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THE IMPEACHMENT TRIAL.

PRESENTATION OF DOCUMENTARY EVIDENCE—ORATORY NOT IN FAVOR—DEPARTMENT CHRONOLOGY—MR. EVARTS TAKES EXCEPTION TO THE WORD "DARE"—THE CABINET NEXT TO TAKE THE STAND.

BY TELEGRAPH TO THE TRIBUNE.

WASHINGTON, Wednesday, April 15, 1868.

The proceedings of the Court of Impeachment were not very interesting or important to-day. Mr. Stanbery was unable to attend, and his associates were not sufficiently familiar with the character of the evidence yet in reserve to warrant them in proceeding with oral testimony. So Mr. Curtis announced, soon after the opening of the Court, that he would consume the day in the presentation of documentary testimony. Previous to this, however, some time had been spent in a repetition of the attempt which was made yesterday, to give the Managers and Counsel opportunities for speeches that are not allowed by the existing rule. The subject came up on a motion by Mr. Sumner to allow such of the Managers and Counsel as are crowded out by the rules to print their arguments as part of the proceedings of the Court. For this Mr. Conness moved a substitute, allowing each side four days for oratory, after the close of the testimony. Mr. Drake moved to postpone the whole subject indefinitely, and this was done by 37 to 15.

The first document presented in evidence was the appointment of Thomas Ewing of Ohio as Secretary of War, made by the President on the 22d of February. The nomination was made on that day, as testified by the President's Secretary; but when the Secretary reached the Capitol, the Senate had adjourned. It did not, therefore, reach the Senate until Monday, Feb. 24. The next document offered was the Message of the President in answer to the Executive resolution of the 21st, which pronounced the removal of Secretary Stanton illegal and unconstitutional. This message was dated Feb. 24. Mr. Butler promptly objected to its introduction, on the ground that it was a declaration made after the crime had been committed. He concluded by asking whether the counsel for the President dare offer such a thing in evidence. This brought Mr. Evarts to his feet in a short speech, in which he sharply rebuked Mr. Butler for his word "dare." He said that the President's counsel might claim some superiority in law and evidence, but in the measure of daring they certainly could not compete with the Managers. After considerable debate, the Chief-Justice expressed the opinion that the message was not competent evidence. He would, however, submit the question to the Senate if any Senator desired it. No Senator desired it, and the document was ruled out. Next, the counsel presented a long list of appointments, made during preceding administrations without the advice and consent of the Senate while the Senate was in session. These were not put in as testimony, but were ordered to be printed and laid on the desks of Senators. The residue of the day's session was occupied in the introduction of documents of various kinds, none of them new to the public or important in their character. At half-past three, the counsel having finished the work which they had appointed for the day, the Court adjourned.

THE TRIAL.

The Court was opened in due form, and the Managers and Members of the House having been announced, took their places. Messrs. Stevens and Williams were absent at the opening, but appeared shortly afterward. Mr. Stanbery was also absent. After the Journal had been read, the Chief-Justice stated the question to be on the order which was submitted by Senator Sumner yesterday, which was read, as follows:

"*Ordered*, That in answer to the motion of the Managers, under the rule limiting the arguments 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 arguments of the closing Managers."

Senator 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 defense may see it and reply to it."

Senator SUMNER—I have no objection to that.

The order as amended was read.

Mr. EVARTS—Mr. Chief-Justice, may I be allowed to ask a question? The amendment offered and accepted places, I suppose, the proper restrictions upon the arguments to be filed on the part of the Managers.

Several Senators—We cannot hear.

Mr. EVARTS (in a louder tone)—The restriction proposed to be placed on this liberty by the amendment, puts the matter on a proper basis, as I suppose, or regards the printed briefs that may be put in on the part of the Managers—that is, that they shall be filed before we make our reply. On our part it would be proper that we should have the opportunity to file the brief at any time before the closing Manager makes his reply, so that we may have an opportunity of replying in our brief to that of the Managers.

Mr. BINGHAM—Mr. President, I desire to say that it would seem that if the order is made as it is suggested, that additional arguments made by the counsel in behalf of the President, need not be filed until the close of the arguments made orally to the Senate. The Managers on behalf of the people would have no opportunity to see these arguments. I would ask the Senate to consider whether it is right to give the counsel for the President an opportunity to review and to reply to the arguments of the counsel for the people, before any argument 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 a propriety in requiring the Managers to file their arguments before the reply of the counsel for the President. The same rule would be applied to us that by the present amendment would be applied to the Managers of the Impeachment; or they are not required to file theirs, except at the very moment that they close their oral argument, and then we are obliged to commence our oral argument.

Mr. NELSON, after making some remarks in an inaudible tone, until admonished by Senators to speak louder, proceeded as follows: In consequence of the imputation made by the Managers, that we desired unnecessarily to consume the time of the court, those of us who under this arrangement had not intended to argue the case, did not intend, either by ourselves or by others, to make any application to the Senate for an enlargement of the rule; but since that application has been made on the part of the Managers, I desire to say to the Senate, that if we are permitted to argue at all, 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 in view of the written arguments whatever; we suppose that the Managers on the part of the House, who have had this subject before them for a much longer period than we have, are more familiar with it, and are better prepared to make written arguments; so that if this rule be extended, we respectfully ask the Senate to allow us to address the Senate in such a mode, either oral or written, as we desire. I do not expect to be able to interest the Senate as much as the learned gentleman to whom the management of the case has hitherto been confided on the part of the President, and I have practiced my profession in the town of his domicile for the last 30 years; and as he has thought 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 may be heard at all, to be heard in the manner which I have suggested.

Senator CONNESS made a motion in writing to strike out all after the word "ordered," and insert the following as a substitute:

"That the 21st rule shall be amended so 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."

Senator DRAKE called for the Yeas and Nays, and the substitute was lost.

YEAS.

Cameron,	Fowler,	Patterson (Tenn.),	Van Winkle,
Conness,	Harlan,	Ramsey,	Willey,
Cragin,	Henderson,	Sherman,	Wilson,
Dixon,	Hendricks,	Stewart,	Yates—19.
Doolittle,	McCreery,	Trumbull,	

NAYS.

Anthony,	Drake,	Morgan,	Saulsbury,
Buckalew,	Edmunds,	Morrill (Me.),	Sumner,
Cattell,	Ferry,	Morrill (Vt.),	Thayer,
Chandler,	Frelinghuysen,	Morton,	Tipton,
Cole,	Howard,	Patterson (N. H.),	Vickers,
Conkling,	Howe,	Pomeroy,	Williams—27.
Davis,	Johnson,	Ross,	

The question was stated to be on the order.

Senator DOOLITTLE—Mr. Chief-Justice, I prefer oral arguments to printed ones, and I submit the following, notwithstanding that there are but four [Cries of "order, order"] of the counsel for the President and six of the Managers of the House. [Order, order.] I have sent to the Chair an order which I will ask to have read. It was read as follows:

Strike out all after the word "ordered," and insert: That upon the final argument two Managers of the House open, two of the counsel for the respondent reply, then two of the Managers speak, and they to be followed by the two other counsel for the respondent, and they in turn to be followed by the two other Managers of the House, who shall conclude the argument.

Mr. DRAKE—Mr. President, I move the indefinite postponement of the whole proposition, together with the subject.

Mr. SUMNER called for the Yeas and Nays, and the motion was carried.

YEAS.

Anthony,	Drake,	Howe,	Ross,
Buckalew,	Edmunds,	Johnson,	Saulsbury,
Chandler,	Ferry,	Morgan,	Sherman,
Cole,	Fessenden,	Morrill (Me.),	Stewart,
Conkling,	Grimes,	Morrill (Vt.),	Thayer,
Conness,	Harlan,	Morton,	Tipton,
Corbett,	Henderson,	Patterson (N. H.),	Williams,
Davis,	Hendricks,	Pomeroy,	Yates—34.
Dixon,	Howard,		

NAYS.

Cameron,	Fowler,	Ramsey,	Vickers,
Cattell,	Frelinghuysen,	Sumner,	Willey,
Cragin,	McCreery,	Trumbull,	Wilson—15.
Doolittle,	Patterson (Tenn.),	Van Winkle,	

So the subject was indefinitely postponed.

Senator FERRY offered the following order:

"Ordered, That the 12th rule be so amended as that the hour of the day at which the Senate shall sit upon the trial now pending, shall be, unless otherwise ordered, 11 o'clock, forenoon, and that there shall be a recess of 30 minutes each day, commencing at 2 o'clock p. m.

The order was rejected, as follows:

YEAS.

Cameron,	Corbett,	Howard,	Sherman,
Cattell,	Cragin,	Howe,	Stewart,
Chandler,	Drake,	Morgan,	Sumner,
Cole,	Ferry,	Morrill (Me.),	Thayer,
Conkling,	Frelinghuysen,	Morrill (Vt.),	Williams,
Conness,	Harlan,	Ramsey,	Wilson—24.

NAYS.

Anthony,	Fessenden,	Morton,	Trumbull,
Bayard,	Fowler,	Patterson (N. H.),	Van Winkle,
Buckalew,	Grimes,	Patterson (Tenn.),	Vickers,
Davis,	Henderson,	Pomeroy,	Willey,
Dixon,	Hendricks,	Ross,	Yates—26.
Doolittle,	Johnson,	Saulsbury,	
Edmunds,	McCreery,	Tipton,	

The CHIEF-JUSTICE directed the counsel to proceed with the case.

Mr. EVARTS—Mr. President and Senators: Although I am not able to announce, as I should be very glad to do, that our associate, Mr. Stanbery, according to the hopes we entertained, has been able to come out to-day, yet I am happy to say that he is quite convalescent, and cannot be long kept from giving the case his attention. Under these circumstances, and from a desire to do whatever we may properly do in advancing the trial of this cause, we propose to proceed to put in documentary evidence, hoping that we will not be called upon to put in any oral testimony until to-morrow.

Mr. CURTIS said that he would have to call upon the Executive Clerk of the Senate to produce the nomination of Thomas Ewing, sr., of Ohio, to the office of Secretary of War, on the 21st of February, 1868.

The CHIEF-JUSTICE was understood to express a doubt whether, under the Rules of the Senate, nominations were not under the injunction of secresy.

Senator EDMUNDS asked the unanimous consent of the Senate to show that the fact of nominations being made was considered not subject to the injunction of secresy.

Mr. CURTIS was so instructed, and therefore he had supposed that no motion to remove the injunction of secresy was necessary.

Senator SHERMAN said that if a motion was considered necessary he would move that the Executive Clerk of the Senate be sworn as a witness in the case.

The motion was agreed to, and the Executive Clerk of the Senate, Dewitt C. Clarke, was sworn and examined by Mr. Curtis, as follows:

DEWITT C. CLARKE'S TESTIMONY.

Q. State what document you have before you? A. I have the original nomination by the President of Thomas Ewing, sr., as Secretary of the Department of War.

Mr. CURTIS—Please to read it.

Witness read as follows:

"*To the Senate of the United States:*

"I nominate Thomas Ewing, sr., of Ohio, as Secretary for the Department of War. ANDREW JOHNSON.

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

Q. On what day was that actually received by you? A. On the 22d of February.

Mr. CURTIS—I now desire to put in evidence a copy of the message from the President of the United States to the Senate of the United States, which bears date of the 24th of February, 1868. I have a printed copy, which is an authorized copy, and I suppose it will not be objected to.

Mr. BUTLER—The article of proof is not objected to, but the proof itself is objected for a very plain reason: This message was sent after the President was impeached by the House, and of course his declarations put in, or attempted to be put in, after his impeachment, whether directed to the Senate or to anybody else, cannot be given in evidence. The exact order of time may not be in the minds of Senators, and I will therefore state it. On the 21st of February a resolution was offered in the House looking to the impeachment of the President, and it was referred to a Committee. On the 22d of February the Committee reported, and the impeachment was actually voted. Then intervened Sunday, the 23d. Any message sent on the 24th of February must have been known to the President to be after his impeachment.

Mr. CURTIS—It will be recollected that the Honorable Managers put in evidence a resolution of 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, with reference to the removal of Mr. Stanton and refuse to receive a reply which the President made to that resolve.

Mr. BUTLER—I have only to say that this is an argument to prejudice and not to law. Will my learned friends opposite dare to say that they have read of a case where, after indictment of the criminal, the respondent was allowed to put in evidence his statement of his own defense. If so, when does that right cease? We put in the resolution referred to, because it is a part of the transaction of Mr. Stanton; it was made before the impeachment was determined upon; and now we ask to admit the criminal's declarations made that day. I only ask the Senate to consider it as a precedent hereafter, as well as being a great wrong upon the people, that after indictment, after impeachment, the President can send in a message, which shall be taken as evidence.

Mr. EVARTS—The learned Managers ask whether we dare to do something. We have not been in the habit of considering the measure for the conducting of forensic disputation to be a question of daring. We are not in the habit of applying such epithets to opponents, nor, hitherto, in the habit of receiving them from them. The measure of duty of counsel is the measure which we shall strive to obey, and not the measure of daring, if for no other reason than this: That on rules of law, of fact, and evidence we may perhaps expect some superiority, but on measures of daring— [Laughter.] Is the learned Manager entirely right in saying that the impeachment was voted on the 22d of February? The 22d was Saturday, and, unless I am mistaken, a vote was not taken until the following Monday.

Mr. BUTLER—The vote was taken on Saturday, the 22d of February.

Mr. EVARTS—That is, that articles of impeachment shall be brought in?

Mr. BUTLER—Yes, Sir.

Mr. EVARTS—The articles, however, were not voted until the 24th. Now it is said that because the vote that the impeachment should proceed was taken on the 22d of February, that impugns the admissibility of the evidence proposed to be laid before the Senate. My learned associate has distinctly stated the situation of the matter. Perhaps both of those transactions—the vote in the Senate, and this message—may be within the range of argument. But the Managers have put in evidence this transaction of the Senate; and exactly what bearing that has as a part of the *res gestæ*, the removal of Mr. Stanton, which took place before the resolution was passed by the Senate, it is not easy to see. It was, however, received as proper evidence, and the reason we did not consider it objectionable was that we supposed, as a matter of course, that this message, which is in answer to that resolution, on the introduction of the topic by the resolution before offered in evidence, would be admissable in testimony. We submit, therefore, that, in every principle of law and of discussion in reference to the completeness of the record on the point, this message of the President should be allowed to be read and given in evidence.

Mr. BUTLER—I simply desire to call the attention of the Senate to the fact that, whether as a matter of daring or of professional knowledge, neither counsel having stated any possible reason why this paper should be received in evidence, we put in the resolve of the Senate to show that, notwithstanding that resolve served upon the President on the night of the 21st of February, he still went on and treated this Lorenzo Thomas as Secretary of War *ad interim*; that Lorenzo Thomas was thus recognized by him after that as the Secretary *ad interim*; and that after that Lorenzo Thomas was carrying out his design to take possession of the office by force. We offered it in order to show that the President of the United States was determined on his obeying the law of the land, and notice was served upon him for the purpose of having him know the action of the Senate, so that he might stay his hand. Now, can a prepared article made after that, and after he was impeached by the House of Representatives be put in evidence? One ounce of action, in obedience to the law and the resolution of the Senate, would have been a great deal better than pages of argument. I will not use the word dare, for I know that counsel would dare do all that good lawyers would dare do in favor of their client, but I will say that the gentlemen have not shown any sound reason on which this can be done.

The CHIEF-JUSTICE directed the counsel for the President to put in writing what they proposed to prove. While they were engaged in doing so, Mr. BUTLER said that, to prevent mistake, he had sent the Clerk of the House for the record of the proceedings on impeachment. Mr. McPherson, Clerk of the House, having come in soon afterward, and handed the House Journal to Mr. Butler,

Mr. BUTLER said: I find, upon examination, that the state of the record is this: On the 21st of February the resolution of impeachment was prepared, and referred to a committee on the 22d; the committee reported, and that report 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—five o'clock; so that I was correct.

Mr. BINGHAM—I rise to state a further reason why we insist upon this objection. The House of Representatives, as appears by the journal now furnished, voted on the 24th of February that Andrew Johnson be impeached of high crimes and misdemeanors; on the day preceding the 22d of February, it appears that the Senate of the United States proceeded to consider another message of the President, 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 previous action of the Senate. The Senate 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 proceeds thereupon to remove him, and to appoint Lorenzo Thomas Secretary of War *ad interim*, in direct contravention of the express words of the act itself, and of the action of the Senate. The record shows that on 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: the removal of the Secretary of War, and his appointment of a Secretary *ad interim*, and declaring that under the Constitution and laws of the United States the President had no power to make the removal, or to make the appointment of a Secretary *ad interim*, and declaring 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, and notice of that action was served on the President on the night of the 21st of February. Now, what takes place? Here is a presentment made on the 21st or 22d of February, 1868, against the President, before the Grand Inquest of the nation. After that presentment he was within the power of the people. Although he had fled to the remotest ends of the earth, he could not have stopped for a moment the proper course of this inquiry to final judgment, even though personal process had never been served upon him. It is so provided in the text of the Constitution that it is to be challenged by no man. After these proceedings thus instituted, and two days after, the effect of the action of the Senate being made known to him, and three days after the effect of the commission of his crime, the President enters deliberately on the task of justifying himself before the nation for a violation of its laws, 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, any more than the voluntary declaration of the criminal after the fact made in his own behalf? Does it alter the case in law? Does it alter the case in fact, reason or the judgment of any man living either within the Senate or outside of the Senate, that he chooses to put his declaration in his own defense in writing? The law makes no such distinction. I undertake to assert here, regardless of any attempt to contradict my statement, that there is no law by which anybody accused criminally, after the fact, can make declarations, either oral or in writing, either by a message to the Senate or a speech to a mob, that can be given in evidence to acquit himself or to affect in any manner his criminality within a tribunal of justice, or to make evidence which should be admitted upon 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 relating to rules of evidence in proceedings of the sort is directly against the proposition, and for the simple reason that this 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, and of the conduct of the President whereof he stands accused. Mr. William H. McDonald, Chief Clerk of the Senate, testified on page 148: "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 10 o'clock p. m., on the 21st of February, 1868." And on the 24th of February, three days afterward, the President volunteers a written declaration, which his counsel now propose to make evidence in his behalf before this tribunal of justice. Of course it is evidence for no purpose whatever, except for the purpose of exculpating him of the criminal accusations preferred against him. Senators will bear with me while I make one further remark. The proposition is to introduce this whole message, not simply what the President says for himself, nor simply the argument which he chooses to present in the form of a written declaration in vindication of his criminal conduct, but the declaration of third persons. The Senate is asked to accept this, too, as evidence on the trial of the accused—the declaration of the third persons whom he calls his Constitutional advisers—he states their opinions without giving their language; he gives their conclusions, and those conclusions are to be thrown before the Senate as part of the 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 that he has any right to attempt to shelter himself from a violation of the laws of his country under the opinions of any member of his Cabinet. The Constitution never vested his Cabinet counsellors with any such authority; it never vested the President with authority to suspend the laws, or to violate 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 law. There is no colorable excuse for these proceedings. I say it with all respect for the learned counsel, and I challenge now the production of authority in any respectable court that ever allowed any man, high or low, officially or unofficially, to introduce his own declarations, written or unwritten, made after the fact, in his defense. That is the point I take here. I beg 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 the Senate.

Mr. EVARTS—Mr. Chief-Justice and Senators: The only apology which the learned Manager has made for the course of his remarks is an apology for the consumption of your time, and yet he has not hesitated to say, and again to repeat, that there is no color of justification for the attempt of the President of the United States to defend himself, or for the effort that his counsel make to defend him. We do not receive our laws from the learned Manager.

Mr. BINGHAM (rising)—Will the gentleman allow me?

Mr. EVARTS was proceeding with his remarks.

Mr. BINGHAM—The gentleman misrepresents me.

Mr. EVARTS—I do not misrepresent the honorable Manager.

Mr. BINGHAM—I did not say that there was no color of excuse for the President's attempt to defend himself, or for his counsel's attempt to defend him; but that there was no color of excuse for offering this testimony.

Mr. EVARTS—It all comes to the single thing. Everything that is admitted on our view or line of subject in controversy, except it conform to the preliminary view which the learned Managers choose to throw down, is regarded as wholly outside the color of the law and of right on the part of the President and his counsel; and it is so repeatedly charged. Now, if the crime was completed on the 21st, which is not only the whole basis of this argument of the learned Manager, but of every other argument on the evidence which I had the honor of hearing from him, I should like to know what application and relevancy the resolution had which was passed by the Senate on the 21st of February after the act of the President had been completed, and after the act had been communicated to the Senate. There can be no single principle of the law of evidence on which that view can be proved on behalf of the Managers, and on which the reply of the President can be excluded. What would be thought, in a criminal prosecution, of a prosecutor giving in evidence what a magistrate or a sheriff had said to the accused concerning the deed, and then shut the mouth of the accused as to what he had said, then and there, in reply? The only possible argument by which what was said to him could be given in evidence is that, unreplied to, it might be construed into an admission or submission. If the Sheriff were to say to the prisoner, "You stole that watch," and if that could be given in evidence, and the prisoner's reply, "It was my watch, and I took it because it was mine," could not be given in evidence, that would be precisely the same proposition which is being applied here, by the learned Manager, to this action had between the President and the Senate.

Mr. BUTLER—If the thief did not make a reply until four days afterward, and then sent in a written statement as to whose the watch was, putting in, also, what his neighbor said—that would be a more appropriate illustration. I take the illustration as a good one; as an excellent one, the Sheriff says to the prisoner, "Where did you get that watch?" four days afterward, the prisoner sends to the Sheriff, after he had been in jail, after an indictment had been found against him, a written answer and claims, in this defense, that that answer may be read. Not only that, but he goes on to put in what everybody else said, or what four or five other men said, and claims that that may be given in evidence. If it is desirous to know what the Cabinet said, let the members of the Cabinet be brought here and let us cross-examine them and find out what they meant when they gave this advice, and how they came to give it, and under what pressures. But at present we do not want the President to put in the advice of the Cabinet.

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 the Senate to the President on the 22d of February could well have been answered sooner than the 24th of February.

Mr. BUTLER—It was communicated on the 21st of February.

Mr. EVARTS—I understood you to say that you could not state whether it was on the 21st or the 22d.

Mr. BUTLER—It was at 10 o'clock on the night of the 21st.

Mr. EVARTS—Very well, it was communicated at 10 o'clock on the night of the 21st of February. The Senate was not in session on the 22d more than an hour, it being a holiday. Then, Sunday intervening, I ask whether an answer to that communication, sent on Monday, the 24th, is not answer according to the ordinary course of prompt and candid dealing between the President and the Senate, concerning the matter in difficulty. As far as the simile about the President's being in prison goes, I will remove that by saying that he was not impeached until 5 o'clock p. m. on Monday, the 24th, that we need not pursue these trivial illustrations. The matter is in the hands of the Court, and must be disposed of by the Court.

Mr. BINGHAM—I desire to say, once for all, that I have said no word and intended to say no word during the progress of the trial that would justify the operation of counsel for the President in saying that we deny them right to make defense of the President. What I insist upon here, what I ask the Senate to act upon, is that he shall make a defense precisely as an official citizen of the United States makes defense according to the law of the land, and not otherwise; that he should not, after the commission of a crime, manufacture evidence in his own behalf, either orally or in writing, by his own declarations, and incorporate into them the declarations of third persons. It has never been allowed in any respectable court in this country. Where men stand on trial for their lives, they never are permitted, after the facts, to manufacture testimony by their own declarations, either written, unwritten, or on their own motion, introduce them into a court of justice. I have another word to say, in light of what has dropped from the lips of the counsel, that he has evaded most skillfully the point which I took occasion to make in the hearing of the Senate, that here is an attempt to introduce not only written declarations of the accused in his own behalf after the fact, but declarations of third persons not under oath. I venture to say that a proposition to the extent of this never was made before in any tribunal of justice in the United States where any man was accused of crime. A proposition not merely to give his own declarations, but to report the declarations of third persons in his own behalf, and throw them before the Court as evidence. The gentlemen seem 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 a right under the Constitution to communicate from time to time with the two Houses of Congress such matters as he thinks pertain to the public interests, and if he thinks this matter pertained to the public interest he might send a message; but I deny that there is any colorable excuse—I repeat my words here—for intimating that the President of the United States, being charged with the commission of a crime on the 21st of February, 1868, being proved guilty—I undertake to say, proved guilty by his written confession, to the satisfaction of every intelligent and unprejudiced mind, in or out of the Senate, in this country—can proceed to manufacture evidence in his own behalf in the form of a message, three days after the fact. That is the point that I make here. We are asked what importance, then, do we attach to the action of the Senate. I answer that we attach precisely this importance, to wit, that the law of the land enjoins upon the President of the United States the duty to notify the Senate of the suspension of an officer and the reason therefor, and the evidence on which he made the suspension, and the law of the land enjoins upon the Senate the duty to act upon the report of the President so made, and to come to a decision upon that report and upon the evidence accompanying it, 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 unsatisfactory. In accordance with the law the Senate non concurred in the suspension. The law expressly provides that if the Senate concur they shall notify the President. The law by every intendment provides that if the Senate 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 his office from which he was suspended. The Senate in this case did give that notice. Why should it not also notify the Executive, that he might know with whom to communicate, and that he might no longer communicate with a Secretary of War *ad interim*. The gentleman, I trust, is answered as to the importance and propriety of our introducing this evidence. But there was another reason for it. It was to leave the President without excuse before the Senate and before the people for persisting in his unlawful attempt in violating a law of the land and executing the duties of the office of Secretary of War through another person than Edwin M. Stanton. It was his business to submit to the final decision of the Senate whether the suspension should become absolute or should be rejected. But here is a man defining the action of the Senate, defying the express letter of the law, that the Secretary of War, in whose suspension the Senate had refused to concur, should forthwith resume his functions; proceeding with his conspiracy with Thomas to confer the functions of that office on another, regardless of the law regulating the tenure of office, regardless of the Constitution, regardless of his oath, and regardless of the rights of the American people; and he winds up the farce by coming before the Senate with his written declaration—which is of no higher authority than his oral declarations made three days after the fact—and he asks the Senate to consider that as evidence.

Mr. Chief-Justice, Senators: There is no branch of the law where there is more difficulty to lay down precise rules than that which regards 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 had removed E. 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*.

That resolution was adopted on the 21st of February, and was served on the evening of the same day. The Message now proposed to be offered in evidence was sent to the Senate on the 24th of February. It does not appear to the Chief-Justice that the resolution of the Senate called for an answer, and, therefore, the Chief-Justice must regard the message of the 24th of February as a vindication of the President's act, addressed to the Senate. It does not appear to the Chief-Justice that that comes within any of the rules of evidence which would justify its being received in evidence on this trial. The Chief-Justice, however, will take the views of the Senate in regard to it. No vote being called for, the Chief-Justice ruled the evidence inadmissible.

Mr. CURTIS then offered to put evidence a tabular statement compiled at the office of the Attorney-General, containing a list of executive officers of the United States, with their statutory terms or act of Congress creating the office, the name or title of the office, showing whether the Tenure was for a definite term, at the pleasure of the President, or for a term indefinite. He said that of course it was not strictly evidence, but it had been compiled as a matter of convenience, and he desired to have it printed so that it might be used in argument of counsel on both sides.

After some objection and interlocutory remarks by Mr. Butler, the paper was, on motion of Mr. Trumbull, ordered to be printed as a part of the proceedings.

Mr. Curtis then offered in evidence papers in the case of the removal of Mr. Pickering by President Adams, remarking that it was substantially the same as had been put in evidence by Mr. Butler, except that it was more formal.

The witness (Mr. Dewitt C. Clarke) here desired to make a correction of his testimony to the effect that the message of the President was not delivered to him on the 22d of February, but on the 24th of February; that it was brought up by Mr. Moore, the President's private secretary, on the 22d of February, but that the Senate not being in session, Mr. Moore returned with it to the Executive Mansion, and returned it on the 24th.

Mr. CURTIS—Do I understand your statement now to be that Col. Moore brought it and delivered it to you on the 22d of February? A. He brought it up on the 22d; he did not deliver it to me as the Senate was not in session.

Q. He took it away, and brought it back on the 24th? A. Yes.

Mr. BUTLER—How did you know that he brought it here on the 22d? A. Only by information from Col. Moore.

Q. Then you have been telling us what Col. Moore told you? A. That is all.

Mr. BUTLER—Then we do not want anything more of what Col. Moore told you.

MR. WILLIAM G. MOORE'S TESTIMONY.

Mr. William G. Moore, the President's private Secretary, was recalled and examined as follows:

Mr. CURTIS—What is the document that you hold in your hand? A. The nomination of Thomas Ewing, sr., of Ohio as Secretary for the Department of War.

Q. Did you receive that from the President of the United States? A. I did.

Q. On what date? A. On the 22d of February, 1868.

Q. About what hour of the day? A. I think it was after 12 o'clock.

Q. And before what hour? A. Before one o'clock.

Q. Then it was between 12 and 1 o'clock? A. It was.

Q. What did you do with it? A. By 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 it was 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.

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 in consequence? 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 and I served it on the President, on Monday the 24th February, 1868, by the President, on Monday the 24th February, 1868, to deliver it to the Senate.

Q. What did you do in consequence. A. I obeyed the order.

Cross-examined by Mr. Butler: Q. Was that, as it is now, or was it in a sealed envelope? A. It was 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 the only message that was to go that day; I gave it to the clerk, who sealed it and handed it to me.

Q. Did you unseal it, or examine it, till you delivered it on the 24th? A. Not to my recollection.

Q. Did you show it to anybody here on the 22d? A. No, Sir; it was sealed.

Q. Have you spoken this morning with Mr. Clark on the subject? A. He asked me on what date I had delivered the message, and I told him it was the 24th.

Mr. BUTLER—That is all.

ADDITIONAL DOCUMENTARY EVIDENCE.

Mr. CURTIS put in evidence, without objection, certified copies of the appointment, by President Tyler, on the 29th of February, 1844, of John Nelson, Attorney-General, to discharge the duties of Secretary of State, *ad interim*, until a successor to Mr. Upshur should be appointed, and of the subsequent confirmation by the Senate, on March 6, 1844, of John C. Calhoun to that office; also the appointment, by President Fillmore, on July 23, 1850, of Winfield Scott as Secretary of War, *ad interim*, in place of George W. Crawford, and of the confirmation by the Senate, on August 15, 1850, of Charles M. Conrad as Secretary of War.

Mr. CURTIS also offered in evidence the appointment by Mr. Buchanan in January, 1861, of Moses Kelley as Secretary of the Interior.

Mr. BUTLER inquired whether counsel had any record of what had become of the Secretary of the Interior at that time; whether he had resigned, or had run away, or what? [Laughter.]

Mr. CURTIS was not informed, and could not speak either from the record or from recollection.

Mr. CURTIS also offered in evidence the appointment by President Lincoln of Caleb B. Smith as Secretary of the Interior; also a document relating to the removal from office of the Collector and Appraiser of Merchandise of Philadelphia.

Mr. BUTLER objected to putting in evidence the letter of removal by McClintock Young, Acting Secretary of the Treasury.

Mr. CURTIS inquired whether the Manager wanted evidence that McClintock Young was Acting Secretary of the Treasury?

Mr. BUTLER replied that he did not.

Mr. CURTIS remarked that the documents were certified by the Secretary of the Treasury as coming from the records of that Department. They were offered in evidence to show the fact of the removal by Mr. Young, who said that it was by direction of the President.

Mr. BUTLER—The difficulty is not removed. It is an attempt by Mr. McClintock Young, admitted to have been Acting Secretary of the Treasury, to remove officers by reciting that he is directed by the President so to do. If this is evidence, we have got to go into the question of the right of Mr. Young to do this act, and whether an Appraiser is one of the inferior officers whom the Secretary of the Treasury may remove, or whom the President may remove without the advice and consent of the Senate. It is not an act of the President in removing the head of a Department, and it is remarkable as the only case to be found to warrant any such removal. If it is evidence at all, it only proves the rule by the exception.

Mr. CURTIS—I understand the Manager to admit that Mr. Young was Acting Secretary of the Treasury.

Mr. BUTLER—Yes, Sir.

Mr. CURTIS—I take this act of his, therefore, as having been done by the Secretary of the Treasury, and he says he proceeded by order of the President. I take it to be well settled, judicially, and practically, that whenever the head of a Department says he acts by order of the President, he is presumed to tell the truth, and requires no evidence to show that he acts by order of the President. No such evidence was ever given. No record is ever made of the directions which the President gives to any one of the heads of Departments to proceed in a transaction of this kind, but when the head of a Department says that he acts by order of the President, all Courts and all bodies presume that he tells the truth.

THE CHIEF-JUSTICE ruled that the act of the Secretary of the Treasury was the act of the President, but said he would put the question to the Senate if any Senator desired it.

No vote being called for the testimony was admitted.

Mr. CURTIS—I now offer in evidence a document from the Navy Department.

While the document was being examined by Mr. Butler,

Senator CONKLING moved that the Court take a recess of 15 minutes.

Senator SUMNER moved as an amendment that business shall be resumed forthwith after the expiration of the 15 minutes.

The question was put on Senator Sumner's amendment, and it was rejected.

The Court then took a recess.

When the Court had reassembled, Mr. BUTLER objected to the admission of the document.

Mr. BUTLER stated the ground of his objection. The certificate was not a copy of a record from the Navy Department, but simply "the annexed is a true statement from the records of this Department," under the head of memoranda; it was a report, made up by the Chief Clerk of the Navy Department, of matters that he had been asked to, or had volunteered to furnish, leaving out many things that would be necessary to show the bearings of the case. Mr. Butler read one of the cases enumerated—the appointment of Mr Morton as Navy Agent at Pensacola, and said that the paper did not show what the consequent action was, nor whether the Senate was then in session, nor whether the President sent another appointment to the Senate at the same moment. It was merely a statement verified as being made from the record by somebody not under oath, and on it there were occasional memoranda in pencil, apparently made by other persons.

Mr. CURTIS—Apply india-rubber to that.

Mr. BUTLER—Yes, Sir; but it is not so much what is stated here as what is left out.