri.
November 1, 1849	William McNair	Fayette	Missouri.
October 13, 1850	Alanson Saltmarsh	Cahaba	Alabama.
October 13, 1850	D. B. Graham	Montgomery	Alabama.
June 13, 1861	La Fayette Mosher	Roseburg	Oregon.
July 14, 1855	E. W. Martin	Elba	Alabama.
July 24; 1855	W. P. Davis	Danville	Illinois.
October 2, 1855	Henry L. Biscoe	Helena	Arkansas.
March 26, 1856	Fielding L. Dowsing	Columbus	Mississippi.
April 3, 1857	Diedrick Upson	Winona	Minnesota.
March 19, 1857	George W. Sweet	Sauk Rapids	Minnesota.
March 20, 1857	James H. Birch	Plattsburg	Missouri.
March 28, 1857	J. O. Henning	Hudson	Wisconsin.
September 22, 1858	Abner C. Smith	Forest City	Minnesota.
April 16, 1859	Samuel Clark	Buchanan	Minnesota.
May 3, 1859	Daniel Shaw	Superior	Wisconsin.
September 19, 1860	John McEnery	Monroe	Louisiana.
April 1, 1861	W. T. Galloway	Eau Claire	Wisconsin.
April 9, 1861	Ira Munson	San Francisco	California.
April 9, 1861	E. P. Hart	Visalia	California.
April 9, 1861	Matthew Keller	Los Angeles	California.
April 9, 1861	William McDaniels	Humboldt	California.
May 9, 1861	J. R. Bennett	Chatfield	Minnesota.
May 15, 1861	Peter White	Marquette	Michigan.
April 2, 1861	Isaac W. Griffith	Des Moines	Iowa.
April 2, 1861	Lewis S. Hills	Council Bluffs	Iowa.
April 2, 1861	J. M. Stockdale	Fort Dodge	Iowa.
April 2, 1861	S. P. Yeomans	Sioux City	Iowa.
April 9, 1861	E. O. F. Hastings	Marysville	California.
April 9, 1861	A. C. Bradford	Stockton	California.
April 10, 1861	Isaac W. Smith	Olympia	Washington Territory.
April 15, 1861	Charles S. Benton	La Crosse	Wisconsin.
April 15, 1861	James C. Dow	Henderson	Missouri.
April 18, 1861	Jesse Morin	Fort Scott	Kansas.
April 18, 1861	James E. Jones	Lecompton	Kansas.
April 22, 1861	David R. Curran	Menasha	Kansas.
April 26, 1861	Samuel B. Garrett	Junction City	Kansas.
April 26, 1861	John A. Parker	Omaha	Nebraska.
April 30, 1861	O. P. Richardson	Santa Fé	New Mexico.
May 3, 1861	Henry L. Brown	Booneville	Missouri.
May 30, 1861	Warren H. Graves	Springfield	Missouri.
June 13, 1861	Benjamin Jennings	Oregon City	Oregon.

B.—*Registers of land offices removed, &c.*—Continued.

Date.	Name of officer.	Location of office.	State.
June 22, 1861	George McOut	Indianapolis	Indiana.
August 7, 1861	Thomas Walke	Chillicothe	Ohio.
September 9, 1861	William E. Keeper	Springfield	Illinois.
March 18, 1866	G. W. Boardman	Booneville	Missouri.
September 26, 1866	Simon Jones	New Orleans	Louisiana.
September 24, 1866	Royal Buck	Nebraska City	Nebraska.
September 24, 1866	H. C. Driggs	East Saginaw	Michigan.
October 5, 1866	S. T. Davis	Sioux City	Iowa.
October 27, 1866	G. W. Martin	Junction City	Kansas.
November 5, 1866	C. R. Dorsey	Brownsville	Nebraska.

The above dates are those upon which the successors of the above-named persons were appointed.

C.—*Receivers of public moneys removed during the recess of the Senate.*

Date.	Name of officer.	Location of office.	State.
March 28, 1849	John G. Winston	Lebanon	Alabama.
March 30, 1849	Elisha Morrow	Green Bay	Wisconsin.
April 7, 1849	J. D. G. Nelson	Fort Wayne	Indiana.
April 7, 1849	James P. Drake	Indianapolis	Indiana.
April 12, 1849	Mitchell Hinsdill	Kalamazoo	Michigan.
April 12, 1849	Thomas Dyer	Chicago	Illinois.
May 7, 1849	Lemuel R. Lincoln	Little Rock	Arkansas.
May 8, 1849	W. Adams	Clarksville	Arkansas.
May 8, 1849	D. J. Chapman	Batesville	Arkansas.
May 8, 1849	Matthew Leeper	Fayetteville	Arkansas.
May 8, 1849	D. T. Witter	Washington	Arkansas.
May 8, 1849	M. F. Rainey	Champagnole	Arkansas.
May 8, 1849	George Jeffries	Helena	Arkansas.
May 8, 1849	John Dement	Dixon	Illinois.
May 9, 1849	W. W. Leland	Pontotoc	Mississippi.
May 9, 1849	M. A. Patterson	Sault Ste. Marie	Michigan.
May 9, 1849	David C. Glenn	Jackson	Mississippi.
May 9, 1849	Paschal Bequette	Mineral Point	Wisconsin.
May 12, 1849	Bennett W. Engle	Crawfordsville	Indiana.
May 12, 1849	Samuel Wise	Vincennes	Indiana.
May 18, 1849	Theodore Gillespie	Greensburg	Louisiana.
May 18, 1849	Verplanck Van Antwerp	Fairfield	Iowa.
May 18, 1849	Enos Lowe	Iowa City	Iowa.
May 18, 1849	George McHenry	Dubuque	Iowa.
May 21, 1849	A. G. Herndon	Springfield	Illinois.
May 31, 1849	John Parsons	Newmansville	Florida.
May 24, 1849	J. A. Helfenstien	Milwaukee	Wisconsin.
June 4, 1849	Braxton Parrish	Shawneetown	Illinois.
June 4, 1849	J. H. Westbrook	Columbus	Mississippi.
June 14, 1849	Frederick Hall	Ionia	Michigan.
June 25, 1849	W. L. Henderson	Defiance	Ohio.
June 30, 1849	Samuel Leech	Stillwater	Minnesota.
June 25, 1849	Daniel Gregory	Vandalia	Illinois.
July 12, 1849	John B. Filhiol	Monroe	Louisiana.
July 27, 1849	Hiram Rodgers	Quincy	Illinois.
August 9, 1849	Nicholas B. Smith	Springfield	Missouri.
August 25, 1849	J. M. B. Tucker	Natchitoches	Louisiana.
August 25, 1849	Daniel Ashby	Clinton	Missouri.
October 10, 1849	L. R. Noell	Danville	Illinois.
October 10, 1849	John G. Cameron	Edwardsville	Illinois.
December 1, 1849	H. W. Palfrey	New Orleans	Louisiana.
September 4, 1855	James Larkins	Elba	Alabama.
October 8, 1855	A. S. Bryant	Sioux City	Iowa.
October 10, 1855	J. C. Clarborne	Batesville	Arkansas.
September 13, 1856	Thomas C. Shoemaker		Territory of Kansas.
August 19, 1858	E. B. Dean	Superior	Wisconsin.
September 19, 1860	Christopher H. Dodds	Monroe	Louisiana.
September 21, 1860	John D. Evans	Forest City	Minnesota.
April 1, 1861	John E. Perkins	Eau Claire	Wisconsin.
March 30, 1861	J. H. McKenny	Chatfield	Minnesota.
June 13, 1861	William J. Martin	Roseburg	Oregon.
March 30, 1861	Thomas McNully	Chillicothe	Ohio.
April 2, 1861	Isaac Cooper	Des Moines	Iowa.
April 2, 1861	A. H. Palmer	Council Bluffs	Iowa.
April 2, 1861	Thomas Sargent	Fort Dodge	Iowa.
April 2, 1861	Robert Means	Sioux City	Iowa.

C.—*Receivers of public moneys removed, &c.*—Continued.

Date.	Name of officer.	Location of office.	State.
April 9, 1861	Joseph Hopkins	Marysville	California
April 9, 1861	Thomas Baker	Visalia	California
April 9, 1861	George W. Hook	Humboldt	California.
April 9, 1861	Augustin Olivera	Les Angeles	California.
April 9, 1861	Paschal Bequette	San Francisco	California.
April 9, 1861	W. B. Norman	Stockton	California.
April 10, 1861	J. M. S. Van Cleare	Olympia	Washington Territory.
April 15, 1861	C. Graham	Henderson	Missouri.
November 10, 1860	Ebenezer Warren	Marquette	Michigan.
April 22, 1861	Samuel Ryan	Menasha	Wisconsin.
April 26, 1861	Findley Patterson	Junction City	Kansas.
April 26, 1861	George J. Clark	Fort Scott	Kansas.
May 24, 1861	W. A. Street	Santa Fé	New Mexico.
May 18, 1861	J. Rush Spencer	Bayfield	Wisconsin.
May 20, 1861	E. E. Buckner	Booneville	Missouri.
May 30, 1861	Thomas J. Bishop	Springfield	Missouri.
June 11, 1861	George E. Greene	Vincennes	Indiana.
June 13, 1861	A. L. Lovejoy	Oregon City	Oregon.
May 27, 1861	C. B. Smith	Brownsville	Nebraska.
June 22, 1861	Charles C. Campbell	Indianapolis	Indiana.
September 9, 1861	A. G. Herndon	Springfield	Illinois.
October 5, 1861	John J. McClelland	Menasha	Wisconsin.
July 30, 1863	Franklin Stewart	Nebraska City	Nebraska.
March 16, 1864	John Greiner	Santa Fé	New Mexico
September 18, 1866	W. B. Mitchell	St. Cloud	Minnesota.
September 18, 1866	J. S. McFarland	Booneville	Missouri.
September 24, 1866	W. H. H. Waters	Nebraska City	Nebraska.
March 30, 1865	Charles A. Gillman	St. Cloud	Minnesota.
September 9, 1865	J. L. Collins	Santa Fé	New Mexico.

The above dates are those upon which the successors of the above-named persons were appointed.

D.—*Receivers of public moneys removed during sessions of the Senate, that body advising and consenting to the appointments of their successors.*

Date.	Name of officer.	Location of office.	State.
July 31, 1852	Henry Acker	Sault Ste. Marie	Michigan.
December 22, 1857	Harvey Whittington	Plattsburg	Missouri.
May 17, 1858	James P. Downer	Ogden	Kansas.
June 3, 1858	Edward Conner	Springfield	Illinois.
December 22, 1858	E. B. Dean, jr.	Superior	Wisconsin.
March 8, 1859	Robert J. Graveriat	Marquette	Michigan.
January 16, 1859	John C. Turk	Dakota City	Nebraska.
February 14, 1860	Thomas C. Hunt	Natchitoches	Louisiana.
February 14, 1860	Milton H. Abbott	Cambridge	Minnesota.
May 28, 1860	Samuel L. Hayes	St. Cloud	Minnesota.
January 16, 1860	Dave Shaw	Superior	Wisconsin.
March 18, 1861	Peter F. Wilson	Omaha	Nebraska.
March 25, 1861	Oscar A. Sterens	Traverse City	Michigan.
March 25, 1861	W. L. P. Little	East Saginaw	Michigan.
March 23, 1861	Benjamin F. Tillotson	St. Peter	Minnesota.
March 23, 1861	Albert G. Ellis	Stevens's Point	Minnesota.
March 23, 1861	W. H. Mower	Sunrise City	Minnesota.
March 25, 1861	Henry J. Wilson	Ionia	Michigan.
March 27, 1861	James D. Reynolds	Falls St. Croix	Wisconsin.
March 27, 1861	Samuel E. Adams	St. Cloud	Minnesota.
July 19, 1861	Theodore Rodolf	La Crosse	Wisconsin.
July 22, 1861	John J. Turnbraugh	Ironton	Missouri.
July 16, 1861	Nathaniel B. Holdon	Warsaw	Missouri.
March 6, 1862	Richard C. Vaughn	Nebraska City	Nebraska.
March 12, 1863	James Compton	Marysville	California.
January 26, 1864	George E. Briggs	Roseburg	Oregon.
June 7, 1864	B. F. Reynolds	Falls of St. Croix	Wisconsin.
May 4, 1866	John Griemer	Santa Fé	New Mexico.
July 14, 1866	Alfred H. Carrigan	Washington	Arkansas.

The above dates are dates of confirmation by the Senate.

E.—*Registers of land offices removed during session of the Senate, that body advising and consenting to the appointment of their successors.*

Date.	Name of officer.	Location of office.	State.
March 14, 1849	Joel S. Fiske	Green Bay	Wisconsin.
July 31, 1852	Andrew Backus	Sault Ste. Marie	Michigan.
March 12, 1857	Deidrich Upman	Faribault	Minnesota.
April 14, 1858	Robert Brown	Des Moines	Iowa.
May 17, 1858	Frederick Emory	Ogden	Kansas.
May 17, 1858	W. H. Doak	Fort Scott	Kansas.
June 3, 1858	J. Rush Spencer	Hudson	Wisconsin.
June 3, 1858	John Connelly, jr	Springfield	Illinois.
June 15, 1858	W. W. Gift	San Francisco	California.
March 1, 1859	A. C. Smith	Forest City	Minnesota.
February 14, 1860	John B. Cloutier	Natchitoches	Louisiana.
March 23, 1860	Charles F. Hyerman	Detroit	Michigan.
March 25, 1860	Jacob Barns	Traverse City	Michigan.
March 25, 1860	Moses B. Hess	East Saginaw	Michigan.
March 27, 1861	Orpheus Everts	Falls St. Croix	Wisconsin.
March 23, 1861	Joshua B. Culver	Portland	Minnesota.
March 23, 1861	Oscar Taylor	Otter Tail City	Minnesota.
March 23, 1861	Hugh Brawley	Stevens's Point	Wisconsin.
March 23, 1861	Henry N. Setger	Sunrise City	Minnesota.
March 27, 1861	Thomas E. Massey	Forest City	Minnesota.
March 27, 1861	J. D. Cruttendon	St. Cloud	Minnesota.
March 25, 1861	John C. Blanchard	Ionia	Michigan.
March 27, 1861	Samuel Plumer	St. Peter	Minnesota.
July 19, 1861	Charles S. Benton	La Crosse	Wisconsin.
March 6, 1862	Adolph Renard	Recorder of land titles, St. Louis.	Missouri.
March 31, 1862	George Webster	Stockton	California.
July 17, 1862	W. W. Lewis	Batesville	Arkansas.
March 9, 1865	D. H. Ball	Marquette	Michigan.
February 10, 1868	Joseph W. Edwards	Marquette	Michigan.

F.—*Surveyor generals removed during recess of the Senate.*

Date.	Name of officer.	Location of office.
April 11, 1849	Robert Butler	Florida.
May 8, 1849	William Pelham	Arkansas.
May 9, 1849	P. F. Landry	Louisiana.
June 14, 1849	F. R. Conway	Illinois and Missouri.
March 22, 1859	John S. Zieber	Oregon.
April 3, 1861	John Loughborough	Illinois and Missouri.
April 15, 1861	J. W. Mandeville	California.
April 29, 1861	H. B. Burnett	Kansas and Nebraska.
May 11, 1861	Warner Lewis	Illinois and Missouri.
June 13, 1861	W. H. Chapman	Oregon.
March 16, 1865	Daniel W. Wilder	Kansas and Nebraska.

Surveyor generals removed during session of the Senate, that body advising and consenting to the appointments of their successors.

Date.	Name of officer.	Location of office.
March 3, 1855	George Milbourne	Arkansas.
March 27, 1861	Charles L. Emerson	Minnesota.
July 22, 1861	A. P. Wilbar	New Mexico.
July 15, 1861	James Tilton	Washington Territory.
March 13, 1863	Francis M. Case	Colorado.
February 23, 1864	Edward F. Beale	California.
May 22, 1866	George D. Hill	Dakota.
July 15, 1861	Samuel C. Stambaugh	Utah.

Miscellaneous removals.

Date.	Name of officer.	Office.
July 23, 1849	* S. H. Laughlin	Recorder of General Land Office.
July 1, 1849	* William Medill	Commissioner of Indian Affairs.
April 7, 1849	* Charles Douglas	Commissioner of Public Buildings.
April 5, 1849	* C. P. Sengstack	Warden of the penitentiary, Dist. of Columbia.
May 9, 1849	* Edmond Burke	Commissioner of Patents.
November 10, 1850	* James L. Edwards	Commissioner of Pensions.
August 12, 1865	* Robert Beale	Warden of the jail.
September 7, 1865	* N. C. Towle	Register of deeds, District of Columbia.
November 3, 1866	* Z. C. Robbins	Register of wills, District of Columbia.
October 21, 1862	* S. J. Dallas	Principal clerk of surveys General Land Office.
June 29, 1850	† Jonas B. Ellis	Warden of the penitentiary, Dist. of Columbia.
March —, 1853	† Luke Lea	Commissioner of Indian Affairs.
December 23, 1859	† Thomas Thornley	Warden of the penitentiary, Dist. of Columbia.
March 19, 1861	† Joseph S. Wilson	Commissioner of General Land Office.
March 6, 1867	† R. M. Hall	Register of deeds.
July 20, 1867	† Thomas B. Brown	Warden of the jail, District of Columbia.

* During recess. † Senate consented to appointment of successor.

FREDERICK W. SEWARD sworn and examined.

By Mr. CURTIS:

Question. State what office you hold under the government.

Answer. Assistant Secretary of State.

Q. How long have you held the office?

A. Since March, 1861.

Q. In whose charge in that department is the subject of consuls and consular and vice-consular appointments?

A. Under my general supervision.

Q. Please state the practice in making appointments of vice-consuls in case of the death, resignation, incapacity, or absence of consuls.

A. Usually——

Mr. Manager BUTLER. Stop a moment. Is not that regulated by law?

Mr. CURTIS. That is a matter of argument. We think it is.

Mr. Manager BUTLER. So do we. There cannot be any dispute on that question.

Mr. CURTIS. Now we are going to show the practice under the law.

Mr. Manager BUTLER. Different from the law?

Mr. CURTIS. Just as we have done in other cases. I have a document here to offer, but it requires some explanations to make the document intelligible.

Mr. Manager BUTLER. We do not object if the object is to show the practice under the law.

Mr. CURTIS, (to the witness.) Proceed, if you please, Mr. Seward.

The WITNESS. When the vacancy is foreseen the consul nominates a vice-consul, who enters upon the discharge of his duties at once during the time that the nomination is sent to the Department of State. The department approves or disapproves when it receives the nomination. In case the vacancy has not been foreseen and the consul is dead, absent, or sick, unable to discharge the duties or to designate his temporary substitute, then the minister in the country will make a nomination and send that to the Department of State; or if there be no minister, the naval commander will not infrequently make a nomination and send that to the Department of State, and the vice-consul so designated will act until the department shall approve or disapprove. In other cases the department itself will designate a vice-consul without any previous nomination of either minister, consul, or naval commander, and he enters upon the discharge of his duties in the same manner.

Q. How is he authorized or commissioned?

A. He receives a certificate of his appointment signed by the Secretary of State.

Q. Running for a definite time, or how?

A. Running "subject to the conditions prescribed by law."

Q. Is this appointment of vice-consul made temporarily to fill a vacancy, or how otherwise?

A. It is made to fill the office during the period which necessarily elapses in the time that it takes for the news of the vacancy to reach the department for a successor to be appointed.

Q. That is for a succeeding consul to be appointed?

A. For a succeeding full officer to be appointed. Sometimes a period of weeks or months may elapse before the news can reach this country, and a similar period before the newly-appointed successor can reach the post.

Q. It is, then, in its character an *ad interim* appointment to fill the vacancy?

A. Yes.

Cross-examined by Mr. Manager BUTLER:

Q. Is there anything said in their commissions or letters of appointment about their being *ad interim?*

A. Their letter of appointment says "subject to the conditions prescribed by law."

Q. That is the only limitation there is?

A. That is the only limitation I remember.

Q. Are not these appointments made under the fifteenth section of the act of August 18, 1856?

A. I think the act of 1856 does not create the office nor give the power of appointment, but it recognizes the office as already in existence, and the power as already in the President.

Mr. Manager BUTLER. We will see about that in a moment, sir.

Mr. JOHNSON. Has the manager the statute before him?

Mr. Manager BUTLER. I have.

Mr. JOHNSON. What is the volume?

Mr. Manager BUTLER. The volume is the 11th Statutes at Large. This statute begins on page 35 of the 11th Statutes at Large; but the fourteenth and fifteenth sections are those that relate to the matter. The fourteenth section I will read, for I want to ask some further questions in regard to it:

> That the President be, and he is hereby authorized, to define the extent of country to be embraced within any consulate or commercial agency, and to provide for the appointment of vice-consuls, vice-commercial agents, deputy consuls, and consular agents therein, in such manner and under such regulations as he shall deem proper; but no compensation shall be allowed for the services of any such vice-consul or vice-commercial agent beyond nor except out of the allowance made by this act for the principal consular officer in whose place such appointment shall be made; and no vice-consul, vice-commercial agent, deputy consul, or consular agent shall be appointed otherwise than in such manner and under such regulations as the President shall prescribe pursuant to the provisions of this act.

(To the witness.) Now, sir, in the Department of State, have they ever undertaken to make a vice consul against the provisions of this act?

The WITNESS. I am not aware that they ever have.

Question. Or attempted it in any way?

Answer. Not that I know of.

Mr. CURTIS. I now offer from the Department of State the document I hold in my hand, which contains a list of consular officers appointed during the session of the Senate when vacancies existed at the time such appointments were made. The earliest instance of it in this list is in 1837, and the latest one does not come down to the law which the honorable manager has read. They are all prior to that law, and after the year 1837.

(The document was handed to the managers for examination.)

Mr. CURTIS. I was mistaken in a date. I thought the honorable manager read the date of the law as 1866.

Mr. Manager BUTLER. Eighteen hundred and fifty-six. August 18, 1856.

Mr. CURTIS. Then there are some which are subsequent to the law. They begin in 1837, and they come down to about 1862, if I remember rightly. I have not examined it minutely.

Mr. Manager BUTLER. There was a prior statute of 1848, which was partly revived in the law of 1856.

Mr. Manager BOUTWELL. Mr. Chief Justice, I wish to call the attention of the counsel for the respondent to the fact that it does not appear from this paper that these vacancies did not happen during the recess of the Senate. It merely states that they were filled during the session. As these were offices existing in remote countries the probability is that the vacancies happened during the recess of the Senate.

Mr. CURTIS. It does not appear when the vacancies happened. The purpose for which we offer the evidence is to show that these temporary appointments were made to fill vacancies during the session of the Senate.

Mr. Manager BOUTWELL. I only wish to give notice that we treat them as cases where vacancies happened during the recess of the Senate, it being perfectly understood that, according to the practice, vacancies happening during the recess of the Senate might be filled during the session of the Senate. There is no evidence to the contrary in the papers.

Mr. EVARTS. We understand, then, that the managers hold that a vacancy that happens in the recess may be filled during the session without sending a nomination to the Senate.

Mr. Manager BOUTWELL. No.

Mr. EVARTS. I thought that was what you stated. Is it not your proposition?

Mr. Manager BOUTWELL. I only give notice that on that record we propose to treat these as vacancies happening during the recess of the Senate.

Mr. EVARTS. And filled during the session.

Mr. Manager BOUTWELL. We do not know anything about when they were filled. It does not appear that they did not happen during the recess.

Mr. EVARTS. The certificate is to the effect that they were filled during the session of the Senate.

Mr. Manager BINGHAM. We do not propose to settle the law of the case now.

The CHIEF JUSTICE. The Chief Justice does not understand the honorable managers as objecting to the reception of this document in evidence.

Mr. Manager BOUTWELL. We do not object to the paper. I only give notice how we propose to treat it, on the face of the paper, as not showing that the vacancies happened during the session of the Senate.

The document is as follows:

UNITED STATES OF AMERICA, *Department of State:*

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed contains a list of consular officers appointed during the session of the Senate, where vacancies existed at the time such appointments were made.

In testimony whereof I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 11th day of April, A. D. 1868, and of the independence of the United States of America the ninety-second.

[L. S.] WILLIAM H. SEWARD.

Henry C. Bridges, appointed vice consul at Kin-Kiang, China, May 16, 1864, on the resignation of W. Breck, consul.

D. Thurston, appointed vice-consul general at Montreal, May 31, 1864, on the death of J. R. Giddings, consul general.

A. Duff, appointed vice-consul at Demerara, 7th January, 1865, on the death of C. G. Hannah, consul.

George W. Healey, appointed vice-consul at Bombay, December 28, 1861, on the death of L. H. Hatfield, consul.

Robert Bayman, appointed vice-consul at Funchal, March 24, 1864, on the death of G. True, consul.

E. Bremt, appointed vice-consul at Hanover, February 18, 1861, on the resignation of J. S. Holton, consul.

Alexander Thompson, appointed vice-consul general at Constantinople, January 7, 1860, awaiting the arrival of M. M. Smith, appointed consul general.

Bernardo J. Arcanques, appointed vice-consul at Bayonne, April 19, 1856, on resignation of John P. Sullivan, consul.

Joseph Ayton, appointed vice-consul at Carthagena, February 20, 1838, on the resignation of J. M. McPherson, consul.

Thomas V. Clark, appointed vice-consul at Guayaquil, December 31, 1857, on the resignation of M P. Gaine, consul.

A. Lacombe, appointed vice-consul at Puerto Cabello, January 23, 1865, on the transfer of C. H. Loehr to Laguayra.

John Gardner, appointed vice-consul at Rio Janeiro, September 15, 1839, on the removal of J. M. Baker.

H. F. Fitch, appointed vice-consul at Pernambuco, April 13, 1860, on death of W. W. Stepp.

August Peixoto, appointed acting consul, December 7, 1864, on the removal of Thomas F. Wilson, consul at Bahia.

Samuel G. Pond, appointed acting consul at Para, December 2, 1862, on the death of M. R. Williams

Robert H. Robinson, appointed acting vice-consul at Montevideo, March 12, 1858, on resignation of R. M. Hamilton.

Amory Edwards, appointed acting consul at Buenos Ayres, December 28, 1840, on death of Slade.

William L. Hobson, appointed vice-consul at Valparaiso, July 17, 1840, on resignation of George G. Hobson.

George B. Merwin, appointed vice-consul at Valparaiso, December 5, 1854, on the resignation of Reuben Wood.

W. H. Kelley, appointed vice-consul at Otaheite, December 31, 1848, Mr. Hawes not having exequatur.

D. B. Van Brundt, appointed United States consul at Acapulco, May 26, 1860, by Flag Officer Montgomery, on death of McMicken.

GIDEON WELLES sworn and examined.

By Mr. EVARTS:

Q. You are now Secretary of the Navy?

A. I am.

Q. At what time and from whom did you receive that appointment?

A. I was appointed in March, 1861, by Abraham Lincoln.

Q. And have held office continuously until now?

A. From that date.

Q. Do you remember on the 21st of February last your attention being drawn to some movements of troops or military officers?

A. On the evening of the 21st of February my attention was called to some movements that were being made.

Q. How was this brought to your attention?

A. My son brought it to my attention. He had been attending a party at which there had been an application from a son of General Emory, I think, and from one or two others, for any officer belonging to the fifth regiment or under the command of General Emory to repair forthwith to headquarters.

Q. Your son had observed that and had reported it to you?

A. He reported that to me.

Q. Did you, in consequence of that, seek or have an interview with the President of the United States?

A. I requested my son to go over that evening; but he did not see the President.

Mr. Manager BUTLER. Stay a moment. We object to what was said.

Mr. EVARTS. He says he sent his son, and his son failed to see the President. His attempt was first to send a message.

The WITNESS. I was not well, and could not go myself.

By Mr. EVARTS:

Q. You attempted to send a message that night?

A. I did.

Q. State what happened on the following day?

A. On Saturday, the 22d, I went myself, in the morning or about noon, to the President on that subject. I told him what I had heard, and asked him what it meant——

Mr. Manager BUTLER. We object to that conversation.

The WITNESS. Very good.

Mr. EVARTS. Is objection made to this?

Mr. Manager BUTLER. Yes, sir; and before we speak to the objection I should like to ask the witness to fix the time a little more carefully.

Mr. EVARTS. He has stated it exactly; about noon.

The WITNESS. About 12 o'clock on the 22d of February.

By Mr. Manager BUTLER:

Q. How close to 12, before or after?

A. I should think it was a little before 12 o'clock. I will state a circumstance or two. The Attorney General was there when I went in. While I was there the nomination of Mr. Ewing was made out for Secretary of War, and was delivered to the private secretary to be carried to the Senate.

Mr. Manager BUTLER. Stay a moment. Let us see what time he said that was.

Mr. EVARTS. It is not time for cross-examination now.

Mr. Manager BUTLER. No; but I submit, Mr. President, it is time for cross-examination upon the question whether the thing is admissible, in order to ascertain the time. At one point of time it may be, while at another point of time it clearly is not admissible.

Mr. EVARTS. It is quite immaterial, if you will go on and get through.

Mr. Manager BUTLER. Quite immaterial what point of time?

Mr. EVARTS. Immaterial whether you cross-examine now or hereafter.

Mr. Manager BUTLER. I only want to fix it. (To the witness.) You think it was very near 12?

The WITNESS About 12.

Q. Could it have been as early as half past 11?

A. No, sir; I do not think it was.

Q. But between that and half past 12 some time?

A. Yes, sir.

Q. Within that hour?

A. Yes, sir.

Mr. Manager BUTLER. Now, our objection——

Mr. EVARTS. Now I will proceed with my questions, if you please.

Mr. Manager BUTLER. Very well.

Mr. EVARTS. How far have we got now? Let the answer on this point as far as it has gone be read, Mr. Stenographer.

The CHIEF JUSTICE. The stenographer will read what is desired.

D. F. Murphy, one of the official reporters, read from the short-hand notes of Mr. Welles's testimony, as follows:

On Saturday, the 22d, I went myself in the morning or about noon to the President on that subject. I told him what I had heard; asked him what it meant——

Mr. Manager BUTLER. We object to that conversation.

Mr. EVARTS. Very good.

The CHIEF JUSTICE. If the question be objected to, the counsel will please reduce it to writing.

Mr. Manager BUTLER. We object to any conversation of the President at that time.

Mr. EVARTS, (to the witness.) What passed between you and the President after that in regard to that communication which you had made to him?

Mr. Manager BUTLER. Wait a moment. The Chief Justice desired the question to be put in writing.

Mr. EVARTS. That is being done now.

The question was reduced to writing, and read by the Secretary, as follows:

What passed between you and the President after you made that communication and in reference to that communication?

Mr. EVARTS. I would state, Mr. Chief Justice and Senators, before any argument is commenced on this subject, if there is to be one, that this evidence is offered in regard to the article that relates to the conversation between the President and General Emory.

Mr. Manager BUTLER. That is precisely as we understand it, Mr. President; but we also understand the fact to be that General Emory had been sent for before Mr. Welles appears on the scene. That is why I was anxious to fix the time. I am instructed by my associate managers, and we are now endeavoring to get the matter certain, that General Emory received a note to come to the President's at ten o'clock in the morning, and that he got there before even the Secretary of the Navy. But, however that may be, he was called there before; we cannot at this moment ascertain exactly how that is; but it does not appear, at any rate, that this conversation was before Emory was sent for.

Mr. CURTIS. We shall see about that.

Mr. EVARTS. That is part of the matter of proof that is to be considered of when it is all in, as to which is right in hours and which in facts.

Mr. Manager BUTLER. The question of what was said in the conversation is not to be considered as proof which was right in fact. I suppose my learned opponents would not claim that if this was before General Emory came there they have a right to put in the testimony.

Mr. EVARTS. It is precisely in that view that we offer it.

Mr. Manager BUTLER. I should have said subsequent.

Mr. EVARTS. I beg your pardon.

Mr. Manager BUTLER. I made a mistake as to the comparative date, for which I am very glad that you corrected me. If it was subsequent, I suppose the gentlemen would not claim that it could be admitted. Therefore it must appear affirmatively that it was before, in order to make it competent. That is my proposition. It does not appear affirmatively to have been before, and I think it was afterward; but of that I am trying to make myself certain by an examination.

The CHIEF JUSTICE. The Chief Justice thinks the evidence is competent. It will be for the Senate to judge of its value. He will, however, put the question to the Senate if any senator desires. [After a pause.] You will proceed, Mr. Welles.

Mr. EVARTS. You will be so good as to answer the question, Mr. Welles.

The WITNESS. I should like to have it read.

The CHIEF CLERK. The question is:

What passed between you and the President after you made that communication and in reference to that communication?

The WITNESS. I cannot repeat the words, perhaps, exactly; but yet I should think the first words of the President were: "I do not know what Emory means;" or "I do not know what Emory is about." I remarked that I thought he ought to know; that if he was summoning high officers at such a

time the evening before, it must be for a reason, and it was his duty, I thought, to send for General Emory, and to inquire into the facts. He hesitated somewhat. We had a little conversation, and I think he said that he would send for him. He either said he would send for Emory, or that he would send and inquire into this. I think he said he would send for him. That was about the conversation.

By Mr. EVARTS:

Q. Now, Mr. Welles, I will call your attention to the 21st of February of this year, at the time of the close of the cabinet meeting on that day. At what hour was the cabinet meeting held on that day, Friday, the 21st of February?

A. At 12. Twelve is the regular hour of meeting.

Q. That is the usual hour, and that is the usual day for cabinet meetings?

A. Yes, sir; Tuesdays and Fridays.

Q. Did you at that time have any interview with the President of the United States at which the subject of Mr. Stanton's removal was mentioned?

A. I did.

Q. About what hour of the day was that?

A. I cannot fix it. It must have been, perhaps, in the neighborhood of 2 o'clock.

Q. Had you, up to that time, heard of the removal of Mr. Stanton?

A. I had not until the close of the cabinet business that day.

Q. When the cabinet meeting was closed, this interview took place, at which the subject was mentioned?

A. The President remarked——

Mr. Manager BUTLER. Stop a moment.

Mr. EVARTS, (to the witness.) You need not state now what it was the President said; but that is the time he made the communication?

The WITNESS. Yes, sir.

By Mr. EVARTS:

Q. What passed between you and the President at that time?

Mr. Manager BUTLER. We object to that.

The CHIEF JUSTICE. Counsel will please reduce their question to writing.

Mr. EVARTS. I will state what I propose to prove.

Mr. CONNESS. I move that the Senate take a recess for fifteen minutes.

The motion was agreed to; and, at the expiration of the recess, the Chief Justice resumed the chair.

Mr. EVARTS. Before presenting in writing the question which was objected to, I wish to ask one or two preliminary questions of Mr. Welles before going further. (To the witness.) Did the President proceed to make any communication to you on this occasion concerning the removal of Mr. Stanton and the appointment of General Thomas?

A. Yes; he did.

Q. Was this before the cabinet meeting had broken up; or at what stage of your meeting was it?

A. We had concluded the departmental business, and were about separating when the President remarked——

Mr. Manager BINGHAM. You need not state anything he said.

Mr. EVARTS. It was then that he made the communication, whatever it was?

The WITNESS. At that time he made the communication.

Q. Who were present?

A. I believe all the cabinet were present. Perhaps Mr. Stanbery, the Attorney General, was not. He was a good deal absent during the session of the Supreme Court.

Q. All were present, unless it be Mr. Stanbery, you think?

A. I think so.

Mr. EVARTS. Now, Mr. Chief Justice and Senators, I offer to prove that communication and submit it in this form:

We offer to prove that on this occasion the President communicated to Mr. Welles and the other members of his cabinet, before the meeting broke up, that he had removed Mr. Stanton and appointed General Thomas Secretary of War *ad interim*, and that upon the inquiry by Mr. Welles whether General Thomas was in possession of the office the President replied that he was; and upon further question of Mr. Welles whether Mr. Stanton acquiesced, the President replied that he did; all that he required was time to remove his papers.

Is that objected to?

Mr. Manager BUTLER. Yes, sir. In reference to this question I want to call the counsel's attention to the state of the fact. I understood Mr. Welles said that after the cabinet meeting broke up——

Mr. EVARTS. No. I have put that according to the fact. You were out, I believe, when it was brought out. It was after they had got through what he calls their departmental business, but before the meeting broke up, that the President made the communication.

Mr. Manager WILSON. Before they separated.

Mr. EVARTS. Before the meeting broke up. It was in the cabinet meeting not yet broken up.

Mr. Manager BUTLER. We have the honor to object to this.

The CHIEF JUSTICE. The Secretary will read the proposition so that it can be heard by the Senate.

The Secretary read the offer, as follows:

We offer to prove that on this occasion the President communicated to Mr. Welles and the other members of his cabinet, before the meeting broke up, that he had removed Mr. Stanton and appointed General Thomas Secretary of War *ad interim*, and that upon the inquiry by Mr. Welles whether General Thomas was in possession of the office the President replied that he was; and upon further question of Mr. Welles whether Mr. Stanton acquiesced, the President replied that he did; all that he required was time to remove his papers.

Mr. Manager BUTLER. Mr. President and Senators, as it seems to us, this does not come within any possible proposition of law to render it admissible. It is now made certain that this act was done without any consultation of his cabinet by the President, whether that consultation was to be held verbally, as I think is against the constitutional provision, or whether the theory is to be adopted that the President has a right to consult with his cabinet upon questions of his conduct. I should hardly have dared, perhaps, to speak upon this question of constitutional law with any confidence, except so far as to bring to the mind of the Senate that the President has no right to call upon his cabinet save through the constitutional method, were I not borne out in it by the opinion of Jefferson. Early in the government he took the same view that I have heretofore had the honor incidentally of stating to the Senate. There seems to be good reason for it, because the heads of departments were in the first place never expected to be a cabinet; there were but three of them. There has been a gradual growing up of this practice. The Constitution wisely, for good purposes, required that when the President wanted the advice of any one of his principal officers he should ask that advice in writing, and it should be given in writing, so that it should remain for all time exactly what the advice was which he received, and exactly the point made.

And the reason of that was, there had been an attempt in the various trials of impeachment of members of cabinets to put in the fact of the order of the King to the cabinet, or the advice of various members of the cabinet to each other. That had been exploded in the Earl of Danby's case. That question used to arise under that state of facts before courts of impeachment, but our fathers evidently did not mean that it should arise here.

But that is not this case, and I have only adverted to this to make the clear distinction: whatever may be the character of the act of removal of Edwin M. Stanton and the act of appointment of Lorenzo Thomas, I am glad that it is

now made quite certain by the testimony of the Secretary of the Navy (who declares he never heard of it until after it was done) that it was not done by the advice of the cabinet; that the President was solely responsible for it; and upon that, his own sole responsibility, he acted. Now, the question is, after he has done the act, after he has thought it was successful, after he thought Mr. Stanton had yielded the office, can he, by his narration of what he had done and what he intended to do, shield himself before a tribunal from the consequences of that act? Is it not exactly the same question which you decided yesterday by almost unexampled unanimity in the case of Mr. Perrin and Mr. Selye, the member of Congress, on that same day, a few minutes earlier or a few minutes later? They offered in evidence here what he told Mr. Perrin and what he told Mr. Selye; they complicated it by the fact that Mr. Selye was a member of Congress; and the Senate decided by a vote which indicated a very great strength of opinion that that sort of narration could not be put in.

Now, is this any more than narration? It was not to take the advice of Mr. Welles as to what he should do in the future, or upon any question; it was mere information given to Mr. Welles or to the other members of the cabinet after they had separated in their cabinet consultation, and while they were meeting together as any other citizens might meet. It would be as if, after you adjourned here, some question should be attempted to be put in as to the action of the senate because the senators had not left the room. Again, I say it was simply a narration, and that narration of his intent and purposes, his thoughts, expectations, and feelings.

I do not propose to argue it further until I hear something showing why we are to distinguish this case from the case of Mr. Perrin, on which you voted yesterday. Mr. Perrin tells you that on the 22d he waited for the cabinet meeting to break up, and as soon as it broke up he went in with Mr. Selye, and then the President undertook to tell him. You said that was no evidence. Now, when he undertook to tell Mr. Welles, is that any more evidence? I cannot distinguish the cases, and I desire to hear them distinguished before I attempt an answer to any such distinction.

Mr. EVARTS. Mr. Chief Justice and Senators, certainly nothing has yet proceeded from the mouth of this witness which has shown that the act of removal of Mr. Stanton or of appointment of General Thomas had taken place without previous advice from the cabinet. However that fact may be, nothing as yet has been said to show it. All that has been proved is that Mr. Welles had not before that heard of the fact that he had been removed. That is all as it now stands. I merely correct that impression for the moment.

So, too, I wish no misunderstanding as to the situation of the members of the cabinet toward the President, as being still in their cabinet meeting with unfinished, unadjourned counsel. I think the honorable manager is a little in difficulty on that point from having an impression beyond the case as it was left by the witness when he left the stand before the recess, and not attending to the differences made by his answers to my questions since he returned, my desire being to get at the precise fact.

Now, then, it stands thus, that at a cabinet meeting held on Friday, the 21st of February, when the routine business of the different departments was over, and when it was in order for the President to communicate to his cabinet whatever he desired to lay before them, the President did communicate this fact of the removal of Mr. Stanton and the appointment of General Thomas *ad interim*, and that thereupon his cabinet officers inquired as to the posture in which the matter stood, and as to the situation of the office and of the conduct of the retiring officer. Here we get rid of the suggestion that it is a mere communication to a casual visitor which made the staple of the argument yesterday against the introduction of the evidence as to the conversation with Mr. Perrin and Mr. Selye. We now present you the communication made by the President of the

United States while this act was in the very process of execution, while it was yet, as we say in law, *in fieri*, being done.

It being *in fieri*, the President communicates the fact how this public transaction has been performed and is going on, and we are entitled to that as a part of the *res gestæ* in its sense of a governmental act, with all the benefit that can come from it in any future consideration you are to give to the matter as bearing upon the merits and the guilt or innocence of the President in the premises. It bears, as we say, directly upon the question whether there had been any other purpose than the placing of the office in a proper condition for the public service according to the announcement of the President as his intention when he conversed with General Sherman in the January preceding; and it negatives all idea that at the time that General Thomas to Mr. Wilkeson or to the Dakota delegate, Mr. Burleigh, was saying or suggesting anything of force, the President was the author of, or was responsible for, his statements. The truth is, it presents the transaction as wholly and completely an orderly and peaceful movement of the President of the United States, as in fact it was, and no evidence has been given to the contrary, of any occurrence disturbing that peaceful order, and as the situation in which its completion left the matter in the mind of the President up to that point of time.

Mr. CURTIS. Mr. Chief Justice, I desire to add to what my colleague has said a very few observations of a slightly different character from those which he has addressed to the Senate. We are anxious that this testimony now offered should be distinguished in the apprehension of the Senate, as it is in our own, from an offer of advice, or from the giving of advice by the cabinet to the President. We do not place our application for the admission of this evidence upon the ground that it is an act of giving advice by his councillors to the President. We place it upon the ground that this was an official act done by the President himself when he made a communication to his councillors concerning this change which he had made in one of their number; that that was strictly and purely an official act of the President, done in a proper manner, the subject-matter of which each of those councillors was interested in in his public capacity, and which it was proper for the President to make known to them at the earliest moment when he could make such a communication.

Now I wish to say a word in respect to the character of this council, in reply to the remarks of the honorable manager concerning the constitutional rights and powers of the President in respect to them. I understand the honorable manager to have rested his views concerning the constitutional character of those councillors upon what he understands to be Mr. Jefferson's opinions and practice. I wish to bring before the Senate in this connection, and somewhat in advance of the question which will presently arise respecting advice given by these officers, the practice of this government concerning such a council; and I beg to refer the Senate, in the first place, to a passage from the Federalist. In its commentary upon that provision of the Constitution which enables the President to require the opinion in writing "of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices," I read from Dawson's edition of the Federalist, pages 516, 517.

Mr. JOHNSON. What is the number?

Mr. CURTIS. Number 73. The author, in the first place, quotes what I have read from the Constitution, and then makes this remark, and passes from the subject as requiring no further discussion or examination:

> This I consider as a mere redundancy in the plan; as the right for which it provides would result of itself from the office.

Mr. JOHNSON. That is by Mr. Hamilton.

Mr. CURTIS. That is Mr. Hamilton. Now, in respect to the practice of this government, and particularly the practice of Mr. Jefferson, in its relations to what

had preceded under other Presidents, I beg leave to refer to Mr. G. T. Curtis's History of the Constitution, volume 2, page 409, note:

Those who are not familiar with the precise structure of the American government will probably be surprised to learn that what is in practice sometimes called the "cabinet" has no constitutional existence as a directory body, or one that can decide anything. The theory of our government is, that what belongs to the executive power is to be exercised by the uncontrolled will of the President. Acting upon the clause of the Constitution which empowers the President to call for the opinions in writing of the heads of departments, Washington, the first President, commenced the practice of taking their opinions in separate consultation; and he also, upon important occasions, assembled them for oral discussion in the form of a council. After having heard the reasons and opinions of each he decided the course to be pursued.

And I may mention here in passing, that if senators have the curiosity to look into the history of the period they will find that the latter course was pursued by General Washington, especially toward the close of his first and during his second administrations, on very important occasions, one of the most prominent of which was the difficulty with the French minister, M. Genet, and the course that was pursued by the government growing out of those complications. The author proceeds:

The second President, Mr. John Adams, followed substantially the same practice. The third President, Mr. Jefferson, adopted a somewhat different practice. When a question occurred of sufficient magnitude to require the opinions of all the heads of departments, he called them together, had the subject discussed, and a vote taken, in which he counted himself but as one. But he always seems to have considered that he had the power to decide against the opinion of his cabinet. That he never or rarely exercised it was owing partly to the unanimity of sentiment that prevailed in his cabinet, and to his desire to preserve that unanimity, and partly to his disinclination to the exercise of personal power. When there were differences of opinion he aimed to produce a unanimous result by discussion, and almost always succeeded. But he admits that this practice made the Executive, in fact, a directory.

And then references are given to Mr. Jefferson's works in support of this statement. The author does not continue to speak of the subsequent practice of the government, as that, no doubt, was considered to be very familiar, his purpose being merely to point out the origin of these two practices; the one being that the members of the cabinet were called together and a consultation held, and then, as the result of that consultation, the President decided; the other practice being that a vote was taken in the cabinet, the President himself ordinarily counting as one in that vote, but always understanding that he had the power, if he thought proper to exert it, to decide the question independently of the votes of the cabinet. That, I understand, has continued to be the practice from Mr. Jefferson's time to the present day, and including all the Presidents who have intervened during that period.

I have made these remarks because they seem to me to have an application, not merely to the testimony now offered, but to other evidence which we shall have occasion to present to the Senate subsequently. They are pertinent to the question now under consideration, for they go to show that, under the Constitution and laws of the United States, as practiced on by every President, including General Washington and Mr. Adams, cabinet ministers were assembled by them as a council for the purposes of consultation and decision; and, of course, when thus assembled, a communication made to them by the President of the United States concerning an important official act which was then *in fieri*, in process of being executed and not yet completed, is itself an official act of the President, and we submit to the Senate that we have a right to prove it in that character.

A reference has been made by the honorable manager to attempts which have sometimes been made in England by ministers to defend themselves under the orders of the king. Everybody who understands the British constitution knows that that is in the nature of the government an absurdity. The king is not responsible; the ministers are; and therefore any order which the king gives contrary to law is executed by his ministers on their own responsibility, and not

upon that of the sovereign. In the United States it is wholly otherwise; the responsibility is on the President; but among other responsibilities which it involves is the responsibility to seek and weigh and consider the advice which it is proper for him to receive.

Mr. Manager BUTLER. Mr. President, I shall not pursue the discussion as to whether advice given by the cabinet to the President would be competent, because it is agreed by the counsel for the President last up that this was neither to get advice, nor was there anything in the nature of advice.

It is said that it is an official act. I had supposed up to this moment—ay, and I suppose now—that there is no act that can be called an official act of an officer which is not an act required by some law or some duty imposed upon that officer. Am I right in my ideas of what is an official act? It is not every volunteer act by an officer that is official. Frequently such acts are officious, not official. An official act, allow me to say, is an act which the law requires, or a duty which is enjoined upon the officer by some law, or some regulation, or in some manner as a duty. Will the learned counsel tell the Senate what constitutional provision, what statute provision, what practice of the government requires the President at any time to inform his cabinet or any member of them whatever that he has removed one man and put in another, and that that other man is in office? If there is any such law it has escaped my attention. I am not aware of it.

The only law that ever has been made on this subject is the law of March 2, 1867, which requires the President to inform one member of his cabinet, to wit, the Secretary of the Treasury, when he suspends an officer, and then requires the Secretary of the Treasury to inform the accounting officers of the treasury, so that that suspended officer shall by no accident get his salary. Up to that time there never was any law requiring any such information, and that law is a special one for a special purpose; and, in the case of the suspension of Mr. Stanton, was carried out by the President, he sending to the Secretary privately—specially, I should say, rather than privately—sending to the Secretary specially the fact that there had been such removal, and the Secretary, as we have proved by Mr. Creecy, informed his subordinates, as the act of March 2, 1867, the tenure of civil office act, required.

If I am right, senators, and there is no official duty on the President to inform his cabinet, whether in session or out of session, whether just as they broke up or after they had got through the routine of business, or at any other time, as to such a proceeding on his part, then I undertake to say it is not an official act; it is an act required by no law, by no practice, so far as it is in evidence here, and by no duty.

Now, then, what is offered? He had done the act. While the counsel took exception to my stating to the Senate that it was in evidence that this was not a consultation of the cabinet, that the cabinet had never consulted upon the removal of Mr. Stanton in the manner and form in which it was done, and that was fairly to be gathered from Mr. Secretary Welles's testimony, yet, I observe that he did not state to the Senate that the cabinet ever was consulted with upon the question of removing Mr. Stanton in manner and form as it was done; and whenever he or anybody does state it, I have the President's declarations, which I can prove, that it was not so. Therefore, I assume it never will be stated.

Now, then, what is offered? Stanton has been removed by the act of the President; and thereupon, without asking advice—because that is expressly waived by the learned counsel last addressing us—not as a matter of advice, the President gives information. Now, how can that information be evidence? How can he make it evidence? The information is required by no law; was given for no purpose to carry out any official duty; was the mere narration of what the President chose to narrate at that time.

More than that, sir; it is said that this must prove the case of the President; and the gravity with which it was argued by both counsel shows the importance they place upon it. It is said this must prove the case of the President, because it proves that then he had no idea of using force. I should have no objection to grant that at that moment he had no idea of using force, because he at that time supposed that Mr. Stanton had yielded the office, and there was no occasion to use force.

Therefore he had no idea of force at that moment of time, if he told the truth. He says, "Stanton is out and Thomas is in; and it is all settled." Then he did not mean to use force. But what did he mean to do in case Stanton resisted, as Stanton did resist? That is the question for the Senate. What did he contemplate? What had been in his mind? General Sherman lets it out here that he and the President said something about force. General Sherman uses the word "force." Where did he get that idea? Sherman, with great caution, says, "I agree that I do not know that he said anything from which I got the idea of force; so that I could say what he said, or that he said anything from which I had a right to infer it." But he said something from which Sherman did infer it, and he put the word "force" here before you of his own free will and accord. It bore on his mind; and when the learned senator [Mr HOWARD] asked what force was meant, what did the President say about force, Sherman said—I give the substance now—"I cannot say what he said that would justify me in using the word 'force.'" The record is before you, senators. You will correct me if I am wrong; but I think I am exactly right in substance.

That testimony being in, and other testimony, how does the President's narration, after he thought Stanton had given up the office peaceably, (when, if I may use a common phrase, he was chuckling over the fact to his cabinet that he had got possession of the office easier than he expected to do,) form a piece of evidence in this case? How can it be put in? Senators, you may think this piece of evidence, and perhaps you in some of your decisions have proceeded upon that hypothesis—I have no right to know, but I trust without offence I may suggest it—you may think that this particular piece of evidence does not weigh much, and that, perhaps, it is best to let it in because it does not weigh much. But the counsel on the other side think it weighs heavily, for both of them argue it with great care. I say you may put it upon that ground; but it lays the foundation for other information, other declarations to the other members of the cabinet; and I do not know where you can stop; and whenever you attempt to stop you simply involve yourselves, I respectfully submit, in an inconsistency, that you ruled in what was said to Mr. Welles and refused to rule in what was said to Mr. A or Mr. B thereafter; for it is impossible, in my judgment, to distinguish the cases.

As yet I have not heard any legal distinction between the case of Perrin and the case of Welles, between what was said to Perrin and what was said to Welles. The only distinction is that one was a cabinet officer and the other was not; but is that a legal distinction, when they themselves admit that it was not submitted to the cabinet officer for the purpose of asking advice, or for any like purpose? It is a mere piece of information. Nor do they stop there. They then propose to put in what the President thought he would do. That is the offer. Now can that be evidence? Can you distinguish it from the case of Perrin yesterday; I mean by any legal distinction?

Mr. EVARTS. Mr. Chief Justice and Senators, I connected this piece of evidence, which I suppose may rightfully be introduced as a part of the action of the President, with previous testimony that had been given as to what his expectation was would happen on the part of Mr. Stanton when he should make an order for his removal, as made known to us in the testimony of General Sherman; and I cannot consent to that testimony being either misconceived or misrepresented. That witness said "something was said about force, and then

the President said there will be no occasion for that, because Mr. Stanton will retire;" and in answer to the question of the honorable senator from Michigan as to what was said about force, the witness assumed to himself that all that was said about force, all that had the idea of force in it, proceeded from himself in the form of his question as to what would happen in case Mr. Stanton should resist or refuse, and then, not only by an absolute exclusion of the idea that the President used any words of force from his, the President's, mouth, or raised a notion that there might be an opportunity or occasion for force, proceeded to say, with that precision which marked all his reflective and deliberate testimony, "The President did not convey to my mind any idea that force was to be used."

The CHIEF JUSTICE. Senators, the Chief Justice thinks that this evidence is admissible. It has, as he thinks, important relations to the *res gestæ*, the very transaction which forms the basis of several of the articles of impeachment, and he thinks it also entirely proper to be taken into consideration in forming an enlightened judgment upon the intent of the President. He will put the question to the Senate if any senator desires it.

Mr. CRAGIN. I ask for the yeas and nays upon it. If it is in order I will ask that the offer to prove made yesterday in the case of the witness Perrin may be read.

The yeas and nays were ordered.

The CHIEF JUSTICE. No debate is in order. The Secretary will call the roll.

Mr. CONNESS. The senator from New Hampshire calls for the reading of a question.

The CHIEF JUSTICE. What question?

Mr. CONNESS. The question proposed to be put yesterday to another witness, which was then voted upon.

The CHIEF JUSTICE. The Secretary will read the question.

The chief clerk being unable to find the written offer yesterday submitted——

Mr. Manager BUTLER. Here is the Globe. You can read it from that.

The chief clerk read the offer to prove in the case of the witness E. O. Perrin, yesterday, from the Globe, as follows:

We offer to prove that the President then stated that he had issued an order for the removal of Mr. Stanton and the employment of General Thomas to perform the duties *ad interim;* that thereupon Mr. Perrin said, "Supposing Mr. Stanton should oppose the order?" The President replied, "There is no danger of that, for General Thomas is already in the office." He then added, "It is only a temporary arrangement; I shall send in to the Senate at once a good name for the office."

Mr. CONKLING. What was the time referred to in that question?

Mr. SUMNER. What was the vote of the Senate on that?

The CHIEF JUSTICE. The Secretary will read the vote of the Senate on that subject.

The SECRETARY. On this question the yeas were 9 and the nays 37.

Mr. TRUMBULL. I should like to know how the Senator from Massachusetts voted upon it. [Laughter.]

The CHIEF JUSTICE. The Secretary will read, in answer to the question, the vote in full.

Mr. SHERMAN. I object. All this is in the nature of argument.

The CHIEF JUSTICE. The Chief Justice thinks it all out of order; but lest there might be some misapprehension he did not interpose.

Mr. HOWARD. I should like to hear a word further from the counsel for the accused upon the subjects embraced in the questions which I send to the desk and ask the Secretary to read before I vote on the question under consideration.

The chief clerk read as follows:

In what way does the evidence the counsel for the accused now offer meet any of the allegations contained in the impeachment?

How does it affect the *gravamen* of any one of the charges?

Mr. EVARTS. The senators will perceive that this question anticipates a very

extensive field of inquiry, first as to what the *gravamen* of all these articles is; and secondly, as to what shall finally be determined to be the limits of law and fact that properly press upon the issues here; but it is enough to say, probably, as we have every desire to meet the question with all the intelligence that we can command, at the present stage of the matter, without going into these anticipations, that it bears upon the question of the intent with which this act was done, as being a qualification of the act in the President's mind at the time he announces it as complete. It bears on the conspiracy articles, and it bears upon the eleventh article, even if it should be held that the earlier articles, upon the mere removal of Mr. Stanton and the appointment of General Thomas, are to cease in the point of their inquiry, intent, and all, with the consummation of the acts.

Mr. Manager WILSON. A question was asked by a member of the Senate as to the date of the conversation between the President and Mr. Perrin. That was on the 21st; but a few moments after the conversation between the President and Mr. Welles.

The CHIEF JUSTICE. The Chief Justice will restate to the Senate the question as it presents itself to his mind. The question yesterday had reference to the intention of the President, not in relation to the removal of Mr. Stanton, as the Chief Justice understood it, but in relation to the immediate appointment of a successor by sending in the nomination of Mr. Ewing. The question to-day relates to the intention of the President in the removal of Mr. Stanton; and it relates to a communication made to his cabinet after the departmental business had closed, but before the cabinet had separated. The Chief Justice is clearly of opinion that this is a part of the transaction, and that it is entirely proper to take this evidence into consideration as showing the intent of the President in his acts. The Secretary will call the roll.

Mr. MORTON. I should like to hear the proposition read. I was not in.

The CHIEF JUSTICE, (to the Secretary.) Read the proposition.

The chief clerk read as follows:

We offer to prove that on this occasion the President communicated to Mr. Welles, and the other members of his cabinet, before the meeting broke up, that he had removed Mr. Stanton and appointed General Thomas Secretary of War *ad interim;* and that, upon the inquiry by Mr. Welles whether General Thomas was in possession of the office, the President replied that he was; and upon further question of Mr. Welles, whether Mr. Stanton acquiesced, the President replied that he did; all that he required was time to remove his papers.

The question being taken by yeas and nays, resulted—yeas, 26; nays, 23; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Cole, Conkling, Corbett, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Morton, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, and Willey—26.

NAYS—Messrs. Cameron, Cattell, Conness, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill, of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—23.

NOT VOTING—Messrs. Chandler, Henderson, Norton, Nye, and Wade—5.

The CHIEF JUSTICE. On this question the yeas are 26, and the nays are 23.

Mr. CHANDLER, (who had just entered the chamber.) Mr. President——

The CHIEF JUSTICE. It is too late. The result has been announced. The yeas have it; and the question is admitted.

Mr. EVARTS, (to the witness.) Please state, Mr. Welles, what communication was made by the President to the cabinet on the subject of the removal of Mr. Stanton and the appointment of General Thomas, and what passed at that time?

The WITNESS. As I remarked, after the departmental business had been disposed of, the President remarked, as usual, when he has anything to communicate himself, that before they separated it would be proper for him to say that he had removed Mr. Stanton and appointed the Adjutant General, Lorenzo Thomas, Secretary *ad interim.* I asked whether General Thomas was in pos-

session. The President said he was; that Mr. Stanton required some little time to remove his writings, his papers. I said perhaps, or I asked, "Mr. Stanton, then, acquiesces?" He said he did, as he understood it.

Q. Was it a part of the President's answer that all he required was time to remove his papers?

A. The President made that remark when I inquired in relation to possession, that he merely wanted time to remove his papers—some private papers and matters, I think.

Q. Was the time at which this announcement of the President was made in accordance with the ordinary routine of your meetings as to such matters?

A. It was. The President usually communicates after we have got through.

Q. After you have got through with the several departmental affairs?

A. Yes, sir; he then states what he has to communicate.

Q. Now, sir, one moment to a matter which you spoke of incidentally. You were there the next morning about noon?

A. I was.

Q. Did you then see the appointment of Mr. Ewing?

A. I did.

Q. Was it made out before you came there, or after, or while you were there?

A. While I was there.

Q. And you then saw it?

A. I saw it.

Mr. JOHNSON. What time of the day was that?

The WITNESS. It was about 12. The Attorney General was there, and said that he must be at the Supreme Court. He had not more than time to get to the court.

By Mr. EVARTS:

Q. Did not the Supreme Court meet at 11?

A. I do not know. He had business which required him to be at the Supreme Court at 12 o'clock, I think. He was there up to that time.

Q. Did you become aware of the passage of the civil-tenure act, as it is called, at or about the time that it passed Congress?

A. I was aware of it.

Q. Were you present at any cabinet meeting at which, after the passage of that act, it became the subject of consideration?

A. Yes; on two occasions.

Q. Who were present, and when was the first occasion?

A. The first occasion when it was brought before the cabinet was Friday, I think, the 26th of February, 1867. It was at a cabinet meeting on Friday.

Q. Who were present?

A. I think all the cabinet were.

Q. Was Mr. Stanton there?

A. Mr. Stanton was there, I think, on that occasion. I might state, perhaps, that the President said he had two bills which he wanted the advice of the cabinet about. One of them consumed most of the time that day.

Mr. Manager BUTLER. The point, I believe, is as to what took place there.

By Mr. EVARTS:

Q. This civil-tenure act was the subject of consideration there?

A. It was submitted.

Q. How was it brought to the attention of the cabinet?

A. By the President.

Q. As a matter of consideration in the cabinet?

A. For consultation; for the advice and the opinion of the members.

Q. How did he submit the matter to your consideration?

Mr. Manager BUTLER. If that involves anything that he said—

Mr. EVARTS. Yes, it does.

Mr. Manager BUTLER. Now, we should like to have, so that we may not discuss this matter in the dark, the offer put in writing; but we object to anything that took place in the cabinet consultation, and in order to have this matter brought to a point, we desire to have the offer of proof put in writing.

Mr. EVARTS. We will put the whole matter in writing.

The offer was reduced to writing and read by the Secretary, as follows:

We offer to prove that the President, at a meeting of the cabinet while the bill was before the President for his approval, laid before the cabinet the tenure-of-civil-office bill for their consideration and advice to the President respecting his approval of the bill; and thereupon the members of the cabinet then present gave their advice to the President that the bill was unconstitutional, and should be returned to Congress with his objections, and that the duty of preparing a message, setting forth the objections to the constitutionality of the bill, was devolved on Mr. Seward and Mr. Stanton; to be followed by proof as to what was done by the President and cabinet up to the time of sending in the message.

Mr. SHERMAN. Does that give the date?

Mr. EVARTS. It gives the date as being the time the bill was before them for consideration.

Mr. CONKLING. During the ten days succeeding its first passage?

Mr. EVARTS. I omitted the precise date because there were two meetings.

Mr. JOHNSON. Within the ten days, I suppose?

Mr. EVARTS. Within the time fixed by the Constitution.

Mr. Manager BUTLER. I assumed, Mr. President and Senators, for the purpose of the objection, that the time to which this offer of proof refers itself is during the ten days between the first passage of the bill by the two houses and the time of its return, with the objections of the President, for redeliberation and reconsideration.

Mr. EVARTS. It is so stated.

Mr. Manager BUTLER. Upon this question I only propose to open the debate in order that my learned friends may be possessed, so far as I may be able to possess them, of the grounds of our objection. The question is whether, after a law has been passed, under the due forms of law, the President can show what his opinions were, and the opinions of his cabinet, before it was passed, as a justification for refusing to obey it and execute it. That is the first proposition. Let me restate it and see if I have made any mistake. It is whether the President can show his opinions and those of his cabinet as to the constitutionality of a law, before the law is passed, in order to justify himself for refusing to obey it and execute it after it is passed.

I am not now, in stating this objection, dealing with the vehicle of proof, but with the question whether declarations in the cabinet can or cannot be a mode of proof. I ventured to say to you, senators, that heretofore the struggle has been, on the trial of impeachments, whether the king's order should sustain the minister; and I was somewhat sharply reminded how familiar it was to everybody that the king could do no wrong in the eye of the British constitution, and therefore that, of course, the ministers were responsible. But the question which I brought to your attention was that the struggle in impeachments in former times was whether the king, not being able to do anything wrong, when he gave his express order or advice to the minister, could shield the minister; and the British Parliament, in the Earl of Danby's case, decided that it could not, for he produced for his justification the order of the king, and that was thought to be a great point.

Now, the proposition is, we having got a king who is responsible, to see if we cannot have the ministers shield the king. That is the proposition: whether the advice of the cabinet ministers can shield the chief; in other words, whether the Constitution has placed these heads of departments around him as aids or shields. That is the question; because if that can be done, then impeachment is ended in this country for any breach of law, for there will be no President who cannot find cabinets subservient enough to advise him as he wants to be advised, especially if they are dependent upon his will, and he

cannot be restrained by law from removing them. If he has this power, as he said he had, in a message which is appended as one of his exhibits, in which he also says that if Mr. Stanton had told him that he thought that law was constitutional, he would have removed him before it went into effect, then any President can find a cabinet subservient enough to him to give him advice, and if that advice can shield him there is an end——

Mr. CURTIS. Allow me to interrupt you, Mr. Manager, to understand what you are saying. What message do you refer to?

Mr. Manager BUTLER. Lest I should make any mistake, perhaps I had better read it.

Mr. CURTIS. I only want to know what message you refer to.

Mr. Manager BUTLER. I am perfectly willing to read it; if you will spare me a moment, I will give you the page. [Examining the official report.] I do not find it. I am certain, however, it is in one of the messages; I think in the message of December 12, 1867, you will find the phrase. I refer to one of the messages given in evidence in this case in which (and with the leave of the counsel and the Senate I will take care that the exact quotation appears in my remarks,) he says, in substance, that if Mr. Stanton had informed him that he would not leave upon being asked under this law, he would have taken care to remove him before it went into operation, or words to that effect. I say if that unlimited power can be held by the President, then he can always defend himself by his cabinet. Let us look at it in the light of another great criminal whom you, sir, may be called upon to try some time or other. I have no doubt he had a cabinet around him by whose advice he can defend himself for most of the treasons which he committed. I have no doubt at all upon that proposition.

Let us take it in another view. I have had gentlemen say to me upon this question, "Why, would you not allow a military commander, who should either make a battle or forbear a battle, to show that he called a council of officers, and what their advice was, to justify him in the case of his refusal to give battle or of his giving battle improvidently?" To that I answer that I would do so, but I make a wide distinction: I would not let any general call around him his staff officers, dependent on his breath for their official existence, and allow them to show their opinions as a shield for his acts.

I do not, as I said, propose by any means to argue this question. I proposed simply when I rose to open the proposition, and I desire to put in a single authority as a justification why I did myself the honor to say that Jefferson thought it the better opinion that the constitutional right of the cabinet was to give opinions in writing, and that is the better constitutional principle. I hold in my hand Story's Commentaries on the Constitution, second volume, and I read the third note to section 1494:

> Mr. Jefferson has informed us that in Washington's administration for measures of difficulty a consultation was held with the heads of departments, either assembled or taking their opinions separately, in conversation or in writing. In his own administration he followed the practice of assembling the heads of departments as a cabinet council; but he has added that he thinks the course of requiring the separate opinion in writing of each head of a department is most strictly within the spirit of the Constitution, for the other does in fact transform the Executive into a directory. (4 Jefferson's Correspondence, 143, 144.)

I have here, and I only propose to refer to it, in the third volume of Adams's works, in the appendix, an opinion of Mr. Jefferson furnished to General Washington upon the question of Washington's right to fix the grade of ambassadors, the right to appoint being in the Constitution, and whether the Senate had a right to negative that grade so fixed by the President. There is an example of one of the opinions that President Washington required of his Secretary of State as early as April 24, 1790, upon this very question of appointment to office, and we have it now to be seen and read of all men; whereas if it had not been for this trial, we never should have known what the opinion of the Secretary of the Navy was on this great constitutional question.

Before I sit down I will call the attention of the learned counsel (Mr. Curtis) to the message to which I referred. It will be found on the 46th page of the proceedings of this trial, and the words are:

If any one of these gentlemen had then said to me that he would avail himself of the provisions of that bill in case it became a law, I should not have hesitated a moment as to his removal.

Mr. CURTIS. What message is that?

Mr. Manager BUTLER. Of the 12th of December, 1867, on the suspension of Mr. Stanton. It is in evidence, and will be found on the 46th page of the proceedings.

Mr. EVARTS. We understand that the managers have exhausted their opening argument on this point?

Mr. Manager BUTLER. Yes, sir.

Mr. EVARTS. The difference, as we understood, between the honorable manager's statement of what was contained in the message and what is really in the message, is that he put it upon the President's statement that if it had been pronounced a constitutional law by Mr. Stanton he would have removed him. The point of the President's statement was that there was a concurrence of all the Secretaries who were appointed by Mr. Lincoln that they were not within the law; and if they had taken the opposite ground there would then have been an opportunity for him to have cabinet ministers of his own appointment for the law to take effect upon.

The question as stated by the honorable manager is, whether the President can show his opinions and the advice of his cabinet as to the unconstitutionality of a law as a justification of his refusal to obey the law. That is the proposition on which they rest their argument. Now, Mr. Chief Justice and senators, this involves more or less the general merits of this case, as they have been necessarily, perhaps, somewhat anticipated by incidental arguments; but we do not propose to occupy your time with preliminary discussions of what must form a very large and important part of the final considerations to be disposed of in this case. It is enough in reference to the question of evidence when it is introduced in a trial, that it should be apparent that the premises of consideration both of fact and of law in the different views that are to be insisted upon, and in the different views that may be maintained by the court within those premises, permit the introduction of evidence authentic in itself and trustworthy, to be used and applied according to the final theory of law and fact as the court shall adopt it.

Now, the proposition in this matter on the part of the managers may be stated briefly thus, as it has often been repeated, that in regard to the civil-tenure act, if what was done by the President on the 21st of February, 1868, in the writing out and delivery of these two orders, one upon Mr. Stanton to surrender, and one to General Thomas to take charge of the surrendered office, if those two papers make a consummate crime, then the law imports an intent to do the thing done, and so to commit the crime, and that all else is inapplicable legally within the purview of an impeachment and its trial as much as it might or would be upon a question of a formal infraction of a statute under an indictment punishable by fine. That is one view. It will be for you to determine hereafter whether a violation of a statute, however complete, is necessarily a high crime and misdemeanor within the meaning of the Constitution for which this remedy of impeachment must be sought, and must carry its punishments.

So, too, it is not to be forgotten that in the matter of defence the bearing of all the circumstances of intent, and of deliberation, and inquiry, and pursuit of duty on the part of a great official to arrive at and determine what is his official duty, under an apparent conflict between the Constitution and the law, forms a part of the general issue of impeachment and defence. Our answer, undoubtedly, does set forth and claim that whatever we have done in the premises has been done upon the President's judgment of his duty under the Constitution of the

United States, and after that deliberate and responsible, upright and sincere effort to get all the aid and light on the subject of his duty that was accessible within his powers. One of the most important, one always recognized as among the most important of the aids and guides, supports, and defences which the Chief Magistrate of the country is to have in the opinion of the people at large, in the opinion of the two houses of Congress, in the opinion even of judicial consideration, when a case shall properly come before a court, of whether he has pursued his duty or attempted to pursue his duty, is the view that these chief officers of the government (under his constitutional right to call upon them for their opinions, and under the practice of this government to convene them in council for the purpose of arriving at those opinions) have given him in regard to the proposed matter of conduct and duty.

And this matter of evidence here touches that part of the case, and is to supply that portion of the evidence of what care, what deliberation, what advice attended the steps of the President as he proceeded in the stress in which he was placed of the obligation of the Constitution in respect to an act of Congress which had received the constitutional majorities of the two houses in the very matter in which he was called upon to proceed, not by a voluntary case assumed by him, but in a matter pressing upon his duty as President in regard to the conduct of one of the chief departments of the government.

That is the range of the issue, and that is the application of this evidence. That it bears upon the issue, and is authentic testimony within the range of the President's right and duty to aid and support himself in the performance of his office, cannot be doubted.

But it is said that this involves matter of grave constitutional difficulty, and that if this kind of evidence is to be adduced that will be the end of all impeachment trials, for it will be equivalent to the authority claimed under the British constitution, but denied, that the king's order should shield the minister. Whenever any such pretension as that is set forth here, that the order of the cabinet in council for any act of the President is to shield him from his amenability under the Constitution for trial and judgment upon his act before this constitutional tribunal, it will be time enough to insist upon the argument, or to attempt an answer.

But it is produced here as being a part of the conduct of the President, the whole of whose conduct, as it shall be displayed before you in evidence, is to furnish the basis in fact for your judgment and sentence concerning it under the view of the Constitution and the law. Nor is there any fear that any such privilege, or any such right, as we call it, should interfere with the due power of this tribunal and the proper responsibility of all great officers of the government to it. On the questions that, as we suppose, make up the sum and catalogue of crimes against the state within the general proposition of impeachable offences, it is impossible that matters of this kind should come into play. On treason or bribery or offences involving turpitude, and sinning against the public welfare, no such matters can properly ever come in play. Of course, in some matters of conduct of foreign affairs, if our Constitution permitted the implication of doubtful conduct as within the range of treason, which it does not, it might be supposed that the constitutional advisers might, by their opinions, support the President in his conduct, if that was made the subject of accusation.

But here it will be perceived that the very matter that is in controversy must be regarded by the court in determining whether this species of evidence is applicable; and in determining its applicability I need not repeat before so learned a court that the question of its weight and force is not to be anticipated.

Mr. CONNESS. I move that the Senate sitting as a court now adjourn. ["No, no."] I will say that I make this motion at request, because this question will be argued at length, and it is now late.

The motion was agreed to, ayes 30, noes not counted; and the Senate sitting for the trial of the impeachment adjourned until to-morrow at 11 o'clock.

SATURDAY, *April* 18, 1868.

The Chief Justice of the United States took the chair at 11 o'clock a. m.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives and the counsel for the respondent, except Mr. Stanbery, appeared and took the seats assigned them respectively.

The members of the House of Representatives, as in Committee of the Whole, preceded by Mr. E. B. Washburne, chairman of that committee, and accompanied by the Speaker and Clerk, appeared and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the Journal of yesterday's proceedings.

Mr. STEWART. I move to dispense with the reading of the Journal.

Mr DRAKE. I object.

The CHIEF JUSTICE. The senator from Missouri objects. The Secretary will proceed with the reading.

The Chief Clerk read the Journal of yesterday's proceedings of the Senate sitting for the trial of the impeachment.

The CHIEF JUSTICE. At the adjournment yesterday the Senate had under consideration an offer to prove on the part of the counsel for the President. The offer will now be read.

The Secretary read as follows:

We offer to prove that the President at a meeting of the cabinet, while the bill was before the President for his approval, laid before the cabinet the tenure-of-civil-office bill for their consideration and advice to the President respecting his approval of the bill; and thereupon the members of the cabinet then present gave their advice to the President that the bill was unconstitutional and should be returned to Congress with his objections, and that the duty of preparing a message, setting forth the objections to the constitutionality of the bill, was devolved on Mr. Seward and Mr. Stanton; to be followed by proof as to what was done by the President and cabinet up to the time of sending in the message.

The CHIEF JUSTICE. Do the honorable managers desire to be heard further?

Mr. Manager WILSON. Yes, sir.

Mr. JOHNSON. Mr. Chief Justice, I wish to put a question to the counsel for the President.

The question was sent to the desk and read, as follows:

Do the counsel understand that the managers deny the statement made by the President in his message of December 12, 1867, in evidence as given by the managers at page 45 of the official report of the trial, that the members of the cabinet gave him the opinion there stated as to the tenure-of-office act; and is the evidence offered to corroborate that statement, or for what other object is it offered?

Mr. HOWARD. I have a query to propound to the counsel, also.

Mr. CURTIS. Mr. Secretary, will you send me that question, please?

The question of Mr. Johnson was sent to the counsel.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Michigan.

The chief clerk read as follows:

Do the counsel for the accused not consider that the validity of the tenure-of-office bill was purely a question of law, to be determined on this trial by the Senate; and, if so, do they claim that the opinion of the cabinet officers touching that question is competent evidence by which the judgment of the Senate ought to be influenced?

Mr. EDMUNDS, (after a pause.) I inquire of the Chair whether the argument on the part of the managers cannot proceed while the gentlemen for the defence are considering their answers to these questions, which may take some time?

The CHIEF JUSTICE. The Chief Justice thinks that the argument on the part of the honorable managers may proceed, and that the counsel can reply to these questions in their argument. That course will be taken if there be no objection.

Mr. CURTIS. That is the course we should prefer, Mr. Chief Justice. We will

reply to the question of the honorable senator from Maryland, and also to that of the honorable senator from Michigan, in the course of the remarks which we desire to address to the Senate.

Mr. Manager WILSON. Mr. President and senators, as the pending objection confronts one of the most important questions involved in this case, I wish to present the views of the managers respecting it with such care and exactness as I may be able to command.

The respondent now offers to prove, doubtless as a foundation for other cabinet action of more recent date, that he was advised by the members of his cabinet that the act of Congress upon which rest several of the articles to which he has made answer, to wit, "An act regulating the tenure of certain civil offices," passed March 2, 1867, was and is unconstitutional, and therefore void. That he was so advised he has alleged in his answer. Whether he was so advised or not we hold to be immaterial to this case, and irrelevant to the issue joined. The House of Representatives were not to be entrapped, in the preparation of their replication, by any such cunning device, nor by the kindred one, whereby the respondent affirms that he was not bound to execute said act because he believed it to be unconstitutional. The replication says that the House of Representatives—

> Do deny each and every averment in said several answers, or either of them, which denies or traverses the acts, intents, crimes, or misdemeanors charged against said Andrew Johnson in the said articles of impeachment, or either of them; and for replication to said answer do say that said Andrew Johnson, President of the United States, is guilty of the high crimes and misdemeanors mentioned in said articles, &c.

There is no acceptance here of the issue tendered by the respondent, and in support of which he offers the immaterial, incompetent, and irrelevant testimony to which we object. The advice which he may have received, and the belief which he may have formed touching the constitutionality of said act, cannot be allowed to shield him from the consequences of his criminal acts. Nor can his mistaken view of the Constitution relative to his right to require the opinions of the heads of the several executive departments upon certain questions aid his efforts to escape from the just demands of violated law. In his answer to the first article he alleges:

> This respondent had, in pursuance of the Constitution, required the opinion of each principal officer of the executive departments upon this question of constitutional executive power and duty, and had been advised by each of them, including the said Stanton, Secretary for the Department of War, that, under the Constitution of the United States, this power [of removal] was lodged by the Constitution in the President of the United States, and that, consequently, it could be lawfully exercised by him, and the Congress could not deprive him thereof.

The respondent found no provision in the Constitution authorizing him to pursue any such course. The Constitution says the President—

> May require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices. (Article 2, section 2.)

Not of his office, not of the legislative department, nor of the judicial department. But when did he require the opinions and receive the advice under cover of which he now seeks to escape? His answer informs us that this all transpired prior to his veto of the bill "regulating the tenure of certain civil offices." Upon those unwritten opinions and that advice he based his veto of said bill, and fashioned the character of his message. He communicated his objections to Congress; they were overruled by both houses, and the bill was enacted into a law in manner and form as prescribed by the Constitution. He does not say that since the final passage of the act he has been further advised by the principal officers of each of the executive departments that he is not bound to enforce it. And if he had done so, he would have achieved a result of no possible benefit to himself, but dangerous to his advisers, for it will be

borne in mind that the articles charge that he "did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown." He might have disclosed that these unknown persons were the members of his cabinet. This disclosure might have placed them in jeopardy without diminishing the peril which attends upon his own predicament.

It is not difficult to see that the line of defence to which we have directed the present objection involves the great question of this case. It tends to matters more weighty than a mere resolution of the technical offences which float on the surface of this prosecution. Whoever attempts to measure the magnitude of the case by the comparatively insignificant acts which constitute the technical crimes and misdemeanors with which the respondent stands charged, will attain a result far short of its true character, and be rewarded with a most beggarly appreciation of the immensity of its real proportions. Far above and below and beyond these mere technical offences, grave as they undoubtedly are, the great question which you are to settle is to be found. It envelops the whole case and everything pertaining thereto. It is the great circle which bounds the sphere composed of the multitude of questions and issues presented for your determination. The respondent is arraigned for a violation of and a refusal to execute the law. He offers to prove that his cabinet advised him that a certain bill presented for his approval was in violation of the Constitution; that he accepted their advice and vetoed the bill; and upon that, and such additional advice as they may have given him, claims the right to resist and defy the provisions of the bill, notwithstanding its enactment into a law by two-thirds of both houses over his objections. In other words, he claims, substantially, that he may determine for himself what laws he will obey and execute, and what laws he will disregard and refuse to enforce. In support of this claim he offers the testimony which, for the time being, is excluded by the objection now under discussion. If I am correct in this, then I was not mistaken when I asserted that this objection confronts one of the most important questions involved in this case. It may be said that this testimony is offered merely to disprove the intent alleged and charged in the articles; but it goes beyond this and reaches the main question, as will clearly appear to the mind of any one who will read with care the answer to the first article. The testimony is improper for any purpose and in every view of the case.

The Constitution of the United States, article two, section one, provides that—

> The executive power shall be vested in a President of the United States of America.

The person at present exercising the functions of the executive office is the respondent who stands at your bar to-day, charged with the commission of high crimes and misdemeanors in office. Before he entered upon the discharge of the duties devolved on him as President he took and subscribed the constitutionally prescribed oath of office, in words as follows:

> I do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States.

This oath covers every part of the Constitution, imposes the duty of observing every section and clause thereof, and includes the distribution of powers therein made. The powers embraced and distributed are legislative, executive and judicial. Of the first the Constitution declares that—

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. (Article 1, section 1.)

This encircles the entire range of legislative action. The will of the legislative department is made known by the terms of the bills which it may pass. Of these expressions of the legislative will the Constitution says:

> Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; and if he approve

he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objection at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. (Article 1, section 7.)

Thus laws are made. But laws cannot execute themselves. However wise, just, necessary they may be, they are lifeless declarations of the legislative will until clothed with the power of action by other departments of the government.

The builders of our Constitution understood with great exactness the philosophy of government, and provided for every contingency. They knew that laws to be effective must be executed; that the best and purest law could not perform its proper office in the absence of executive power; therefore they created that power and vested it in a President of the United States. To insure a due execution of the power, they imposed the duty of taking and subscribing the oath above quoted on every person elected to the presidential office, and declared that he should comply with the condition "before he enter on the execution of his office." Chief among the executive duties imposed by the Constitution and secured by the oath is the one contained in the injunction that the President "shall take care that the laws be faithfully executed." (Article 2, section 3.) What laws? Those which may have been passed by the legislative department in manner and form as declared by that section of the Constitution heretofore recited. The President is clothed with no discretion in this regard. Whatever is declared by the legislative power to be the law the President is bound to execute. By his power to veto a bill passed by both houses of Congress he may challenge the legislative will, but if he be overruled by the two-third voice of the houses he must respect the decision and execute the law which that constitutional voice has spoken into existence. If this be not true, then the executive power is superior to the legislative power. If the executive will may declare what is and what is not law, why was a legislative department established at all? Why impose on the President the constitutional obligation to "take care that the laws be faithfully executed," if he may determine what acts are and what are not laws? It is absurd to say that he has any discretion in this regard. He must execute the law.

The great object of the executive department is to accomplish this purpose; and without it, be the form of government whatever it may, it will be utterly worthless for offence or defence; for the redress of grievances or the protection of rights; for the happiness or good order or safety of the people. (Story on the Constitution, vol. 2, p. 419.)

De Tocqueville, in his work on Democracy in America, in opening the chapter on executive power, very truly remarks that—

The American legislators undertook a difficult task in attempting to create an executive power dependent on the majority of the people, and nevertheless sufficiently strong to act without restraint in its own sphere. It was indispensable to the maintenance of the republican form of government that the representative of the executive power should be subject to the will of the nation. (Volume 1, p. 128.)

The task was a difficult one, but the great minds from which our Constitution sprung were equal to its severest demands. They created an executive power strong enough to execute the will of the nation, and yet sufficiently weak to be controlled by that will. They knew that "power will intoxicate the best of hearts, as wine the strongest heads," and therefore they surrounded the executive agent with such proper restraints and limitations as would confine him to the boundaries prescribed by the national will or crush him by its power if he stepped beyond. The plan adopted was most perfect. It created the executive power; provided for the selection of the person to be intrusted with its exercise; determined the restraints and limitations which should rest upon, guide, and control it and him, and, out of abundant caution, decreed that—

The President * * * * of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article 3, section 4.)

It is preposterous for the respondent to attempt to defend himself against the corrective power of this grand remedy by interposing the opinions or advice of the principal officers of the executive departments, either as to the body of his offence or the intent with which he committed it. His highest duty is to "take care that the laws be faithfully executed;" and if he fail in this particular he must fail in all, and anarchy will usurp the throne of order. The laws are but expressions of the national will, which can be made known only through the enactments of the legislative department of the government. A criminal failure to execute that will (and every willful failure, no matter what its inducement may be, is criminal) may justly call into action the remedial power of impeachment. This power is, by the express terms of the Constitution, confided to one branch of the legislative department, in these words:

> The House of Representatives * * * * shall have the sole power of impeachment. (Article 1, section 2.)

This lodgment of the most delicate power known to the Constitution is most wise and proper, because of the frequency with which those who may exercise it are called to account for their conduct at the bar of the people, and this is the check balanced against a possible abuse of the power, and it has been most effectual. But the wisdom which fashioned our Constitution did not stop here. It next declared that—

> The Senate shall have the sole power to try all impeachments. (Article 1, section 3.)

In the theory of our Constitution the Senate represents the States, and its members being removed from direct accountability to the people, are supposed to be beyond the reach of those excitements and passions which so frequently change the political complexion of the House of Representatives, and this is the more immediate check provided to balance the possible hasty action of the representatives. Wise, considerate, and safe to the perfect work of demonstration is this admirable adjustment of the powers with which we are now dealing. The executive power was created to enforce the will of the nation; the will of the nation appears in its laws; the two houses of Congress are intrusted with the power to enact laws, the objections of the Executive to the contrary notwithstanding. Laws thus enacted, as well as those which receive the executive sanction, are the voice of the people. If the person clothed for the time being with the executive power—the only power which can give effect to the people's will—refuses or neglects to enforce the legislative decrees of the nation, or wilfully violates the same, what constituent elements of governmental power could be more properly charged with the right to present and the means to try and remove the contumacious Executive than those intrusted with the power to enact the laws of the people, guided by the checks and balances to which I have directed the attention of the Senate? What other constituent parts of the government could so well understand and adjudge of a perverse and criminal refusal to obey, or a wilful declination to execute, the national will, as those joining in its expression? There can be but one answer to these questions. The provisions of the Constitution are wise and just beyond the power of disputation in leaving the entire subject of the responsibility of the Executive to faithfully execute his office and enforce the laws to the charge, trial, and judgment of the two several branches of the legislative department, regardless of the opinions of cabinet officers, or of the decisions of the judicial department. The respondent has placed himself within this power of impeachment by trampling on the constitutional duty of the Executive and violating the penal laws of the land.

I readily admit that the Constitution of the United States is, in almost every respect, different from the constitution of Great Britain. The latter is, to a great extent, unwritten, and is, in all regards, subject to such changes as Parliament may enact. An act of Parliament may change the constitution of England. In this country the rule is different. The Congress may enact no

law in conflict with the Constitution. The enactments of Parliament become a part of the British constitution. The will of Parliament is supreme. The will of Congress is subordinate to the written Constitution of the United States, but not to be judged of by the executive department. But the theories upon which the two constitutions rest at the present time are almost identical. In both the executive is made subordinate to the legislative power. The Commons of England tolerate no encroachments on their powers from any other estate of the realm. The Parliament is the supreme power of the kingdom, in spite of the doctrine that "the king can do no wrong," and in spite of the assertion that the exercise of the sovereignty rests in the several estates.

The kindred character of the theories permeating the two constitutions may be illustrated by certain parliamentary and ministerial action connected with the American revolution, and which will well serve the purposes of my argument.

On the 27th day of February, 1782, General Conway moved in the House of Commons the following resolution:

> That it is the opinion of this house, that the further prosecution of offensive war on the continent of North America, for the purpose of reducing the revolted colonies to obedience by force, will be the means of weakening the efforts of this country against her European enemies, dangerously to increase the mutual enmity, so fatal to the interests both of Great Britain and America; and by preventing a happy reconciliation with that country, to frustrate the earnest desire graciously expressed by his Majesty to restore the blessing of public tranquillity. (Hansard, vol. 22, p. 1071.)

The Commons passed the resolution. The ministry did not seem to catch its true spirit, and, therefore, on March the 4th next following, General Conway moved another resolution in these more express and emphatic terms, to wit:

> That after the solemn declaration of the opinion of this house in their humble address presented to his Majesty on Friday last, and his Majesty's assurance of his gracious intention, in pursuance of their advice, to take such measures as shall appear to his Majesty to be most conducive to the restoration of harmony between Great Britain and the revolted colonies, so essential to the prosperity of both, this house will consider as enemies to his Majesty and this country all those who shall endeavor to frustrate his Majesty's paternal care for the ease and happiness of his people, by advising or by any means attempting the further prosecution of offensive war on the continent of North America, for the purpose of reducing the revolted colonies to obedience by force. (Ibid., p. 1089.)

This resolution led to an animated debate. The temper of the Commons was equal to the directness of the resolution. The ministry saw this and understood exactly its meaning. They were disposed to avoid the implied censure, and attempted to show, by expressions of a determination to observe and respect the opinion of the house as declared in the first resolution, that no necessity existed for the adoption of the second. To effectuate this end Lord North, the premier, in the course of his remarks, said:

> The majority of that house had resolved that peace should be made with America, and the answer given from the throne was so satisfactory that the house had just concurred in a motion to return thanks to his Majesty for making it; where, therefore, could be the ground for coming to a resolution which seemed to doubt the propriety or sincerity of that answer? He was not of the disposition of those who complained of majorities in that house who condemned them, and by factious and seditious misrepresentations held them out to the public in the most odious colors; a majority of that house was, in parliamentary language, the house itself; it could never make him change a single opinion, yet he bowed to that opinion which was sanctioned by the majority; though he might not be a convert to such opinion, still he held it to be his indispensable duty to obey it, and never once to lose sight of it, in the advice which, as the servant of the Crown, he should have occasion to give his sovereign. It was the right of that house to command; it was the duty of a minister to obey its resolutions. Parliament had already expressed its desires or its orders; and as it was scarcely possible that a minister should be found hardy, daring, infamous enough to advise his sovereign to differ in opinion from his Parliament, so he could not think the present motion, which must suppose the existence of such a minister, could be at all necessary. (Ibid., p. 1090.)

And again he said:

> To the policy of that resolution he could not subscribe: but as Parliament had thought

proper to pass it, and as ministers were bound to obey the orders of Parliament, so he should make that resolution the standard of his future conduct. (Ibid., p. 1107.)

These protestations of Lord North did not arrest the action of the Commons. The resolution passed, and peace followed.

It will be observed that these proceedings on the part of the Commons trenched on ground covered by the prerogatives of the Crown, and affected, to some extent, the powers of declaring war, making peace, and entering into treaties. Still the ministry bowed in obedience to the command of the house, and declared that—

> It was scarcely possible that a minister should be found hardy, daring, infamous enough to advise his sovereign to differ in opinion from his Parliament.

This grand action of the Commons and its results disclosed the sublimest feature of the British constitution. It was made to appear how thoroughly, under that constitution, the executive power was dependent on the legislative will of the nation. The doctrine that "the King can do no wrong," while it protected his person, was resolved into an almost perfect subordination of the ministers, through whom the powers of the Crown are exerted, to the acts and resolutions of the Parliament, until at last the roar of the lion of England is no more than the voice of the Commons of the realm. So completely had this principle asserted itself in the British constitution that the veto power had passed into disuse for nearly a century, and it has not been exercised since. The last instance of its use was in April, 1696, when William III refused the royal assent to a "bill to regulate elections of members to serve in Parliament." (Hansard, vol. 5, p. 993.)

The men who formed our Constitution in 1787 were not untaught of these facts in English history; and they fashioned our government on the plan of the subordination of the executive power to the written law of the land. They did not deny the veto power to the President; but they did declare that it should be subject to a legislative limitation, under the operation of which it might, in any given case, be overruled by the Congress, and when this happens, and the vetoed bill becomes a law, the President must yield the convictions of his own judgment, as an individual, to the demands of the higher duty of the officer, and execute the law. His oath binds him to this, and he cannot pursue any other course of action without endangering the public weal. The Constitution regards him in a double capacity—as citizen and public officer. In the first it leaves him to the same accountability to the law in its ordinary processes as would attach to and apply in case he were a mere civilian or the humblest citizen; while in the latter it subjects him to the power of the House of Representatives to impeach, and that of the Senate to remove him from office, if he be guilty of "treason, bribery, or other high crimes and misdemeanors." If the citizen disobeys the law, and be convicted thereof, he may be relieved by pardon; but the officer who brings upon himself a conviction on impeachment cannot receive the executive clemency. For while it is provided that the President "shall have power to grant reprieves and pardons for offences against the United States," it is also expressly declared that this power shall not extend to "cases of impeachment." (Article 2, section 2.) The same person, if he be a civil officer, may be indicted for a violation of law and impeached for the same act. If convicted in both cases he may be pardoned in the former, but in the latter he is beyond the reach of forgiveness. The relief provided for the disobedient citizen is denied to the offending officer.

I have already observed that the Constitution of the United States distributes the powers of the government among three departments. First in the order of constitutional arrangement is the legislative department; and this, doubtless, because the law-making power is the supreme power of the land through which the will of the nation is expressed. The legislative power, in other words the

law-making power, is "vested in a Congress of the United States." The acts of Congress constitute the municipal law of the republic.

Municipal law is a rule of action prescribed by the supreme power of a State, commanding what is right and prohibiting what is wrong. (1 Blackstone, p. 44.)

The supreme power of a State is that which is highest in authority, and therefore it was proper that the Constitution should name first the legislative department in the distribution of powers, as through it alone the State can speak. Its voice is the law, the rule of action to be respected and obeyed by every person subject to its direction or amenable to its requirements.

Next in the order of its distribution of powers the Constitution names the executive department. This is proper and logical; for the will—the law—of the nation cannot act except through agents or instrumentalities charged with its execution. The Congress can enact a law, but it cannot execute it. It can express the will of the nation, but some other agencies are required to give it effect. The Constitution resolves these agencies and instrumentalities into an executive department. At the head of this department, charged imperatively with the due execution of its great powers, appears the President of the United States, duly enjoined to "take care that the laws be faithfully executed." If the law which he is to execute does not invest him with discretionary power, he has no election—he must execute the will of the nation as expressed by Congress. In no case can he indulge in the uncertainties and irresponsibilities of an official discretion unless it be conceded to him by express enactment. In all other cases he must follow and enforce the legislative will. "The office of executing a law excludes the right to judge of it;" and as the Constitution charges the President with the execution of the laws, it thereby "declares what is his duty, and gives him no power beyond." (Rawle on the Constitution, p. 134.) Undoubtedly he possesses the right to recommend the enactment and to advise the repeal of laws. He may also, as I have before remarked, obstruct the passage of laws by interposing his veto. Beyond these means of changing, directing or obstructing the national will he may not go. When the law-making power has resolved, his "opposition must be at an end. That resolution is a law, and resistance to it punishable." (Federalist, No. 70.)

The judgment of the individual intrusted, for the time being, with the executive power of the republic may reject as utterly erroneous the conclusions arrived at by those invested with the legislative power; but the officer must submit and execute the law. He has no discretion in the premises except such as the particular statute confers on him; and even this he must exercise in obedience to the rules which the act provides. A high officer of the government once gave to a President of the United States an opinion relative to this doctrine in these words:

To the Chief Executive Magistrate of the Union is confided the solemn duty of seeing the laws faithfully executed. That he may be able to meet this duty with a power equal to its performance he nominates his own subordinates and removes them at his pleasure.

This opinion was given prior to the passage of the act of March 2, 1867, which requires the concurrence of the Senate in removals from office, which while denying to the President the power of absolute removal, concedes to him the power to suspend officers and to supply their places temporarily.

For the same reason the land and naval forces are under his orders as their Commander-in-chief; but his power is to be used only in the manner prescribed by the legislative department. He cannot accomplish a legal purpose by illegal means, or break the laws himself to prevent them from being violated by others.

The acts of Congress sometimes give the President a broad discretion in the use of the means by which they are to be executed, and sometimes limit his power so that he can exercise it only in a certain prescribed manner. Where the law directs a thing to be done, without saying how, that implies the power to use such means as may be necessary and proper to accomplish the end of the legislature. But where the mode of performing a duty is pointed out by statute, that is the exclusive mode, and no other can be followed. The United States have no common law to fall back upon when the written law is defective. If, therefore, an act of

Congress declares that a certain thing shall be done by a particular officer, it cannot be done by a different officer. The agency which the law furnishes for its own execution must be used to the exclusion of all others. (Opinion of Attorney General Black, November 20, 1860.)

This is a very clear statement of the doctrine which I have been endeavoring to enforce, and on which the particular branch of this case now commanding our attention rests. If we drift away from it we unsettle the very foundations of the government, and endanger its stability to a degree which may well alarm the most hopeful minds, and appal the most courageous. A departure from this view of the character of the executive power, and from the nature of the duty and obligation resting upon the officer charged therewith, would surround this nation with perils of most fearful proportions. Such a departure would not only justify the respondent in his refusal to obey and execute the law, but also approve his usurpation of the judicial power when he resolved that he would not observe the legislative will, because, in his judgment, it did not conform to the provisions of the Constitution of the United States touching the subjects embraced in the articles of impeachment on which he is now being tried at your bar. Concede this to him, and when and where may we look for the end? To what result shall we arrive? Will it not naturally and inevitably lead to a consolidation of the several powers of the government, in the executive department? And would this be the end? Would it not rather be but the beginning? If the President may defy and usurp the powers of the legislative and judicial departments of the government, as his caprices or the advice of his cabinet may incline him, why may not his subordinates, each for himself, and touching his own sphere of action, determine how far the directions of his superior accord with the Constitution of the United States, and reject and refuse to obey all that come short of the standard erected by his judgment? It was remarked by the Supreme Court of the United States in the case of Martin *vs.* Mott, (12 Wheaton, 19,) that—

If a superior officer has a right to contest the orders of the President, upon his own doubts as to the exigency (referred to by the statute) having arisen, it must be equally the right of every inferior and soldier; and any act done by any person in furtherance of such orders would subject him to responsibility in a civil suit, in which his defence must finally rest upon his ability to establish the facts by competent proofs. Such a course would be subversive of all discipline, and expose the best disposed officers to the chances of ruinous litigation. * * * * The power itself is confined to the executive of the Union, to him who is, by the Constitution, the commander of the militia, when called into the actual service of the United States; whose duty it is "to take care that the laws be faithfully executed," and whose responsibility for an honest discharge of his official obligations is secured by the highest sanction. He is necessarily constituted the judge of the existence of the exigency in the first instance, and is bound to call forth the militia; his orders for this purpose are in strict conformity with the provisions of the law, and it would seem to follow, as a necessary consequence, that every act done by a subordinate officer, in obedience to such orders, is equally justifiable. The law contemplates that, under such circumstances, orders will be given to carry the power into effect; and it cannot, therefore, be a correct inference that any other person has a just right to disobey them.

Apply the principles here enunciated to the case at bar, and they become its perfect supports. If the President has a right to contest and refuse to obey the laws enacted by Congress, his subordinates may exercise the same right and refuse to obey his orders. If he may exercise it in one case, they may assert it in any other. If he may challenge the laws of Congress, they may question the orders of the President. It is his duty to enforce the laws of the nation, and it is their duty to obey his orders. If he may be allowed to defy the legislative will, they may be allowed to disregard the executive order. This begets confusion; and the affairs of the public are made the sport of the contending factions and conflicting agents. No such power belongs to either. To Congress is given the power to enact laws, and while they remain on the statute-book it is the constitutional duty of the President to see to their faithful execution. This duty rests upon all of his subordinates. Its observance by all, the President included, makes the executive department, though it be acting through ten thousand

agents, a unit. Unity produces harmony, harmony effects directness of action, and this secures a due execution of the laws. But if the President may disregard the law because he has been advised by his cabinet and believes that the Congress violated the Constitution in its enactment, and his subordinates may, following his example, disobey his orders and directions, the object and end of an executive unity is defeated, anarchy succeeds order, force, irresponsible and vicious, supplants law, and ruin envelops the republic and its institutions. If the views which I have imperfectly presented are correct—and such I believe them to be—the testimony to which we object must be excluded from your consideration, and thus will be determined one of the most important questions encircled by this case.

If I have been able to arrest your attention, and to centre it upon the question which I have imperfectly discussed, the time occupied by me will not be without profit to the nation. I have endeavored to show that the royal fiction which asserts that "the king can do no wrong" cannot be applied to the President of the United States in such manner as to shield him from the just condemnation of violated law. The king's crimes may be expiated by the vicarious atonement of his ministers; but the President is held personally amenable to the impeaching power of the House of Representatives. Concede to the President immunity through the advice of his cabinet officers, and you reverse by your decision the theory of our Constitution. Let those who will, assume this responsibility. I leave it to the decision of the Senate.

Mr. CURTIS. Mr. Chief Justice and Senators, I have no intention of attempting to make a reply to the elaborate argument which has now been addressed to you by one of the honorable managers touching the merits of this case. The time for that has not come. The testimony is not yet before you. The case is not in a condition for you to consider and pass upon those merits, whether they consist in law or fact. The simple question now before the Senate is whether a certain offer of proof which we have placed before you shall be carried out into evidence. Of course that inquiry involves another. That other inquiry is whether the evidence which is offered is pertinent to any matter in issue in this case, and when it is ascertained that the evidence is pertinent I suppose it is to be received. Its credibility, its weight, its effect finally upon the merits of the case or upon any question involved in the case, is a subject which cannot be considered and decided upon preliminarily to the reception of the evidence. And, therefore, leaving on one side the whole of this elaborate argument which has now been addressed to you, I propose to make a few observations to show that this evidence is pertinent to the matter in issue in this case.

The honorable manager has read a portion of the answer of the President, and has stated that the House of Representatives has taken no issue upon that part of the answer. As to that, and as to the effect of that admission by the honorable manager, I shall have a word or two to say presently. But the honorable manager has not told you that the House of Representatives, when the honorable managers brought to your bar these articles, did not intend to assert and prove the allegations in them which are matters of fact. One of these allegations, Mr. Chief Justice, as you will find by reference to the first article and to the second article and to the third article, is that the President of the United States, in removing Mr. Stanton and in appointing General Thomas, intentionally violated the Constitution of the United States; that he did these acts with the intention of violating the Constitution of the United States. Instead of saying, "it is wholly immaterial what intention the President had; it is wholly immaterial whether he honestly believed that this act of Congress was unconstitutional; it is wholly immaterial whether he believed that he was acting in accordance with his oath of office, to preserve, protect, and defend the Constitution when he did this act"—instead of averring that, they aver that he acted with an intention to violate the Constitution of the United States.

Now, when we introduce evidence here, or offer to introduce evidence here, bearing on this question of intent—evidence that, before forming any opinion upon this subject, he resorted to proper advice to enable him to form a correct one, and that when he did form and fix opinions on this subject it was under the influence of this proper advice, and that consequently when he did this act, whether it was lawful or unlawful, it was not done with the intention to violate the Constitution—when we offer evidence of that character, the honorable manager gets up here and argues an hour by the clock that it is wholly immaterial what his intention was, what his opinion was, what advice he had received, and in conformity with which he acted in this matter.

The honorable manager's argument may be a sound one; the Senate may ultimately come to that conclusion after they have heard this cause; that is of discussion into which I do not enter; but before the Senate can come to the consideration of those questions they must pass over this allegation; they must either say, as the honorable manager says, that it is wholly immaterial what opinion the President formed or under what advice or circumstances he formed it, or else it must be admitted by senators that it is material, and the evidence must be considered.

Now, how is it possible at this stage of the inquiry to determine which of these courses is to be taken by the honorable Senate? If the Senate should finally come to the conclusion that it is wholly immaterial, this evidence will do no harm. On the other hand, if the Senate should finally come to the conclusion that it is material what the intention of the President was in doing these acts, that they are to look to see whether there was or not a wilful violation of the Constitution, then they will have excluded the evidence upon which they could have determined that question, if it should thus prove to be material.

I respectfully submit, therefore, that whether the argument of the honorable manager is sound or unsound, whether it will finally prove in the judgment of the Senate that this evidence is immaterial or not, this is not the time to exclude it upon the ground that an examination of the merits hereafter and a decision upon those merits will show that it is immaterial. When that is shown the evidence can be laid aside. If the other conclusion should be arrived at by any one senator, or by the body generally, then they will be in want of this evidence which we now offer.

In reference to this question, senators, is it not pertinent evidence? I do not intend to enter into the constitutional inquiry which was started yesterday by an honorable manager as to the particular character of this cabinet counsel. One thing is certain: that every President from the origin of the government has resorted to oral consultations with the members of his cabinet and oral discussions in his presence of questions of public importance arising in the course of his official duty. Another thing is equally certain, and that is, that although the written letter remains, and therefore it would appear with more certainty what the advice of a cabinet councillor was if it were put in writing, yet that every practical man who has had occasion in the business affairs of life, and every lawyer and every legislator knows that there is no so satisfactory mode of bringing out the truth as an oral discussion, face to face, of those who are engaged in the subject; that it is the most suggestive, the most searching, the most satisfactory mode of arriving at a conclusion; and that solitary written opinions, composed in the closet, away from the collision between mind and mind which brings out new thoughts, new conceptions, more accurate views, are not the best mode of arriving at a safe result. And under the influence of these practical considerations undoubtedly it is that this habit, beginning with General Washington—not becoming universal by any means until Mr. Jefferson's time, but from that day to this continuing a constant practice—has been formed. President Johnson found it in existence when he went into office, and he continued it.

I therefore say that when the question of his intention comes to be considered by the Senate, when the question arises in their minds whether the President honestly believed that this was an unconstitutional law, when the particular emergency arose, when if he carried out or obeyed that law he must quit one of the powers which he believed were conferred upon him by the Constitution, and not be able to carry on one of the departments of the government in the manner the public interests required—when that question arises for the consideration of the Senate, then they ought to have before them the fact that he acted by the advice of the usual and proper advisers; that he resorted to the best means within his reach to form a safe opinion upon this subject, and that therefore it is a fair conclusion that when he did form that opinion it was an honest and fixed opinion, which he felt he must carry out in practice if the proper occasion should arise. It is in this point of view, and this point of view only, that we offer this evidence.

The honorable senator from Michigan has proposed a question to the counsel for the President, which is this:

Do not the counsel for the accused consider that the validity of the tenure-of-office bill was purely a question of law?

I will answer that part of the question first. The constitutional validity of any bill is, of course, a question of law which depends upon a comparison of the provisions of the bill with the law enacted by the people for the government of their agents. It depends upon whether those agents have transcended the authority which the people gave them; and that comparison of the Constitution with the law is, in the sense that was intended undoubtedly by the honorable senator, a question of law.

The next branch of the question is "whether that question is to be determined on this trial by the Senate."

That is a question I cannot answer. That is a question that can be determined only by the Senate themselves. If the Senate should find that Mr. Stanton's case was not within this law, then no such question arises, then there is no question in this particular case of a conflict between the law and the Constitution. If the Senate should find that these articles have so charged the President that it is necessary for the Senate to believe that there was some act of turpitude on his part connected with this matter, some *mala fides*, some bad intent, and that he did honestly believe, as he states in his answer, that this was an unconstitutional law, that an occasion had arisen when he must act accordingly under his oath of office, then it is immaterial whether this was a constitutional or unconstitutional law; be it the one or be it the other, be it true or false that the President has committed a legal offence by an infraction of the law, he has not committed the impeachable offence with which he is charged by the House of Representatives. And, therefore, we must advance beyond these two questions before we reach the third branch of the question which the honorable senator from Michigan propounds, whether the question of the constitutionality of this law must be determined on this trial by the Senate. In the view of the President's counsel there is no necessity for the Senate to determine that question. The residue of the inquiry is:

Do the counsel claim that the opinion of the cabinet officers touching that question—

That is, the constitutionality of the law—

is competent evidence by which the judgment of the Senate might be influenced?

Certainly not. We do not put them on the stand as experts on questions of constitutional law. The judges will determine that out of their own breasts. We put them on the stand as advisers of the President to state what advice, in point of fact, they gave him, with a view to show that he was guilty of no improper intent to violate the Constitution. We put them on the stand, the honorable senator from Michigan will allow me to answer, for the same purpose for which

he doubtless, in his extensive practice, has often put lawyers on the stand. A man is proceeded against by another for an improper arrest, for a malicious prosecution. It is necessary to prove malice and want of probable cause. When the want of probable cause is proved, the malice is inferable from it; but then it is perfectly well settled that if the defendant can show that he fairly laid his case before counsel, and that counsel informed him that that was a probable case, he must be acquitted; the malice is gone. That is the purpose for which we propose to put these gentlemen on the stand, to prove that they acted as advisers, that the advice was given, that it was acted under; and that purges the malice, the improper intent.

To respond to the question of the honorable senator from Maryland, he will allow me to say that it is a question which the managers can answer much better than the President's counsel.

Mr. JOHNSON. Will you read it, please?

Mr. CURTIS. It is:

Do the counsel for the President understand that the managers deny the statement made by the President in his message of December 12, 1867, to the Senate, as given in evidence by the managers, at page 45 of the official report of the trial, that the members of the cabinet gave him—

That is, the President—

the opinion there stated as to the tenure-of-office act, and is the evidence offered to corroborate that statement, or for what other object is it offered?

We now understand, from what the honorable manager has said this morning, that the House of Representatives has taken no issue on that part of our answer; that the honorable managers do not understand that they have traversed or denied that part of our answer. We did understand before this question was proposed to us that the honorable managers had themselves put in evidence the message of the President of the 12th of December, 1867, to the Senate, in which he states that he was advised by the members of the cabinet unanimously, including Mr. Stanton, that this law would be unconstitutional if enacted. They have put that in evidence themselves.

Nevertheless, senators, this is an affair, as you perceive, of the utmost gravity in any possible aspect of it; and we did not feel at liberty to avoid or abstain from the offering of the members of the President's cabinet that they might state to you, under the sanction of their oaths, what advice was given. I suppose all that the managers would be prepared to admit might be—certainly they have made no broader admission—that the President said these things in a message to the Senate; but from the experience we have had thus far in this trial we thought it not impossible that the managers, or some one of them speaking in behalf of himself and the others, might say that the President had told a falsehood, and we wish therefore to place ourselves right before the Senate on this subject. We desire to examine these gentlemen to show what passed on this subject, and we wish to do it for the purposes I have stated.

Mr. WILLIAMS. Before the learned gentleman concludes I desire to submit a question to him.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Oregon.

The chief clerk read as follows:

Is the advice given to the President by his cabinet, with a view of preparing a veto message, pertinent to prove the right of the President to disregard the law after it was passed over his veto?

Mr. CURTIS. I consider it to be strictly pertinent. It is not of itself sufficient; it is not enough that the President received such advice; he must show that an occasion arose for him to act upon it, which, in the judgment of the Senate, was such an occasion that you could not impute to him wrong intention in acting. But the first step is to show that he honestly believed that this was an uncon-

stitutional law. Whether he should treat it as such in a particular instance is a matter depending upon his own personal responsibility without advice. That is the answer which I suppose is consistent with the views we have of this case.

And I wish, in closing, merely to say, that the senators will perceive how entirely aside this view which I have now presented to the Senate is from any claim on behalf of the President that he may disregard a law simply because he believes it to be unconstitutional. He makes no such claim. He must make a case beyond that—a case such as is stated in his answer; but in order to make a case beyond that it is necessary for him to begin by satisfying the Senate that he honestly believed the law to be unconstitutional; and it is with a view to that that we now offer this evidence.

The CHIEF JUSTICE. Senators, the question now before the Senate, as the Chief Justice conceives, respects not the weight, but the admissibility of the evidence offered. To determine that question, it is necessary to see what is charged in the articles of impeachment. The first article charges that on the 21st day of February, 1868, the President issued an order for the removal of Mr. Stanton from the office of Secretary of War, that this order was made unlawfully, and that it was made with intent to violate the tenure-of-office act, and in violation of the Constitution of the United States. The same charge in substance is repeated in the articles which relate to the appointment of Mr. Thomas, which was necessarily connected with the transaction. The intent, then, is the subject to which much of the evidence on both sides has been directed; and the Chief Justice conceives that this testimony is admissible for the purpose of showing the intent with which the President has acted in this transaction. He will submit the question to the Senate if any senator desires it.

Mr. HOWARD. I call for the yeas and nays.

The CHIEF JUSTICE. The senator from Michigan desires that the question be submitted to the Senate, and calls for the yeas and nays.

The yeas and nays were ordered.

The CHIEF JUSTICE. Senators, you who are of opinion that the proposed evidence is admissible will, as your names are called, answer yea; those of the contrary opinion, nay.

Mr. DRAKE. I ask for the reading of the offer of counsel.

The CHIEF JUSTICE. The Secretary will read the offer.

The chief clerk read the offer.

The question being taken by yeas and nays, resulted—yeas 20, nays 29; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, Vickers, and Willey—20.

NAYS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—29.

NOT VOTING—Messrs. Morton, Norton, Nye, Sumner, and Wade—5.

So the Senate decided the evidence to be inadmissible.

GIDEON WELLES—examination continued.

By Mr. EVARTS:

Question. At the cabinet meetings held at the period from the presentation of the bill to the President until his message sending in his objections was completed, was the question whether Mr. Stanton was within the operation of the civil-tenure act the subject of consideration and determination?

Mr. Manager BUTLER. Stop a moment. We object.

The CHIEF JUSTICE. The counsel will please propose their question in writing.

Mr. EVARTS. I will make an offer, with the permission of the Chief Justice.

The offer was reduced to writing, and read by the chief clerk, as follows:

We offer to prove that at the meetings of the cabinet at which Mr. Stanton was present, held while the tenure-of-office bill was before the President for approval, the advice of the cabinet in regard to the same was asked by the President and given by the cabinet; and thereupon the question whether Mr. Stanton and the other Secretaries who had received their appointment from Mr. Lincoln were within the restrictions upon the President's power of removal from office created by said act was considered, and the opinion expressed that the Secretaries appointed by Mr. Lincoln were not within such restrictions.

Mr. Manager BUTLER. We object, Mr. President and senators, that this is only asking the advice of the cabinet as to the construction of a law. The last question was as to the constitutionality of a law, and advice as to law we suppose to be wholly included within the last ruling of the Senate. We do not propose to argue it.

Mr. EVARTS. We do not so regard the matter; and even if the ruling should be so rightly construed, still, Mr. Chief Justice and Senators, it would be proper for us to make this offer accepting your ruling, if it were not a matter for debate. We understand that the disposition of the question of evidence already made may turn upon any one of several considerations quite outside of the present inquiry; as, for instance, if it should be held to have turned upon considerations suggested by some of the questions put by one or more of the senators of this body, as to the importance or pertinence of evidence as bearing upon the question of the constitutionality of a law, as tending to justify or explain or affect with intent the act alleged of a violation of the law.

The present evidence sought to be introduced is quite of another complexion, and has this purpose and object in reference to several views that may be applied to the President's conduct; in the first place, as respects the law itself, that a new law confessedly reversing, or, as was frequently expressed in the debates of the houses which passed the law, "revolutionizing the action of the government" in respect to this exercise of executive power, and in respect to this particular point also of whether it had any efficacy or was intended to have any application which should fasten upon the President Secretaries whom he never had selected or appointed, which formed the subject of so much opinion in the Senate, and also in the House of Representatives, was made a subject of inquiry and opinion by the President himself, and that his action concerning which he is now brought in question here in the removal of Mr. Stanton, was based upon his opinion after proper and diligent efforts to get at a correct opinion, whether Mr. Stanton was within the law; and, therefore, that his conduct and action was not in the intent of violating the law which, it is said here, cannot be qualified even under these charges by showing that he did not do it with intention of violating the Constitution.

The point now is that he did not do it with intent of violating the law, but that he did it with the intent of exercising a well-known, perfectly established constitutional power, deemed by him, on the advice of these his cabinet, not to be embraced within the law; and if the question of the intent of his violation of duty, of the purpose and the motive and the object and the result, the injury to the public service or the order of the state is to form a part of the inquiry, then we bring him by one mode of inquiry within obedience to the Constitution as he was advised, and by this present object of inquiry within obedience to the law as he was advised.

So, too, it has a bearing from the presence of Mr. Stanton and his assent to these opinions, on the attitude in which the President stood in regard to his right to expect from Mr. Stanton an acquiescence in the exercise of the power of removal, which stood upon the Constitution in Mr. Stanton's opinion, and which was not affected by the law in Mr. Stanton's opinion; and thus to raise precisely and definitely in this aspect the qualifications of the President's course and conduct in this behalf as intending an application of force, or contemplating the possibility of the need of an application of force.

Mr. Manager BUTLER. Without intending to debate this proposition, I desire to call the attention of the Senate to the fact that the question seeks to inquire whether the cabinet, including Mr. Stanton, did not advise the President that the bill as presented for his consideration did not apply to Mr. Stanton and those in like situation with him. I desire to call the attention of the Senate to Exhibit A, on the 38th page, which is the veto message, wherein the President vetoes the bill expressly upon the ground that it does include all his cabinet, so that if hey advised him to the contrary, the advice does not seem to have had operation on his mind.

Mr. Manager BOUTWELL. Read the words.

Mr. Manager BUTLER. I will.

To the Senate of the United States:

I have carefully examined the bill to regulate the tenure of certain civil offices. The material portion of the bill is contained in the first section, and is of the effect following, namely:

That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is, and shall be, entitled to hold such office until a successor shall have been appointed by the President, with the advice and consent of the Senate, and duly qualified; and that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate.

These provisions are qualified by a reservation in the fourth section, "that nothing contained in the bill shall be construed to extend the term of any office the duration of which is limited by law." In effect the bill provides that the President shall not remove from their places any of the civil officers whose terms of service are not limited by law without the advice and consent of the Senate of the United States. The bill, in this respect, conflicts, in my judgment, with the Constitution of the United States. The question, Congress is well aware, is by no means a new one."

And then he goes on to argue upon the debate of 1789, which wholly applied to cabinet officers, and you will find that that is the gist of the President's whole argument. Then, on the 41st page, after having exhausted the argument as to the cabinet officers, he says:

It applies equally to every other officer of the government appointed by the President, whose term of duration is not specially declared. It is supported by the weighty reason that the subordinate officers in the executive department ought to hold at the pleasure of the head of the department, because he is invested generally with the executive authority, and the participation in that authority by the Senate was an exception to a general principle, and ought to be taken strictly. The President is the great responsible officer for the execution of the laws.

But I must ask attention to the point that there is some additional reason to have this evidence go in because Mr. Stanton gave such construction to the law. It was offered in the last proposition voted upon to show that Mr. Stanton gave advice as to the constitutionality of the law; so that in this respect the two propositions stand precisely alike in principle, and cannot be distinguished.

It is said this evidence should be admitted to show that the President, when he removed Stanton and put in Thomas, supposed that Stanton did not believe himself to be within the law and protected in office by its enactments. Mr. Stanton had just been reinstated under the law; had refused to resign because he could not be touched under the law; had put the President's power to defiance, as the President says in his message, because he believed that the law did not allow him to be touched. Now, does this evidence tend to show that the President thought Mr. Stanton would agree that he was not kept in office by the law, and go out when he put in Mr. Thomas? Does any sane man believe that the President thought that Mr. Stanton would yield on the ground that he was not covered by the law when he was removed and Mr. Thomas appointed? The President did not put his belief on any such ground; he put it on the ground that Stanton was a coward, and would not dare resist; not that he did not believe

himself within the law and protected by it, but that his nerve would not be sufficient to meet General Thomas. That was the President's proposition to General Sherman; it was a reliance on the nerves of the man, not upon his construction of the law. Therefore, I must call your attention to the fact that these offers are wholly illusory and deceptive. They do not show the thing contended for; they cannot show it; they have no tendency to show it, and whether they have or have not, the Senate, by solemn decision, have said that the advice of cabinet officers is not the legal vehicle of proof by which the fact is to be shown to the Senate, even if it were competent to be proved in any manner.

Mr. EVARTS. Mr. Chief Justice and Senators, the reference to the argument of the President's message, which is contained on page 38 and the following pages of the record, seems hardly to require any attention. The President is there arguing against the bill as a matter of legislation, and rightly regards it in its general application to the officers of the government, including the principal officers of the departments. The minor consideration of whether or not it by its own terms reached the particular persons who held their commissions from President Lincoln could not by any possibility have been the subject of discussion by the President of the United States in sending in his objections to the bill on constitutional grounds. It was not a constitutional question whether the bill included the officers who had received their commissions from President Lincoln, or did not exclude them.

The learned manager seems equally unfortunate in his reference to the conduct of Mr. Stanton upon the preliminary proceeding of his suspension under the civil-tenure act, for no construction can be put upon Mr. Stanton's conduct there except that he did not think he was under the act, I suppose, because he said he did not yield to the act which authorized suspension, but yielded to force. So much for that.

Now, I come to the principal inquiry; and that is whether or not it bears either upon the President's conduct in attempting a removal of Mr. Stanton because he was not under the bill, or whether it bears upon the rightful expectation and calculation of the President that the attempt would be recognized as suitable by Mr. Stanton because he, Mr. Stanton, did not believe he was within the bill.

It will be observed that the President had a perfect right to suppose that Mr. Stanton would not attempt to oppose him, the President, in the exercise of an accustomed authority of the Chief Executive, since he, Mr. Stanton, believed it to be unlawful; and if the Executive had been advised by Mr. Stanton on this very point that he, Mr. Stanton, was not protected by the restrictions of the civil tenure-of-office bill, then the President had a right to suppose that when the executive authority given by the Constitution, as it was understood by Mr. Stanton, was not impeded by the operation of the special act of Congress, Mr. Stanton of course would yield to this unimpeded constitutional power.

The CHIEF JUSTICE. Senators, the Chief Justice is of opinion that this testimony is proper to be taken into consideration by the Senate, sitting as a court of impeachment; but he is unable to determine what extent the Senate is disposed to give to its previous ruling, or how far they consider that ruling applicable to the present question. He will therefore direct the Secretary to read the offer to prove, and will then submit the question directly to the Senate.

Mr. DRAKE. On that I ask for the yeas and nays.

The chief clerk read the offer, as follows:

We offer to prove that at the meetings of the cabinet at which Mr. Stanton was present, held while the tenure-of-civil-office bill was before the President for approval, the advice of the cabinet in regard to the same was asked by the President and given by the cabinet, and thereupon the question whether Mr. Stanton and the other Secretaries who had received their appointment from Mr. Lincoln were within the restrictions upon the President's power of removal from office created by said act was considered, and the opinion expressed that the Secretaries appointed by Mr. Lincoln were not within such restrictions.

The CHIEF JUSTICE. On this question the senator from Missouri asks for the yeas and nays.

The yeas and nays were ordered, and being taken resulted—yeas 22, nays 26; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Saulsbury, Sherman, Sprague, Trumbull, Van Winkle, Vickers, and Willey—22.

NAYS—Messrs. Cameron, Cattell, Chandler, Cole, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—26.

NOT VOTING—Messrs. Conkling, Morton, Norton, Nye, Sumner, and Wade—6.

So the evidence proposed to be offered was decided to be inadmissible.

Mr. EVARTS, (to the witness.) Mr. Welles, at any of the cabinet meetings held between the time of the passage of the civil-tenure act and the removal of Mr. Stanton, did the subject of the public service as affected by the operation of that act come up for the consideration of the cabinet?

Mr. Manager BUTLER. I object.

Mr. EVARTS. This is merely introductory.

Mr. Manager BUTLER. "Yes" or "No?"

Mr. EVARTS. Yes.

Mr. Manager BUTLER. We do not object to that.

The WITNESS. I answer yes.

By Mr. EVARTS:

Q. Was it considered repeatedly?

A. It was on two occasions, if not more.

Q. During those considerations and discussions was the question of the importance of having some determination judicial in its character of the constitutionality of this law considered?

Mr. Manager BUTLER. Stay a moment; we object.

Mr. EVARTS. It only calls for "yes" or "no."

Mr. Manager BUTLER. If it means only to get in "yes" or "no," whether it was considered, it is not very important.

Mr. EVARTS. That is all.

Mr. Manager BUTLER. Then it is not to get in that there was any particular consideration on a given point. In other words, to make myself plain, by asking a series of well-contrived questions, one might get in pretty much what was done in the cabinet by "yes" or "no" answers. We object to it as immaterial; and now we, perhaps, might have it settled at once, as well as ever. If this line of testimony is immaterial, then it is immaterial whether the matter was considered in the cabinet. If the determination of the Senate is that what was done in the cabinet should not come in here, then whether it was done is wholly immaterial, and is as objectionable as what was done.

Mr. EVARTS. Yes; but the honorable manager will be so good as to remember that the rulings of the Senate have expressly determined that all that properly bears upon the question of the intent of the President in making the removal and appointing the *ad interim* holder of the office with a view of raising the judicial question is admissible, and has been admitted.

Mr. Manager BUTLER. We never have heard that ruling. It may have escaped us, perhaps.

Mr. EVARTS. By examining the record you will find it.

Mr. Manager BUTLER. We have examined it with great care, but we shall not find that, we think. Will you have the kindness to read that ruling?

Mr. EVARTS. It is in the memory of the court.

Mr. Manager BUTLER. The ruling is on the record.

The CHIEF JUSTICE. If the question be objected to it will be reduced to writing.

The offer of the counsel for the respondent was reduced to writing and handed to the managers.

Mr. Manager BUTLER. By "the removal" do I understand down to the 21st of February, 1868?

Mr. EVARTS. Yes, sir.

Mr. Manager BUTLER. May I insert these words: "21st of February, 1868?"

Mr. EVARTS. You may alter the word "removal" to "order of the 21st of February, 1868, for the removal."

The CHIEF JUSTICE. The Secretary will read the offer made by the counsel for the President.

The offer was handed to the desk and read, as follows:

We offer to prove that at the cabinet meetings between the passage of the tenure-of-civil-office bill and the order of the 21st of February, 1868, for the removal of Mr. Stanton, upon occasions when the condition of the public service as affected by the operation of that bill came up for the consideration and advice of the cabinet, it was considered by the President and cabinet that a proper regard to the public service made it desirable that upon some proper case a judicial determination on the constitutionality of the law should be obtained.

Mr. Manager BUTLER. Mr. President and Senators, we, of the managers, object, and we should like to have this question determined in the minds of the senators upon this principle. We understand here that the determination of the Senate is, that cabinet discussions, of whatever nature, shall not be put in as a shield to the President. That I understand, for one, to be the broad principle upon which this class of questions stand and upon which the Senate has voted; and, therefore, these attempts to get around it, to get in by detail and at retail—if I may use that expression—evidence which in its wholesale character cannot be admitted, are simply tiring out and wearing out the patience of the Senate. I should like to have it settled, once for all, if it can be, whether the cabinet consultations upon any subject are to be a shield. Upon this particular offer, however, I will leave the matter with the Senate after a single suggestion.

It is offered to show that the cabinet consulted upon the desirability of getting up a case to test the constitutionality of the law. It is either material or immaterial. It might possibly be material in one view if they mean to say that they consulted upon getting up this case in the mode and manner that it is brought here, and only in that event could it be material. Does the question mean to ask if they consulted and agreed together to bring up this case in the form in which it has been done? If they agreed upon any other proceeding it is wholly immaterial; but if they agreed upon this case, then we are in this condition of things, that they propose to justify the President's act by the advice of his subordinates, and substitute their opinion upon the legality of his action in this case for yours.

Senators, you passed this tenure-of-office act. That might have been done by inadvertence. The President then presented it to you for your revision, and you passed it again notwithstanding his constitutional argument upon it. The President then removed Mr. Stanton, and presented its unconstitutionality again, and presented also the question whether Mr. Stanton was within it, and you, after solemn deliberation and argument, again decided that Mr. Stanton was within its provisions so as to be protected by it, and that the law was constitutional. Then he removed Mr. Stanton on the 21st of February, and presented the same question to you again; and again, after solemn argument, you decided that Mr. Stanton was within its provisions and that the law was constitutional. Now they offer to show the discussions of the cabinet upon its constitutionality to overrule the quadruple opinion solemnly expressed by the Senate upon these very questions—four times upon the constitutionality of the law, and twice upon its constitutionality and upon the fact that Mr. Stanton was within it. Is that testimony to be put in here? The proposition whether it was desirable to have this constitutional question raised is the one presented. If it was any other constitutional question in any other case, then it is wholly

immaterial. If it is this case, then you are trying that question, and they propose to substitute the judgment of the cabinet for the judgment of the Senate.

Mr. EVARTS. I must, I think, be allowed to say that the patience of the Senate, which is so frequently referred to by the learned managers as being taxed, seems to be, in their judgment, a sort of unilateral patience, and not open to impressions upon opposite sides. Now, senators, the proposition can be very briefly submitted to you.

By decisive determinations upon certain questions of evidence arising in this cause, you have decided that, at least, what in point of time is so near to this action of the President as may fairly import to show that in his action he was governed by a desire to raise a question for judicial determination, shall be admitted. About that there can be no question that the record will confirm my statement. Now, my present inquiry is to show that within this period, thus extensively and comprehensively named for the present, in his official duty and in his consultations concerning his official duty with the heads of departments, it became apparent that the operation of this law raised embarrassments in the public service, and rendered it important as a practical matter that there should be a determination concerning the constitutionality of the law, and that it was desirable that upon a proper case such a determination should be had. I submit the matter to the Senate with these observations.

The CHIEF JUSTICE. The Secretary will read the offer to prove.

The chief clerk read the offer.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate.

Mr. CONNESS called for the yeas and nays, and they were ordered.

Mr. HENDERSON. Mr. President, I desire to submit a question to the managers before I vote. I send it to the desk.

The CHIEF JUSTICE. The question propounded to the honorable managers by the senator from Missouri will be read.

The chief clerk read as follows:

If the President shall be convicted, he must be removed from office.

If his guilt should be so great as to demand such punishment, he may be disqualified to hold and enjoy any office under the United States.

Is not the evidence now offered competent to go before the court in mitigation?

Mr. Manager BUTLER. Mr. President and senators, I am instructed to answer to that, that we do not believe this would be evidence in any event; but all evidence in mitigation of punishment must be submitted after verdict and before judgment, save where the jury fix the punishment in their verdict, which is not the case here. Evidence in mitigation never is put in to influence the verdict; but if a verdict of guilty is rendered, then circumstances of mitigation, such as good character or possible commission of the crime by inadvertence, can be given, but not upon the issue.

Mr. CONKLING. Is that the rule of practice before this tribunal?

Mr. Manager BUTLER. I do not know as there are any rules of practice here.

Mr. CONKLING. Would that be applicable to this tribunal?

Mr. Manager BUTLER. I am asked by the honorable senator from New York whether it would be applicable before this tribunal. Under the general practice of impeachments judgment is never given by the House of Peers until demanded by the Commons. Whether that may be applicable here or not I do not mean at this moment to determine. I say judgment never is given until demanded; and as this judgment is to be given as a separate act, if evidence in mitigation is applicable at all, it must be given to influence that event. There is an appreciable time in this tribunal, as in all others, between a verdict of guilty and the act of judgment; and if any such evidence can be given at all, it must, in my judgment, be given at that time. It certainly cannot be given for any other purpose.

I have already stated that we do not believe it to be competent at all, and I

am so instructed by my associates; but, if ever competent, it cannot be competent until the time arrives for the consideration of the judgment. If I may ask a question, I would inquire, do the President's counsel offer this evidence in mitigation? because if they do, that will raise another question. We shall not object to it, perhaps, even now, in mitigation, because that will be a confession of guilt. [Laughter.]

The CHIEF JUSTICE. The Secretary will read the offer to prove once more.

The offer was read as follows:

We offer to prove that at the cabinet meetings between the passage of the tenure-of-civil-office bill and the order of the 21st of February, 1868, for the removal of Mr. Stanton, upon occasions when the condition of the public service, as affected by the operation of that bill, came up for the consideration and advice of the cabinet, it was considered by the President and cabinet that a proper regard to the public service made it desirable that upon some proper case a judicial determination on the constitutionality of the law should be obtained.

The CHIEF JUSTICE. Senators, you who are of opinion that the evidence offered by the counsel for the President should be received will, when your names are called, answer yea; those of the contrary opinion, nay. The Secretary will call the roll.

The question being taken by yeas and nays, resulted—yeas 19, nays 30; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, and Vickers—19.

NAYS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Thayer, Tipton, Willey, Williams, Wilson, and Yates—30.

NOT VOTING—Messrs. Morton, Norton, Nye, Sumner, and Wade—5.

So the Senate ruled the offer to be inadmissible.

Mr. ANTHONY, (at 2 o'clock p. m.) I move that the Senate take a recess for fifteen minutes.

The motion was agreed to, and at the expiration of the recess the Chief Justice resumed the chair.

GIDEON WELLES's examination continued.

By Mr. EVARTS:

Q. Mr. Welles, was there within the period embraced in the inquiry in the last question, and at any discussions or deliberations of the cabinet concerning the operations of the civil-tenure act, or the requirements of the public service in respect to the same, any suggestion or intimation of any kind touching or looking to the vacation of any office, or obtaining possession of the same by force?

A. Never, on any occasion——

Mr. Manager BUTLER. Stop a moment. We object.

The CHIEF JUSTICE. The counsel for the President will please reduce the question to writing.

The question was reduced to writing and sent to the desk, and read, as follows:

Was there, within the period embraced in the inquiry in the last question, and at any discussions or deliberations of the cabinet concerning the operation of the tenure-of-civil-office act and the requirements of the public service in regard to the same, any suggestion or intimation whatever touching or looking to the vacation of any office by force or getting possession of the same by force.

Mr. Manager BUTLER. To that we object. We think it wholly within the previous ruling; and if it were not, it would be incompetent upon another ground—that to show that the President did not state to A, B, or C that he meant to use force by no means proves that he did not tell E, F and G.

Mr. EVARTS. We may hereafter call persons to testify that he did not tell E, F and G, and that would not prove that he did not tell A, B and C.

Mr. Manager BUTLER. And so on to the end of the alphabet.

Mr. EVARTS. Yes; and so on to the end of time. The question is, Mr. Chief Justice and Senators, a negative to exclude a conclusion; and if the subject of force or the purpose of force is within the premises of this issue and trial, evidence on the part of the President to show that in all the deliberations for his official conduct force never entered into contemplation is, as I suppose, rightfully offered on our part.

Mr. Manager BUTLER. We object to the question, whether he told his cabinet he would or would not use force, as wholly immaterial and as within the last ruling.

The CHIEF JUSTICE. The Chief Justice does not understand the honorable manager to object to it as leading.

Mr. Manager BUTLER. No; it is not worth while to take that objection. We wish to come to substance.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate.

Mr. GRIMES. I ask for the yeas and nays.

The yeas and nays were ordered.

The CHIEF JUSTICE. The Secretary will read the question.

The chief clerk again read the question.

The CHIEF JUSTICE. Senators, you who are of opinion that this question is admissible will, as your names are called, answer yea; those of the contrary opinion, nay.

Mr. FERRY. I was requested by the senator from Missouri [Mr. Drake] to state that he was called away by sickness in his family.

The question being taken by yeas and nays, resulted—yeas 18, nays, 26; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Edmunds, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Saulsbury, Trumbull, Van Winkle, and Vickers—18.

NAYS—Messrs. Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Thayer, Tipton, Willey, Williams, Wilson, and Yates—26.

NOT VOTING—Messrs. Cameron, Doolittle, Drake, Henderson, Morton, Norton, Nye, Sprague, Sumner, and Wade—10.

So the Senate decided the question to be inadmissible.

Mr. EVARTS. We are through with the witness.

Cross-examined by Mr. Manager BUTLER:

Q. Mr. Welles, you were asked if you were Secretary of the Navy, and you said you held under a commission, and you gave the date of the commission?

A. March, 1861.

Q. You have had no other?

A. No other.

Q. And you have been Secretary of the Navy down to to-day?

A. I have continued to this time.

Q. Has Lorenzo Thomas acted as a member of the cabinet down to to-day from the 21st of February?

A. He has met in the cabinet since that time.

Q. Did he meet as a member or outsider?

Mr. EVARTS. I submit, Mr. Chief Justice, that this is no cross-examination upon any matter we have examined upon, as far as General Thomas is concerned.

Mr. Manager BUTLER. I waive it. I will not have a word upon that.

By Mr. Manager BUTLER:

Q. Now, then, you told us of something said between you and the President

about a movement of troops. I want to know a little more accurately when that was. In the first place what day was it?

A. It was on the 22d of February.

Q. Is there any doubt about that in your mind?

A. None at all.

Q. What time was it?

A. It was not far from twelve o'clock.

Q. I understood you to fix that time of day by something that happened with the Attorney General. What was that?

A. I called on the President on the 22d, about twelve o'clock. The reception for official business at the Navy Department is from eleven to twelve. I left as soon as I well could, after that matter was over, and therefore it was a little before twelve, I suppose. When I arrived at the President's and called on him, the Attorney General was there. While there, the nomination of Mr. Ewing was made out.

Q. Never mind about that; I am not now speaking of that.

A. I am speaking of that. The private secretary wished to get it up to the Senate as early as he could; and Mr. Stanbery remarked that he wished to be here, I think, about twelve; that he had some appointment about twelve; and it had got to be nearly that time then.

Q. I understood you to say that he had some appointment in the Supreme Court. Was that so?

A. I will not be sure that it was.

Q. Did you not state yesterday that he had an appointment in the Supreme Court?

A. Perhaps I inferred that it was there; I cannot say that he said it was at the Supreme Court, or where it was.

Q. Did you not so testify yesterday?

A. Perhaps I did.

Q. How was the fact?

A. He had an engagement.

Q. How was the fact as to your testimony yesterday—not what perhaps you did, but how do you remember you testified on that point yesterday?

A. I presume I testified that he was to come here at 12 o'clock to the Supreme Court, because that was my inference. I supposed it was so. He had an engagement at 12 o'clock, and wanted to get away as soon as he could; and it was in connection with the nomination of Mr. Ewing, which went up at the same time.

Q. Have you not heard since yesterday that the court did not sit on Saturdays?

A. No, sir.

Q. Have you heard anything on that subject?

A. No, sir.

Q. Do you know whether they sit on Saturdays or not?

A. I do not.

Q. You do not know upon that matter?

A. I do not.

Q. Now, sir, did you learn that there was any other movement of troops, except an order upon one officer of the regiment to meet General Emory?

A. Well, I heard of two or three things that evening.

Q. I am now speaking of the officers of the regiment.

A. I understand.

Q. Did you learn that there was any other movement of troops except an order to an officer of the regiment to meet General Emory?

A. I heard that the officers of the regiment were required to meet at headquarters that evening.

Q. At what time?
A. That evening.
Mr. EVARTS. The 21st.

By Mr. Manager BUTLER:

Q. The evening of the 21st?
A. The evening of the 21st.
Q. And that the officers were called to headquarters?
A. The officers were called to headquarters.
Q. Did you learn whether it was to give them directions about keeping away from a masquerade or going to it as a reason why they were called to headquarters?
A. I did not hear the reasons. If I had heard the reasons perhaps they would have satisfied me. I do not know how that may be.
Q. You did not hear the reasons?
A. No; I knew the fact that they had been called to meet at headquarters that evening, which was an unusual order, and were called from a party, I believe.
Q. What party?
A. A party that was in F or G street, I think; a reception.
Q. That they were called from a party to go to headquarters. Now, sir, that was all the movement of troops you spoke of yesterday to us, was it not?
A. I do not recollect that I spoke of others. I spoke of that.
Q. Had you any other in your mind yesterday but that?
A. There were some other movements in my mind; but perhaps not connected with General Emory, unless they were called there for a purpose.
Q. There was none communicated to you, whatever might have been in your mind, was there?
A. What do you mean by "none communicated?"
Q. No other movements were communicated to you, whatever may have been in your mind, that evening?
A. I heard of movements that evening, or heard of appearances. I heard that the War Department was lighted up, which was an unusual matter.
Q. You heard that the War Department was lighted up?
A. I did. I do not know that I alluded to that to President Johnson; but that was one of the circumstances that I heard of the evening before.
Q. Then the movement was the call of the officers of one regiment to meet General Emory. How many officers did you hear were called?
A. I did not hear the number of officers. I heard that General Emory's son and his orderlies, one or two, had called at a party, requesting that any officers belonging to the fifth regiment, and, I believe, to his own, should repair forthwith to headquarters; which was thought to be a very unusual movement.
Q. I did not ask for your thoughts about it.
A. Well, I thought it was.
Q. Those officers were asked to come to headquarters. That was all you stated to the President of movements of troops?
A. I will not say that was all.
Q. Is it all that you remember that you did?
A. I will not be sure whether I stated to him the fact of the lighting up of the War Department that night, for that was the first of the intrenchment there, or whether I alluded to the fact that there was a company, or part of a company, reported to me as being seen in the——
Q. Excuse me; I am only asking what you stated, not what you think you did not state.
A. I say I do not know that I stated that.
Q. And I am asking for what you stated.

A. I say I do not know that I stated to the President that the War Department was lighted up that night.

Q. I do not ask you for what you do not know you stated, but what you know you did state?

Mr. EVARTS. Your question was, whether that was all he stated, and he says he cannot say whether it was all or not.

Mr. Manager BUTLER. I am asking if it was all he stated, and I am asking not for what he did not state, but for what he did.

Mr. EVARTS. He says he cannot say but that he did.

The WITNESS. I stated to him in relation to General Emory and what I heard in regard to him. Whether I alluded to the other facts in my mind I cannot say now.

Mr. Manager BUTLER. Very well; that is exactly what I want; but I did not want to get at what the facts were. The 22d was to be kept as a holiday?

A. It is a half holiday, I believe. The War Department closed that office; but I suppose that is in violation of law. The law is that the departments shall be kept open, each of them, every day of the year, save Sundays and the Fourth of July and the 25th of December. The War Department has sometimes——

Mr. Manager BUTLER. Excuse me; I did not ask you for your legal opinion.

The WITNESS. I am not giving a legal opinion. I am stating facts.

Mr. Manager BUTLER. You say it is in violation of law. I suppose that is a legal opinion?

The WITNESS. You can read the law and see what it is.

Q. I am only asking you whether, in fact, it is kept as a holiday?

A. We did not keep it as a holiday, as we keep the Fourth of July. The clerks were at the department and were required to clear their desks before they left.

Q. How was it at the War Department?

A. I understood—if you will allow me to state that—that the War Department was closed on that day. I have understood it was closed on other days; but the Navy Department had not been closed in that way.

Q. I do not want any comparison between the Navy and War Departments. I only ask the fact if it was closed on that day. Did you inquire whether the officers were called together to notify them that the next day was to be a holiday or not?

A. I made no inquiries on the subject of others, but communicated to the President what I had learned.

EDGAR T. WELLES sworn and examined.

By Mr. EVARTS:

Question. You are the son of Mr. Secretary Welles?

Answer. Yes, sir.

Q. Are you employed in the Navy Department?

A. Yes, sir; I am chief clerk of the department.

Q., (presenting a paper to the witness.) Please look at this paper and say if that is a blank form of navy agent's commissions as used in the department?

A. It is the blank form that was used.

Q. Before the civil tenure bill?

A. Yes, sir.

Mr. EVARTS. We propose to offer it in evidence.

(The document was handed to Mr. Manager Butler.)

Mr. Manager BUTLER. We have no objection to that. Do you want it read?

Mr. EVARTS. No.

The document thus put in evidence is as follows:

PRESIDENT OF THE UNITED STATES OF AMERICA:

To all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, fidelity, and abilities of ——— ———, I do, by and with the advice and consent of the Senate of the United States, appoint him navy agent for the ———.

He is therefore carefully and diligently to discharge the duties of navy agent, by doing and performing all manner of things thereunto appertaining; and he is to observe and follow the orders and directions which he may from time to time receive from the President of the United States and Secretary of the Navy.

This commission to continue in force during the term of four years from the ———.

Given under my hand at Washington, this —— day of ——, in the year of our [L. S.] Lord one thousand eight hundred and ——, and in the —— year of the independence of the United States.

By the PRESIDENT:

———— ————,

Secretary of the Navy.

Registered.

By Mr. EVARTS:

Q. Do you remember on Friday, the 21st of February, that your attention was drawn to some movement, or supposed movement, connected with military organization here?

A. I do.

Q. At what hour of the day was that?

A. I should suppose it was about five o'clock.

Q. What was it, and how was it brought to your attention?

A. I was attending a small reception, and the lady of the house informed me——

Mr. Manager BUTLER. Excuse me. You need not state what the lady of the house said.

Mr. EVARTS. It does not prove the truth of the lady's statement, but only what it was.

Mr. Manager BUTLER. I beg your pardon; but as nothing but the truth is to be in evidence we do not want the lady's statement.

Mr. EVARTS. It came to his notice and he acted upon it. That is the truth to be proved.

Mr. Manager BUTLER. In answer to that, the truth is that this is not the proper way to prove the truth of a case of impeachment, by putting in what the lady said to this man. No matter how he got the information; let him give the information he gave to his father.

Mr. EVARTS. Very well. (To the witness.) What information did you get, whether it was from a lady or not, I do not care?

Mr. Manager BUTLER. No, sir; the question should be, what information did he give to his father?

Mr. EVARTS. I want to prove that he gave the same that he got; that he did not make it up. I certainly am permitted to prove what occurred. It will all be over in three minutes. (To the witness.) Did you gain any information concerning it?

Mr. Manager BUTLER. On the whole, I think it had better come in; I will not object.

Mr. EVARTS. It is utterly immaterial.

Mr. Manager BUTLER. I think it is.

The WITNESS. General Emory had sent his orderlies there that afternoon requesting certain officers named to me to report to headquarters immediately, and that after that General Emory's son, Dr. Tom. Emory, had come there with the request that any officers of two branches of the service—I do not

recall what two branches, cavalry and infantry or cavalry and artillery—should report at headquarters immediately.

Mr. CONNESS. Mr. President, we cannot hear the witness. We did not hear the answer to the last question.

Mr. EVARTS. Does the senator desire it to be repeated?

Mr. CONNESS. Yes, sir.

Mr. EVARTS, (to witness.) Be so good as to repeat it.

A. That General Emory had sent certain orderlies requesting officers, who were named, to report at headquarters without delay, and had also sent his son, requesting that any officers of two branches of the service, cavalry and infantry, or cavalry and artillery, should report at headquarters immediately.

Q. After this, did you communicate this to your father?

A. I did, sir.

Q. At what time?

A. I should suppose it was about 7 o'clock.

Q. The same evening?

A. The same evening, between 7 and 8 o'clock.

Q. Were you sent on any message to the President concerning this?

A. I was.

Q. By your father?

A. I was sent by him over to the President's.

Q. Did you go?

A. I did.

Q. At what hour in the evening?

A. Between 8 and 9 o'clock; shortly after I went home.

Q. Was it on an occasion of any engagement of the President?

A. The President was engaged at dinner.

Q. Was it a diplomatic dinner?

A. It was a state dinner. I do not remember precisely the character of it.

Q. Did you see him?

A. I did not see him on that account.

Q. And you reported to your father?

A. I reported to him that I did not see him; that there was nobody at the President's Mansion to communicate with.

Q. Was anything further done that night that you know of on the subject?

A. Nothing further that I know of.

No cross-examination.

Mr. EVARTS. Mr. Chief Justice and Senators, we have in attendance, to give their evidence, the Secretary of State, the Secretary of the Treasury, the Secretary of the Interior, and the Postmaster General, and we offer them as witnesses to the same points that we have inquired of from Mr. Welles, and that have been covered by the rulings of the court. If objection is made to their examination, of course it must be considered as covered by the rulings already made.

Mr. WILLIAMS. I did not fully understand the last witness, and I should like to have him recalled for a moment.

EDGAR T. WELLES recalled.

Mr. WILLIAMS. If allowable, I should like to inquire of the witness whether what he communicated to his father was told to him by this lady, or whether it was communicated to him by the officers?

A. It was told to me by this lady.

Mr. EVARTS. We tender the witnesses I have named for examination upon the points that Mr. Secretary Welles has been interrogated concerning, and that the rulings of the Senate have covered. If the objection is made, it must be considered as covered by that ruling.

Mr. Manager BUTLER. We object. We have not objected that Mr. Welles

was not a credible witness, but only that the testimony to be given was not proper.

Mr. EVARTS. I understand that.

ALEXANDER W. RANDALL sworn and examined.

By Mr. EVARTS:

Question. Mr. Randall, you are Postmaster General?

Answer. I am, sir.

Q. From what time have you held that office?

A. I was appointed in July, 1866; I have held it from that time.

Q. Before that time had you been in the department; and if so, in what capacity?

A. I had been from the fall of 1862. I was First Assistant Postmaster General.

Q. Since the passage of the civil-tenure act, have cases arisen in the postal service in which officers came in question for their conduct and duty in the service?

A. They have.

Q. Do you remember the case of Foster Blodgett?

A. I do.

Q. What was he?

A. He was postmaster at Augusta, in Georgia.

Q. Was there any suspension of Mr. Blodgett in his office or in its duties?

Mr. Manager BUTLER. That suspension must have been evidenced by some writing.

Mr. EVARTS. I have asked the question whether there was one.

Mr. Manager BUTLER. If it was in writing I desire it to be produced.

Mr. EVARTS. I expect to produce it.

The WITNESS. There was.

Q. By whom was it made?

A. It was made by me.

Q. As Postmaster General?

A. As Postmaster General.

Q. Had the President anything to do with it?

A. Nothing at all.

Q. Did he know of it?

A. Not when it was done, nor before it.

Q., (handing some papers to the witness.) Please look at these papers and say if they are the official papers of that act?

A. Yes, sir; they are certified to be by me as Postmaster General.

Q. Did you receive a complaint against Mr. Blodgett?

A. There was one; yes, sir.

Q. And was it upon that complaint that your action was taken?

A. It was.

Q. In what form did the complaint come to you, and of what fact?

Mr. Manager BUTLER. Let the complaint itself state.

Mr. EVARTS. I have asked in what form it came.

Mr. Manager BUTLER. The complaint will speak for itself. This form is in writing.

Mr. EVARTS. I do not know that.

Mr. Manager BUTLER. Then I object to the information of others.

Mr. EVARTS. I have asked in what form the complaint came to him. Is that objected to?

Mr. Manager BUTLER. No, sir; that is not objected to; whether it was in writing or verbal.

The WITNESS. It came in writing and verbally, both.

Mr. Manager BUTLER. We shall have the writing, I suppose.

Mr. EVARTS. Yes, sir. (To the witness.) And on the complaint, verbally and in writing, this action was taken?

A. Yes, sir.

Mr. EVARTS. I propose to put in evidence these papers.

Mr. Manager BUTLER. Let me see them first.

After an examination of the papers,

Mr. Manager BUTLER. Have you a copy of the indictment referred to in these papers?

Mr. EVARTS: It is not here.

Mr. CURTIS. Governor Randall has it here.

Mr. EVARTS, (to the witness.) Have you it here?

The WITNESS. I do not think a copy of the indictment is here.

Mr. Manager BUTLER. That is all there is of it.

Mr. EVARTS. Very well.

Mr. Manager BUTLER. We object to these papers, because, very carefully, there has been left out the only thing that is of any consequence.

Mr. EVARTS. Whose care do you refer to?

Mr. Manager BUTLER. The man who did it.

Mr. EVARTS. Who is that?

Mr. Manager BUTLER. I do not know. This Mr. Blodgett is now attempted to be affected in his absence, and I feel a little bound to take care of him, because, being called as a witness here, he must be dealt justly with. The papers they now offer refer to the evidence of Mr. Blodgett's misconduct, and the evidence is not produced here, not even a recital of it; and therefore I say it is unjust to put in Mr. Randall's recital of a fact that happened when he has in his department the fact itself, and which has been, by somebody to me unknown, carefully kept away from here.

Mr. EVARTS. Mr. Chief Justice and senators, the honorable managers chose, for some reason and ground best known to themselves, to offer in evidence as a part of this incrimination an act of the President of the United States in the removal of Foster Blodgett. I propose to show what that act was.

Mr. Manager BUTLER. I do not object, if you will show what that act was, and not keep back the paper which is the inculpation of Mr. Blodgett.

Mr. EVARTS. I am not inculpating Mr. Blodgett. I am proving what the act of the executive officer of the United States was that you have sought to put in evidence by oral testimony.

Mr. Manager BUTLER. You have put in the fact that Mr. Blodgett was removed upon a complaint in writing of misconduct, and you keep back that complaint in writing.

Mr. EVARTS. And you said that if the act was in writing it must be proved by the letters, and I agreed to it, and now produce them.

Mr. Manager BUTLER. You do not produce the complaint.

Mr. EVARTS. Well, we will not wrangle about it. I offer the official act of the department in the removal of Mr. Blodgett.

Mr. Manager BUTLER. And I object that it is not fair play unless you bring in the complaint.

Mr. EVARTS. The learned manager treats this as if it were a question of impeaching Mr. Blodgett. I am giving in evidence the act of the executive department which you brought in testimony.

Mr. Manager BUTLER. We proved the act ourselves. We proved that they removed Blodgett. Now, then, there is no occasion to prove that over again, if they are going to stop there.

Mr. EVARTS. You made it inculpation, and we want to prove what the act was.

Mr. Manager BUTLER. Then produce the whole thing on which it was grounded.

Mr. JOHNSON. What is the paper?

Mr. GRIMES. I call for the reading of the paper.

Mr. EVARTS. If you want the indictment produced it may certainly be produced; but the fact that it is not here is no legal objection to these papers.

Mr. JOHNSON. What is the paper produced?

The CHIEF JUSTICE. The counsel for the President will state what they propose to prove in writing,

Mr. EVARTS. I offer in evidence the order and letters handed to the clerk, and desire that they may be read.

The CHIEF JUSTICE. It will be necessary to state what the order and letters are; otherwise the court will be unable to judge of their admissibility.

Mr. EVARTS. The testimony of Governor Randall has described them as the official action of the department. I offer in evidence the official action of the Post Office Department in accomplishing the removal of Foster Blodgett, which removal was put in evidence by the managers.

The CHIEF JUSTICE. The counsel will please reduce their offer to writing.

Mr. SHERMAN. I think we have a right to ask for the reading of the letters to know upon what we are called to vote.

The CHIEF JUSTICE. The Senate undoubtedly have a right to order the letters to be read.

Mr. SHERMAN. We are called upon to decide a question of evidence, and I should like to know what is offered from the papers themselves.

The CHIEF JUSTICE. The usual mode of proposing to prove is by stating the nature of the proof proposed to be offered, and then, upon an objection, the Senate decides whether proof of that description can be introduced. It is not usual to read the proof itself. Undoubtedly it is competent for the Senate to order it to be read.

Mr. SHERMAN. If the counsel will state the matter so that we can act upon it without taking time in reading the papers, I have no objection.

The offer to prove of the counsel for the respondent was reduced to writing and sent to the desk.

The CHIEF JUSTICE. The Secretary will read the offer to prove made by the counsel for the President.

The Secretary read as follows:

We offer in evidence the official action of the Post Office Department in the removal of Mr. Blodgett, which removal was put in evidence by oral testimony by the managers.

Mr. Manager BUTLER. We will not object further. We think we can get in the indictment somehow.

The CHIEF JUSTICE. The objection is withdrawn.

Mr. EVARTS. I ask the clerk to read the papers in their order.

The CHIEF JUSTICE. The clerk will read the papers offered by the counsel.

The chief clerk read the papers, as follows:

A.

POST OFFICE DEPARTMENT, *January* 3, 1868.

It appearing from an exemplified copy of the bill of indictment now on file in this department against Foster Blodgett, postmaster at Augusta, Georgia, that he has been indicted in the United States district court for the southern district of Georgia for perjury: It is

Ordered, That said Foster Blodgett be suspended from the office of postmaster at Augusta, Georgia, aforesaid; and that George W. Summers be designated as special agent of this department to take charge of the post office thereat and discharge all its duties until further action shall be had by the President and Senate of the United States.

ALEX. W. RANDALL, *Postmaster General.*

POST OFFICE DEPARTMENT,
Washington, D. C., April 17, 1868.

This is to certify that the foregoing, marked A, is a true copy of an original order on file in this department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Post Office Department to be affixed, at the General Post Office in the city of Washington, District of Columbia, the day and year first above written.

[L. S.] ALEXANDER W. RANDALL,
Postmaster General.

B.

THE POST OFFICE DEPARTMENT
To whom it may concern:

Know ye, that Foster Blodgett having been suspended from the office of postmaster at Augusta, Georgia, under a bill of indictment for perjury, George W. Summers is hereby designated a special agent of this department to take charge of the post office and public property thereat, and to discharge all the duties of the aforesaid office.

Witness my hand and the seal of said department at Washington this 3d day of January, A. D. 1868.

[L. S.] ALEXANDER W. RANDALL,
Postmaster General.

POST OFFICE DEPARTMENT,
Washington, D. C., April 17, 1868.

This is to certify that the foregoing, marked B, is a true copy of an original commission on record in this department.

In witness whereof, I have hereunto set my hand and caused the seal of the Post Office Department to be affixed at the General Post Office in the city of Washington, District of Columbia, the day and year first above written.

[L. S.] ALEXANDER W. RANDALL,
Postmaster General.

C.

POST OFFICE DEPATRMENT,
Appointment Office, January 3, 1868.

SIR: Enclosed please find blank oath and bond to be executed by yourself and sureties as special agent of this department to take charge of the post office at Augusta, Richmond county, Georgia. So soon as the same shall have been executed and placed in the mail addressed to this department, you will then exhibit the enclosed commission to Foster Blodgett, or to the person in charge of the post office at Augusta aforesaid, take possession of the public property thereafter, and enter on the full discharge of all the duties thereof, as required by the postal laws and regulations.

You will continue to conduct the office in the same manner as though you were postmaster until the President and Senate shall have taken further action in the premises.

Your salary will be at the rate of $1,600 a year, with $3 per diem for subsistence.

Very respectfully, your obedient servant,

ST. JOHN B. L. SKINNER,
First Assistant Postmaster General.

GEORGE W. SUMMERS, Esq., *Augusta, Georgia.*

POST OFFICE DEPARTMENT,
Washington, April 17, 1868.

This is to certify that the foregoing, marked C, is a true copy of a letter on record in this department.

In witness whereof I have hereunto set my hand and caused the seal of the Post Office Department to be affixed at the General Post Office in the city of Washington, District of Columbia, the day and year first above written.

[L. S.] ALEX. W. RANDALL, *Postmaster General.*

D.

POST OFFICE DEPARTMENT,
Apppointment Office, January 3, 1868.

SIR: A copy of the bill of indictment found against you in the United States district court for the southern district of Georgia, for perjury, has been placed on file in this department, and in consequence thereof the Postmaster General has made an order suspending you from the office of postmaster at Augusta, Georgia, and designated George W. Summers as special agent of this department, to take charge of the aforesaid post office and all the public property thereat.

You are, therefore, required to deliver to said George W. Summers the mail key and all

the public property in your possession, upon the exhibition of his commission and demand for the mail key and property aforesaid; take from him duplicate receipts for the same; retain one and forward the other to this department.

Very respectfully, yours, &c.,

ST. JOHN B. L. SKINNER,
First Assistant Postmaster General.

FOSTER BLODGETT, Esq., *Augusta, Georgia.*

POST OFFICE DEPARTMENT,
Washington, April 17, 1868.

This is to certify that the foregoing, marked D, is a true copy of a letter on record in this department.

In witness whereof I have hereunto set my hand and caused the seal of the Post Office Department to be affixed at the General Post Office, in the city of Washington, District of Columbia, the day and the year first above mentioned.

[L. S.] ALEX. W RANDALL, *Postmaster General.*

Cross-examined by Mr. Manager BUTLER:

Q. Is the post office in Augusta one that is within the appointment of the President under the law?

A. It is.

Q. Was Mr. Blodgett appointed by the President?

A. He was.

Q. When?

A. I cannot tell you that.

Q. Some time ago?

A. Yes, sir; some time ago; and confirmed by the Senate.

Q. Under what law did you, as Postmaster General, suspend him?

A. Under the law of necessity.

Q. Any other?

A. Under the law authorizing me to put special agents in charge of offices where I was satisfied that injustice was being done by the postmaster, and under the practice of the department.

Q. I am asking you now as to the law. We will come to the practice by and by. Cannot you tell us whereabouts that law will be found?

A. No, sir; not without referring to my notes.

Q. Well, sir, refer to your notes. Of course I do not mean that unwritten law—the law of necessity?

A. No. It was a question whether I would close up the office, or appoint a special agent. [Holding a letter in his hand.] I have there, in a letter I wrote——

Q. I do not care about your letters. I am asking you to refer me to the law under which you did it, if you can?

A. I can make no further reference than I did to that law, except my authority to appoint special agents.

Q. What statute did you do this under?

A. Appoint the special agent?

Q. What statute did you do this act under? What statute do you justify yourself by?

A. I do not justify myself under any particular statute.

Q. What general statute?

A. No general statute.

Q. Then under no statute whatever, either particular or general, do you justify yourself. Now, sir, do you mean to say that this took place on the 3d of January?

A. The fore part of January.

Q. The paper is dated the 3d.

A. The fore part of January.

Mr. JOHNSON. What is the date of the paper, Mr. Manager?

Mr. Manager BUTLER. They are all dated the 3d of January, 1868. (To the witness.) Now, sir, have you ever communicated this case to the President?

A. I did.

Q. When?

A. I do not recollect; some time after it was done.

Q. About how long?

A. Perhaps a week.

Q. More?

A. I do not remember about that; a few days afterwards.

Q. Did you take any advice of the President, or consent, or order, before you made this removal?

A. I did not.

Q. Was the verbal complaint the same or different from the written complaint against Foster Blodgett?

A. It was the same. It was the statement that he had been indicted by the district attorney.

Q. The statement that he had been indicted?

A. Yes, sir.

Q. And was there any other complaint?

A. And a copy of the indictment.

Q. Was there any other complaint than that?

A. I do not remember now whether there was any other or not.

Q. Who made the complaint to you?

A. The district attorney of that district stated to me the fact that an indictment had been found against him.

Q. Did he state it to you in person?

A. Yes, sir.

Q. Did you ask him to forward you a copy?

A. No, sir.

Q. Did he do so?

A. He did, or somebody did.

Q. Somebody did. Do you know who?

A. I cannot tell, unless he did.

Q. Did you prepare these papers here?

A. I ordered them to be prepared.

Q. You ordered all the papers to be prepared?

A. I did.

Q. Why is not a copy of the indictment here, then?

A. It was not inquired for, and I did not think of it.

Q. If it was not inquired for, who made the inquiry for the papers?

A. One of the attorneys asked me about the case.

Q. One of the counsel asked you about the case, the papers I am talking about now?

A. He asked me what was the condition of the case, what the testimony of Mr. Blodgett meant, and I told him, and told him I could furnish all the orders that were made in the case; and I did so.

Q. Then you volunteered to furnish him the orders?

A. I did.

Q. Why did you not furnish us a copy of the indictment?

A. I cannot tell about that. I did not think anything about it. I would have furnished it to you if you had asked me for it. You did not ask me for any copies.

Q. Now, sir, had you any other complaint against Foster Blodgett except the fact that he was indicted?

A. I do not remember any now.

Q. Have you any inclination of your mind, anything in your mind, in any way, of anything else brought against him?

A. I cannot tell you now. I do not remember anything else. There may be something in the papers.

Q. Have you any remembrance of acting upon any other, which you have forgotten?

A. I do not remember anything now. The papers are quite voluminous, and there may be something else in them. I do not remember now.

Q. Did you act upon any other than this?

A. Not that I remember.

Q. Now, sir, was not that an indictment brought by the grand jury of that county against him for taking the test-oath?

A. Yes, sir.

Q. Was it for anything else except that he was supposed to have sworn falsely when he swore the test-oath?

A. Not that I remember.

Q. It was taking the test-oath as an officer of the United States that he had not been in the rebellion?

A. Yes.

Q. And you removed him for that?

A. No, sir; I did not remove him.

Q. You suspended him for that?

A. Yes.

Q. Did you give him any notice of the suspension?

A. I did.

Q. That you were going to do it?

A. No, sir; not that I was going to do it. I sent him the notice you see there, or directed it to be sent.

Q. You sent a notice suspending him?

A. I directed notice to be sent to him that he was suspended, a copy of which is in the papers.

Q. That was the order of suspension?

A. Yes, sir.

Q. You did not give him any means of defending himself, or showing what had happened to him, or how it came on?

A. No, sir.

Q. But you suspended him at once?

A. I did.

Q. Is there any complaint on your books that he had not properly administered this office?

A. I do not remember any.

Q. Certainly none upon which you acted?

A. Not that I remember.

Q. And a competent officer, acting properly, because somebody found an indictment against him for taking the test-oath, swearing he was a Union man, you suspended, without any hearing or trial at all?

A. I do not swear to any such statement as that. Part of it is incorrect. If you will ask me to state what there is about this case, I shall be glad to do it.

Q. I will ask this question, and you will answer it——

A. The WITNESS. Ask your questions and I will answer them.

Q. I will put this question: Did you not suspend this officer, without investigation or trial, upon the simple fact of an indictment being found against him for having taken the test-oath to qualify him for that office, against whom no other complaint stood in your office?

A. I do not remember any other complaint now, as I have stated before.

Q. And therefore, if you answer upon what you know, you will have to answer yes; you did suspend him?

A. Yes, I did suspend him; and if he had been convicted I should have asked to have him removed.

Q. This case has been pending since the 3d of January?
A. Yes, sir.
Q. Has it ever been communicated by the President to the Senate?
A. Not that I know of.
Q. Did he direct you so to do?
A. No, sir.
Q. Did you suspend him under the civil-tenure act?
A. No, sir.
Q. You took no notice of that?
A. Yes, sir; I took notice of it. That was the difficulty in the case, if you will allow me.
Q. You took no notice of it to act under it?
A. I could not act under it.
Q. How many hundreds of men have you appointed who could not take the test-oath?
A. I do not know of any—none that I know of
Q. Do you not know that there are men appointed to office who have not taken the test-oath?
The WITNESS. As postmasters?
Mr. Manager BUTLER. Yes, sir.
The WITNESS. No, sir; I do not know of one—never one with my consent.
Mr. JOHNSON. What is your last answer?
The WITNESS. I say there never has been such an appointment with my onsent.

By Mr. Manager BUTLER:

Q. Did you learn who were the prosecutors under this indictment?
A. No, sir; I did not.
Q. Did you inquire?
A. I did not.
Q. Whether they were rebels or Union men?
A. I did not.
Q. Did you not ask whether it was a prosecution by rebels down there against Mr. Blodgett?
A. No, sir; that was not my business. I simply inquired as to the fact of his being indicted for perjury in taking the oath of office.
Mr. Manager BUTLER. Will you have the kindness to furnish me with a copy of that indictment, duly certified?
The WITNESS. I will do so, certainly.
Mr. Manager BUTLER. And of any other complaint you can find against Foster Blodgett before this trial commenced?
The WITNESS. I will do so.
Mr. CURTIS. We should prefer to have it furnished to the court, and it can be directed to be put into the case. I suppose that will answer the purpose.
Mr. Manager BUTLER. I do not know that until I see it. If you had wanted it very much you could have had it.
Mr. CURTIS. It was a mere inadvertence.
The WITNESS. I presume they did not think of it, for I did not.
Mr. CURTIS. It was a mere inadvertence that it was not produced.
Mr. Manager BUTLER. Perhaps.
Mr. CURTIS. I wish it now produced. (To the witness.) Will you furnish to the Secretary of the Senate a copy of that indictment?
The WITNESS. Yes, sir.
Mr. Manager BUTLER. Furnishing it to the Secretary without my seeing it will not put it into the case. If you desire it to be furnished to him, very well; but I object to anything being put on the files without my seeing it; and I shall want the witness after that.

Mr. EVARTS. If it is objected to as evidence, perhaps it is not worth while to produce it. The only object of having it here is as evidence.

Mr. Manager BUTLER. I cannot tell whether I shall object to it or not until I see it.

Mr. EVARTS. That will be a private matter, then, between you and Governor Randall.

Mr. Manager BUTLER. We shall want the Postmaster General with it. I shall want to ask him some more questions after I get it.

Mr. EVARTS. You can do so.

The WITNESS. There is another similar case in which I suspended a man last week.

Mr. Manager BUTLER. Never mind about the other case. I do not care about what you have done since.

The WITNESS. I thought you might want that.

Re-examined by Mr. EVARTS:

I understand your judgment as Postmaster General was that this suspension should be made?

A. Yes, sir.

Q. It occurred not during a recess of the Senate?

A. No, sir; it was during the session of the Senate.

Q. So that it was not under the civil-tenure act?

A. Not as I understand it.

Mr. EVARTS. It would not be a suspension under the civil-tenure act.

Mr. Manager WILLIAMS. It was during the recess.

Mr. EVARTS. It was not in the recess, and the civil-tenure act does not apply to the case. (To the witness.) Now, sir, this oath, for perjury in taking which he was indicted, as you were informed by the indictment, was in taking the oath to this office that he held?

A. Yes, sir.

Mr. Manager BUTLER. I object to what was done as to the indictment until that can be produced.

Mr. EVARTS. I said as you stated. You asked him the question whether the indictment was not for taking a false oath. I ask him if that false oath was not in qualifying for this office which he held?

The WITNESS. Yes, sir.

Q. And in which you suspended him?

A. Yes, sir; that is what I understand.

Mr. EVARTS. That is all, sir.

Mr. Manager BUTLER. That is all until you bring the indictment.

Mr. SHERMAN. I desire to submit, if the Senate think the question admissible, this question to this witness, or any other member of the cabinet that may be called. It may be contravened by the decision already made, and I should like to have the question decided by the Senate.

The CHIEF JUSTICE. The Secretary will read the question proposed by the senator from Ohio.

The Secretary read as follows:

State if, after the 2d of March, 1867, the date of the passage of the tenure-of-office act, the question whether the Secretaries appointed by President Lincoln were included within the provisions of that act came before the cabinet for discussion; and if so, what opinion was given on this question by members of the cabinet to the President?

Mr. Manager BINGHAM. We desire to object to that on the ground of its incompetency, and that we deem it directly within the ruling of the Senate twice or three times made this day.

Mr. Manager BUTLER. The very same question was voted upon.

Mr. Manager BINGHAM. The very same question.

Mr. SHERMAN. I should like to have the question taken by the Senate upon that by the yeas and nays.

Mr. HOWARD. I raise a question of order upon that question of the senator, that it has been once decided by the Senate.

The CHIEF JUSTICE. The Chief Justice has no doubt that the question may be properly put to the witness. Whether it shall be answered is a question for the Senate to judge.

Mr. Manager BUTLER. I should like, before that question is put, to have the question which was decided by the Senate to-day, the third question I think it is, read from the minutes. It was an offer covering exactly the same ground.

The CHIEF JUSTICE. The offer will be read.

Mr. SHERMAN. If the Senate will allow me, I can tell in a word the difference between the two.

Mr. CONNESS and others. I object.

Mr. CONKLING. Let us hear that offer read.

The CHIEF JUSTICE. The Secretary will read the offer to prove, the reading of which is requested by Mr. Manager Butler.

The Secretary read as follows:

We offer to prove that at the meetings of the cabinet at which Stanton was present, held while the tenure-of-civil office bill was before the President for approval, the advice of the cabinet in regard to the same was asked by the President, and given by the cabinet, and thereupon the question whether Mr. Stanton and the other Secretaries who had received their appointments from Mr. Lincoln were within the restrictions upon the President's power of removal from office created by said act, was considered and the opinion expressed that the Secretaries appointed by Mr. Lincoln were not within such restrictions.

Mr. JOHNSON. I ask that the question propounded by the senator from Ohio shall now be read.

The Secretary read the question, as follows:

State if, after the 2d of March, 1867, the date of the passage of the tenure-of-office act, the question whether the Secretaries appointed by President Lincoln were included within the provisions of that act came before the cabinet for discussion; and if so, what opinion was given on this question by members of the cabinet to the President?

Mr. FERRY. I call for the yeas and nays on that question.

The yeas and nays were ordered; and being taken, resulted—yeas 20, nays 26; as follows:

YEAS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Fowler, Grimes, Hendricks, Johnson, McCreery, Patterson of Tennessee, Ross, Saulsbury, Sherman, Trumbull, Van Winkle, Vickers, and Willey—20.

NAYS—Messrs. Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wilson, and Yates—26.

NOT VOTING—Messrs. Drake, Henderson, Morton, Norton, Nye, Sprague, Sumner, and Wade—8.

So the question was not admitted.

Mr. EVARTS. Mr. Chief Justice and Senators, the counsel for the President are now able to state that the evidence on his part is now closed, as they understand their duty in the matter. The conduct of the proofs, however, has been mainly intrusted to Mr. Stanbery, both on the part of the counsel and for some particular reasons in reference to his previous knowledge concerning the conduct of the controversy and the matters to be given in evidence which belonged to his official familiarity with them. Mr. Stanbery's health, we are sorry to say, is still such as to have precluded anything like a serious conference with them since he was taken ill. We submit it, therefore, to the Senate that, upon such consideration, it is possible some other proof may need to be offered. We do not at present expect that it will be so.

Mr. JOHNSON. Mr. Chief Justice, I ask the managers if they have any proof to offer to-day?

Mr. Manager BUTLER. Not till the other side get through.

Mr. JOHNSON. I move, then, that the court adjourn until 11 o'clock on Monday.

Mr. EVARTS. Mr. Chief Justice, we have made this announcement. We suppose ourselves to be through. I have only stated that in the absence of Mr. Stanbery, it may be possible that some further evidence may need to be offered, which we do not at all expect.

Mr. Manager BUTLER. When you are entirely through we will commence.

The CHIEF JUSTICE. The senator from Maryland moves that the Senate, sitting as a court of impeachment, adjourn until Monday at 11 o'clock.

The motion was agreed to; and the Senate, sitting for the trial of the impeachment, adjourned.

MONDAY, *April* 20, 1868.

The Chief Justice of the United States took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives and the counsel for the respondent, except Mr. Stanbery, appeared and took the seats assigned to them respectively.

The members of the House of Representatives, as in Committee of the Whole, preceded by Mr. E. B. Washburne, chairman of that committee, and accompanied by the Speaker and Clerk, appeared and were conducted to the seats provided for them.

The CHIEF JUSTICE. The Secretary will read the journal of Saturday's proceedings.

The Secretary proceeded to read the journal of the Senate sitting on Saturday last for the trial of the impeachment; but before concluding was interrupted by

Mr. STEWART. I move that the further reading of the journal be dispensed with.

The CHIEF JUSTICE. If there be no objection it will be so ordered. The Chair hears no objection. It is so ordered. Gentlemen of counsel for the President, do you propose to put in any further evidence?

Mr. CURTIS. No, Mr. Chief Justice; we consider that we have closed the evidence on the part of the defence.

The CHIEF JUSTICE. Do the honorable managers propose to put in any rebutting evidence?

Mr. Manager BINGHAM. As we are advised at present, Mr. President and Senators, we may desire, in case one or two witnesses subpœnaed early in this trial should appear, to call them. I will desire, however, to consult my associates, two of whom are absent and who are expected within a few minutes at the table, in regard to any further statement about it.

The CHIEF JUSTICE. In case the honorable managers desire to put in further evidence after the adjournment, it will be necessary to obtain an order of the Senate; at least it would be proper to obtain such order before the argument proceeds.

Mr. Manager BINGHAM. I wish to be understood as suggesting to the presiding officer of the Senate that I desire to consult my associates further about it.

The CHIEF JUSTICE. Certainly.

Mr. Manager BINGHAM. So far as the order is concerned, I took it for granted that upon the suggestion made at the time the evidence was closed on the part of the managers it would be competent for us without further order, if these witnesses should appear, to introduce them upon the stand, because the Senate will recollect, although I have not referred myself to the journal of proceedings since,

it was stated by my associate manager, Mr. Butler, in the hearing of the Senate, that we considered our case closed, reserving our right to call rebutting testimony or to offer some documentary testimony that might have escaped our notice. Some such statement, I believe, was entered upon the journal.

Mr. JOHNSON. I am not sure that I heard correctly the honorable manager. I rise merely for the purpose of inquiring whether the managers desire to have the privilege of offering evidence after the argument begins?

Mr. Manager BINGHAM. Not as at present advised, although on that subject, as doubtless is known to honorable senators, in proceedings of this sort, (though I am not prepared to say that it has happened in this country; I am not sure but it did, however, in the case of Justice Chase,) such orders have been made after the final argument has been opened. I am not advised, however, that the managers have any desire of that sort. I wish it to be understood simply by the Senate that there are one or two witnesses who were deemed important on the part of the managers who were early subpœnaed to attend this trial, and neither of whom we have been able yet to see, although we are advised that they have been in the capital for the last 48 hours, or 24 hours at least.

Mr. YATES. I do not still understand—I could not hear the manager—whether he proposes to introduce evidence after the examination is closed and after the argument begins.

Mr. Manager BINGHAM. As at present advised, we have no purpose of the sort. I only made the remark I did in response to the honorable gentleman from Maryland. I do not know what may occur in the progress of this trial, and I do not wish to be concluded by any statement I have made here touching the rights of the people under the usage and practice in proceedings of this kind.

Mr. JOHNSON. I do not think there is any such practice in the United States.

After a pause,

Mr. Manager BUTLER. I desire, Mr. President, to offer the Journal of Congress of 1774–'75, of the first Congress, pages 121, 122, which is a report of the committee appointed to draught a commission to the General, George Washington, who had just been theretofore appointed:

SATURDAY, *June* 17, 1775.

* * * * * * * * * * *

The committee appointed to draught a commission to the General reported the same, which, being read by paragraphs and debated, was agreed to as follows:

IN CONGRESS.

The delegates of the United Colonies of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the counties of New Castle, Kent, and Sussex on Delaware, Maryland, Virginia, North Carolina, and South Carolina,

To GEORGE WASHINGTON, Esq.:

We, reposing special trust and confidence in your patriotism, valor, conduct, and fidelity, do, by these presents, constitute and appoint you to be General and Commander-in-chief of the army of the United Colonies, and of all the forces now raised or to be raised by them, and of all others who shall voluntarily offer their service and join the said army for the defence of American liberty, and for repelling every hostile invasion thereof. And you are hereby vested with full power and authority to act as you shall think for the good and welfare of the service.

And we do hereby strictly charge and require all officers and soldiers under your command to be obedient to your orders and diligent in the exercise of their several duties.

And we do also enjoin and require you to be careful in executing the good trust reposed in you, by causing strict discipline and order to be observed in the army, and that the soldiers be duly exercised and provided with all convenient necessaries.

And you are to regulate your conduct in every respect by the rules and discipline of wars, (as herewith given you,) and punctually to observe and follow such orders and directions, from time to time, as you shall receive from this or a future Congress of these United Colonies or committee of Congress.

This commission to continue in force until revoked by this or a future Congress.

By order of the Congress.

The point to which I offer this is that this is the only form of commission ever prescribed by law in this country to a military officer, and in draughting

commissions under the Constitution of the United States "the pleasure of the President" was inserted instead of "the pleasure of Congress."

The CHIEF JUSTICE. Is there any objection?

Mr. CURTIS and Mr. EVARTS. No objection.

Mr. Manager BUTLER. I now offer, Mr. President and senators, a letter from the Treasury Department in answer to what has been put in as the practice of the government to appoint officers during the recess. [The letter was handed to the counsel for the respondent.] It is one of a series of letters which were not brought to your attention in the schedules which you allowed to come in. Only so much of the practice, as I charge, as would make on one side was put in.

[The letter was returned to the manager.]

Mr. EVARTS. The letter we do not consider as applicable to any point that we have made, either in argument or in evidence; nor do we regard it as an act of the Treasury Department, but simply as an expression of an opinion of the then existing Secretary of the Treasury. It is simply an immaterial piece of evidence; it is not worth while to occupy time in discussing it.

Mr. Manager BUTLER. I only ask whether you object?

Mr. EVARTS. I have stated all I have to say.

Mr. Manager BUTLER. You do not.

Mr. EVARTS. No. I have stated what it applied to.

Mr. Manager BUTLER. Very well. I will read the letter:

TREASURY DEPARTMENT, *August* 23, 1855.

SIR: Your letter of the 18th instant, recommending William Irving Crandall for the appointment of surveyor of the customs at Chattanooga, Tennessee is received. The office not having been filled before the adjournment of the Senate, it must necessarily remain vacant until its next session, when your recommendation of Mr. Crandall will receive respectful consideration.

I have the honor to be, very respectfully, your obedient servant,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. J. H. SMITH, *Charleston, South Carolina.*

After a pause,

Mr. Manager BUTLER. If the President will grant me a moment. Mr. Randall did not bring the papers which I called for to me until since we have come into the Senate, and I want to examine them to see what I will and what I will not offer. [After an examination of the papers.] Mr. Randall, you will take the stand.

ALEXANDER W. RANDALL examined.

By Mr. Manager BUTLER:

Question. Had you any copy of the indictment against Foster Blodgett on file in your office?

Answer. What purported to be.

Q. When was it made?

A. That I cannot tell you; I suppose about the time the original copy was filed there.

Q. Have you produced it here?

A. No, sir.

Q. What did you do with it?

A. It is in the office.

Q. Have you produced copies here?

A. Yes, sir; there is a copy there before you.

Q. A copy from where?

A. From the Treasury Department.

Q. Why did you not produce the copy from your office, as I asked you?

A. Because that would not prove anything; I could not certify that it was a copy without having the original.

Q. Have you produced the original?

A. I understand it is here. The reason I did not produce it was, I understood it was here.

Q. Where?

A. Before some committee. It was sent up here with the case. The letter of Mr. McCulloch there explains that.

Q. The letter of Mr. McCulloch explains about Mr. Hopkins's case, which I do not mean to put in; but I mean now to deal with Mr. Blodgett's case.

A. You will find the copy of two indictments fastened together in the original as they are there, and I understand they are here. That is the reason I did not bring that, for I could not, without the original, certify that it was a copy.

Q. And you got a copy from the Treasury Department this morning?

A. Yes, sir.

Q. Which you produce here, but do not from your own office?

A. No, sir; I do not produce that because I could not certify without having the original that it was a true copy; and, understanding the others were here in the Senate, I did not bring it.

Q. But you brought this copy?

A. I had forgotten how the case came here.

Mr. Manager BUTLER, (to the counsel for the respondent.) Gentlemen, I will detach these, or only put in one paper, just as you please.

Mr. EVARTS. Of course, we understand.

Mr. Manager BUTLER. I do not care to go through detaching the copy in this one case.

Mr. EVARTS. It is Mr. Blodgett's indictment?

Mr. Manager BUTLER. Yes, sir. I now offer simply the indictment in Blodgett's case, which I will read, without detaching it from the other paper:

United States of America, southern district of Georgia. District court of the United States for the southern district of Georgia.

NOVEMBER TERM, 1867, A. D.

The grand jurors of the United States, chosen, selected, and sworn, in and for the southern district of Georgia, being good and lawful men of the said southern district of Georgia, and being charged to inquire for the United States and for the body of the said district, upon their oaths,

Present: that heretofore, that is to say, on the 27th day of July, in the year of our Lord 1866, one Foster Blodgett, of the city of Augusta and county of Richmond, in the State of Georgia, and in the southern district of Georgia aforesaid, was appointed by the President of the United States to the office of deputy postmaster at Augusta aforesaid, the said office, that is to say, the office of deputy postmaster, being an office of profit under the government of the United States aforesaid, in the civil department of the public service, and that after said appointment and before entering upon the duties of the said office, and before he, the said Foster Blodgett, was entitled to any salary or other emoluments arising from the said office, to wit, the office of deputy postmaster aforesaid, he, the said Foster Blodgett, was then and there required by law to take and subscribe the oath hereinafter set forth, the said oath being by law made material and necessary to be taken and subscribed by him, the said Foster Blodgett, before entering upon the duties of the office aforesaid, to wit, the office of deputy postmaster at Augusta aforesaid; and being so required by law, he, the said Foster Blodgett, came in his own proper person before David S. Roath, a judge of the court of ordinary for the county of Richmond, in the State of Georgia and within the district aforesaid, and within the jurisdiction of this court, on the 5th day of September, in the year of our Lord 1866, at Augusta aforesaid, within the county, State, and district aforesaid, and then and there was duly sworn and took his corporal oath before the said David S. Roath, a judge of the court of ordinary for the county of Richmond, in the State of Georgia and district aforesaid, he, the said David S. Roath, being then and there duly authorized by law, and having then and there sufficient and competent power to administer the said oath to the said Foster Blodgett in that behalf, and that thereupon the said Foster Blodgett having so sworn as aforesaid, and not having the fear of God before his eyes, but having been moved and seduced by the instigation of the devil, then and there, to wit, on the day and year aforesaid and at the place last aforesaid, before the said David S. Roath, judge of the court of ordinary as aforesaid, (he, the said Roath, having then and there competent authority to administer the said oath as aforesaid,) upon his oath aforesaid, sworn to before the said David S. Roath, on

the 5th day of September, in the year of our Lord 1866, falsely, wilfully, and corruptly did swear to the purport and effect following; that is to say:

"I, Foster Blodgett, (meaning the said Foster Blodgett,) being appointed deputy postmaster at Augusta, in the county of Richmond, and State of Georgia, do swear that I will faithfully perform all the duties required of me, and abstain from anything forbidden by the laws in relation to the establishment of the post office and post roads in the United States; and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control; and I do further solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto; and I do further swear that to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."

Whereas in truth and in fact the said Foster Blodgett before the time of taking the said oath as aforesaid, had voluntarily borne arms against the United States aforesaid, he, the said Foster Blodgett, having been at that time, that is to say, at the time when he bore arms as aforesaid, a citizen of the United States aforesaid; and whereas in truth and in fact, he, the said Foster Blodgett, being a citizen as aforesaid, before that time, that is to say, before the time of the taking of the oath, voluntarily had given aid to persons engaged in armed hostility to the United States aforesaid, and had voluntarily as aforesaid given countenance, counsel, and encouragement to persons engaged in armed hostility to the United States aforesaid; and whereas in truth and in fact, he, the said Foster Blodgett, being a citizen of the United States as aforesaid, had before that time, that is to say, before the time of the taking of the said oath as aforesaid, accepted an office, to wit, the office of the captaincy of an artillery company in the service of and under the authority of the so-called confederate States, the so-called Confederate States being then and there an authority or a pretended authority in hostility to the United States aforesaid; and whereas in truth and in fact, he, the said Foster Blodgett, being a citizen as aforesaid, had before that time, that is to say, before the time of the taking of the said oath, yielded a voluntary support to a pretended government of Georgia, the same being at that time, that is to say, at the time he, said Foster Blodgett, yielded a voluntary support thereto, a pretended authority in power within the United States and hostile thereto. And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Foster Blodgett, by his oath aforesaid taken and subscribed on the day and year aforesaid, by David S. Roath, a judge of the court of ordinary as aforesaid, falsely, wilfully, and corruptly, in manner and form aforesaid did, in the southern district of Georgia, and within the jurisdiction of this court, commit wilful and corrupt perjury, contrary to the forms of the statute in such case made and provided, and against the peace and dignity of the United States.

HENRY S. FITCH,
United States Attorney for Georgia.

[Indorsement.]

United States of America, southern district of Georgia, United States district court, November term, 1867.

UNITED STATES
vs.
FOSTER BLODGETT. } Indictment for perjury.

Witnesses: James A. Bennett, Ambrose R. Wright, Dr. M. J. Jones, John N. Wray, Avera D'Antiquac, George W. Vennurey, Allen Phillips, John L. Ellis.

A true bill:

HENRY BINGHAM, *Foreman.*

SAVANNAH, *November* 27, 1867.

Filed November 29, 1867.

JAMES McPHERSON, *Clerk.*

Mr. JOHNSON. Does it charge that he was a captain in the rebel service?

Mr. Manager BUTLER. He was charged with being a captain in a volunteer company. (To the witness.) Now, Mr. Randall, upon notice which you have put in as given to Mr. Blodgett being sent to him, did he return an answer, and is this paper that answer or a copy of it? (Handing a paper to the witness.)

A. These are copies of the papers that are on file. I can only swear to them as copies of papers on file. I believe these are correct copies.

Q. And that is a copy of his answer? Will you look at it?

A. Yes, sir. I have read it all over; I think it is.

Q. The notice left here on the 3d of January, we have learned by the paper which was put in on Saturday?

A. I think it was the 3d of January.

Q. And on the 10th he returned this answer?

A. Yes, sir.

Mr. Manager BUTLER. I propose to offer it. It is:

WASHINGTON, D. C., *January* 10, 1868.

Hon. A. W. RANDALL:

SIR——

Mr. EVARTS. One moment, Mr. Manager. We suppose that there is no inquiry before this Senate sitting as a court of impeachment as to the truth of the charges against Mr. Blodgett, nor as to his defences. We put in evidence nothing but the official action of the government through the Post Office Department, and that only in answer to an oral statement concerning it which Mr. Blodgett had himself given. Now, the manager brings in the indictment, and having got that in, claims the right to repel it and thus produce evidence on both sides of the question of the reason of Mr. Blodgett's suspension. We submit to the Senate that the proof is irrelevant.

Mr. Manager BUTLER. Mr. President, the case stands thus: Mr. Foster Blodgett, who is mayor of the city of Augusta, appointed by General Pope, and a member of the constitutional convention——

Mr. EVARTS. No part of that statement is in evidence.

Mr. Manager BUTLER. I propose to put it in evidence, and am stating my case. I have got it all here. He was a member of the constitutional convention and an active Union man——

The CHIEF JUSTICE. The honorable manager will please reduce his offer to prove to writing.

Mr. Manager BUTLER. I will after I state the grounds of it. I will put——

The CHIEF JUSTICE. The Chief Justice thinks it ought to be reduced to writing now, in order that the Senate may pass upon the question whether they will receive the evidence.

Mr. Manager BUTLER. They cannot until I make the statement, sir.

The CHIEF JUSTICE. The Chief Justice thinks that the same rule which was applied to the counsel for the President yesterday ought to be applied to the honorable managers to-day. The managers should state in writing the nature of the evidence which they propose to introduce, and the Senate can then pass upon the question whether they desire to hear that class of evidence.

Mr. JOHNSON. Does the manager propose to offer that paper in evidence itself?

Mr. Manager BUTLER. I do.

Mr. JOHNSON. And nothing else?

Mr. Manager BUTLER. I propose to offer something else besides. At present I propose to offer this, and it is the first time any counsel has been thus stopped. I assume, Mr. President—I never have assumed any different—that the same rule will be applied to-day as yesterday. I do not want to be understood as asking anything different.

The CHIEF JUSTICE. The honorable manager appears to the Chief Justice to be making a statement of matters which are not in proof, and of which the Senate has as yet heard nothing. He states that he intends to put them in proof. The Chief Justice therefore requires that the nature of the evidence that he proposes to put before the Senate shall be reduced to writing, as has been done heretofore. He will make the ordinary offer to prove, and then the Senate will judge whether they will receive the evidence or not.

Mr. Manager BUTLER. I was trying to state that this was a part of the record produced by the other side. It is the first time, I have a right to say, that any counsel has been interrupted in this way. This——

The CHIEF JUSTICE. Does the honorable manager decline to put his statement in writing?

Mr. Manager BUTLER. I am not declining to put the statement in writing, sir.

The CHIEF JUSTICE. Then the honorable manager will have the goodness to put it in writing.

Mr. Manager BUTLER. I can do it, sir, by taking sufficient time.

The CHIEF JUSTICE. It will be allowed.

The proposition having been reduced to writing,

Mr. Manager BUTLER. This is the offer, sir:

We offer to show that Foster Blodgett, the mayor of Augusta, Georgia, appointed by General Pope, and a member of the constitutional convention of Georgia, being, because of his loyalty, obnoxious to some portion of the citizens lately in rebellion against the United States, by the testimony of such citizens an indictment was procured to be found against him; that said indictment being sent to the Postmaster General, he thereupon, without authority of law, suspended said Foster Blodgett from office indefinitely, without any other complaint against him and without any hearing, and did not send to the Senate the report of such suspension, the office being one within the appointment of the President by and with the advice and consent of the Senate; this to be proved in part by the answer of Blodgett to the Postmaster General's notice of such suspension, being a portion of the papers on file in the Post Office Department, upon which the action of the Postmaster General was taken, a portion of which have been put in evidence by the counsel of the President, and that Mr. Blodgett is shown by the evidence in the record to have always been friendly to the United States and loyal to the government.

That is the offer. On this we wish to be heard at such time as the Chair will permit.

Mr. EVARTS. We object to the evidence, Mr. Chief Justice and Senators, as being wholly irrelevant to this case. The evidence concerning Foster Blodgett was produced on the part of the managers, and on their part was confined to his oral testimony that he had received certain commissions under which he held the office of postmaster at Augusta; that he had been suspended in that office by the Executive of the United States in some form of its action, and there was a superadded negative conclusion of his that his case had not been sent to the Senate. In taking up that case the defence offered nothing but the official action of the Post Office Department, coupled with the evidence of the head of that department that it was his own act, without previous knowledge or subsequent direction of the President of the United States. In that official order, thus a part of the action of the department, it appears that the ground of it was an indictment against Mr. Blodgett. A complaint was made that that indictment was not produced. The managers having procured it, having put it in evidence, they now propose to put in evidence his answer to that indictment or to the accusation made before the Postmaster General.

Mr. Manager BUTLER. I know you do not mean to misstate—his answer to the Postmaster General's notice, not to the indictment.

Mr. EVARTS. His answer to the accusation and the evidence concerning the accusation as placed before the Postmaster General, I understood.

Mr. Manager BUTLER. Not an answer to the indictment.

Mr. EVARTS. An answer to the indictment so far as it was the accusation before the Post Office Department. I understood you to say so; that is, you propose to prove that he was friendly to the United States, and always had been, notwithstanding he had been a captain in the rebel troops. I understood you to say so; and now the honorable manager states that this paper, which is part of his evidence to sustain Mr. Blodgett's loyalty and defeat the accusation against him, in which Mr. Blodgett may be entirely right for aught I know, is a letter written by him ten days after his suspension; and the honorable manager states that that letter of his, written to the Postmaster General ten days

after his suspension, was a part of the papers upon which the Postmaster General acted in suspending him. How that could be, in the nature of things, it is difficult for me to see. He was suspended on the 3d. Ten days after he wrote an answer to the incrimination; and that is one of the papers on which the Postmaster General suspended him, it is said.

The honorable court can see that this is not evidence introduced by us in disparagement of Foster Blodgett. It is evidence introduced by us to show the action of the Post Office Department in the suspension, which suspension the managers had put in by oral testimony; and under cover of that the learned manager first seeks to introduce the accusations against Blodgett, and then to rebut them. If this evidence is rightly put in on their part, we of course can meet it on ours; and we shall have an interesting excursion from the impeachment trial of the President to the trial of Mr. Foster Blodgett on the question of loyalty; and I am instructed to say that there is a witness in the city who can testify that he was a captain in the rebel army; and we are ready to go on with that proof if it is desired.

Mr. Manager BUTLER. Mr. President and Senators, I think now it will not be out of any order, either of to-day or yesterday or the day before, for me to state the grounds upon which I offer this evidence.

Foster Blodgett was called here to show that, holding an office which required the advice and consent of the Senate, he had been suspended indefinitely by the President of the United States, as he supposed, and as we supposed, on the 3d of January, 1868, without any fault on his part, so far as his official duties were concerned, and without any adjudication or conviction of any crime, and a man placed in his office as special agent with the same salary and a little more; so that it amounted to a removal and putting a man into the office as now appears by the papers presented. Mr. Blodgett testified that up to the day he testified he had not had his case before the Senate; he could get no redress. We thought that upon the proposition that the President desired to obey the law, except that he wanted to make a case to test the constitutionality of it, this was quite pertinent evidence. He having put forward broadly in his answer that he was exceedingly desirous to obey the laws, the civil-tenure act and all other laws, except that he wanted to make a case to test the constitutionality of the law, these facts are put in, and these facts are yet undisputed. They called Mr. Postmaster General Randall on Saturday, and he produced, and they put in, a letter of appointment of one Summers, special agent, with a salary therein set out. They also put in a letter informing Mr. Blodgett that he had been suspended from office. That letter states precisely that it was upon an indictment for perjury, not setting out the indictment, so as to leave us to infer that Foster Blodgett had in some controversy between neighbor and neighbor, or citizen and citizen, somewhere committed wilful and corrupt perjury, and that it was so heinous a case that the Postmaster General felt obliged instantly to suspend him; and it was a case, he said, where the great law of necessity compelled him to suspend him at once. In order to meet that we asked for the indictment. We got it at last from the Treasury Department, a copy of it. The indictment then makes certain statements against Mr. Foster Blodgett. Now, Mr. Foster Blodgett, instantly upon being notified—this being the 3d of January, and the paper, which I shall show you, being dated the 10th—seven days only, three from ten leaves seven, not ten, Mr. Counsel, so that inadvertences can take place as well on the one side as the other——

Mr. EVARTS. If you consider it material, I will retract.

Mr. Manager BUTLER. I do not consider it material only as a matter of correctness; that is all. As I say, seven days afterward, being in Washington, he instantly answers and puts on file his justification, that this was all a rebel plot and treason against the United States in fact. Having put that on file, that is a part of the case.

Now, I have not said to the Senate that this paper was that upon which Mr. Randall acted in suspending him, but I do say it is a part of the proceedings in the case, and it is a paper on which Mr. Randall acted in not returning that suspension through the President to the Senate. It may be said that Mr. Randall had no business to return it to the Senate. He had just as much business to return it to the Senate as he had to suspend him.

We are answered, too, that they put in only the official act of the department. I had the honor to explain to the Senate some days ago that I understood an official act to be that which was made a man's duty by law to do. I never understood that there was any other official act. I have always understood that the kind of acts which a man does where the law does not require him to do them are officious acts, and not official; and I think this was the most officious act I have ever known—one which the Postmaster General says there is no law for, which was justified by no statute. A man is suspended; his reputation is ruined as far as it can be; the tribunal the law has appointed before which he could have a hearing, the Senate of the United States, is not informed of it in the regular way. It affects the President of the United States, because he was informed of it after it was done, and he has taken no action; and then when we put him on to say to us, "I have been suspended and cannot go before the Senate," the answer is what? When he simply says that, the answer is to put in the fact that he was indicted in order to blacken his reputation and send it out to the country.

I never saw Foster Blodgett until the day he was brought upon this stand. I have no interest in him any more than any other gentleman of position in the south. I put it to you, if you had been treated in that way when here as a witness under the summons of the Senate by the managers of the House of Representatives to testify to a fact, and then the President, after refusing you any hearing before the constitutional tribunal and legal tribunal, had put in the fact to blacken your character that you had been indicted, would you not like to have the privilege of putting in at least your answer on record in the case, that which you did instantly? It is said to be the letter of Mr. Blodgett. True, it is; but it also contains exhibits and other papers which establish the facts beyond controversy.

It is said here, with a slur, that they have got a witness to prove that he was in the rebel army. I do not doubt it—plenty of them—whether he was or not. But what I say is, that while he was only a captain in a militia company, and called into service and bound to obey the powers that be, and he was indicted because he yielded to the power of the State of Georgia to compel him to hold the commission; and taking no commission, he had either to go or lose his life; and he could well swear, although he went as a militia captain into the service, that he did not voluntarily go. But, however that may be, he has a right to have before the country that he has been traduced—a man among his neighbors so well known that they elected him to make the constitutional law for them; a man among his neighbors so well known that General Pope appointed him mayor of this very town where he held the office; a man so well known that when the State of Georgia shall come here and demand a place in this chamber I have no doubt Foster Blodgett will come and take his place beside the proudest of you.

I say under these circumstances I feel it my duty to put this testimony before you; and if the mere objection is want of relevancy I put it as a matter of justice to a witness that the House of Representatives brought here, and who is now being oppressed by the entire power of the executive government of the United States, who has been confessedly, without law, against right, suspended from his office and so removed, can get no hearing before this tribunal or any other, because the President controls his district attorney and he cannot get a trial down there, and they will not report him up here, and he cannot get a trial

here. It appeals to your justice. I do not propose to go into any excursion in trying the case of Foster Blodgett. I only propose to put in all the papers that were on file in the Post Office Department about this case that bear on my side of the case. They have put in such papers as bear on their side of the case, and I propose to put in such papers as bear on my side of the case out of the same bundle, that they shall not pick out such as please them and have them put in without my picking out and putting in from the same bundle such as please us.

Mr. EVARTS. We do not put in anything from the bundle. We put in merely the action of the department. You have taken a paper from the bundle and now propose to put in an answer to it. That is now the statement of the evidence. We have as little to do with and as little care for Foster Blodgett as possible; but you brought him here and compelled us to state the circumstances of the department's action. We have stated them. If his case is to be tried by this court because it cannot be tried by any other, and if that is a ground of jurisdiction, of course you may have plenty of work.

The CHIEF JUSTICE. The Secretary will read the offer to prove made by the honorable managers.

The chief clerk read:

We offer to show——

Mr. Manager BUTLER. Stop a moment. Perhaps I will amend the offer a little, though not in substance. With leave, sir, I will withdraw that and take one which covers the same points, but is much shorter, which has been drawn up by one of my associates.

The CHIEF JUSTICE. The Secretary will read the offer to prove now made by the honorable managers.

The chief clerk read as follows:

The defendant's counsel having produced from the files of the Post Office Department a part of the record showing the alleged causes for the suspension of Foster Blodgett as deputy postmaster at Augusta, Georgia, we now propose to give in evidence the residue of said record, including the papers on file in the said case, for the purpose of showing the whole of the case as the same was presented to the Postmaster General before and at the time of the suspension of the said Blodgett.

Mr. EVARTS. Our objection to that offer, as we have already stated, is that it does not present correctly the relation of the papers.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate. The original offer to prove has been withdrawn. The offer which has just been read has been substituted. Senators, you who are of opinion that the evidence now proposed to be offered should be received will say aye; contrary opinion no. (Putting the question.) The noes have it. The evidence is not received.

Mr. ANTHONY. I should like to have the yeas and nays on that, if not too late.

The CHIEF JUSTICE. It is too late. If there be no objection, however, the Chief Justice will put the question on taking the yeas and nays. There seems to be no objection.

Mr. CAMERON. I object.

Mr. Manager BUTLER, (to the witness.) Mr. Randall, I have been informed that you desire to make some statement about this removal. If it does not put in anything that the President said or anybody else I shall not object.

The WITNESS. I expressed to a gentleman this morning a wish to explain the circumstances under which I made this suspension. It was one of those cases which there is no provision of law to meet, like several others that we have, and one that I passed upon this last week. The copy of this indictment was brought to me, and the district attorney at the same time or about the same time, soon afterward at any rate, came to me and made statements of the circumstances under which it was found. Under the tenure-of-office law, if we acted under

that, the President would have no power, as I understood it, to suspend any officer during the session of the Senate. The only thing he could do would be to send up the name of some man in his place, removing Mr. Blodgett. It occurred to me that this violation of the law by Mr. Blodgett might be merely a technical violation of the law. If it was a technical violation of the law—I am telling now what my reasoning was on the subject—if it was true that he was forced into the rebel service and got out of it as soon as he could, and this violation of the oath of office law in taking that oath was merely a technical violation for which he was indicted, I did not want him turned out; and for that reason I took the responsibility of doing this thing, of making this suspension and putting a special agent in temporary charge of the office until we could ascertain more fully what the facts were in the case, and what action ought to be taken. Those are the circumstances under which this thing was done.

By Mr. Manager BUTLER:

Q. Why did you not report it to the President for his action?

A. I told the President what I had done.

Q. When?

A. Afterward; as I stated before.

Q. Why did you not report it before you undertook to take the responsibility? Did you not suppose he would turn him out?

A. Because the only thing he could do, if he did anything, was to send to the Senate some other nomination, turning this man out.

Q. That is to say, if I understand you, following the law, the only thing he could do was to send to the Senate the name of somebody in place of this man, removed; and you thought, breaking the law, you could do something better?

A. I do not put it in any such shape as that. I stated it just exactly as it occurred. I did not want the man turned out if this was a mere technical violation of the law on which he was indicted, and if he was an honest man. That was the reason I was disposed to ascertain the facts. It may have been a technical violation of the law; but I assumed the doing of it for the purpose of not having an act of injustice done to him if he was an honest man.

Q. Was the Senate in session on the 3d of January last?

A. I cannot tell you whether it was in session on that day or not.

Q. Was there not a recess?

A. There may have been; I do not remember now.

Q. Then the reason that the Senate was in session did not apply to this case?

A. I considered the Senate in session. I do not look upon a recess for two or three or five days as a recess of the Senate, in the sense of the Constitution. I do not remember whether the Senate was actually in session on that particular day.

Q. You deemed it to be in session, and you treated it as if in session?

A. I considered the session as continuing.

Mr. Manager BUTLER. That is all.

Mr. CONNESS. I should like to ask a question of the witness. I will reduce it to writing.

The WITNESS. One suggestion I forgot to make which I wish to mention. The reason why something was not further done in the case is that I was trying to get information on this subject, and then this trouble began, and this case has lain long without any intention to delay it, and no further action has been had.

Mr. Manager BUTLER. By trouble you mean the impeachment, I suppose?

The WITNESS. Yes, sir; I had no time to have copies made, but I have brought here the original papers which were filed at the time he was appointed. I did not know whether you would want them.

Mr. Manager BUTLER. No, sir; I do not want to see them.

The CHIEF JUSTICE. The question proposed by the senator from California has been submitted in writing, and will be read by the Secretary.

The question propounded by Mr. Conness was read, as follows:

Have you ever taken any step since your act suspending Foster Blodgett in further investigation of his case?

A. Yes, sir; in trying to secure information. There is considerable information among the papers here on the subject.

Mr. Manager BUTLER. That is what we offered to put in.

The WITNESS. Beyond what you offered to put in.

Mr. Manager BUTLER. I only offered one thing at a time. We have no more questions to ask the witness.

Mr. CURTIS. Nor we.

Mr. Manager BUTLER. I now offer, Mr. President, an official copy of the order creating the military department of the Atlantic, and putting General Sherman into charge of it.

Mr. EVARTS. What does that rebut? I am not aware that we have given any evidence on that subject.

Mr. Manager BUTLER. Do you object?

Mr. EVARTS. We do, unless it is relevant and rebutting. I do not recall any evidence that we have given concerning the department of the Atlantic.

Mr. Manager BUTLER. It is put in to show part of the action of the President at the same time, on the same day that he restored General Thomas. That date was not fixed until after General Thomas came on to the stand. The object is to show what was done militarily on that same day. That is the reason why it is put in.

Mr. EVARTS. I do not see any connection with General Thomas's testimony. The only connection the honorable manager states is that he learned from General Thomas when he was restored, as if he did not know that before. It was all public when he was restored. It does not connect itself at all with any evidence we have produced. If it is put on the ground that it was forgotten or overlooked, that is another matter; but to bring it in as rebutting is a consideration which we cannot consider well suggested.

Mr. Manager BUTLER. Mr. President, when I speak of learning a thing in the trial of a cause I mean learning it in the course of the evidence during the trial, not what I know in the country from the newspapers, because they are not always the best sources of knowledge. I say that General Thomas testifies that on the 13th of February the President made an order that he should be restored to his position as Adjutant General. That was fixed by his testimony; it was not fixed before. That was an order given on the 13th to General Grant, which was not published, a private letter or order. Now, I want to show that on that same day, or the day before, this new military division was made here, and General Sherman ordered to the command of it, showing the acts of the President at or about the same time. The presiding officer has so well told us heretofore the competency of the acts of a party about the same time as being a part of the *res gestæ*, and the Senate has so often allowed testimony to come in to that effect, that I cannot conceive why this cannot be competent. It is part of the things done by the President on the same day, or the day before Thomas was restored. I do not mean to say a word on the question whether it is rebutting; I do not understand that that rule belongs here.

The CHIEF JUSTICE. On the part of the honorable managers, it is proposed to give in evidence an order establishing the department of the Atlantic. The Chief Justice will submit the question to the Senate.

Mr. ANTHONY. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BUCKALEW. Mr. President, I ask for the reading of a question submitted to General Sherman by the counsel for the defence in reference to this very matter. If our clerk will turn to the record he will find that a question was put to General Sherman as to the establishment of the department of the Atlantic, which was ruled out.

The CHIEF JUSTICE. The Secretary will read the question referred to.

Mr. Manager BUTLER. We shall not trouble the Senate. This being a matter of public document, I suppose we can refer to it in the argument. We withdraw the offer.

The CHIEF JUSTICE. The offer to prove made by the honorable managers is withdrawn.

Mr. Manager BUTLER. I have now, Mr. President and Senators, a list prepared as carefully as we were able to prepare it in the time given us, from the laws, of the various officers in the United States who would be affected by the President's claim here of a right to remove at pleasure. That is to say, if he can remove at pleasure and appoint *ad interim*, this is a list of officers taken from the laws, with their salaries, being a correlative list to that put in by the counsel, showing the number of officers and the amount of salaries which would be affected by the President. In order to bring it before the Senate I will read the recapitulation only thus:

In the Navy, War, State, Interior, Post Office, Attorney General, Agriculture, Education, and Treasury, the officers are 41,558; the grand total of their emoluments is $21,180,736 87 a year.

I propose that the same course shall be taken with this as with the like schedule, this being a compilation from the laws, that it be printed as part of the proceedings.

The CHIEF JUSTICE. Is there any objection?

Mr. EVARTS. If it shows what it is there is no objection.

The document is as follows:

Navy Department, as per Navy Register for 1868.

Office.	Number.	Annual pay.	Total.
Secretary	1	$8,000 00	$8,000 00
Assistant Secretary	1	3,500 00	3,500 00
Solicitor and Judge Advocate General	1	3,500 00	3,500 00
Admiral	1	10,000 00	10,000 00
Vice-admiral	1	7,000 00	7,000 00
Rear-admiral	9*	5,000 00	45,000 00
Commodores	24*	4,000 00	96,000 00
Captains	49*	3,500 00	171,500 00
Commanders	90*	2,800 00	252,000 00
Lieutenant commanders	136*	2,343 00	318,648 00
Lieutenants	45*	1,875 00	84,375 00
Masters	29*	1,500 00	43,500 00
Ensigns	52*	1,200 00	62,400 00
Midshipmen	157*	800 00	125,600 00
Surgeons as captains	14*	3,500 00	49,000 00
Surgeons as commanders	38*	2,800 00	106,400 00
Surgeons as lieutenant commanders	28*	2,343 00	65,301 00
Passed assistant surgeons as lieutenants	42*	1,875 00	78,750 00
Assistant surgeons as masters	28*	1,500 00	42,000 00
Paymaster as commodore	1*	4,000 00	4,000 00
Paymasters as captains	12*	3,500 00	30,000 00
Paymasters as commanders	30*	2,800 00	84,000 00
Paymasters as lieutenant commanders	36*	2,343 00	84,348 00
Passed assistant paymasters as lieutenants	39*	1,875 00	73,125 00
Assistant paymasters as masters	26*	1,500 00	39,000 00
Chief engineer as commodore	1*	4,000 00	4,000 00
Chief engineers as captains	4*	3,500 00	14,000 00
Chief engineers as commanders	34*	2,800 00	95,200 00
Chief engineers as lieutenant commanders	11*	2,343 00	25,773 00
First assistant engineers as lieutenants	88*	1,875 00	165,000 00
Second assistant engineers as masters	131*	1,500 00	196,500 00
Third assistant engineers as midshipmen after graduation	94*	800 00	19,200 00
Chaplains as commanders	7*	2,800 00	19,600 00
Chaplains as lieutenant commanders	11*	2,343 00	25,773 00
Professors of mathematics as commanders	4*	2,800 00	11,200 00
Professors of mathematics as lieutenant commanders	7*	2,343 00	16,401 00
Total	1,210	.....	2,464,594 00

* Active list.

Navy Department, as per Navy Register for 1868—Continued.

Office.	Number.	Annual pay.	Total.
WARRANT OFFICERS.			
Boatswains	52	$1,000 00	$52,000 00
Gunners	55	1,000 00	55,000 00
Carpenters as gunners	36	1,000 00	36,000 00
Sailmakers as gunners	31	1,000 00	31,000 00
	174	.....	174,000 00
CONSTRUCTORS.			
Naval constructor as commodore	1	$4,000 00	$4,000 00
Naval constructor as captain	1	3,500 00	3,500 00
Naval constructors as commanders	3	2,800 00	8,400 00
Naval constructor as lieutenant commander	1	2,343 00	2,343 00
Assistant naval constructors as masters	5	1,500 00	7,500 00
	11	.....	25,743 00
RETIRED AND RESERVED LIST.			
Rear-admiral	17	$2,000 00	$34,000 00
Commodores	65	1,800 00	117,000 00
Captains	32	1,600 00	51,200 00
Commanders	17	1,400 00	23,800 00
Lieutenant commanders	3	1,300 00	3,900 00
Masters (not in the line of promotion)	6	800 00	4,800 00
Midshipman	1	500 00	500 00
Surgeons as captains	18	1,600 00	28,800 00
Surgeons as commanders	3	1,400 00	4,200 00
Surgeons as lieutenant commanders	3	1,300 00	3,900 00
Passed assistant surgeons as lieutenants	3	1,000 00	3,000 00
Assistant surgeons as masters	4	800 00	3,200 00
Paymasters as captains	15	1,600 00	24,000 00
Paymaster as commander	1	1,400 00	1,400 00
Chief engineer as lieutenant commander	1	1,300 00	1,300 00
First assistant engineers as lieutenants	4	1,000 00	4,000 00
Second assistant engineers as masters	8	800 00	6,400 00
Chaplains as commanders	8	1,400 00	11,200 00
Chaplain as lieutenant commander	1	1,300 00	1,300 00
Professor as commander	1	1,400 00	1,400 00
Professor as lieutenant commander	1	1,300 00	1,300 00
Naval constructor as captain	1	1,600 00	1,600 00
Boatswains	6	600 00	3,600 00
Gunners	6	600 00	3,600 00
Carpenters	6	600 00	3,600 00
Sailmakers	5	600 00	3,600 00
	236	.....	346,000 00
MARINE CORPS.			
Brigadier general and commandant	1	$6,130 00	$6,130 00
Majors, (staff)	3	2,666 00	7,998 00
Captains, (staff)	2	1,776 00	3,552 00
Colonel, (line)	1	3,365 00	3,365 00
Lieutenant colonels, (line)	2	3,015 50	6,031 00
Majors, (line)	4	2,666 00	10,664 00
Captains, (line)	19	1,776 00	33,744 00
First lieutenants, (line)	30	1,616 00	48,480 00
Second lieutenants, (line)	27	1,536 00	41,472 00
	89	.....	161,436 00

RECAPITULATION—NAVY DEPARTMENT.

Office.	Number.	Total annual pay.
Secretary of War, &c., and active list	1,210	$2,464,594 00
Warrant officers	174	174,000 00
Naval constructors	11	25,743 00
Retired and reserved list	236	346,000 00
Marine corps	89	161,436 00
Total	1,720	3,171,773 00

Tabular statement of officers of the army appointed by the President.

Rank.	No.	Annual pay.	Total.
Secretary of War			$8,000 00
GENERAL OFFICERS.			
General	1	$10,632 00	$10,632 00
Lieutenant General	1	9,072 00	9,072 00
Major generals	5	5,772 00	28,860 00
Brigadier generals	10	3,918 00	39,180 00
			87,744 00
ADJUTANT GENERAL'S DEPARTMENT.			
Adjutant General—brigadier general	1	3,918 00	$3,918 00
Assistant adjutant generals—colonels	2	2,724 00	5,448 00
Assistant adjutant generals—lieutenant colonels	4	2,436 00	9,744 00
Assistant adjutant generals—majors	13	2,148 00	27,924 00
			47,024 00
INSPECTOR GENERAL'S DEPARTMENT.			
Colonels	4	2,724 00	$10,896 00
Lieutenant colonels	3	2,436 00	7,308 00
Majors	3	2,148 00	6,444 00
			24,648 00
BUREAU OF MILITARY JUSTICE.			
Brigadier general—Judge Advocate General	1	3,918 00	$3,918 00
Colonel	1	2,724 00	2,724 00
Majors	9	2,148 00	19,332 00
			25,974 00
QUARTERMASTERS' DEPARTMENT.			
Brigadier general—Quartermaster General	1	3,918 00	$3,918 00
Colonels—assistant quartermaster generals	6	2,724 00	16,344 00
Lieutenant colonels—deputy quartermaster generals	10	2,436 00	24,360 00
Majors—quartermasters	15	2,148 00	32,220 00
Captains—assistant quartermasters	44	1,650 00	72,600 00
Military storekeepers	16	1,650 00	26,400 00
			175,842 00
SUBSISTENCE DEPARTMENT.			
Brigadier general—Commissary General Subsistence	1	3,918 00	$3,918 00
Colonels—assistant commissary generals subsistence	2	2,724 00	5,448 00
Lieutenant colonels—assistant commissary generals subsistence	2	2,436 00	4,872 00
Majors	8	2,148 00	17,184 00
Captains	16	1,650 00	26,400 00
			57,822 00
MEDICAL DEPARTMENT.			
Brigadier general—Surgeon General	1	3,918 00	$3,918 00
Colonel—assistant surgeon general	1	2,724 00	2,724 00
Chief medical purveyor—lieutenant colonel	1	2,436 00	2,436 00
Assistant medical purveyors—lieutenant colonels	4	2,436 00	9,744 00
Surgeons—majors	60	2,148 00	128,880 00
Assistant surgeons—first lieutenants	450	1,449 96	217,494 00
Medical storekeepers	4	1,650 00	6,600 00
			371,796 00
PAY DEPARTMENT.			
Brigadier general—Paymaster General	1	3,918 00	$3,918 00
Colonels	2	2,724 00	5,448 00
Lieutenant colonels	2	2,436 00	4,872 00
Majors	60	2,148 00	128,880 00
			143,118 00

Tabular statement of officers of the army appointed by the President—Cont'd.

Rank.	Number.	Annual pay.	Total.
ENGINEER DEPARTMENT.			
Chief engineer, (brigadier general)	1	$3,918 00	$3,918 00
Colonels	6	2,724 00	16,344 00
Lieutenant colonels	12	2,436 00	29,232 00
Majors	24	2,148 00	51,552 00
Captains	30	1,650 00	49,500 00
Lieutenants	38	1,449 96	55,098 48
	.....	.....	205,642 48
ORDNANCE DEPARTMENT.			
Brigadier general, (Chief of Ordnance)	1	$3,918 00	$3,918 00
Colonels	3	2,724 00	8,172 00
Lieutenant colonels	4	2,436 00	9,744 00
Majors	10	2,148 00	21,480 00
Captains	20	1,650 00	33,000 00
Lieutenants	26	1,449 96	37,698 96
Military storekeepers	13	1,650 00	21,450 00
	.....	.....	135,466 96
SIGNAL CORPS.			
Chief—colonel	1	$2,724 00	$2,724 00
POST CHAPLAINS.			
Chaplains	30	1,416 00	$42,480 00
REGIMENTAL OFFICERS—CAVALRY.			
Colonels	10	2,724 00	$27,240 00
Lieutenant colonels	10	2,436 00	24,360 00
Majors	30	2,148 00	64,440 00
Captains	120	1,650 00	198,000 00
Adjutants	10	1,569 96	15,599 60
Quartermasters	10	1,569 96	15,699 60
Commissaries	10	1,569 96	15,699 60
First lieutenants	120	1,449 96	173,995 20
Second lieutenants	120	1,449 96	173,995 20
			709,129 60
ARTILLERY.			
Colonels	5	2,544 00	$12,720 00
Lieutenant colonels	5	2,256 00	11,280 00
Majors	15	2,028 00	30,420 00
Captains	60	1,530 00	91,840 00
Adjutants	5	1,530 00	7,650 00
Quartermasters	5	1,530 00	7,650 00
First lieutenants	120	1,410 00	169,200 00
Second lieutenants	120	1,350 00	162,000 00
			492,720 00
INFANTRY.			
Colonels	45	2,544 00	$114,480 00
Lieutenant colonels	45	2,256 00	101,520 00
Majors	45	2,028 00	91,260 00
Captains	450	1,530 00	688,500 00
Adjutants	45	1,530 00	68,850 00
Quartermasters	45	1,530 00	68,850 00
First lieutenants	450	1,410 00	634,500 00
Second lieutenants	450	1,350 00	607,500 00
			2,375,460 00
WEST POINT.			
Professors	8	2,240 00	$17,920 00

SUMMARY.

Total number of officers, 3,033. Total amount of their salaries, $4,907,831 04.

Department of State, as per official register of 1865.

Officer.	Number.	Annual salary.	Total annual salary.
Secretary	1	$8,000 00	$8,000 00
Assistant Secretaries	2	3,500 00	7,000 00
Envoys extraordinary, &c	2	17,500 00	35,000 00
Envoys extraordinary, &c	7	12,000 00	84,000 00
Envoys extraordinary, &c	2	10,000 00	20,000 00
Ministers resident	21	7,500 00	157,000 00
Secretaries of legation	2	2,625 00	5,250 00
Secretaries of legation	7	1,800 00	12,600 00
Secretaries of legation	17	1,500 00	25,500 00
Assistant secretaries of legation	2	1,500 00	3,000 00
Interpreter and secretary of legation	1	5,000 00	5,000 00
Dragoman and secretary of legation	1	3,000 00	3,000 00
Interpreter	1	2,500 00	2,500 00
Interpreters	2	1,500 00	3,000 00
Interpreters	2	1,000 00	2,000 00
Commissioner and consul general	1	7,500 00	7,500 00
Commissioner and consul general	1	4,000 00	4,000 00
Consul general	1	5,000 00	5,000 00
Consul general	1	6,000 00	6,000 00
Consul generals	2	3,000 00	6,000 00
Consul general	1	Fees.	.....
Consul general	1	3,500 00	3,500 00
Consul generals	2	4,000 00	8,000 00
Consul general	1	1,500 00	1,500 00
Consuls	2	7,500 00	15,500 00
Consuls	23	2,000 00	46,000 00
Consuls	12	3,000 00	36,000 00
Consuls	78	1,500 00	117,000 00
Consuls	6	3,500 00	21,000 00
Consuls	9	2,500 00	22,500 00
Consuls	5	4,000 00	20,000 00
Consuls	18	1,000 00	18,000 00
Consuls	3	750 00	2,250 00
Consuls	5	500 00	2,500 00
Consuls	84	Fees.	.....
Vice-consul	1	1,500 00	1,500 00
Vice-consuls	11	Fees.	.....
Commercial agents	3	2,000 00	6,000 00
Commercial agents	3	1,500 00	4,500 00
Commercial agents	7	1,000 00	7,000 00
Commercial agents	7	Fees.	.....
Marshals to consular courts	7	(*)	7,000 00
Consular clerks	3	1,000 00	3,000 00
Judges under provisions of treaty with Great Britain of April 7, 1862	3	2,500 00	7,500 00
Arbitrator under provisions of treaty with Great Britain of April 7, 1862	1	1,000 00	1,000 00
Arbitrator under provisions of treaty with Great Britain of April 7, 1862	1	2,000 00	2,000 00
Commissioner	1	2,000 00	2,000 00
Commissioner	1	3,000 00	3,000 00
Commissioner	.....	5,000 00	5,000 00
Secretary of commissioner	1	2,000 00	2,000 00
Governors of Territory	6	1,500 00	9,000 00
Governors of Territory	2	2,500 00	5,000 00
Secretaries of Territory	5	1,800 00	9,000 00
Secretary of Territory	1	1,500 00	1,500 00
Secretaries of Territory	2	2,000 00	4,000 00
	394	.....	797,600 00

* 1,000 and fees.

RECAPITULATION—DEPARTMENT OF STATE.

Total number of officers, 394. Total annual salary, $797,600.

Interior Department as per Official Register, 1865.

Officer.	Number.	Annual salary.	Total annual salary.
Secretary	1	$8,000 00	$8,000 00
Assistant Secretary	1	3,500 00	3,500 00
Commissioner General Land Office	1	3,000 00	3,000 00
Registers	73	500 00*	36,500 00
Receivers	73	500 00*	36,500 00
Surveyors of public lands	4	2,000 00	8,000 00
Surveyors of public lands	3	3,000 00	9,000 00

* And fees.

Interior Department as per Official Register, 1865—Continued.

Officer.	Number.	Annual salary.	Total annual salary.
Surveyor of public lands	1	$2,500 00	$2,500 00
Surveyor of public lands	1	1,800 00	1,800 00
Commissioner of Patents	1	4,500 00	4,500 00
Examiners-in-Chief	3	3,000 00	9,000 00
Examiners	14	2,500 00	35,000 00
Assistant Examiners	12	1,800 00	21,600 00
Second Assistant Examiners	6	1,600 00	9,600 00
Commissioner of Indian Affairs	1	3,000 00	3,000 00
Superintendents	7	2,000 00	14,000 00
Agents	4	1,800 00	7,200 00
Agents	48	1,500 00	72,000 00
Special agents	7	1,500 00	10,500 00
Sub-agent	1	1,500 00	1,500 00
Sub-agent	3	1,000 00	3,000 00
Commissioner of Pensions	1	3.000 00	3,000 00
Agents for paying army and navy pensions in the several States and Territories	45	4,000 00*	.....
Captain of Capitol police	1	1,740 00	1,740 00
Police officers	27	1,320 00	35,640 00
President Columbia Institution for Deaf and Dumb	1	2,500 00	2,500 00
Professor Columbia Institution for Deaf and Dumb	1	1,600 00	1,600 00
Professor Columbia Institution for Deaf and Dumb	1	1,800 00	1,800 00
Engineer in charge of Washington aqueduct	1	1,800 00	1,800 00
Superintendent of hospital for insane of the army, navy, revenue-cutter service	1	2,500 00	2,500 00
Superintendent of police	1	1,500 00	1,500 00
Superintendent of Public Printing	1	3,000 00	3,000 00
Commissioners of police	5	250 00	1,250 00
Ex-officio commissioners of police	2	250 00	500 00
Surgeons of police	3	300 00	900 00
Police magistrates	5	800 00	4,000 00
Corps of detectives	5	840 00	4,200 00
Sergeants of police	10	600 00	6,000 00
Police patrolmen	140	480 00	67,200 00
Sanitary police commissioners	9	480 00	4,320 00
Policeman at President's House	1	1,320 00	1,320 00
Watchman in the crypt	1	960 00	960 00
Gatekeeper at Capitol	1	1,000 00	1,000 00
Watchmen on the grounds	2	720 00	1,440 00
Watchman at public stables	1	1,000 00	1,000 00
Watchmen at President's House	2	720 00	1,440 00
Watchman at reservation No. 2	1	720 00	720 00
Doorkeeper at President's House	1	720 00	720 00
Assistant Doorkeeper at President's House	1	720 00	720 00
Public gardener	1	1,440 00	1,440 00
Gardener at President's	1	960 00	960 00
	548	.....	457,870 00

*Fees; whole compensation not to exceed $4,000 per annum.

RECAPITULATION—INTERIOR DEPARTMENT.

Total number of officers, 548. Total annual salary, $457,870.

Post Office Department as per Official Register, 1865.

Postmaster General	1	$8,000 00	$8,000 00
Assistant Postmasters General	3	3,500 00	10,500 00
Postmasters	26,619*	†	4,250,000 00‡
Special agents	29	1,600 00	46,400 00
Special agents	3	1,200 00	3,600 00
Special agent	1	2,500 00	2,500 00
Route agents	410	.....	287,000 00§
Local agents	51	.....	25,353 00
Mail contractors	3,926	.....	5,001,315 00
Local mail agency	67	.....	13,541 27
Mail messenger service	1,776	.....	111,432 32
Special mail messenger service	1,838	.....	51,997 68
	34,722	.....	9,811,699 27

*As per special list corrected by Post Office Department to October 20, 1867.
†Too varied for speedy classification.
‡As per report of Postmaster General.
§ Approximation.

Attorney General's Office and Judiciary, as per Official Register, 1865.

Officer.	Number.	Annual salary.	Total annual salary.
Attorney General	1	$8,000 00	$8,000 00
Assistant Attorney General	1	3,500 00	3,500 00
District attorneys, States and Territories	60	*250 00	15,000 00
Marshals' courts	60	*250 00	15,000 00
Chief justices, Territories	2	2,500 00	5,000 00
Chief justices, Territories	3	2,000 00	6,000 00
Chief justices, Territories	3	1,800 00	5,400 00
Associate justices, Territories	4	2,500 00	10,000 00
Associate justices, Territories	6	2,000 00	12,000 00
Associate justices, Territories	6	1,800 00	10,800 00
	146	.....	90,700 00

*And fees.

Department of Agriculture, as per Official Register, 1865.

Commissioner	1	$3,000 00	$3,000 00

Department of Education, as per law creating Department.

Commissioner	1	$4,000 00	$4,000 00

Treasury Department, as per Official Register, 1865.

Secretary	1	$8,000 00	$8,000 00
Assistant Secretaries	2	3,500 00	7,000 00
Comptroller	1	3,500 00	3,500 00
Comptroller	1	3,000 00	3,000 00
Commissioner of Customs	1	3,000 00	3,000 00
Auditors	6	3,000 00	18,000 00
Treasurer	1	5,000 00	5,000 00
Assistant Treasurer	1	2,800 00	2,800 00
Assistant Treasurer	1	6,000 00	6,000 00
Assistant Treasurer	1	4,500 00	4,500 00
Assistant Treasurers	2	4,000 00	8,000 00
Assistant Treasurer	1	1,000 00	1,000 00
United States depositary	1	2,500 00	2,500 00
United States depositaries	3	2,000 00	6,000 00
United States depositaries	2	1,800 00	3,600 00
United States depositary	1	1,600 00	1,600 00
United States depositary	1	1,500 00	1,500 00
United States depositaries	2	1,400 00	2,800 00
United States depositaries	6	1,300 00	7,800 00
United States depositaries	4	1,200 00	4,800 00
United States depositary	1	1,000 00	1,000 00
United States depositary	1	750 00	750 00
United States depositary	1	480 00	480 00
Register	1	3,000 00	3,000 00
Assistant register	1	2,000 00	2,000 00
Chief of loan branch	1	2,000 00	2,000 00
Comptroller National Currency Bureau	1	5,000 00	5,000 00
Deputy comptroller	1	2,500 00	2,500 00
Solicitor	1	3,500 00	3,500 00
Chief of first division	1	3,000 00	3,000 00
Assistant of first division	1	2,500 00	2,500 00
Commissioner of Internal Revenue	1	4,000 00	4,000 00
Deputy commissioner of internal revenue	1	2,750 00	2,750 00
Assessors of internal revenue	226	*1,500 00	602,008 90
Collectors of internal revenue	216	*1,500 00	498,239 66
Deputy collectors	216	1,500 00	324,000 00
Supervising architect of Bureau of Construction, (Coast Survey)	1	3,000 00	3,000 00
Assistant supervising architect of Bureau of Construction, (Coast Survey.)	1	2,000 00	2,000 00
Superintendent of United States Coast Survey	1	6,000 00	6,000 00
First assistant superintendent	1	3,500 00	3,500 00
Second assistant superintendent	2	2,500 00	5,000 00
Hydrographic inspector	1	2,825 00	2,825 00

* And fees.

Treasury Department, as per Official Register, 1865—Continued.

Officer.	Number.	Annual salary.	Total annual salary.
Disbursing agent of Coast Survey	1	$2,500 00	$2,500 00
Assistant and foreman of weights and measures	1	2,500 00	2,500 00
Director of mint at Philadelphia	1	3,500 00	3,500 00
Treasurer of mint at Philadelphia	1	2,000 00	2,000 00
Melter and refiner of mint at Philadelphia	1	2,000 00	2,000 00
Assayer of mint at Philadelphia	1	2,000 00	2,000 00
Chief coiner of mint at Philadelphia	1	2,000 00	2,000 00
Engraver of mint at Philadelphia	1	2,000 00	2,000 00
Superintendent of branch mint at San Francisco	1	4,500 00	4,500 00
Treasurer of branch mint at San Francisco	1	4,500 00	4,500 00
Assayer of branch mint at San Francisco	1	3,000 00	3,000 00
Melter and refiner of branch mint at San Francisco	1	3,000 00	3,000 00
Coiner of branch mint at San Francisco	1	3,000 00	3,000 00
Superintendent of branch mint at Denver	1	2,000 00	2,000 00
Assayer of branch mint at Denver	1	1,800 00	1,800 00
Chief coiner of branch mint at Denver	1	1,800 00	1,800 00
Melter and refiner of branch mint at Denver	1	1,800 00	1,800 00
Assistant treasurer at Denver	1	500 00	500 00
Superintendent of assay office at New York	1	3,500 00	3,500 00
Assayer of assay office at New York	1	3,000 00	3,000 00
Melter and refiner of assay office at New York	1	3,000 00	3,000 00
Deputy treasurer of assay office at New York	1	3,000 00	3,000 00
Accountant at assay office at New York	1	2,500 00	2,500 00
Weigh clerk at assay office at New York	1	2,500 00	2,500 00
Special agent	1	5,000 00	5,000 00
Special agents	7	3,000 00	21,000 00
Special agents	2	2,500 00	5,000 00
Special agents	24	$6 per day.	52,560 00
Special agents	2	5 per day.	3,650 00
Supervising inspectors of steamboats	9	1,500 00	13,500 00
Local inspectors of steamboat hulls	28	.....	23,900 00
Local inspectors of steamboat boilers	28	.....	23,900 00
Captains revenue-cutter service	34	1,800 00	61,200 00
First lieutenants revenue-cutter service	27	1,400 00	37,800 00
Second lieutenants revenue-cutter service	16	1,200 00	19,200 00
Third lieutenants revenue-cutter service	48	900 00	43,200 00
Chief engineers revenue-cutter service	18	1,400 00	25,200 00
First assistant engineers revenue-cutter service	19	1,200 00	22,800 00
Second assistant engineers revenue-cutter service	18	900 00	16,200 00
Chief clerk of Light-House Board	1	2,000 00	2,000 00
Physicians, &c., at marine hospitals	.....	.....	18,800 00
	1,023	.....	2,036,263 56

RECAPITULATION—TREASURY DEPARTMENT.

Total number of officers, 1,023. Total annual salary, $2,036,263 56.

RECAPITULATION TOTAL.

Department.	Number of officers.	Total annual salary.
Navy	1,720	$3,171,773 00
War	3,033	4,907,831 04
State	394	797,600 00
Interior	548	457,870 00
Post Office	34,722	9,811,699 27
Attorney General	146	90,700 00
Agricultural	1	3,000 00
Education	1	4,000 00
Treasury	1,023	2,036,263 56
Grand totals	41,588	21,180,736 87

Errors excepted

Mr. Manager BUTLER. Mr. President, I have the honor to offer now from the files of the Senate, in the first place, the message of Andrew Johnson nominating Lieutenant General William T. Sherman to be General by brevet in the army of the United States on the 13th day of February, 1868.

Mr. EVARTS. Under what article is that offered? With what intent?

Mr. Manager BUTLER. That is under the eleventh article and under the tenth.

Mr. EVARTS. The tenth is the speeches.

Mr. Manager BUTLER. I should say the ninth; I beg pardon.

Mr. EVARTS. That is the Emory article.

Mr. Manager BUTLER. That is the General Emory article.

Mr. EVARTS. Do you offer this on the ground that the conferring the brevet on General Sherman was with intent to obstruct the reconstruction act?

Mr. Manager BUTLER. I offer it *valeat quantum*. I referred to it in the argument I have already made. The statement which I made in the opening upon that question has been twice read—once, I believe, by yourself, and once, I am certain, by Mr. Curtis.

Mr. EVARTS. It does not seem to us, Mr. Chief Justice and Senators, to be relevant, and it certainly is not rebutting. We have offered no evidence bearing upon the only evidence you offered under the eleventh article, which was the telegrams between Governor Parsons and the President on the subject of reconstruction. We have offered no evidence on that subject, and we do not see that this appointment——

Mr. Manager BUTLER. They may be both passed upon at once to save time. I offer, also, the appointment by brevet of George H. Thomas to be Lieutenant General and then General by brevet, two brevets on the 21st, the same day that Mr. Stanton was removed.

Mr. EVARTS. What was the last paper?

Mr. Manager BUTLER. The last paper was the appointment by brevet of Major General George H. Thomas first to be Lieutenant General by brevet and then General by brevet; and that was done on the same day that Mr. Stanton was removed, the 21st of February.

Mr. EVARTS. Mr. Chief Justice and Senators, it is very apparent that this does not rebut any evidence we have offered. It is, then, offered as evidence-in-chief, that the conferring of brevets on these two officers is in some way within the evil intents that are alleged in these articles. We submit that on that question there is nothing in this evidence that imports any such evil intent.

Mr. Manager BUTLER. I only wish to say upon this that we do not understand that this case is to be tried upon the question of whether evidence is rebutting evidence or otherwise, because we understand that to-day the House of Representatives may bring a new article of impeachment if they choose, and go on with it; but we have a right to put in any evidence which would be competent at any stage of the cause anywhere.

Mr. EVARTS rose.

Mr. Manager BUTLER. Excuse me a moment.

Mr. EVARTS. I wish to ask a question. When does our right to give in evidence end?

Mr. Manager BUTLER. When you get through with competent and pertinent evidence, I suppose.

Mr. EVARTS. I supposed there was a different rule for us?

Mr. Manager BUTLER. No, sir; that is the rule that I am claiming now, putting in competent and pertinent evidence, not a different rule. I beg you will not misunderstand me. In many of the States—I can instance the State of New Hampshire—I am sure the rule of rebutting evidence does not obtain in their courts at all. Each party calls such pertinent and competent evidence as he has up to the hour when he says he has got through from time to time; and in some other of the States it is so applicable, and no injustice is done to anybody.

The CHIEF JUSTICE. The Chief Justice will submit the question to the Senate. The honorable managers propose to put in evidence the nomination sent by the President to the Senate on the 13th of February, 1868, of Lieutenant General Sherman to be General by brevet, and the nomination of Major General

George H. Thomas, sent to the Senate on the 21st of February, 1868, to be Lieutenant General by brevet and General by brevet.

Mr. ANTHONY called for the yeas and nays; and they were ordered.

Mr. HOWARD. I ask that the offer may be again read. It is not understood.

The CHIEF JUSTICE. The Chief Justice will state it. The offer was not reduced to writing. It is very brief, and the Chief Justice will state it.

Mr. HOWARD. I respectfully ask that the Chair will again announce it to the Senate.

The CHIEF JUSTICE. He was about to do so. The honorable managers propose to put in evidence the nomination of Lieutenant General Sherman to be General by brevet, sent to the Senate on the 13th of February, 1868; also, the nomination of Major General George H. Thomas to be Lieutenant General by brevet and to be General by brevet, sent to the Senate on the 21st of February, 1868. Senators, you who are of opinion that this evidence shall be received will, as your names are called, answer yea; those of the contrary opinion, nay.

The question being taken by yeas and nays, resulted—yeas, 14, nays 35; as follows:

YEAS—Messrs. Anthony, Cole, Fessenden, Fowler, Grimes, Henderson, Morton, Ross, Sumner, Tipton, Trumbull, Van Winkle, Willey, and Yates—14.

NAYS—Messrs. Buckalew, Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Davis, Dixon, Doolittle, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Hendricks, Howard, Howe, Johnson, McCreery, Morgan, Morrill of Maine, Morrill of Vermont, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Thayer, Vickers, Williams, and Wilson—35.

NOT VOTING—Messrs. Bayard, Norton, Nye, Saulsbury, and Wade—5.

So the Senate refused to receive the evidence offered.

Mr. Manager BUTLER. Mr. President, I have the honor to say that the case on the part of the managers is closed, and all witnesses who are here under the subpœna of the Senate, at the instance of the managers, may be discharged.

The CHIEF JUSTICE. Does the Chief Justice understand that the case on the part of the President is closed?

Mr. EVARTS. We are able to make the same announcement as regards witnesses who are attending on the part of the defence under subpœna; and this announcement on both sides, we assume, precludes almost necessarily any attempt to proceed with evidence again.

The CHIEF JUSTICE. The honorable managers will please proceed with their argument.

Mr. Manager BOUTWELL. Mr. Chief Justice and Senators, it has fallen to me, upon the judgment of the managers, to make the first argument on the part of the House of Representatives in the close. It is very likely that I shall be obliged to occupy the larger part of a day in presenting to the honorable Senate the views which I shall feel it my duty to offer. Under these circumstances, I have to ask that the Senate will do me the favor to adjourn until to-morrow morning at the usual hour, when I shall be prepared to proceed.

Mr. JOHNSON. Mr. Chief Justice, I move that the Senate, as a court of impeachment, adjourn until 11 o'clock to-morrow.

Several SENATORS. Say 12 o'clock.

The CHIEF JUSTICE. The rule now fixes 11 as the hour of meeting.

Mr. EVARTS. Mr. Chief Justice, may I be heard a moment?

The CHIEF JUSTICE. On a motion to adjourn no debate is in order.

Mr. JOHNSON. I withdraw the motion.

Mr. EVARTS. Of course I do not rise with the view of making the least objection to the suggestion on the part of the honorable manager, which seems to us to be entirely reasonable, but to couple with it a statement to which I beg the attention of the court for a moment. Our learned associate, Mr. Stanbery, has, from the outset, been relied upon by the President and by the associate counsel to make the final argument in this cause; and there are many reasons,

professional and others, why we should all wish that this purpose should be carried out. It has been his misfortune, in the midst of this trial, and after it had proceeded for a fortnight, to be taken suddenly ill. The illness, of no great gravity, is yielding to the remedies prescribed and to the progress of time, so that he now occupies his parlor, as we found him this morning. The summing up of a cause of this weight in many aspects, regarding the testimony and the subject and the situation, is, of course, a labor of no ordinary magnitude, physical and otherwise, and Mr. Stanbery is of the opinion, in which we concur, that he will need an interval of two days, added to what in the course of the trial would probably bring him to his feet in the argument, to have the adequate strength for that purpose. It might have been left until the day on which he should have appeared, and then have the request made for a day or two's relief in this regard; but it occurred to us to be fairer to the managers that the interval of repose should be interposed at a time when it would be useful and valuable to them also, as the proofs are not entirely printed in the proper form for reference, and the latter voluminous evidence on the subject of appointments and the routine of the practice of the government is such as to require considerable investigation in order to point out to the Senate the efficacy on the one side of, or the answer on the other to, the proofs. It is, therefore, our duty now to suggest, (coupling it with the suggestion of the managers, that until to-morrow should be given for the propriety of the more agreeable introduction of the argument on their part,) that we ask that you consider this statement which I have made to you, and see whether it is not better in all respects that the matter should now be disposed of. I think the managers will concur that this is the proper time to consider it and accommodate matters to the providential interference with the leader of the President's counsel and his confidential friend and adviser.

Mr. JOHNSON. What is the motion?

Mr. EVARTS. The suggestion is that an interval of two days should be given now, instead of waiting till Mr. Stanbery shall come in; and I understand the managers will agree it is better it should occur now than later.

Mr. YATES. I move that the Senate adjourn until Wednesday.

Mr. Manager BOUTWELL. Mr. President——

Mr. YATES. I withdraw the motion if the managers desire to be heard.

Mr. Manager BOUTWELL. Mr. President, if it shall be the pleasure of the Senate to consider favorably the request made by the learned counsel for the respondent, which is a question of public duty on which I can express no opinion, I certainly should desire that the time to be granted should be granted at once. I may say that if I had consulted my own feelings exclusively I should have made the request for a day more of time for further examination of the record and more careful preparation than I have yet been able to make; but under the circumstances of the trial I did not feel at liberty to ask that favor or consideration upon my own account. I have only now to say that if it is the judgment of the Senate that time should be granted to the learned counsel who is to close for the respondent it would certainly be very desirable on my part that the time should be granted at once, and that we may all have the benefit of it in preparing what we deem it proper to say.

Mr. EVARTS. One word, if I may be indulged. The honorable senators will also perceive that if Mr. Stanbery's resolution and expectation should be disappointed, it is then a matter of some importance for us of the defence to supply his place as well as we may on an unexpected emergency, and a little time in that behalf also would be valuable to us.

Mr. JOHNSON. Mr. Chief Justice, I move that the Senate, sitting as a court of impeachment, adjourn until Thursday morning.

Several senators. Say Wednesday.

Mr. Manager LOGAN. If the gentleman will withdraw the motion for a moment, I desire to make a request of the Senate.

Mr. JOHNSON. Certainly; or rather I would submit the motion in this form: that when the Senate, sitting as a court of impeachment, adjourns to-day, it adjourn to meet at eleven o'clock on Wednesday morning.

Mr. DOOLITTLE. I suggest twelve o'clock instead of eleven. [No, no.]

The CHIEF JUSTICE. The rule now fixes eleven as the hour of meeting.

Mr. Manager LOGAN. I merely desire to make a request. Is this the proper time to do it, sir?

The CHIEF JUSTICE. It is.

Mr. Manager LOGAN. Mr. President and Senators, I desire to make a request of the Senate before the adjournment, as doubtless that will be granted upon the statement of the honorable counsel for the President and the managers, as they both seem to desire this extension of time. I have not presumption enough to ask of the Senate permission to address them on the issues presented for their consideration, nor do I desire to do so; but I ask that I may be permitted to file to-day the printed argument which I have prepared, that it may become a part of the record, without taking the time of the Senate, inasmuch as the evidence on both sides, for the prosecution on the part of the people and for the respondent, has been closed.

Mr. STEWART. Mr. President, I move that leave be granted to the manager to file his argument.

The CHIEF JUSTICE. That involves a change of the rules, and it cannot be done if there is any objection.

Mr. BUCKALEW. I object.

Mr. JOHNSON. May I ask the honorable manager whether the argument is now in print?

Mr. Manager LOGAN. It is, and I am ready to file it at once.

Mr. STEWART. I make the motion that leave be granted, and that the manager furnish a copy of his argument to the other side.

The CHIEF JUSTICE. The order cannot be made except by unanimous consent, as it involves a change of the rules. Is there unanimous consent?

Mr. BUCKALEW. I object.

Mr. WILSON. I ask that the rule bearing on this matter be read.

The CHIEF JUSTICE. The Secretary will read the twenty-first rule.

The chief clerk read as follows:

XXI. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side, (unless otherwise ordered by the Senate, upon application for that purpose,) and the argument shall be opened and closed on the part of the House of Representatives.

Mr. Manager LOGAN. Mr. President, the reason I made the request to-day—if it is denied, as a matter of course I shall not renew it—was that I might present the argument I have prepared to the counsel for the respondent, that they, if they saw anything worthy of reply in it, might have an opportunity of replying in their argument.

The CHIEF JUSTICE. The rule permits argument by but two counsel, one in opening and one in the close, on the part of the managers, and two on the part of the President. The question of changing the rule has been frequently before the Senate and the Senate has uniformly refused to alter it. An order can be submitted to-day to be considered on the next day of meeting, but not for present consideration except by unanimous consent.

Mr. HOWE. I did not hear any objection.

The CHIEF JUSTICE Objection has been made.

Mr. DOOLITTLE. I object.

Mr. Manager BOUTWELL. Mr. President, before the adjournment of the Senate I should like to call the attention of the counsel for the respondent to a feature

of the testimony. It happens that the managers, as I suppose under the construction given to the rule, are to proceed first in the argument. A large mass of testimony has been introduced upon the subject of removals and appointments. At the present time I am not informed whether there are special cases on which the counsel for the President rely. I think it may be proper for me at this time to ask them whether there are cases upon which they purpose to rely as furnishing precedents for the course pursued by the President on the 21st of February.

Mr. ANTHONY. Mr. President, I will make a motion, to lie over until to-morrow, that the 21st rule be so modified as to allow the honorable manager——

The CHIEF JUSTICE. The order will be reduced to writing.

Mr. STEWART. I have drawn up an order, which I submit in writing.

The CHIEF JUSTICE. The senator from Nevada submits an order, which will be read by the Secretary.

The chief clerk read as follows:

Ordered, That the honorable Manager Logan have leave to file his written argument to-day, and furnish a copy to each of the counsel for the respondent.

Mr. SHERMAN. Mr. President, I submit, as a substitute for that, to go over with it, the following:

That the managers on the part of the House of Representatives and the counsel for the respondent have leave to file written or printed arguments before the oral argument commences.

The CHIEF JUSTICE. The order submitted by the senator from Nevada is under consideration unless objected to.

Mr. BUCKALEW. I mean my objection to apply to all this.

The CHIEF JUSTICE. It is objected to. For information, the amendment proposed by the senator from Ohio will be read.

Mr. STEWART. I will accept the amendment offered by the senator from Ohio as a substitute for my proposition.

The CHIEF JUSTICE. The order as now proposed will be read for information.

The chief clerk read as follows:

Ordered, That the managers on the part of the House of Representatives and the counsel for the respondent have leave to file written or printed arguments before the oral argument commences.

The CHIEF JUSTICE. The present consideration of the order is objected to; it will lie over until to-morrow.

Mr. DOOLITTLE. Mr. Chief Justice, the motion now made is a change of the rule, and I object to it.

The CHIEF JUSTICE. It is already objected to.

Mr. JOHNSON. I now renew the motion that when the Senate, sitting as a court of impeachment, adjourn, it adjourn to meet at 11 o'clock on Wednesday.

The motion was agreed to.

Mr. EDMUNDS. I move that the Senate sitting for this trial do now adjourn.

The motion was agreed to; and the Senate, sitting for the trial of the impeachment, adjourned until Wednesday, the 22d instant.

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