IMPEACHMENT

Trial of President Andrew Johnson for High Crimes and Misdemeanors.

Elaborate Argument of Manager Wilson.

The Cabinet Discussions and Advice to the President Excluded.

Postmaster General Randall on the Stand.

The Testimony for the Defence Conditionally Closed.

SPECIAL TELEGRAM TO THE HERALD.

WASHINGTON, April 18, 1868.

The case for President Johnson closed to-day so far as the rendering of evidence is concerned. People can now determine pretty nearly the exact closing hours of this great impeachment drama. Manager Wilson began the proceedings of to-day by reading an elaborate argument against the admission of the testimony relative to the advice and opinions offered in Cabinet council touching the Tenure of Office act. Mr. Curtis made an effective reply, without the necessity of resorting to manuscript to help him in the effort. It proved, however, of no avail, for the Senate immediately afterwards rejected the testimony by a vote of twenty-nine to twenty.

It will be remarked that all of the questions recently put by the President's counsel have been steadily sustained by the Chief Justice and as steadily opposed, with but a few exceptions, by those radical Senators who have, ever since the beginning of the proceedings, shown a marked animus against allowing an impartial trial. The famous seven doubtful Senators who, by uniting with the democrats, are to block the game of the impeachers, are supposed to be embraced in that knot of republicans who have been voting in accordance with the rulings of the Chief Justice. Senator Anthony heads the list, and the other six are supposed to be, after a careful examination of the votes, Senators Fowler, Grimes, Norton, Ross, Trumbull and Van Winkle. A few others are looked upon as equally doubtful republicans; but the general tenor of the votes cast by those who are mentioned above, along with the conservative tendencies they have hitherto exhibited in the transaction of legislative business, point them out more prominently as the seven men who will not brook the party dictation which bids them vote a certain way or suffer immolation at the hands of their indignant constituents.

Secretary Welles, not being allowed to give his version of the President's intentions regarding Secretary Stanton, proceeded to relate what he told the President in reference to the movements of troops in Washington. In the cross-examination Mr. Butler made a lame attempt to confuse the easy-minded Secretary, but the latter held on to his plain statements without a single variation.

Postmaster General Randall testified that he suspended Foster Blodgett, postmaster in the State of Georgia, on the representation that he was under an indictment on a charge of perjury. Mr. Butler attempted to make it appear that Blodgett was suspended because he happened to be a Union man, but no particle of evidence could be extracted from the witness to give the least color to the assumption.

The defence having stated that the President's Cabinet were all present to testify on the point relative to the proceedings in Cabinet meetings which had been ruled out by the Senate, and as their evidence could not, therefore, be produced, there was nothing further left to be offered in the shape of testimony. Senator Sherman, after Mr. Randall had left the stand, sent a question to the Chair substantially similar to those offered by the defence. The witness was recalled, the question read and objected to, whereupon a vote was taken and twenty-six votes were recorded against eighteen; and as this was a final and decisive ruling out of the evidence, the counsel for the President threw up the sponge, and declared they had nothing more to offer save what Mr. Stanbery might have, but with the character of which they were unacquainted.

The trial is thus virtually over. Some small share of rebutting testimony may be offered, but it will hardly consume more than a few hours, and then follows the final argument, and then the momentous verdict. The very sudden and abrupt closing of the evidence for the defence has surprised everybody, and the opinion is freely expressed that the President's counsel have made somewhat of a mistake. It is thought that they should have made a formal offer of all the testimony they have and stated what they intended to prove, thus forcing the Court to pass upon every scintilla of evidence and exhibiting to the country the nature of the defence fully. Some of the President's friends are disposed to view the result of to-day's proceedings in a rather gloomy spirit, but what additional cause there is for desponding does not appear very clearly. If any mistake has been made by the abrupt closing it can probably be removed under the stipulation that additional testimony might be offered by Mr. Stanbery. The sickness of the latter, just at this juncture, is decidedly unfortunate for the President.

There is no disguising the fact that a great pressure is now being made upon Senators to insure conviction. The influx of radical leaders from all the Northern and Western States is quite formidable, and the Senators are greatly bothered in consequence. On the floor of the Senate to-day were Governors Geary, of Pennsylvania; Fairchild, of Wisconsin; Fletcher, of Missouri, and Marshall, of Minnesota. It is expected that during the coming week a new instalment will arrive and lend their aid to the radical cause. The Governors now here give great importance to the triumph of the advocates of conviction and declare if the President be not deposed the radical party will enter the coming political campaign with a loss of prestige which may result in defeat. Upon this ground the greatest anxiety is felt in the result of the pending trial, and, notwithstanding the strongest assurances of sustaining the party when a final vote is reached, a strict surveillance is kept over those Senators who are considered doubtful, particularly to prevent the spread of any disposition to break down if such fears are well founded. Although there was great depression shown by the radicals at the close of the High Court last evening, to-night the opposite is the fact, and these same parties evince more satisfaction than ever. The success in keeping out any evidence showing the motives of the President in the case of Mr. Stanton is considered a big point gained, and the friends of the impeachers are delighted at the prospects. By the 1st of May it is now expected the whole affair will be over.

There is a rumor to-night that, though the Senate may find the President guilty, they will not inflict the full penalty of removal and disqualification.

PROCEEDINGS OF THE COURT.

Eighteenth Day.

UNITED STATES SENATE CHAMBER,
WASHINGTON, April 18, 1868.

The court was opened at eleven o'clock.

Pursuant to the order of yesterday the Managers and members of the House were successively announced. Mr. Stevens was not present at the opening.

Senator STEWART moved to dispense with the reading of the journal.

Senator DRAKE objected, and the journal was read.

By the direction of the CHIEF JUSTICE the question pending yesterday was read as follows:—

We, the counsel of the President, offer to prove that the President, at a meeting of the Cabinet, while the bill was before the President for his approval, laid before the Cabinet the Tenure of Office act for their consideration and advice to the President respecting his approval of the bill; and thereupon the members of the Cabinet then present gave their advice to the President that the bill was unconstitutional and should be returned to Congress with his objections, and that the duty of preparing a message setting forth the objections to the constitutionality of the bill was devolved upon Mr. Seward and Mr. Stanton, to be followed up by proof of what was done by the President and Cabinet up to the time of sending in the message by the President.

Manager WILSON rose to speak, when

Senator JOHNSON submitted the following question to the counsel of the President in writing:—"Do the counsel understand that the Managers deny that the statement made by the President in his message of December 12, 1867, in evidence as given by the Managers, at page 45, No. 9 of the official report of the trial, that the members of the cabinet gave the opinion last stated as to the Tenure of Office act and as evidence offered to corroborate their statement? or for what purpose is it offered?"

Senator HOWARD submitted the following question to the President's counsel:—"Do the counsel for the accused not consider that the validity of the Tenure of Office bill was purely a question of law to be determined in this trial by the Senate; and if so, do they consider that the opinions of Cabinet officers touching that question are competent evidence by which the judgment of the Senate ought to be influenced?"

Senator EDMUNDS asked whether the argument on the part of the Managers might not be continued while the counsel were considering the questions?

The CHIEF JUSTICE replied in the affirmative.

Mr. CURTIS said they would prefer that course.

Manager WILSON rose and said:—As this question confronts one of the most important questions involved in this case I wish to present the views of the Managers respecting it with such care and exactness as I may be able to command. The respondent now offers to prove, doubtless as a foundation for other Cabinet advice of more recent date, that he was advised by the members of his Cabinet that the act of Congress, upon which rest several of the articles to which he had made answer, to wit: "An act regulating the tenure of certain civil officers," passed March 2, 1867, was and is unconstitutional, and therefore void. That he was so advised he has alleged in his answer. Whether he was so advised or not we hold to be immaterial to this case and irrelevant to the issue joined. The House of Representatives were not to be entrapped in the preparation of this replication by any such cunning device, nor by the kindred one whereby the respondent affirms that he was not bound to execute the act because he believed it to be unconstitutional. The replication says that the "House of Representatives do deny each and very averment in the said several answers, or either of them, which denies or traverses the acts, intents, crimes or misdemeanors charged against the said Andrew Johnson in the said articles of impeachment, or either of them, and for replication to the said answer do say that the said Andrew Johnson, President of the United States, is guilty of the high crimes and misdemeanors mentioned in the said articles," &c. There is no acceptance here of the issue tendered by the respondent, and in support of which we object. The advice which he may have formed touching the constitutionality of the said act cannot be allowed to shield him from the consequences of his criminal acts, nor can his mistaken view of the constitution relative to his right to require the opinion of the heads of the several executive departments upon certain questions aid his efforts to escape from the just demands of violated law. In his answer to the first articles he alleges—"That this respondent had, in pursuance of the constitution, required the opinion of each principal officer of the Executive departments upon this question of constitutional executive power and duty, and had been advised by each of them, including the said Stanton, Secretary for the Department of War, that under the constitution of the United States this power of removal was lodged by the constitution in the President of the United States, and that consequently it could be lawfully exercised by him, and the Congress could not deprive him thereof." The respondent found no provision in the constitution authorizing him to pursue any such course. The constitution says, "the President may require the opinion in writing of the principal in each of the executive departments upon any subject relating to the duties of their respective offices." (Article 2, section 2.) Not of his office, not of the legislative department, nor of the judicial department. But when did he require the opinions and receive the advice under cover of which he now seeks to escape? His answer informs us that this all transpired prior to his veto of the bill regulating the tenure of certain civil offices. Upon these unwritten opinions and that advice he based his veto of said bill and fashioned the character of his message. He communicated his objections to Congress; they were overruled by both houses, and the bill was enacted into a law in manner and form as prescribed by the constitution. He does not say that since the final passage of the act he has been further advised by the principal officers of each of the executive departments that he is not bound to enforce it; and if he had done so he would have achieved a result of no possible benefit to himself, but dangerous to his admirers; for it will be borne in mind that the articles charge that he "did unlawfully conspire with one Lorenzo Thomas and with other persons to the House of Representatives unknown." He might have disclosed that these unknown persons were the members of his Cabinet. This disclosure might have placed them in jeopardy without diminishing the peril which attends upon his own predicament. It is not difficult to see that the line of defence to which we have directed the present objection involves the great question of this case. It tends to matters more weighty than a mere resolution of the technical offences which float on the surface of this prosecution. Whoever attempts to measure the magnitude of the case by the comparatively insignificant acts which constitute the technical crimes and misdemeanors with which the respondent stands charged will attain a result far short of its true character and be rewarded with a most beggarly appreciation of the immensity of its real proportions. Far above and below and beyond these mere technical offences, grave as they undoubtedly are, the great question which you are to settle is to be found. It envelopes the whole case and everything pertaining thereto. It is the great circle which bounds the sphere composed of the multitude of questions and issues presented for your determination. The respondent is arraigned for a violation of and a refusal to execute the laws. He offers to prove that his Cabinet advised him that a certain bill presented for his approval was in violation of the constitution; that he accepted their advice and vetoed the bill, and upon that and such additional advice as they may have given him claims the right to resist and defy the provisions of the bill, notwithstanding its enactment into a law by two-thirds of both houses over his objections. In other words, he claims substantially that he may determine for himself what laws he will obey and execute and what laws he will disregard and refuse to enforce. In support of this claim he offers the testimony which for the time being is excluded by the objection under discussion. If I am correct in this, then I was not mistaken when I asserted that this objection confronts one of the most important questions involved in this case. It may be said that this testimony is offered merely to disprove the intent alleged and charged in the articles, but it goes beyond this and reaches the main question, as will clearly appear to the mind of any one who will read with care the answer to the first article. The testimony is improper for any purpose and in every view of the case. The constitution of the United States, article 2, section 1, provides that "the executive power shall be vested in a President of the United States of America." The person at present exercising the functions of the executive office is the respondent, who stands at your bar to-day, charged with high crimes and misdemeanors in office. Before he entered upon the discharge of the duties devolving upon him as President he took and subscribed the constitutionally prescribed oath of office, in words as follows:—"I do solemnly swear that that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect and defend the constitution of the United States." This oath covers every part of the constitution, imposes the duty of observing every section and clause thereof and includes the distribution of powers therein made. The powers embraced and distributed are legislative, executive and judicial. Of the first the constitution declares that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." (Article 1, section 1.) This encircles the entire range of legislative action. The will of the legislative department is made known by the terms of the bills which it may pass. Of these expressions of the legislative will the constitution says:—"Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States, and, if he approve, he shall sign it, but, if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law." (Article 1, section 7.) Thus laws are made, but laws cannot execute themselves. However wise, just and necessary they may be, they are lifeless declarations of the legislative will until clothed with the power of action by other departments of the government. The builders of our constitution understood with great exactness the philosophy of government and provided for every contingency. They knew that laws to be effective must be executed; that the best and purest law could not perform its proper office in the absence of executive power; therefore they created that power and vested it in a President of the United States. To insure a due execution of the power they imposed the duty of taking and subscribing the oath above quoted on every person elected to the Presidential office, and declared he should comply with the conditions before he entered upon the execution of his office. Chief among the executive duties imposed by the constitution and secured by the oath is the one contained in the injunction that the President shall take care that the laws be faithfully executed. (Article 2, section 3). What laws? Those which may have been passed by the legislative department in manner and form as declared by the section of the constitution heretofore recited. The President is clothed with no discretion in this regard. Whatever is declared by the legislative power to be the law the President is bound to execute. By his power to veto a bill passed by both houses of Congress he may challenge the legislative will; but if he be overruled by the two-thirds vote of the houses, he must respect the decision and execute the law which that constitutional voice has spoken into existence. If this be not true, then the executive power is superior to the legislative power. If the executive will may declare what is and what is not law, why was a legislative department established at all? Why impose on the President the constitutional obligation to take care that the laws be faithfully executed if he may determine what acts are and what are not laws? It is absurd to say that he has any discretion in this regard. He must execute the law. "The great object of the executive department is to accomplish this purpose, and without it, be the form of government whatever it may, it will be utterly worthless for offence or defence; for the redress of grievances or the protection of rights; for the happiness, or good order or safety of the people." (Story on the Constitution, vol. 2, p. 419.) De Tocqueville, in his work on "Democracy in America," in opening the chapter on executive power, very truly remarks that "The American legislators undertook a difficult task in attempting to create an executive power dependent on the majority of the people, and nevertheless sufficiently strong to act without restraint in its own sphere. It was indispensable to the maintenance of the republican form of government that the representative of the executive power should be subject to the will of the nation." (Vol 1., p. 128.) The task was a difficult one, but the great minds from which our constitution sprung were equal to its severest demands. They created an executive power strong enough to execute the will of the nation, and yet sufficiently weak to be controlled by that will. They know that "power will intoxicate the best of hearts as wine the strongest heads," and therefore they surrounded the executive agent with such proper restraints and limitations as would confine him to the boundaries prescribed by the national will, or crush him by its power, if he step beyond. The plan adopted was most perfect. It created the executive power, provided for the selection of the person to be entrusted with its exercise, determined the restraints and limitations which should rest upon, guide and control it and him; and out of abundant caution decreed that "the President * * * of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." (Article 3, section 3.) It is preposterous for the respondent to attempt to defend himself against the corrective power of this grand remedy by interposing the opinions or advice of the principal officers of the executive departments, either as to the body of his offence or the intent with which he committed it. His highest duty is to "take care that the laws be faithfully executed," and if he fails in this particular he must fail in all, and anarchy will usurp the throne of order. The laws are but expressions of the national will, which can be made known only through the enactments of the legislative department of the government. A criminal failure to execute that will, and every wilful failure, no matter what its inducement may be, is criminal—may justly call into action the remedial power of impeachment. This power is, by the express terms of the constitution, confided to one branch of the legislative department, in these words:—"The House of Representatives * * * shall have the sole power of impeachment." (Article 1, section 2.) This lodgment of the most delicate power known to the constitution is most wise and proper, because of the frequency with which those who may exercise it are called to account for their conduct at the bar of the people; and this is the check balanced against a possible abuse of the power, and it has been most effectual. But the wisdom which fashioned our constitution did not stop here. It next declared that "the Senate shall have the sole power to try all impeachments." (Article 1, section 3.) In the theory of our constitution the Senate represents the States, and its members being removed from direct accountability to the people are supposed to be beyond the reach of those excitements and passions which so frequently change the political complexion of the House of Representatives; and this is the more immediate check provided to balance the possible hasty action of the Representatives; wise, considerate and safe to the perfect work of demonstration is this admirable adjustment of the powers with which we are now dealing. The executive power was created to enforce the will of the nation. The will of the nation appears in its laws. The two houses of Congress are entrusted with the power to enact laws; the objection of the Executive to the contrary notwithstanding, laws thus enacted, as well as those which receive the Executive sanction, are the voice of the people. If the person, clothed for the time being with the Executive power, the only power which can give effect to the people's will, refuses or neglects to enforce the legislative decrees of the nation, or wilfully violates the same, what constituent elements of governmental power could be more properly charged with the right to present and the means to try and remove the contumacious Executive than those entrusted with the power to enact the laws of the people guided by the checks and balances to which I have directed the attention of the Senate? What other constituent parts of the government could so well understand and impede a perverse and criminal refusal to obey, or a wilful declination to execute the national will, than those joining in its expression? There can be but one answer to these questions. The provisions of the constitution are wise and just beyond the power of disputation in leaving the entire subject of the responsibility of the Executive to faithfully execute his office and enforce the laws to the charge, trial and judgment of the two several branches of the legislative department, regardless of the opinions of Cabinet officers or the decisions of the judicial department. The respondent has placed himself within this power of impeachment by trampling on the constitutional duty of the Executive, and violating the penal laws of the land. I readily admit that the constitution of the United States in almost every respect is different from the constitution of Great Britain. The latter is to a great extent unwritten and is in all regards subject to such changes as Parliament may enact. An act of Parliament may change the constitution of England. In this country the rule is different. The Congress may enact no law in conflict with the constitution. The enactments of Parliament become a part of the British constitution. The will of Parliament is supreme. The will of Congress is subordinate to the written constitution of the United States, but may not be judged of by the executive department. But the theories upon which the two constitutions rest at the present time are almost identical. In both the executive is made subordinate to the legislative power. The Commons of England tolerate no encroachments on their power from any other estate of the realm. The Parliament is the supreme power of the kingdom, in spite of the doctrine that "the King can do no wrong," and in spite of the assertion that the exercise of the sovereignty rests in the several estates. The kindred character of the theories permeating the two constitutions may be illustrated by certain Parliamentary and ministerial action connected with the American revolution, and which will well serve the purposes of my argument. On the 27th day of February, 1782, General Conway moved in the House of Commons the following resolution:—"That it is the opinion of this House that the further prosecution of offensive war on the continent of North America for the purpose of reducing the revolted colonies to obedience by force will be the means of weakening the efforts of this country against her European enemies; dangerously to increase the mutual enmity so fatal to the interests both of Great Britain and America, and by preventing a happy reconciliation with that country, to frustrate the earnest desire, graciously expressed by his Majesty, to restore the blessing of public tranquility." (Hansard, vol. 22, p. 107.) The Commons passed the resolution, but the Ministry did not seem to catch its true spirit, and, therefore, on the 4th of March next following, General Conway moved another, in these more express and emphatic terms, to wit:—"That, after the solemn declaration of the opinion of this House, in their humble address, presented to his Majesty on Friday last, and his Majesty's assurance of his gracious intention, in pursuance of this advice, to take such measures as shall appear to his Majesty to be most conducive to the restoration of harmony between Great Britain and the 'revolted colonies,' so essential to the prosperity of both, this House will consider as enemies to his Majesty and this country all those who shall endeavor to frustrate his Majesty's paternal care for and happiness of his people, by advising or by any means attempting the further prosecution of offensive war on the continent of North America for the purpose of reducing the revolted colonies to obedience by force." (Ibid, page 1,089.) This resolution led to an animated debate, and the temper of the Commons was equal to the directness of the resolution. The ministry saw this and understood exactly its meaning. They were disposed to avoid the implied censure, and attempted to show by expressions of a determination to observe and respect the opinion of the House as declared in the first resolution, that no necessity existed for the adoption of the second. To effectuate this end, Lord North, the Premier, in the course of his remarks said:—"The majority of that House had resolved that peace should be made with America, and the answer given from the throne was so satisfactory that the House had just concurred in a motion to return thanks to his Majesty for making it. Where, therefore, could be the ground for coming to a resolution which seemed to doubt the propriety or sincerity of that answer? He was not of the disposition of those who complained of majorities in that House, who condemned them, and by factious and seditious misrepresentations held them out to the public in that most odious color. A majority of that House was, in Parliamentary language, the House itself—it could never make him change a single opinion, yet he bowed to that opinion which was sanctioned by the majority. Though he might not be a convert to such opinions, still he held it to be his indispensable duty to obey it and never once to lose sight of it in the advice which, as a servant of the crown, he should have occasion to give his sovereign. It was the right of that House to command; it was the duty of a Minister to obey its resolutions. Parliament had already expressed its desires or its orders, and as it was scarcely possible that a Minister should be found hardy, daring, infamous enough to advise his sovereign to differ in opinion from his Parliament, so he could not see that the present motion, which must suppose the existence of such a minister, could be at all necessary." (Ibid, p. 1,090.) And again he said:—"To the policy of that resolution he could not subscribe; but as Parliament had thought proper to pass it, and as Ministers were bound to obey the orders of Parliament, so he should make that resolution the standard of his future conduct." (P. 1,107.) These protestations of Lord North did not arrest the action of the Commons. The resolution passed and peace followed. It will be observed that these proceedings on the part of the Commons trenched on ground covered by prerogatives of the Crown, and affected to some extent the powers of declaring war, making peace and entering into treaties. Still the Ministry bowed in obedience to the command of the House and declared that "it was scarcely possible that a Minister could be found hardy, daring, infamous enough to advise his sovereign to differ in opinion from his Parliament." This grand action of the Commons and its result disclosed the sublimest feature of the British constitution. It is made to appear how thoroughly under that constitution the executive power was dependent on the legislative will of the nation. The doctrine that the King can do no wrong, while it protected his person, was resolved into an almost perfect subordination of the Ministers through whom the powers of the crown are exerted to the acts and resolutions of the Parliament—until at last the roar of the lion of England is no more than the voice of the Commons of the realm. So completely had this principle asserted itself in the British constitution that the veto power had passed into disuse for nearly a century, and has not been exercised since. The last instance of its use was in April, 1696, when William III. refused the royal assent to a bill to regulate the election of members to serve in Parliament. (Harsard, vol. 5, p. 993.) The men who framed our constitution in 1797 were not untaught of these facts in English history, and they fashioned out the government on the plan of the subordination of the executive power to the written law of the land. They did not deny the veto power to the President; but they did declare that it should be subject to a legislative limitation under the operation of which it might in any given case be overruled by the Congress, and when this happens and the vetoed bill becomes a law the President must yield the convictions of his own judgment as an individual to the demands of the higher duty of the office and execute the law. His oath binds him to this and he cannot pursue any other course of action without endangering the public weal. The constitution regards him in a double capacity—as citizen and public officer. In the first it leaves him to the same accountability to the law in its ordinary processes as would attach to and apply in case he were a civil officer or the humblest citizen, while in the latter it subjects him to the power of the House of Representatives to impeach and that of the Senate to remove him from office if he be guilty of treason, bribery or other high crimes and misdemeanors. If the citizen disobey the law and be convicted thereof, he may be relieved by pardon; but the officer who brings upon himself a conviction on impeachment cannot receive the Executive clemency; for while it is provided that "the President shall have power to grant reprieves and pardons for offences against the United States" it is also expressed and declared that this power shall not extend to cases of impeachment. (Article II., section 2.) The same person, if he be a civil officer, may be indicted for a violation of law and impeached for the same act. If convicted in both cases he may be pardoned in the former; but in the latter he is beyond the reach of forgiveness. The relief provided for the disobedient citizen is denied the offending officer. I have already observed that the constitution of the United States distributes the powers of the government among three departments. First in the order of constitutional arrangement is the legislative department, and this doubtless, because the lawmaking power is the supreme power of the land, through which the will of the nation is expressed. The legislative power—in other words, the lawmaking power—is "vested in the Congress of the United States." The acts of Congress constitute the municipal law of the republic. "Municipal law is a rule of action prescribed by the supreme power of a State, commanding whatever is right and prohibiting what is wrong." (1 Blackstone, page 44.) The supreme power of a State is that which is highest in authority, and therefore it was proper that the constitution should name first the legislative department in the distribution of power, as through it alone the State can speak. Its voice is the law—the rule of action to be respected and obeyed by all persons subject to its direction and amenable to its requirements. Next in the order of its distribution of powers the constitution names the executive department. This is proper and logical, for the will, the law of the nation cannot act except through agents and instrumentalities charged with its execution. The Congress can enact a law, but it cannot execute it. It can express the will of the nation, but some other agents are required to give it effect. The constitution resolves these agencies and instrumentalities into an executive department. At the head of this department, charged imperatively with the due execution of its great powers, appears the President of the United States, duly enjoined to "take care that the laws be faithfully executed." If the law which he is to execute does not invest him with discretionary power he has no election. He must execute the will of the nation as expressed by Congress. In no case can he indulge in the uncertainties and irresponsibilities of an official discretion unless it is conceded to him by express enactment. In all other cases he must follow and enforce the legislative will. "The office of executing a law excludes the right to judge of it," and as the constitution charges the President with the execution of the laws it declares what is his duty and gives him no power beyond." (Rawle on the Constitution, page 137.) Undoubtedly he possesses the right to recommend the enactment and to advise the repeal of laws. He may also, as I have before remarked, obstruct the passage of laws by interposing his veto. Beyond these means of changing, directing or obstructing the national will he may not go. "When the law making power has resolved his opposition must be at an end. That resolution is a law, and resistance to it punishable." (Federalist, No. 70.) The judgment of the individual intrusted for the time being with the executive power of the republic may reject as utterly erroneous the conclusion arrived at by those invested with the legislative power; but the officer must submit and execute the law; he has no discretion in the premises, except such as the particular statute confers on him; and even this he must exercise in obedience to the rules which the act provides. A high officer of the government once gave to a President of the United States an opinion relative to this doctrine in these words:—"To the Chief Executive Magistrate of the Union is confided the solemn duty of seeing the law faithfully executed. That he may be able to meet this duty with a power equal to its performance he nominates his own subordinates, and removes them at his pleasure." This opinion was given prior to the passage of the act of March 2, 1867, which requires the concurrence of the Senate in removals from office; which, while denying to the President the power of absolute removal, concedes to him the power to suspend officers and to supply their places temporarily. For the same reason the land and naval forces are under his orders as their Commander-in-Chief; but his power is to be used only in the manner prescribed by the legislative department. He cannot accomplish a legal purpose by illegal means, or break the laws himself to prevent them from being violated by others. The acts of Congress sometimes give the President a broad discretion in the use of the means by which they are to be executed, and sometimes limit the power so that he can exercise it only in a certain prescribed manner. When the law directs a thing to be done without saying how, that implies the power to use such means as may be necessary and proper to accomplish the end of the legislature; but where the mode of performing a duty is pointed out by statute that is the exclusive mode, and no other can be followed. The United States have no common law to fall back upon when the written law is defective. If, therefore, an act of Congress declares that a certain thing shall be done by a particular officer, it cannot be done by a different officer. "The agency which the law furnishes for its own execution must be used to the exclusion of all others." (Opinion of Attorney General Black, November 20, 1860.) This is a very clear statement of the doctrine on which the particular branch of this case now commanding our attention rests. If we drift away from it we unsettle the very foundations of the government and endanger its stability to a degree which may well alarm the most peaceful minds and appal the most courageous. A departure from this view of the character of the Executive power, and from the nature of the duty of the obligations resting upon the officer charged therewith, would surround the nation with perils of the most fearful proportions and of unparalleled magnitude. Such a departure would not only justify the respondent in his refusal to obey and execute the law, but also approve his usurpation of the judicial power when he resolved that he would not observe the legislative will, because, in his judgment, it did not conform to the provisions of the constitution of the United States touching the subject embraced in the articles of impeachment, on which he is now being tried at your bar. Concede this to him, and when and where may we look for the end? At what result shall we arrive? Will it not naturally and inevitably lead to a consolidation of the several powers of the government in the executive department? And would this be the end? Would it not rather be but the beginning? If the President may defy and usurp the powers of the legislative and judicial departments of the government as his caprice or the advice of his Cabinet may incline him, why may not his subordinates, each for himself, and touching his own sphere of action, determine how far the directions of his superior accord with the constitution of the United States and reject and refuse to obey all that come short of the standard erected by his judgment? It was remarked by the Supreme Court of the United States in the case of Martin versus Mott (12 Wheaton, 19), that "if a superior officer has a right to contest the orders of the President upon his own doubt as to the exigency referred to by the statute having arisen, it must be equally the right of every inferior officer and soldier; and any act declined by any person in furtherance of such orders would subject him to responsibility in a civil suit, in which his defence must finally rest upon his ability to establish the facts by competent proofs. Such a course would be subversive to all discipline and expose the best disposed officers to the chances of ruinous litigation." The power itself is confined to the Executive of the Union, to him who is by the constitution the commander of the militia when called into the actual service of the United States, whose duty it is to take care that the laws be faithfully executed, and whose responsibility for an honest discharge of his official obligation is secured by the highest sanction. He is necessarily constituted the judge of the existence of the exigency in the first instance, and is bound to call forth the militia. His orders for this purpose are in strict conformity with the provisions of the law, and it would seem to follow as a necessary consequence that every act done by a subordinate officer in obedience to such orders is equally justifiable. The law contemplates that under such circumstances orders will be given to carry the power into effect, and it cannot, therefore, be a correct inference that any other person has a just right to disobey them. Apply the principles here enunciated to the case at bar and they become its perfect support. If the President has a right to contest and refuse to execute the laws enacted by Congress his subordinates may exercise the same right and refuse to obey his orders. If he may exercise it in one case they may assert it in any other. If he may challenge the acts of Congress, they may question the orders of the President. It is his duty to enforce the laws of the nation, and it is their duty to obey his orders. If he may be allowed to defy the legislative will, they

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