IMPEACHMENT.

Trial of President Andrew Johnson for High Crimes and Misdemeanors.

Close of the Testimony for the Prosecution.

Argument of Mr. Curtis for the Defence.

WASHINGTON, April 9, 1868.

The impeachment trial suffered nothing in the way of attendance by its brief postponement since last Saturday. The usual crowd filled the galleries, and more than the usual representation from the House was conspicuous on the floor. Of course, the great attraction was the change in the performance from he side of the prosecution to that of the defence.

The speech of Judge Curtis to-day—or rather the first part of it, for he has scarcely warmed up yet—produced a marked effect. It furnished the ablest answer to the impeachers yet presented, was listened to with profound attention and was spoken of highly by everybody. Some of the points made by Judge Curtis are regarded as unanswerable, and even fatal to the whole prosecution. His exposition of the objects of the framers of the Tenure of Office bill, and of the meaning given to it before its passage by members of the conference committee, particularly in the speeches of Messrs. Sherman and Schenck, of Ohio, were looked upon as establishing fully the fact that Mr. Stanton's case does not come under the Tenure of Office act at all. If, as Judge Curtis says, Congress was represented rightly by Schenck and Sherman when they declared it was only intended that Cabinet officers should be continued in power "during the term of service of the President by whom they were appointed," how can the High Court entertain for a moment the idea that the President has violated the law and constitution? Judge Curtis will conclude his argument to-morrow, and probably occupy the whole day.

A condition of quasi rebellion exists on the part of the Board of Managers towards the Senate this evening. During the discussion of the rules for the government of the High Court it will be remembered the Senate had an exceedingly high time over the twenty-first rule, in reference to the number of persons to be allowed to participate in the argument. The rule as finally adopted allowed only two persons on each side to take part in the final argument, with a proviso, "unless otherwise ordered by the Senate upon application for that purpose." Some objection was then raised by the Board of Managers as to the stringency of this rule, and it was very generally understood that the Senate would suspend this obnoxious feature in order to allow more speeches to be delivered. Under this impression the Board of Managers have been busily engaged for the past ten days in getting up elaborate speeches, which, as a matter of courtesy at least, it was thought the Senate would allow to be spoken. To-day, however, in a canvass of a majority of the Senate, it was discovered that those who were in favor of giving all the Managers an opportunity to spread themselves are now opposed to making any concessions whatever, and declare they will enforce the twenty-first rule. The Managers are greatly exercised at this new development, and cite the cases of Chase and Peck, both tried by the Senate, to show that the rule in each instance allowed the full number to speak. In the case of Chase there were eleven speeches made, and in that of Peck eight. Therefore, it is argued, how much more important is it in a great trial like that of the President of the United States that all the Managers should have an opportunity to say something.

Notwithstanding the inferences which have been drawn from conversations with the Senators to-day, the Managers intend to-morrow, if an occasion offers, to ask permission to allow more of their number to speak. If the Senate refuses to accede to this request some lively scenes are expected. Among the rest Old Thad has been quite busy for some days in putting his ideas upon paper, and, it is said, became excessively rampant when informed that there was a prospect of his being ruled out.

General Thomas will be a far more interesting witness than is generally supposed, provided he gets a chance to unbosom himself about General Butler and his peculiar ways. Butler, it will be remembered, characterized Thomas as a traitor in his speech last Monday week; but Thomas, by reference to his memory, recollects that Butler used the same phrase towards him some years ago in a personal difficulty which occurred between them, which is thus related. At the breaking out of the war three commissions were issued to Generals Banks, Dix and Butler, bearing date May 16, 1861. A difficulty arose as to which one of these officers ranked the other. President Lincoln, it seems, wrote on a slip of paper the above names in the order they appear, leaving Butler last, and of course outranked by the other two. When Butler learned this he repaired to the War Department and raised a great commotion, contending that as he had put his troops in the field before the others he was entitled to seniority of rank. Thomas, who was Adjutant General at the time, fell in his way, and was taken to task for placing the martial trio in the order they have been given. "There has been some shuffling going on in your department and you are a traitor," exclaimed the highly inflamed hero of many unfought fields. General Thomas, with his usual calm expression, surveyed Butler's agitated form and measuredly responded, "you're a liar." A lively scene ensued. Butler doubled his digits and placed both his hands inconveniently close to Thomas' nose, while the Secretary of War and a group of amazed spectators looked wonderingly on. Thomas reiterated his conviction of Butler's veracity, and the latter, who never cares to encounter determined opposition, dropped his threatening attitude and ingloriously retired. Time rolled on and Butler flourished in the pages of current history as the hero of New Orleans. One day President Lincoln came to the wise conclusion to relieve him from duty down there. The order to this effect was known to nobody but the General himself. A citizen of New Orleans, however, received the news through some unofficial channel, and, the fact coming to Butler's ears, he ordered him to appear in his presence and state from what source he procured the information. This the citizen refused to do, whereupon, it is said, the General ordered a sergeant and a squad of men to take the contumacious rebel out and have him shot immediately. It is to be presumed this was merely ordered for the object of extorting a confession. It succeeded, however, and the citizen told the story that the news of Butler's removal came direct from Jeff Davis. Whereupon Butler threw himself into a reflective attitude, and exclaimed, "None but the President, the Secretary of War and the Adjutant General could have known this—the two first would not have told it, but that fellow Thomas communicated it to Jeff Davis." And thus is disclosed the animus of Butler to Thomas.

It is told of Ben Wade to-day that he sat for some time listening very attentively to Judge Curtis until the latter, in the course of his argument, happened to mention, by way of analogy, the word "sovereign," whereupon Old Ben got up and said when they came to talk about sovereigns or kings it was time for him to go and take a smoke.

It is thought that when the impeachment case is finally closed by the prosecution the Senate will retire for consultation to determine whether, if a verdict of guilty is to be rendered, the penalty disqualifying the accused from holding any office of trust or emolument under the government will be attached to the sentence.

SPECIAL CORRESPONDENCE OF THE HERALD.

Impeachment—The Weakness of the Testimony for the Prosecution—What the Defence Expect to Prove—The Radicals Quarrelling Over the Spoils—Strict Party Discipline.

WASHINGTON, April 9, 1868.

During the short time that has been agreed to between the legal and the politico-legal parties who are contending over the Presidential chair the lookers on have had ample time to sift the evidence that has been given for the prosecution and upon which the honorable Managers rely for a verdict of guilty of high crimes and misdemeanors against Mr. Johnson, and have drawn their own conclusions.

It is perhaps safe to say that every person in this city who is at all familiar with the merits of the case, and who knows anything of the requirements of law in an attempt to prove the charges in a prosecution, has read the testimony taken before the High Court of Impeachment, and has carefully weighed it to ascertain the precise nature of the facts, which the irrepressible body of impeachers have led the country to believe were strong enough to strike instantaneous conviction in the mind of any man having at heart the good of his country. Among all classes of people, of every shade of political belief, eccept ultra republicans, there seems to exist a general opinion that the Impeachment Managers have certainly not brought forth all the testimony within their reach, but are holding back the strongest and most effective witnesses for a decisive blow, to be delivered as a sort of *coup de grace* in the grand tableau. The prevailing feeling among men opposed to impeachment partakes of surprise at the extreme weakness of the testimony produced by the prosecution to prove the President guilty, and great relief from the same cause, as none but the President himself and his most intimate friends and counsellors could know that it was impossible for Mr. Johnson's enemies to prove anything against him that would show intention on his part to violate either the constitution or the laws of the United States: and it was constantly feared that some indisputable proof of such intentions must be in the hands of the Managers to embolden them to risk a trial.

Those who hold to the radical view of the situation, so far as your correspondent has been able to learn, regard the evidence given for the prosecution as amply sufficient to establish their case. They do not seem to attach much importance to the testimony elicited in support of the articles which charge the President with conspiring with General Emory and others to precipitate an armed conflict and with degrading the dignity of his high office by delivering coarse stump speeches and assailing the character of Congress as they do to that going to prove the removal of Mr. Stanton under the Tenure of Office act and the appointment of General Thomas as Secretary of War *ad interim* during a session of Congress.

On these two points the impeachers chiefly rely. They think that, having proved these charges, no republican Senator can do otherwise than pronounce the President guilty of having violated the Tenure of Office law, which was passed by their own votes, and by which they subsequently declared that the President had no power to remove the head of any department; and guilty of having made an appointment, without the advice and consent of the Senate, while Congress was in session, in direct violation of the provisions of the constitution.

These charges, to be sure, are serious enough to furnish an excellent pretext for creating a vacancy in the Presidential office if they can only be proved; but it is thought that when the testimony for the defence is heard and the President's counsel has closed the illustrious impeachers will find that they have discovered a huge "mare's nest." It is understood that the array of testimony the counsel will bring to overthrow these particular charges of the impeachers is quite formidable; and it will be shown so clearly as to be within the comprehension of the weakest intellect that Mr. Stanton is no more protected by the Tenure of Office law than he is by the Homestead law, which is the only other law of any importance which may be regarded as exercising protection over squatters. It will be shown that the Tenure of Office law no more applies to Mr. Stanton than it does to Jeff Davis. If it can be established that the only commission as Secretary of War that Mr. Stanton ever held expired on the 4th of March, 1865, the end of Mr. Lincoln's first term, and that he has never since been nominated and confirmed as Secretary of War for the present term, either by Mr. Lincoln or Mr. Johnson, the law in question has not been violated, and this it is proposed to prove.

If it can be established that Mr. Johnson merely detailed General Thomas to act as Secretary of War *ad interim*, and did not appoint him any more than he appointed General Hancock to command the Military Division of the Atlantic, the other mainstay of the impeachers is knocked from under their case.

The radicals seem, however, to regard the removal of the President as a settled thing, and are busily employed in arranging for the succession. They appear to be a good deal divided in their opinions as to who are the proper officers to succeed to the Chief Magistracy on the removal of Mr. Johnson, or the inability, from any cause, of Ben Wade to act after he is duly installed. The contest over this important question promises to be quite acrimonious, and will sow the seeds of dissension in the party before the matter is set at rest.

The belief is openly expressed by the more bitter radicals of both houses that the vote of the court on the guilt or innocence of the President will be a strictly party one. They have frequently been heard to rail at certain Senators because they refused to promise their votes for conviction; but they resolutely adhere to the opinion that no republican Senator dare vote to acquit the President. The despotism established by these party leaders over those Senators who have evinced a disposition towards conservatism is such that the latter dare not say their souls are their own without subjecting themselves to the suspicions and threats of their political tyrants.

The impeachment trial possesses far greater importance than that involved in the question of guilt or innocence of Mr. Johnson; the decision to be reached in this case will prove whether the statesmen in whom the people trust can pronounce their honest opinion upon the merits of the case, as bound by their oath, or whether they are to be dragooned into committing an outrage on justice, at the dictation of unscrupulous party leaders. A fortnight will decide it.

PROCEEDINGS OF THE COURT.

Tenth Day.

UNITED STATES SENATE CHAMBER, }
WASHINGTON, April 9, 1868. }

The doors were opened to the crowd at eleven o'clock this morning, and the galleries were comfortably filled by an audience of the usual well dressed order at the opening of the Senate at twelve o'clock.

After prayer by a stranger, in which all the departments of the government were remembered, the President *pro tem.* relinquished the chair for the Chief Justice, and the court was opened by the usual proclamation.

At ten minutes past twelve o'clock the Managers were announced. All appeared but Mr. Stevens. The counsel for the President were all promptly present.

The House of Representatives at fifteen minutes past twelve o'clock was announced, and a rather larger proportion than on recent occasions put in their appearance.

The CHIEF JUSTICE asked—Have the Managers on the part of the House of Representatives any further evidence to bring in?

Mr. BUTLER—We have.

On motion of Senator JOHNSON the further reading of the journal was dispensed with when but little progress had been made.

Testimony for the Prosecution.

TESTIMONY OF W. H. WOOD.

Mr. BUTLER, on the part of the Managers, then called up W. H. Wood, who was sworn.

Q. Where is your place of residence? A. Tuscaloosa, Ala.

Q. Did you serve in the Union army during the war? A. I did, sir.

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 and present him testimonials for employment in the government service? A. I did, sir.

Q. What time was it in 1866? A. It was on the 21st day of September.

Q. How do you fix the time? A. Partly from memory, partly from the journal at the Ebbitt House.

Q. How long before that had he returned from Chicago from his trip to the tomb of Douglas? A. My recollection is that he returned the 15th or 16th; I awaited his return.

Q. Did you present your testimonials to him? A. I did, sir.

Q. Did he examine them? A. Part of them, sir.

Q. What then took place between you?

Mr. STANBERY—What do you propose to prove? Has it anything to do with this case?

Mr. BUTLER—Yes, sir.

Mr. STANBERY—What articles?

Mr. BUTLER—As to the intent of the President in several of the articles.

Mr. STANBERY—What to do?

Mr. BUTLER—To oppose Congress.

Mr. BUTLER (to witness)—What did he say? A. He said my claims for government employment were good or worthy of attention.

Q. What next? A. He inquired about my political sentiments; I told him I was not a political man. I told him I was a Union man—a loyal man, and was in favor of the administration; I had confidence in Congress and in the Chief Justice. He asked me if I knew of any differences between himself and Congress. I told him that I did know of some differences in minor points; then he said that they were not minor points—"The influence or patronage (I do not know which) shall be in my favor;" that's the meaning.

Q. Were those the words? A. I will not swear that those were the words.

Q. 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 were 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.

Q. Have you talked with him since you have been in the city? A. I have; I called on him when I first came to the city.

Q. Did you tell him yesterday morning that all you could say 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 your arrival in this city there was an attempt to make you say things 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 what I could not.

Q. Have you been examined before this time? A. By whom?

Q. By any one? A. I have, sir.

Q. Under oath? A. Yes, sir.

Q. Who by first? A. By the Managers.

Q. Was your testimony taken down? A. Yes, sir.

Q. Were you examined or talked to by any one of them? A. Not under oath; I had informal interviews with two of them before I was examined; I could hardly call it an examination.

Q. What two of them were they? A. By Governor Boutwell and General Butler.

Q. When? A. Monday of this week.

Q. Did you say to Mr. Koppel that since you had been in this city a proposition was made to you that in case you would give certain testimony it would be to your benefit? A. I did not, sir.

Re-direct examination by Mr. BUTLER:—

Q. Who is Mr. Koppel?—(emphasizing the name so as to provoke laughter in the galleries.) A. Mr. Koppel, sir, is an acquaintance of mine on the avenue—a merchant.

Q. What is his merchandise? 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, sir, that Mr. Koppel was a Southern man in spirit; he came from South Carolina—ran the blockades.

Q. Do you mean that to be an answer to my question of sympathy between the President and him? (Laughter.) A. Yes, sir. (Laughter.)

Q. Now, sir, 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; you answered in explanation, as I understand, that there was a misunderstanding, which you explained to Mr. Koppel. Will you have the goodness to tell us what that misunderstanding was?

Mr. STANBERY rose to object.

Mr. BUTLER—If you give a part of the conversation I have a right to the whole of it.

Q. I will ask, in the first place, did you explain the matter to him? A. I did, sir.

Q. Very well; tell us what that understanding was that you explained to him in that conversation? A. I think, sir, a gentleman in 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 from Boston misunderstood me; the President said nothing of the kind to me, and I explained that to Mr. Koppel.

Q. Did you explain where the misunderstanding arose? A. I told him it must have occurred in a conversation between a gentleman from Boston and myself.

Q. In regard to what? A. In regard to twenty-five per cent.

Q. Did you explain to Mr. Koppel where the idea came from that you were to give twenty-five per cent? A. I did, sir.

Mr. EVARTS—We object. The witness has distinctly told us that nothing else occurred between the President and himself. It is certainly quite unimportant what occurred between this gentleman and another gentleman in Boston.

Mr. BUTLER—I pray judgment again upon this. You have put in a conversation about a tailor upon Pennsylvania avenue or somewhere else and this witness. I want the whole of the conversation. I suppose from the evidence of the gentleman that the conversation between Mr. Koppel, the tailor, and this witness was put in for some good purpose. If it was I want the whole of it.

Mr. EVARTS—Mr. Chief Justice, the fact is not exactly as stated. In the privileged cross-examination counsel for the President asked the witness distinctly whether he had said so and so to a Mr. Koppel. Witness said he had not, and then volunteered a statement that there might have been some misunderstanding between Mr. Koppel and himself on that subject, or some misunderstanding somewhere. Our inquiry had not reached, or asked for or brought out the misunderstanding. We hold distinctly that everything that 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 and the further testimony as to the grounds of the misunderstanding between this witness and some interlocution in Boston we object to.

Mr. BUTLER—Having put in a part of this testimony in regard to Koppel, whether voluntary or not, I have a right to the whole of it. I will explain. I want to show that the misunderstanding was not that the President said that twenty-five per cent was to be given, but one of his friends. This is where the misunderstanding was. Do the gentlemen still object?

Mr. EVARTS—Certainly.

Mr. BUTLER—That's all.

TESTIMONY OF FOSTER BLODGETT.

Mr. Foster Blodgett was sworn and examined by Mr. BUTLER:—

Q. Were you an officer of the United States at any time? A. Yes.

Q. Where? A. In Augusta, Ga.

Q. Holding what office? A. Postmaster of the city.

Q. When did you go into the exercise of that office? A. I was appointed on the 25th of July, 1865, and went into the office in the following September. (Witness produced his commission, which was exhibited by Mr. Butler to counsel for the President.)

Q. Were you confirmed by the Senate? A. Yes.

Q. Were you suspended from office? A. Yes.

Q. Have you a copy of the letter of suspension? A. I have not a copy of it here; it was dated the 3d of January, 1868.

Q. Have you examined to see whether your suspension and the reasons therefor have been sent to the Senate? I have been told by the Chairman of the Post Office Committee they have not been sent in.

Mr. BUTLER—I suppose that Senators can ascertain for themselves how that is.

Senator JOHNSON—Of course we know all about it.

Mr. BUTLER—I suppose you did know all about it. (To the witness)—Has any action been taken on your suspension? A. None that I know of.

The witness was not cross-examined.

Mr. BUTLER called upon counsel for the President to present the original letter of suspension.

Mr. BUTLER then put in evidence the letter of Adjutant General Thomas, dated "War Department, February 21, 1868," acknowledging his appointment as Secretary of War *ad interim*.

Mr. BUTLER stated that he was instructed by the Managers to say that they would ask leave to put in a proper certificate from the records of the Senate to show that no report of the suspension of Foster Blodgett has ever been made to the Senate.

The CHIEF JUSTICE remarked that that could be put in at any time.

Mr. BUTLER then said, on the part of the Managers, "We close."

Mr. STANBERY—I ask the honorable Manager under what article this case of Blodgett comes?

Mr. BUTLER—In the final discussion I have no doubt that the gentleman who closes the case for the Managers will answer that question to your satisfaction?

Mr. STANBERY—I have no doubt of that myself. The question is why we are to be put to the trouble of answering it.

The CHIEF JUSTICE remarked that the case was closed on the part of the Managers, and that there was no question before the court on which this discussion could continue.

Mr. STANBERY—The question is that we merely want to know under what article this case of Mr. Blodgett comes.

The CHIEF JUSTICE—The Managers state that they have concluded their evidence. Gentlemen, counsel for the President, you will proceed with your defence.

Argument of Mr. Curtis for the Defence.

Mr. CURTIS rose to open the case on the part of the President. He said:—

Mr. CHIEF JUSTICE AND SENATORS—I am here to speak to the Senate of the United States, sitting in its judicial capacity as a Court of Judicial Impeachment, presided over by the Chief Justice of the United States, for the trial of the President of the United States. (Here one or two sentences were entirely inaudible.) Inasmuch as the constitution requires that there shall be a trial, and inasmuch as in that trial the oath which each one of you has taken is to administer impartial justice according to the constitution and laws, the only appeal that I can make here in behalf of the President is an appeal to conscience and to the reason of each Judge who sits in this court on the law and the fact in the case upon its judicial merits. On the duties incumbent on that high office, by virtue of his office, and on his honest endeavor to discharge those duties, the President rests his case. And I pray each one of you to listen with that patience which belongs to a judge, for his own sake, but which I cannot expect by any efforts of mine to elicit while I open to you what that defence is. The honorable Managers, through their associate who has addressed you, have informed you that this is not a court; that whatever may be the character of this body, it is bound by no law. On that subject I shall have something hereafter to say. The honorable Manager did not tell you, in terms at least, that there are no articles before you, because a statement to that effect would be in substance to say that there are no honorable Managers before you, inasmuch as the only power by which the honorable Managers are clothed by the House of Representatives is an authority to present here at your bar certain articles, and within the limits of them to conduct this prosecution. Therefore I shall make no apology for asking your close attention to these articles in manner and form as they appear presented, to ascertain in the first place what the substantial allegations in each of them are, what is to be the legal proof and effect of these allegations, and what proof is necessary to be adduced in order to sustain them. I shall begin with the first article, not merely because the House of Representatives in arranging this article has placed it first in order, but because the subject matter in that article is of such a character that it forms the foundation of the eight first articles in the series, and enters materially into the body of the remaining three. What, then, is the substance of the first article? What are what the lawyers call the *gravamena* contained in it? There is a good deal of verbiage—I do not mean, unnecessary verbiage—in the description of the substantial thing set down in that article; stripped of that it amounts exactly to these things:—First, that the order set out in the article for the removal of Mr. Stanton, if executed, would have been 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 in violation of the constitution of the United States; and fifth, that it was intended by the President to be so; or, to draw all these into one sentence, which I hope 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 constitution of the United States. These are the allegations which it is necessary for the honorable Managers to make out in order to support that article. Now, there is a question involved here which enters deeply, as I have already intimated, into the first eight articles of this series, and materially two others, and to that question I desire in the first instance 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 in this case, include it, then it will be found by the honorable Senators, when they come to examine this and the other articles, that a deep, indefaceable and material wound has been attempted to be inflicted on the constitution. I must ask your attention, therefore, to the question of the consideration and application of the first section of the Tenure of Office act. It is, as Senators know, but dry work, but it requires close and careful attention, and no doubt will receive it. Allow me, in the first place, to read it:—

That any 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.

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 Post Master 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.

Here is a section a part of which applies to all civil officers, as well to those then in office as to those who should thereafter be appointed; and the body of this 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 be hereafter appointed to office) "entitled to hold such office until another is appointed and qualified in his place." That is the body of the section; but out of that body of the section it is explicitly declared that there is to be excepted a particular class of officers as to whom something is otherwise provided—that is, a different rule is to be made for them. Now, the Senate will perceive that in the body of the section every officer, as well those then holding office as those hereafter to be appointed, is included. The language is, "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 be hereafter appointed, is and shall be entitled to hold," &c. It affects the present; it sweeps over all who are in office; it includes them all by its terms, as well as those who may hereafter be appointed; but when you come to the proviso the first noticeable thing is that that language is not used. It is not that every Secretary of State, or of the Treasury, or of War, &c., is to hold his office. It fixes a rule for the future only, and the question whether any particular Secretary comes within that rule is a question whether he comes within the general description contained in the proviso. There is nothing to bring him within the proviso. There is no express declaration, as in this body of the section, that he is and hereafter shall be entitled to hold his office, &c.; nothing to bring him within the body of the proviso, except the description; and the question is whether the proviso contains, applies to and includes this case. Now let us see if it does. "The Secretary of State, the Secretary of the Treasury, &c., shall hold their offices respectively for and during the term of the President by whom they may have been appointed and one month thereafter," &c. The first inquiry which arises on this language is this, as to what is meant by "for and during the term of the President by whom they may have been appointed?" Mr. Stanton appears, by the commission which has been put in in the case by the honorable Managers, to have been appointed during the first term of President Lincoln, in January, 1862. Is this part of the language "during the term of the President by whom they may have been appointed" appplicable to Mr. Stanton's case? That depends whether a person expounding this law judicially has any right to add to it "and any other term for which he may afterwards be elected." By what authority short of the legislative power can these words be added to the statute "during the term the President?" Does it mean any other term or terms for which the President may be re-elected? I respectfully submit that no such judicial interpretation can be put upon the text. At the time when this order was issued for the removal of Mr. Stanton was he holding the office 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 one or two sentences that are exactly applicable to this question. The first is the first section of the second article of the constitution, which says:—"The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as follows." There is a declaration that the President and Vice President are each respectively to hold his office for the term of four years; but that does not stand alone. Here is a qualification of that statement:—"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 the term of four years, and each is elected for the same term, the President is not to hold his office absolutely during the four years. The limit of four years is not an absolute limit. There is a conditional limit, as the lawyers term it, imposed, and when, according to the second passage, which I have read, the President dies or is removed, then his term of four years for which he was elected, and during which he was to hold office, 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. There is no more propriety under this provision of the constitution of the United States in calling the time during which Mr. Johnson holds the office of President, as it was devolved on him, a part of Mr. Lincoln's term than there would be propriety in saying that one sovereign who succeeds to another sovereign by death holds a part of his predecessor's term. The term assigned by the constitution was a conditional assignment. It was to last four years, if not sooner ended; but if sooner ended by death, then the office was to devolve on the Vice President, and the term of the Vice President to hold office then began. I submit, then, that on this language it is equally apparent that Mr. Stanton's case cannot be considered as within this act. This law, however, as Senators very well know, had a purpose; there was a practical object in view, and however clear it may seem that the language of the law, when applied to Mr. Stanton, will exclude that case on the mere words of the law, if the purpose can be disclosed, and that purpose plainly required a different interpretation, that different interpretation should be given. But on the other hand, if the purpose that was in view is one which requires this interpretation to which I have been drawing your attention, then it greatly strengthens the argument, but shows that not only the language of the act itself, but the practical object which the legislation had in view of using that language, requires this interpretation. Now, there can be no dispute concerning what that purpose was, as I suppose here is a peculiar class of officers singled from all others and brought within this purpose. Why is it? 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—that is the language of the constitution—respecting theirseveral duties—not, as I read the constitution, that the President may call upon the Secretary of War for advice concerning questions arising in the Department of War, but that he may call upon him for advice concerning questions which are a part of the duty of the President and which touch his duties as well as questions that belong to the Department of War. Allow me to see if that is not a true interpretation. The language of the constitution is that the President may require the opinion in writing of the principal officer of each of the executive departments on any subject relating to the duties of their respective offices. As I read it, it is "relating to the duties of the office 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; and every gentleman who listens to me, and who is familiar at all with the political history of the country, knows that from an early period of the country, in the administration of General Washington, his secretaries were called upon for their advice concerning matters not within their respective departments, and so the practice has continued from that time to this. This is what distinguished this class of officers in one particular from any other officers embraced within the body of this law. But there is another distinction. The constitution undoubtedly contemplated that there should be executive departments organized, 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 is countenanced directly and explicitly by the legislation of Congress in the organization of the departments, and in the act which constitutes the Department of War. That act provides, as Senators will remember, in so many words, that the Secretary of War is to discharge such duties, within a certain general description there given, as shall be assigned to him by the President, and that he is to do it under the President's instructions and directions. Let me repeat:—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 duties, to take care that the laws are faithfully executed, and they are to speak and act for him. Now, do not these suggestions or views show why this class of officers was excepted out of the Tenure of Office act? 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, and in whom he was expected to repose the gravest honor, trust and confidence; therefore, it was that this act has connected the tenure of office of these offices with that of the President, by whom they were appointed. It says, in fact, that as to the secretaries who were appointed by some particular President, they shall continue to hold office during the term of that President, but that as to secretaries who are in office, and who are not appointed by any President now in office, Congress has nothing to say, and leaves them as they stand. I submit, Senators, that that is the natural and—having regard to the character of these officers—the necessary interpretation of the Tenure of Office act, so that it was not the intention of Congress to compel the President to continue in office a Secretary not appointed by himself. Fortunately, however, we have not only those means of interpreting this law which I have alluded to—namely, the language of the act and the evident object and purpose of the act—but we have decisive evidence of what was intended and understood by the law in each branch of Congress at the time it was passed. In order to make this more apparent and its just weight more evident, allow me to state what is very familiar, undoubtedly, to Senators, but which I wish to recall to their minds—the history of this proviso. The bill, as Senators will recollect, originally excluded those officers altogether; it made no attempt—indeed, it rejected all attempts to prescribe the tenure of office for them. So the bill went to the House of Representatives. It was there amended by putting the Secretaries on the same footing as other civil officers appointed with the advice and consent of the Senate; and, thus amended, it came back to this body. This body disagreed to the amendment. Thereupon a committee of conference was appointed. That committee on the part of the House had for its chairman the Hon. Mr. Schenck, of Ohio, and on the part of this body it had the Hon. Mr. Williams and the Hon. Mr. Sherman. That committee of conference came to an agreement to alter the House bill by striking those Secretaries out of the body of the bill and inserting them in the proviso containing the matter now under the consideration of that course. When this report was made to the House of Representatives it was incumbent on the committee appointed by that body to explain what was done, or agreed to be done, so that the House itself might understand and act intelligently on the matter. Now I wish to read to the Senate the explanation as given by the Hon. Mr. Schenck, the chairman of the committee on the part of the House, when he made the conference report to the House. After reading the report Mr. Schenck said:—

I propose to demand the previous question on 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 committee of conference upon it. It will be recollected that the bill as it passed the Senate was to provide that the concurrence of the Senate should be required in all removals from office except in the case of 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 has 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, and who would hold over to the next 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 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 appointments can be made. That 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 of the House.

Then these questions were put to Mr. Schenck, and he went on to say:—

Their terms of office (that is to say, the terms of office of the Secretaries,) are limited by law, so that they expire with the term of service of the President who appointed them, and one month after, in case of death or other accident, until others can be substituted for them.

Allow me to repeat that sentence:—"They expire with the term of service of the President who appointed them, and one month after, in case of death or accident." Now in this body, when the report of the committee of conference was made, Mr. Williams made an explanation of it. That explanation was in substance the same as that made by Mr. Schenck in the House. Thereupon a considerable debate sprung up. No debate had sprung up in the House, for the explanation of Mr. Schenck was accepted by the House as correct, and was unquestionably accepted by the House as giving the true sense, meaning and effect of the bill. In this body, however, 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; but I think the whole of it may be fairly summed up in this statement:—That it was charged by one of the Senators from Wisconsin (Mr. Doolittle) that it was the intention of those who favored this bill to keep in office Mr. Stanton and some other Secretaries; that that was directly met by the honorable Secator from Ohio (Mr. Sherman), one of the members of the conference committee, by this statement:—

I do not understand the language of the Senator from Wisconsin. He first attributes a purpose to the conference committee which I say is not true. I say that the Senate has not legislated with a view to any person or to any President, and therefore he commences by asserting what is not true. We do not legislate to keep in the Secretary of War, the Secretary of the Navy nor the Secretary of State.

Thus a conversation arose between the honorable Senator from Ohio and the honorable Senator from Wisconsin; and the honorable Senator from Ohio continued thus:—

That the Senate has 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 the language is so framed as 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 or the Secretary of State; and if I supposed that either of those gentlemen was so wanting in manhood and in honor as to hold his place, after the politest intimation from 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.

I read this, Senators, not as expressing the opinion of an individual Senator concerning the meaning of a law that is under discussion and that is about to pass into legislation; I read it as the explanation report of the committee of conference appointed by this body to see whether it could agree with the House of Representatives in the terms of this bill. And now I ask the Senate if, looking at the language of this bill, looking at its purpose, looking at the circumstances under which it was passed, looking at the meaning then attached to it by each of the bodies who assented to it, is it possible to hold that Mr. Stanton's case is within the scope of this Tenure of Office act? I submit that it is not. I now return to the allegations of this article. The first, as Senators will remember, is that the issuing of the order which is set out in the articles was a violation of the Tenure of Office act. It is perfectly clear that this is not true. The Tenure of Office act, in its sixth section, enacts that every removal, appointment and emoluments that may have been exercised contrary to the provisions of this act shall be deemed a high misdemeanor. Well, in the first place, no removal has been proved. They set out the order of removal. If Mr. Stanton had obeyed that order it would have been a removal, but inasmuch as Mr. Stanton did not obey it there was no removal; so that it is quite clear that, looking at this sixth section of the act, they have made out no case of removal within the statute and therefore no case of violation by the removal. It must not only be a removal, but it must be contrary to the provisions of the Tenure of Office act. And, therefore, if you hold the order to be in effect a removal, unless Mr. Staton's case was within this act, and unless this act gave Mr. Stanton a tenure of office, his removal would not have been contrary to the provisions of the act. 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 has not by its articles attempted, in other words, to erect a mistake into a crime. I have been arguing to you at considerable length, and, no doubt, tiring your patience on the construction of this law. I have a clear idea of what its construction ought to be. Senators who have listened to me may have a different idea about it; but I think they will in all candor admit that there is a question of construction here, and a question as to what the meaning of this law was; a question whether it is applicable to Mr. Stanton's case—a very honest and solid question which any man may entertain; and, therefore, I repeat it is important to observe that the honorable House of Representatives has not by this article endeavored to charge the President with a high misdemeanor because he had failed in construing that law. The House charges him with intentionally misconstruing it, so that in order to maintain the substance of this article, without which it was not designed by the House of Representatives to stand and could not stand, it is necessary for the Managers to show that the President wilfully misconstrued this bill; 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 within it. That is the substance of the charge in this article. Well, what is the proof in support of it? Not a particle of evidence. 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 judicial officers, call upon those who hold them for the exercise of judgment and skill in the construction and application of laws, and on this judgment and skill in the application of the constitution itself. It is true the judicial power of the country, so to speak, technically speaking, is all vested in the Supreme Court and in such inferior courts as Congress from time to time has established or may establish. But, then, there is a great mass of judicial 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 is done by an auditor or comptroller, or whether it be done by a chancellor. It is of the same character when done by one as when done by the other. They must construe and apply the laws. They must investigate and ascertain the facts. They must come to some results founded on the law and on 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? and he encounters, among other things, this Tenure of Office act in the course of that inquiry. His first duty is to construe that law to see whether it applies to the case, and to use, of course, in doing so all those means and appliances which the constitution and 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 refrain from acting. That process the President was obliged to go through in this case, and did go through, and he came to the conclusion that the case of Mr. Stanton was not within the law. He came to that conclusion not merely by examination into this law himself, but by resorting to the advice which the constitution and laws of the country enable him to call for in order to assist him in coming to a correct conclusion. Having done so, will the Senate be prepared to say that this must have been a wilful misconstruction of the law, so wilful and so wrong that it can be justly and properly, and, for the purpose of this prosecution, effectually be termed a high misdemeanor? How does the law read? What are its purposes and objects? How was it understood here at the time it was passed, and how is it possible for this body to convict the President of the United States of America of high crimes and misdemeanors for construing the law as those who made it construed it at the time of its passage? I submit to the Senate that thus far no great advance has been made towards the conclusion of either of the allegations in this article—that this order was a violation of the Tenure of Office act, or that there was an intent on the part of the President thus to violate it; and yet, although we have not gone over all the allegations in this article, we have met its heads and front, and what remains will be found to be nothing but incidental and circumstantial, and not the principal subjects. Is Mr. Stanton was not within this law—if he held during the pleasure of President Johnson, as he had held during the pleasure of President Lincoln, and if he was bound to obey that order to quit the place, instead of being sustained in resisting it, I think that the honorable Managers will find it extremely difficult to construct out of the broken fragments of this article anything that will amount to a high misdemeanor. What are they? They are, in the first place, that the President did violate and intend to violate the constitution of the United States. By giving this order, or how? They say, as I understand it, that the order of removal was made during the session of the Senate, and that for that reason the order was a violation of the constitution of the United States. Now, if I can make my own ideas of it plain, I think there is nothing left of that article. In the first place, as Senators will observe, this is the case of a Secretary of War holding by the terms of his commission "during the pleasure of the President," and holding under the act of 1789, which created that department, and which, although it does not directly confer on the President the power of removing 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. The question is this—whether under the law of 1789, and the tenure of office created by that law—created after great debate—the President could have removed 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 a nomination to the Senate, a confirmation by that body and commission by the President on that confirmation; the other is the commission of an officer when a vacancy happens during a recess of the Senate. But the question now before you is not a question how many vacancies shall be filled for that the constitution has provided for, but a question how vacancies may be created, which is a totally different question. Whatever may be thought of the soundness of the conclusion arrived at after the great debate in 1789 concerning the tenure of office or concerning the power of the removal from office, no one, I suppose, will question the fact that a conclusion was arrived at, and that that conclusion was that the constitution of the United States had lodged with the President this power of removal independently of the Senate. This may be a decision which ought to be reversed. It may have been now reversed. On that I say nothing at present. But that it was made, that the legislation of Congress in 1789 and on down to 1867 proceeded on the assumption, expressed or implied, that that decision had been made, nobody who understands the history of the country will deny. Consider, if you please, what the decision was—that the constitution had lodged this power in the President, that he was to exercise it, that the Senate had not and could not have any control whatever over it. If that be so what, materially, 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 commissioning until the end of the next session of the Senate. If the Senate is in session the constitution has made provision for filling the vacancy thus created by nomination, and the laws of the country made provision for filling it *ad interim*; 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 on that decision, it is a case when either by force of the constitution the President had the power of removal without consulting the Senate or the legislation of Congress had given it to him; and in 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, therefore, that if you look at this case as it has been presented, on the decision made in 1789 on the legislation of Congress following that decision, and on the terms of the commission under which Mr. Stanton held, you must come to the conclusion, without any further reference to the subject, that the Senate had nothing whatever to do with the removal of Mr. Stanton, either whether the Senate was in session or not; that his removal was made either under the constitutional power of the President, as it had been interpreted in 1789, or, if that be considered reversed, under the grant made by the Legislature to the President in reference to all those Secretaries not included within the Tenure of Office act. This, however, does not rest simply on this application of the constitution and legislation of Congress. There has been—and I shall bring it before you—a practice on the part of the government of 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 where, if the Senate was in session, he would not send a nomination to the Senate, saying:—"I appoint A. B. instead of C. D., removed." But there were occasions, not of frequent occurrence, where the President had not time to select a person whom he would nominate, where he would not trust the officer then in possession of the office to continue it, and where it was necessary, by a special order to remove him from the office, wholly independent of the nomination of his successor. Let me bring before your attention a case which happened recently within the knowledge of the Senate. We were on the eve of civil war. The 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 to the place, was in the same category as his master. Under these circumstances the President of the United States said, "Mr. Floyd, I must have possession of the office." Mr. Floyd had too much good sense, or good manners, or good something else, to do anything but immediately resign, and instantly the President put into the War Office General Holt, the Postmaster General, without the delay of an hour, when the delay of twenty-four hours might be of vast practical consequences. There are several of this class of cases arising in all the departments and followed by this action, and we shall bring before you evidence showing what these cases were; so that it will appear that as long as officers held during the pleasure of the President, and wholly independent of the advice which he might receive from the Senate with reference to their removal, whenever there was an occasion for it the President used his power whether the Senate was in session or not. I have now given the considerations applicable to the Tenure of Office act; and to those allegations that the President violated knowingly the constitution of the United States in the order for the removal of Mr. Stanton from office while the Senate was in session, the counsel for the President deem that it is not essential in order to his vindication from this charge to go further into the subject. The President, nevertheless, takes a broader view of the matter, and it is due to the President that it should be brought into court and that I now propose to open to your consideration. The constitution requires the President of the United States to take care that the laws be faithfully executed. It also requires of him before he is qualified 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 man will agree that as long as the President in good faith is endeavoring to take care that the laws be faithfully executed, and is in good faith to the best of his ability preserving, protecting and defending the constitution of the United States, although he may be mistaken, he has not committed high crimes and misdemeanors in the execution of those duties. The President found various reasons—which it is not my province at this time to state, but which will be exhibited to you hereafter—that it was impossible for him to allow Mr. Stanton to continue to hold the office of Secretary of War while he was responsible for his conduct in the manner in which he is required by the constitution and laws to be responsible. This was intimated to Mr. Stanton, and did not produce the effect which in the opinion of well informed men such an intimation usually produces. Thereupon the President first suspended Mr. Stanton, and reported that fact to the Senate. Certain proceedings took place here which will be adverted to more particularly presently. They resulted in the return of Mr. Stanton to the occupation by him of his office. Then it was necessary for the President of the United States to consider, first, whether this Tenure of Office act applied to the case of Mr. Stanton, and second, whether the law itself was a law of the land or was inoperative, because conflicting with the constitution. Now, I am aware that it is insisted that it is the civil and moral duty of all men to obey those laws that have passed through all the forms of legislation until they shall have been declared by the judicial authority not to be binding; but it is evident that that is too broad a statement of the civil and moral duty incumbent either upon private citizens or upon public officers, because if this be the measure of the duty there never could be a decision, there could never be a decree that the law is unconstitutional, inasmuch as it is only by disregarding the law that any question can be raised upon 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 in a citizen to raise a question whether a law is within the constitution of his country. Will any man question the patriotism or propriety of John Hampden's act when he brought the question before the courts of England whether ship money was within the constitution 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 and often have been instances in which the highest patriotism and the purest civil and moral liberty required it. Let me ask any of you if you were a trustee for the rights of third persons, and if those rights of third persons, which they could not defend themselves by reason of, perhaps, sex or age, should be attacked by an unconstitutional law, should you not deem it your sacred duty to resist that law 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, with powers confided to him for their protection, for their security, for their benefit, may not in that character of a trustee defend what has been thus committed to him? Do not let me be misunderstood upon this. I am not intending to advance upon or to occupy any extreme ground, because no such extreme ground has been advanced upon or is 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 the law be faithfully executed. So long as nothing is required of him in his 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. If that was done there manifestly never could be a judicial decision. The President would not only veto the law but would refuse all action under the law after it was passed, and would thus prevent any judicial de-

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