IMPEACHMENT.

Trial of President Andrew Johnson for High Crimes and Misdemeanors.

Argument of Mr. Nelson for the Defence.

The President's Political Course Reviewed.

Status of the Court of Impeachment.

SPECIAL TELEGRAM TO THE HERALD.

WASHINGTON, April 23, 1868.

An hour and a half sufficed to-day for Manager Boutwell to finish his speech, the longest that has as yet been delivered during the impeachment trial. Throughout the closing part of his speech this morning Mr. Boutwell's style of language and delivery showed a marked improvement on yesterday, and the attention of his audience was equally marked in the much greater interest they exhibited.

A recess was taken after Mr. Boutwell's speech, and then Mr. Nelson, counsel for the President, proceeded with his address. Mr. Nelson's style showed little artistic finish, and his arguments were thrown around with a magnificent indifference as to point and arrangement. Some of his rhetorical flights were marvellously giddy, yet sustained without accident. On the whole, his speech, which has not yet been finished, was a great impassioned appeal to defend the President without strict regard to time and place, the rules of logic or the nicer distinctions in grammar and philology. It was the speech of a lifetime friend of the President, and if it were not as courtly, as scholarly and as unimpassioned as it might have been, it had the merit of being the sincere expression of the speaker's mind. Mr. Nelson will probably occupy two or three hours to-morrow in continuation of his argument commenced to-day in defence of the President.

It is now arranged that Mr. Groesbeck will follow Mr. Nelson on the part of the defence. He will probably not finish his argument until Saturday. He will be followed by Mr. Williams, of Pennsylvania, who will be succeeded by Thad Stevens. Mr. Evarts and, if his health permits, Mr. Stanbery will then close the defence, and Mr. Bingham, for the prosecution, will complete the case. It is understood that the Senate will retire for consultation before the final vote is taken.

Thad Stevens displays the strongest belief in the success of conviction. To-day he stated that thirty-eight of the Senators were known to be in favor of conviction. This will be two more than the requisite two-thirds necessary to success from his standpoint. Mr. Stevens feels so much encouraged by this fact that he even thinks the number will be more than thirty-eight, which he illustrates by that principle in natural philosophy called gravitation. He says, "a larger body always attracts the smaller, and by the law of gravitation, the thirty-eight Senators being the larger body, he thinks they will bring to their senses those of the radicals who hang back." Mr. Stevens never looked in better health during the present session. The prospects of consummating a political necessity which he has so long been pressing seems to act with a remarkably invigorating influence.

Mr. Stanbery's health is reported to be improving fast, and it is thought to-day that he will be well enough to close the argument for the defence.

PROCEEDINGS OF THE COURT.

Twenty-first Day.

UNITED STATES SENATE CHAMBER, WASHINGTON, April 23, 1868.

The Senate reassembled at eleven o'clock, and the court was opened in the usual form.

Senator GRIMES submitted the following:—

Ordered, That hereafter the hour for the meeting of the Senate, sitting for the trial of the impeachment of Andrew Johnson, President of the United States, shall be twelve o'clock meridian of each day, except Sundays.

Senator SUMNER and others objected, and the order was laid over.

At twenty minutes past eleven o'clock Mr. Boutwell resumed his address.

When Mr. Boutwell had concluded, at five minutes past one o'clock P. M., on motion of Senator JOHNSON the court took a recess for fifteen minutes.

Mr. Nelson's Address in Behalf of the Defence.

At twenty minutes before two o'clock Mr. Nelson took the floor in behalf of the President. His opening words were rather indistinct, but he spoke substantially as follows:—

Mr. CHIEF JUSTICE AND SENATORS—I have been engaged in the practice of my profession as a lawyer for the last twenty years, and I have in the course of my somewhat diversified professional life argued cases involving life, liberty, property and character. I have prosecuted and defended every species of crime known to law, from murder in the first degree down to simple assault; but in rising to address you to-day I feel that all the cases in which I was ever concerned sink into comparative insignificance when compared to this one, and a painful sense of the magnitude of the case in which I am now engaged and of my inability to meet and to defend it as it should be defended oppress me as I rise to address you. But I would humbly invoke the Great Disposer of Events to give me a mind to conceive, a heart to feel and a tongue to express those words which should be proper and fitting on this great occasion. I would humbly invoke the assistance which comes from on high, for when I look at the results which may follow from this great trial; when I endeavor to contemplate in imagination how it will affect our country and the world, I stand back, feeling that I am utterly incapable of comprehending its result, and that I cannot look into the future and foretell it. I feel, Senators, that it will be necessary upon this occasion for me to notice many things which, as I suppose, have but little bearing upon the specific articles of impeachment which have been presented, and in doing so to follow the language of William Wirt upon the trial of Judge Chase. If I follow the argument of the honorable Manager more closely than would seem necessary to some of the court it will be remembered that it would seem presumptuous to slight any topic which the learned and honorable Managers have deemed it proper to press upon the consideration of the court. It has been charged that the President was trifling with the Senate. Scarcely had he entered upon this trial before charges were made against him of seeking improperly to gain time to effect an unworthy and improper procrastination. I shall dwell but a moment upon that. We supposed that there was nothing improper in our asking at the hands of the Senate a reasonable indulgence to prepare in our defence, when the subject of impeachment had been before the House of Representatives in some form for more than a twelvemonth, and when the honorable Managers were armed at all points and ready to contest the case on the one hand, and we, upon the other, were suddenly summoned from our professional pursuits; we, who are not politicians, but lawyers engaged in the practice of our profession, measure arms with gentlemen who are skilled in political affairs and who are well posted upon all the subjects that may be involved in this discussion. But it is not merely the complaint as to delaying and trifling with the Senate that it will become my duty to notice. A great many things have been said, and among the rest an attempt has been made to stigmatize the President as a traitor to his party; as disgracing the position held by some of the most illustrious in the land; as a dangerous person; a criminal, but not an ordinary one, and as encouraging murder, assassination and robbery all over the Southern States, and, finally, by way of proving that there is but one step between the sublime and the ridiculous, as handying ribald epithets with a jeering mob. My excuse for noticing these charges, which have been made here in the progress of this investigation, is that nothing has been said in vindication of the President from them. It will be my duty, Senators, to pay some attention to-day. We have borne it long enough, and I propose before I enter upon the investigation of the articles of impeachment to pay some attention to those accusations which have been heaped upon us almost every day from the commencement of the trial, and which have been passed unanswered and unnoticed on the part of the President of the United States. It is true, as is alleged, that the President is guilty of all these things—if he be guilty of one little of the offences which have been imputed to him in the opening argument, and which have been iterated and reiterated in the argument of yesterday and to-day, then I am willing to confess that he is

> A monster of such frightful mien,
> That to be hated needs but to be seen.

I am willing to admit that if he was guilty of any of the charges which have been made against him, he is not only worthy of the censure of this Senate, but you should place

> A whip in every honest hand,
> To lash him naked through the land.

He should be pointed at everywhere as a monster to be banished from society, and his name should become a word to frighten children with throughout the land, from one end to the other; and when any one should meet him or see him

> Each particular hair to stand on end
> Like quills upon the fretful porcupine.

If he was, then I agree that neither I nor those associated with me can defend him. Mr. Nelson then, asking "Who is Andrew Johnson?" proceeded to sketch the President's early life and career, and passed a high encomium on his patriotism and public services, referring also to the fact that his neighbors, and those who like himself (Mr. Nelson) knew him best, sustained him and believed him innocent. Mr. Nelson felt he was not addressing merely Senators or politicians, but judges, whom he begged to rise above prejudice or party considerations and do impartial justice. Referring to the immense outside pressure which it was impossible to conceal unworthy persons and journals sought to bring to bear upon them, he said he was confident that they would repel it with indignation. If he could believe that the result of the trial was a foregone conclusion, humble individual that he was, he would scorn to address them. He asked them as far as possible to put themselves in the President's place, to judge of his feelings and motives and intentions—a privilege accorded to the meanest criminal. Continuing, Mr. Nelson said:—I agree that it requires an almost superhuman effort to do it—to divest yourselves of all preconceived opinions and place yourselves in his condition and place. Then as to his life as a politician—who is the President of the United States? Why, a democrat of the strictest sect and the most strict construction—an old Jackson-Jeffersonian democrat—a man who proclaimed his democracy in the acceptance which he wrote at the time when he was nominated for the office of Vice President of the United States; and you and the whole country were told that he was a democrat, and he endeavored to rouse the old democratic party to what he called the pure and correct doctrines of democracy and to stand by the country in the great conflict in which it was engaged. When we look at this and examine the records of Congress and the debates, and look at his record on every question in which the constitution of the United States was involved, where do you find the President? You find him, under all circumstances, a strict constructionist of the constitution, adhering with strict tenacity to the principles and spirit of the constitution and of that party faith in which he had been trained; and when you look at the great difference between him and the House of Representatives upon the great questions whice agitate the country, I ask you, Senators, if he may not entertain an opinion different from your own without blame? Do accord to him something of that freedom of opinion which you accord to every man on trial. Accord to him something of the privilege which is accorded to the meanest criminal. Accord to him the presumption that he is innocent until he is declared guilty. Look at his motives. Look at the manner in which he has acted, and, if there has been an unfortunate difference of opinion between him and the Congress of the United States upon great constitutional questions, why, attribute that difference, if you please, to the training, to the education, to the habits of thought of his whole life. But do not attribute it, in the absence of proof, to unworthy, base, dishonorable, mean motives, as you are asked to do upon the other side. I beg leave, Senators, to remind you of the resolution to which I adverted a moment ago, for, in the view which I take of this case, that resolution furnishes a key to the whole conduct of the President in the controversy out of which this unfortunate prosecution has arisen. That resolution, adopted in 1861, declares that Congress, in the prosecution of the war for the suppression of the rebellion, will recollect only its duty to the whole country, that the war is prosecuted in no spirit of revenge, nor for the purpose of overturning any of the existing institutions of the country, but to defend the constitution and all laws made in pursuance thereof, and to preserve the dignity, equality and rights of all the States impartially, and that as soon as these ends were accomplished the war should cease. There is the chart which has guided the President of the United States in the discharge of his official duties. There is the platform upon which he has stood, and if he has not viewed it in the light in which others have regarded it, still I ask if it is not capable of being regarded in the light in which he has viewed it? If it is, then I claim that we shall remove from this prosecution all idea of improper motives, and I declare that in view of the testimony offered on the other side, in view of all that is known to the contrary, with the exception of one single instance, the President of the United States has stood up, in letter and in spirit, to what he believes to be the doctrine of this resolution, which was adopted with all but perfect unanimity by the two houses of Congress in 1861. In the progress of the war he felt it necessary for him to yield the question of slavery so far as he had any influence in the section of country in which he resided, and that he did yield. He went as far as the farthest in proclaiming emancipation in the State over which he was placed as Military Governor, and in other respects he has endeavored to carry out that resolution in the spirit in which it was introduced by the venerable Crittenden, whose memory will ever be respected by those of you who know him; and as long as America shall have a name, as long as talent, genius, independence, faithfulness and firmness shall be venerated, so long will the name of that great and good man be honored in our own and in other lands, who declared in the resolution which he offered that the war was prosecuted, not for the purpose of conquest or subjugation, but that the dignity and equality and rights of all the States should be impartially maintained. Do not misunderstand me, Senators, it is not my purpose to enter into any discussion upon the differences of opinion between the President and Congress in regard to the reconstruction policy which has been pursued by them. I only advert to it for the purpose of showing that there was a pledge of equality of rights to be preserved in 1860 and 1861, when the galleries of the Senate Chamber rang with the applause of the multitude, when "fair women and brave men" were not ashamed to express their admiration and gratitude for him who is now on trial before you for the course he then took. If he had advocated a doctrine which was exceedingly obnoxious to the Southern people, what was it? It was that the Congress of the United States had the power to compel obedience to the constitution and laws of the United States. He denounced the doctrine of secession and denied that any State had the right to withdraw from the Union without the consent of all the States. He insisted that the great power of the government should be brought into requisition to keep those States within the Union, and when the war was over, when Lee had surrendered, when the government of the United States was cast upon him suddenly and unexpectedly, in the sudden emergency in which he was called upon to act hastily and speedily so as to bring the war to a termination as soon as possible, what did he do? There was no time to call Congress together, no time to assemble the representatives of a nation, and such was the state of the country as to demand immediate and prompt action. What did the President of the United States do? The President undertook to carry out what he believed to be the policy of his lamented predecessor. He undertook this in good faith. He manifested no desire to segregate himself from the party by whom he had been elevated to power. He endeavored faithfully to carry out the resolution of 1861 to preserve the dignity, equality and rights of the States and not impair them in the slightest degree, and now the question is, Suppose he is wrong? Suppose the Congress is right? In the name of all that is great and good, I ask any one of you if he is a traitor to his principles or a traitor to the party that elected him? It is a mere difference of opinion, an unfortunate difference, a very unfortunate difference, between him and the Congress of the United States; but who can say, in the spirit of candor and truth, that he was not endeavoring and did not try in all his acts to carry out what he believed to be the policy of the party by whom he was elevated to power, and after he had taken his stand he did all he could to have the policy of the lamented Lincoln carried out in regard to Arkansas and Louisiana, believing that when Mr. Lincoln made his proclamation in regard to the restoration of the States he designed to restore them to the state in which they were before the war commenced, I ask who can say there was guilt in that? You may differ in opinion, you may think he was wrong (undoubtedly a large majority of this Senate believe conscientiously that he was wrong), but still do you believe you can deprive him of the claim of honesty and integrity? Is a judge to be tried because he mistakes the law in a charge to a jury? I need not turn to authority: I need not read law books to satisfy you that any man acting in a judicial capacity, from a simple justice of the peace to the chief justice of the highest court in the United States, is protected by the laws while in the faithful and honest exercise of the judgment which is conferred upon him. You hear a great deal about the doctrine of implied power, and I shall have occasion to speak of that further in another part of my remarks; but let me put one plain, simple question to this Senate and to the whole country—Can any man put his finger on any sentence or clause in the constitution which says who is to restore the relations of peace in the land when they have been disturbed by a civil war? You have the power to suppress rebellion, but the moment you go beyond the language of the constitution you make use of an implied power, and the moment you admit the doctrine of the implication then I maintain that that doctrine is just as applicable to the President of the United States as to any Senator or Representative. I ask this question again. I know whom I am addressing. I know the intelligence and the high respectability and character of this great tribunal, and I put the question with fearless confidence to every Senator, where does he find the power in the constitution to pass your reconstruction laws unless under the power to suppress insurrection? Where, unless under those general powers by which the war was carried on, and under which it is declared that the government has the inherent right to protect itself against dissolution, and in the name of law and justice that you inaugurate here in this chamber and inscribe over the doors that are the entrance here, I ask you in the law and order and justice where do you get this power if not from implication? The constitution is silent. It does not say that Congress shall pass laws to reconstruct States that have been in rebellion; it does not say that the President of the United States shall do this. You are obliged to resort to implication. He is the Commander-in-Chief of the Army and Navy in time of war. Peace had not been declared when these measures of his were undertaken. It was necessary to protect the country against the ruin that was likely to follow in the wake of hundreds of thousands of soldiers turned loose upon the country. There was no time to ask the judgment of the Congress of the United States. He was forced to act, in construing the powers and duties that belonged to him, upon his own judgment as Commander-in-Chief of the army and navy; and if he misconceived his duty or his power; if he fell into an error, into which you may say Mr. Lincoln, his lamented predecessor, had fallen, let me ask you, gentlemen, is there to be no charity, no toleration, no liberality for a difference of opinion? Are we to judge in the spirit that governed the world two hundred years ago? Are we like those who burned heretics at the stake, to introduce in this nineteenth century such a standard of judgment, and forget that the spirit of the Gospel has been spread abroad, and that a spirit of liberality is infused into the minds of the people of this age? I ask, Senators, if the President is to be judged in the spirit of the dark ages, or of the middle ages, or in an enlightened, patriotic and Christian spirit? Now, I maintain upon this great question, that the President, in his position of the chief executive officer of the nation, is entitled to the credit of having acted honestly and being governed by upright and correct motives. And I maintain, also, that in this court, or in any court under heaven, honesty and integrity of motive is a shield and protection to him against all the darts that may be levelled at him from any quarter, high or low. The servant that knew his master's will, but did it not, was punished, but never the servant who did not know his master's will, or who erred in an honest exercise of his judgment and reason. Now, Senators, I maintain that this cursory glance at the history of the country and at the difference of opinion that exists between Congress and the President is sufficient to show that he was animated by correct and upright motives, and that he ought not to be judged in the spirit in which the honorable Managers ask that he shall be judged. His acts ought not to be taken as an evidence that he intended to act contrary to what he deemed to be his duty under the circumstances. Now, without discussing this question further, but merely for the purpose of calling the attention of Senators to the subject, I beg leave to remind them, as I have already done, that according to Mr. Stanton's own testimony in another investigation, which has been published under the authority and sanction of Congress, the President of the United States endeavored to carry out what he believed to be the policy of Mr. Lincoln. I will refer you to some few dates and circumstances in connection with this, and I shall then pass from it without undertaking to discuss the merits or differences of opinion between the Senate and President. I do so for the purpose of relieving him from the charge of being a usurper, a traitor, a tyrant and a man guilty of every crime known under heaven. How Mr. Lincoln in his proclamation of the 8th of July, 1864, stated that while he had failed to approve the first Reconstruction bill passed by Congress yet he expressed an unwillingness to set aside the constitutions of Arkansas and Louisiana, and in his emancipation proclamation of 1863 he invited the rebel States to form new constitutions, to be adopted by not less than one-tenth in number of the votes cast in each State at the Presidential election of 1860, each having taken the oath prescribed by his proclamation. Mr. Johnson, as you know, when he came into power recognized Governor Pierpoint as the Governor of West Virginia, which the Congress of the United States thought (and rightly) was sufficiently well organized to justify them in consenting to the formation of a new State. Senators will pardon me if I fall into errors on these subjects, because I am no politician, and it is like carrying coals to Newcastle for any of us to argue these questions before Senators and the House of Representatives, who are more familiar with them than we are; and if I fall into errors they are errors of ignorance and not of design. I know the great superiority that the honorable Managers have in this respect over us, and I acknowledge it; because each member of the House of Representatives and every Senator, in reference to these subjects, has been concerned in them. But still, Senators, I beg leave to remind you that Mr. Johnson recognizes her Governor. That State was recognized as a State under an election held by the people. Under that election West Virginia was formed into a new State; and all this was done, if I am not misinformed, without any act of reconstruction being passed by the Congress of the United States. Now when the President came into power, when he saw that the Congress of the United States had recognized and accepted West Virginia as a State, was he not justified in the belief that he was pursuing not only the policy of Mr. Lincoln and the party that elevated him to power, but the policy of the Senate and the House of Representatives of the United States? And if he committed an error, I repeat, it was an error of the head and not of the heart, and it ought not to be made a matter for accusation against him. Let me now call your attention to the fact that between the 29th of May and the 13th of July, 1865, he appointed provisional Governors for North Carolina, Mississippi, Georgia, Texas, Alabama, South Carolina and Florida. Now, let me pause a moment and ask you a question here. Up to the time of the assembling of the Congress of the United States in December, 1865, who was there in all this broad land, from one end of it to the other, that dared to point the slow, unmoving finger of scorn at Andrew Johnson and say that he had betrayed any trust that had been reposed in him, or that he was a traitor? He was faithfully carrying out what he believed to be the policy of Congress and his predecessor, who was anxious that the Union should be restored. He was anxious to "pour oil on the troubled waters" and to "heal the living wound" of his distracted and divided country; and if he erred it was an error which was intended to restore peace and harmony to our bleeding country; it was an error which designed to banish the recollection of war, and which was intended to bring into a fraternal embrace the brother and sister, the husband and wife, who had been separated during the awful calamity which overshadowed our country in that terrible civil war that drenched the land in human gore. I say if he committed an error in these things it is not an errort that should be imputed to crime, however you may differ with him. If you pronounce on his conduct that judgment which I invoke elevated judges to pronounce; if you will pronounce that cool, dispassionate judgment which must be exercised by every one of you who intends faithfully to redeem the pledge which he has made to God and the country, I think, Senators, that you will acquit of this accusation that has been made against him. Now one other thought and I leave this branch of the subject. On the 20th August, 1866, the President of the United States proclaimed the rebellion at an end, and on the 2d of March, 1867, an act was approved entitled "An act to provide for a temporary increase of the pay of officers in the army of the United States and for other purposes." By the second section of that act it is enacted "that section one of the act entitled 'An act to increase the pay of soldiers in the United States Army and for other purposes,' approved June 20, 1864, be, and the same is hereby continued in full force and effect for three years from and after the close of the rebellion as announced by the President of the United States by proclamation bearing date the 20th day of August, 1866." There is a legislative recognition of the fact that the war is at an end; there is recognition of the President's power to proclaim, and without discussing these questions—for I have said I will not enter upon the discussion of these topics—I advert to it, and my reason for alluding to it is by the remarks, I might say the repeated remarks, that have been made by the honorable Managers, that this did not show that the legislative recognition of the President's proclamation announcing the termination of the civil war and the close of the rebellion was a recognition of the fact that the Southern States were not out of the Union, and that it goes far to extenuate, if not to justify, the view which the President took in reference to the restoration of these States to their harmonious relations with the government of the country. And now, Senators, having disposed to some extent, but not entirely of these personal charges made against the President, and having reviewed briefly and imperfectly something of his personal and political history, I invite you to look back upon the record of his whole life, and in his name I ask you, ask the country to-day to remember his course. We appeal with proud confidence to the whole country to attest the purity and integrity of his motives, and while we do not claim that his judgment is infallible, or that he may not have committed error (and who in his position may not commit great and grievous errors), while we claim no such attributes as these, we do claim, before this Senate and before the world, that he is an honest man, that he is a man of integrity, of pure and upright motives, and, notwithstanding the clamor that has been raised against him, he appeals to the judgment of this Senate and of the world to vindicate him. Having thus endeavored to dispose of the charges of usurpation, &c., based on the President's conduct in former years, Mr. Nelson said he would consider the important question whether or not this body is a court. He denied that authority or precedent was to be found for its guidance in Parliament, except in the same way that history was to be consulted. Continuing, he said:—I do say this, that upon some subjects it is perfectly right and proper to go to English history and English law books, with a view to the interpretation of those phrases and terms known to English law which have been incorporated into our constitution; but it never will afford any clue to this investigation or throw any light on the subject. Why? Because this tribunal has no exemplar in the history of the world; it is a tribunal of the American constitution, and we must look to the language of that constitution in order to ascertain what it means. I ask, and I hope the Chief Justice will not take offence at my phraseology, whether it was the intention of the framers of the constitution that the Chief Justice of the United States should be called down from the most elevated tribunal on the face of the earth to preside over your deliberations, and when he comes here that he shall have no more power than an ordinary speaker of an ordinary house of representatives, and hardly so much—a machine through which the votes of the Senate are to pass to the records of the country. I insist that there was a high object and purpose intended by the framers of the constitution when they called the Chief Justice from his elevated position to preside over the deliberations of the Senate. There was an object and a purpose such as never was attained in English history, an object such as was unknown to the British constitution, and I contend, therefore, that it was not intended by the framers of the constitution that the Chief Justice was to be a mere cypher in this trial. I beg leave to remind you of some facts relating to the history of this subject, and I do not consider in doing so to bring in the volumes and read page after page to you. I take it for granted that the Senators are a great deal better informed upon it than I am. All that I deem it important or material for me to do is to refresh your recollection in relation to some of the subjects connected with the incorporation of that provision in the constitution of the United States. You will recollect, Senators, that when the constitution was about to be formed there were various plans of government submitted. Colonel Hamilton introduced a plan of government, the ninth section of which provided that the Governors, Senators and all officers of the United States should be liable to impeachment for malfeasance and corrupt conduct, and that on impeachment the person convicted should be removed from office and disqualified from holding any office of trust or profit under the United States. All impeachments were to be tried by a court, to consist of the chief or senior judge of the supreme court of law in each State; provided that such judge held his place during good behavior and had a permanent salary. That plan was introduced in the Convention on the 18th of June, 1787, and is to be found in the first volume of Elliott's "Debates on the Federal Constitution" (page 108). Mr. Randolph had a plan of government, the thirteenth proposition of which was that the jurisdiction of the national judiciary should extend to cases of impeachment of any national officer and to questions involving the national peace and harmony. This was withdrawn on the 19th of June, 1787, and is set out in 1st Elliott's Debates (page 182). In Mr. Charles Pinckney's plan, introduced on the 1st of May, 1787, it was provided that the jurisdiction of the court termed the Supreme Court should extend to the trial or impeachment of officers of the United States. Mr. Madison preferred the Supreme Court for the trial of impeachment, or rather a tribunal of which that court should form a part. Mr. Jefferson, in his letter of the 22d of February, 1798, to Mr. Madison, alludes to an attempt to have a jury trial of impeachments. (Fourth volume Jefferson's Works, 215.) And Mr. Hamilton, in the "Federalist," No. 65, page 355, asks whether it would have been an improvement in the plan to have united the Supreme Court to the Senate in the form of a Court of Impeachment. He says:—"It would certainly have been attended with certain advantages;" but he asks "whether they would not have been overbalanced by the disadvantages arising from the same judges having again to try the defendant, in case of a double prosecution," He adds, "That to a certain extent the benefits of that union would be obtained by making the Chief Justice of the Supreme Court President of the Court of Impeachment," as was proposed. Madison, Mason, Morris, Pinckney, Williamson and Sherman discussed the impeachment question. A committee on style and arrangement was appointed, consisting of Johnson, Hamilton, Morris and King. On Wednesday, the 12th of September, 1787, Dr. Johnson reported a digest of the plan, and on Monday, the 17th of September, 1787, the engrossed constitution was read and signed. So far as we have examined this question it does not appear when or how the words, "When the President of the United States is tried the Chief Justice shall preside," were inserted in the constitution. No doubt you are much better informed on the subject than myself. I have read and seen it stated that they must have been introduced by a conference committee, and that that fact is shown by Mr. Madison's writings, but in the searches which I have been able to make in the short time during which this investigation has been going on I have not been able to ascertain whether that is so or not. So far as I do comprehend or understand it I maintain the following proposition, to which I respectfully ask the attention of the Chief Justice himself, and also the attention of the Senate. I shall not dwell upon it at any great length, but leave it to you, Senators, and to the Chief Justice, to judge for yourselves whether it is founded in sound reasoning. First, I hold that the law of Parliament furnishes no satisfactory explanation of the union of the Chief Justice with the Senate on an impeachment trial. That explanation must be found in the circumstances under which the constitution was formed. I think it is one of the most important considerations in the investigation of this great question. You have seen that one of the plans was to have impeachments States; another plan was to have them tried by the Supreme Court of the United States; another plan was to have the Supreme Court tried by a court composed of judges from each of the of the United States associated with the Senate in the trial. Every one of these plans you will perceive looked to judicial aid and assistance in the trial of the case, and when it was finally determined that the Chief Justice should preside I imagine that it was determined that he should come here as a judge; that he should come here clothed in his robes of office; that he should declare the law and pronounce a judicial opinion upon every question arising in the case. While I know that it is for your Honor to determine for yourself what course you will pursue; while I do not presume to dictate to this honorable court or to the Chief Justice who presides over it—for it is my province to argue and your province to decide and determine—I do most respectfully insist, before the Senate and before the world, that I have the right, as one of the counsel for the President, to call, as I do call, upon the venerable Chief Justice who presides over your deliberations for an expression of his judgment and opinion on any question of law that may arise. Mr. Nelson argued this point, and then went on as follows:—We all know, Senators, that this is the first case under the American constitution in which the Senate has been called upon as a Court of Impeachment to try the Chief Magistrate of the land. The precedent which you are to form in this case, if our government survives the throes of revolution and continues undiminished and unimpaired to remote posterity, is one which will last for a thousand years. The decision made now is one which will be quoted in after years and will be of the very highest importance. I maintain, therefore, that in the view which has been presented we have a right to call upon the Chief Justice to act, not merely as a presiding officer, but to act as judge on the conduct and management of this trial. I have already noticed some startling and extraordinary propositions made by the Managers. Mr. Manager Bingham says that "you are a rule and a law unto yourselves." Mr. Manager Butler claims that as a constitutional tribunal you are bound by no law, either statute or common. He states further that common fame and current history may be relied upon to prove facts; that is, to prove the President's course of administration, and further that the momentous question is raised whether the Presidential office ought in fact to exist. Senators, in the whole course of American history I have never heard or seen three such startling propositions as those which are insisted upon by the honorable Managers. They are dangerous to liberty. They are dangerous to the prosperity of the American constitution and of the American government. They would overthrow every principle of justice and of law that is known in the civilized world if they were carried out to the extent which the hohorable Managers insist upon. I never thought or dreamed that in this land of liberty—this land of law—this land where we have a written constitution—such doctrines would be asserted here. If I do not misunderstand the language used, the learned Managers think that this Senate has the power to set aside the constitution of the United States itself. Many of the most eminent and learned writers in England and in our country, when treating on the subject of the distribution of powers between the executive, legislative and judicial branches of government, have sounded the note of warning that the danger is not to be expected from the executive, not to be apprehended from the judicial department, but is to be apprehended from the encroachments of the House of Commons, of the popular branch of the government; and now we hear learned and able and distinguished leaders of the House of Representatives, the chief men of this impeachment trial, arguing that the Senate has the right to judge and determine for itself whether the provisions of the constitution shall be maintained. Senators, this is not in conformity with the healthful doctrine of the American constitution. The sovereignty of the land is not in you. It is not in the President. It is not in the Chief Justice. It is the American people, and they only can alter their constitution. No Senate, no House of Representatives, no Judiciary, no Congress can alter the American constitution. I noticed during the trial that when one of the witnesses spoke of the President of the United States saying that he intended to support the constitution of the country, caused a universal smile in the Senate and galleries. That venerable instrument, established by the wisdom of some of the bravest and most distinguished men the world ever saw, that noble instrument which was purchased with the blood and treasure of the Revolution, and which we have been accustomed to regard with sacred reverence, seems to have been so often trampled upon and violated in this land that when somebody dares to mention it with some of the reverence of ancient times it excites smiles of derision and laughter. God grant that a more healthful sentiment may animate and inspire the hearts of the American people, and that we will return, now that the war has passed away, back to something of the veneration and respect for the American constitution, and that we will teach our children who are to come after us to love and venerate and respect it as the popular safeguard of the country, which is not to be treated with anything short of that respect and veneration and high reverence with which we have been accustomed to regard it. But you are told that you are to act in common fame. Is it possible that we have come to that? Is it possible that this great impeachment trial has reached so lame and impotent a conclusion as that the honorable Managers are driven to the necessity of insisting before you that common fame is to be regarded as evidence by Senators? I hope it will not grate harshly on your ears when I repeat the old and familiar adage that "common fame is common liar." Are Senators of the United States to try the Chief Executive Magistrate on rumor, the most vague, the most uncertain, the most unreliable? The glory and boast of English law and of the American constitution are that we have certain fixed principles of law, fixed principles of evidence, which are to guide and govern a trial in the investigation of cases, and one of the boasts of the system of American jurisprudence and one of its greatest perfections is this, that when you go into a court of justice there is nothing taken of rumor or of fame. There sits the judge, there the jury; here are the witnesses; they are called on to testify; they are not allowed to give in evidence any rumor; they are compelled to speak of facts within their own knowledge; the case is investigated slowly, cautiously and deliberately; the truth is arrived at not by any hasty conclusions, but upon solemn trial and upon patient and faithful investigation, and when the result is found it commands the confidence of the country; it secures the approbation of the world and it is acquiesced in; if it be in the highest court it passes into history and law and goes down to posterity as a precedent to be followed in all time to come. And here, Senators, is the greatest of the liberties of the American people. Mr. Nelson pursued this theme at length, and continuing, said:—Another question, Mr. Chief Justice, and it is a question of very considerable interest, is as to what are crimes and misdemeanors under the constitution. I desire to remind the Senate and Chief Justice of a proposition which was asserted at an early period in this trial by one of the learned Managers. I regretted at the moment that I had not answered it, but it is in the record, and it is not too late to give a passing remark to it now. The honorable Manager made use of the expression that "the great pulse of the nation beats perturbedly, fitfully pauses when we pause, and goes forward when we go forward, and we have been told time and again that the honorable Managers are acting for all the people of the United States. I may have something to say, Senators, before I close my remarks, but I shall postpone the consideration of that for the present. The honorable Managers told you that "the public pulse beats perturbedly, that it pauses when you pause and goes forward when you go forward," and you have been told time and time again that the people out of doors are anxious for the conviction of the President of the United States. Permit me, Senators, to be guilty of the indecorum almost of saying one word about myself, and I am only doing so by the way of stating my argument. In the whole course of my professional career, from the time I came first a young man to practice law until the present moment, I never had the impudence or the presumption to talk to a judge out of court about any case in which I was concerned. My arguments before him have always been made in court. I have had sufficient respect for the independence of the judges before whom I had the honor to practise my profession to take it for granted that they were men of honor, men of intelligence, and that they would not hear any remark which I should make to them out of doors and not in the presence of my adversary. But the doctrine here is that "the public pulse beats." Ah! have we come to that? Is this case to be tried before the greatest court in Christendom, not upon the law, not upon the evidence, not under the instructions of the Chief Justice of the United States, but to be tried on common rumor? And is it to become interesting or to cease to be interesting just according to the beating of the public pulse? Why, Senators, if it were not that I do not intend to say one word designed to be offensive to any gentleman on the other side of the Senate, I would say that I almost regard this as an insulting argument. But I do not make use of that expression. It is not my intention in anything that I have said or may say to wound the sensibilities of any one or give just cause of offence to anybody connected with the case. But you are told that you are to try the case according to the public pulse. What an argument to advance to the American Senate! what an argument to put forward in the American nation! Why, all history teems with examples of gross, outrageous injustice which has been done in criminal trials, trials in Parliament and trials in courts of justice; ay, and our own country has not been exempt from some notable instances of it, where public clamor was allowed to influence the judgment of the judges. Those instances that are recorded in history, those instances of blood, and of murder, land of outrage and wrong perpetrated in the name of justice are an admonition to us that the public pulse should have nothing to do with this trial. Senators, regarding every man whom I address as a judge—as a sworn judge—allow me for one moment to call your attention to one great trial in this country. Mr. Nelson then referred to the trial of Burr, and spoke in high terms of Judge Marshall, who presided. He hoped that the Senators would imitate the example of that illustrious jurist, and went on saying, I trust, Senators, that the result will be such as to command the approbation not only of your own consciences, not only of the States which you have the honor to represent, but the approbation of Him who is a greater Judge than you are, and the approbation of posterity. A most excellent rule of interpretation was adverted to by Chief Justice Marshall in the trial to which I have referred. (Burr's trial.) Speaking of the words "levying war," as used in the constitution, he said that it was a technical term, and that it must be considered as being employed in the constitution as it was employed in England, unless the contrary was proved by the context, or unless it was incompatible with other parts of the constitution. He held that it was used in the same sense in which it was used in England in the statute of Edward the Third, from which it was borrowed. Now, the words "treason," "bribery," "crimes" and "misdemeanors," were words just as familiar to the framers of the constitution as they are to us. One of the honorable Managers made an argument here to show that because Dr. Franklin was in London at the time of the Warren Hastings trial, that had a good deal to do with the proper mode of construing the American constitution on the subject of the power of the Chief Justice. These words were almost as familiar to the lawyers at the time of the formation of the constitution as they were to the lawyers and judges of the present day. In one passage of Burke he says that crimes and misdemeanors are almost synonymous words; but in another and further exposition he undertakes to show and does show that the word "crime" is used in the sense of charges, such as usually fall within the denomination of felony; and that the word "misdemeanor" is used in the sense of those trivial and lighter offences which are not punishable with death, but with fine or impeachment, or both. Now what is the rule of interpretation? It is not necessary for me to turn to authorities on the subject. Words are to be construed in the connection in which they are used, and in the sense of those being of the same kind. If I correctly apprehend the law at the date of forming the constitution, treason by the law of England was a felony punishable with death. Bribery was a misdemeanor, not punishable with death, but punishable with fine and imprisonment. When the words "crimes," therefore is, used in the constitution it is to be construed in the same sense as the word "treason." It is to be understood as a felonious offence, an offence punishable with death or imprisonment in the penitentiary. The word "misdemeanors" has reference to other offences. It does not mean a simple assault; for the expression, in the constitution is "high crimes and misdemeanors," high crimes referring, of course, to such crimes as are punishable with death, and high misdemeanors referring to such misdemeanors as are punishable by fine and imprisonment, and not to such simple misdemeanors as an assault. What, then, is the argument upon that? What is the true meaning of the words "crimes and misdemeanors" as embodied in the constitution of the United States? One set of constructionists held that you are not to look at the common law to ascertain the meaning of the words "crimes and misdemeanors," but that you are to look at the parliamentary law to ascertain it. And now, so far as I have any knowledge of it, the parliamentary law does not define and did never undertake to define what is the meaning of "crimes and misdemeanors." What did the parliamentary law undertake to do? It undertook to punish, not only its members, but citizens for offences which were regarded as offences against the government; after, without turning the offender over to the courts, the Parliament impeached him, or proceeded against him in a manner similar to impeachment; but there was no definition, so far as I know, of "crimes and misdemeanors." Parliament was, to use the language of the honorable Manager, "in a great part a law unto itself;" but when the framers of the constitution incorporated those words in our charter did they borrow them from parliamentary law or did they get them from Blackstone and Hall, and from other writers on the criminal law in England? They got them from the common law of England and not from the law of Parliament. Then what proposition follows as a corollary from the premises I have laid down if the premises be correct? Why, it follows inevitably that the words "crimes and misdemeanors" are received in the sense in which they are employed by writers on criminal law in England. I doubt whether the Congress of the United States has, within the meaning of the American constitution, a right to create a new crime and a new misdemeanor from something which was not known as a crime or a misdemeanor at the date of the adoption of the American constitution. I think it is a matter of great doubt, to say the least of it. It is, Mr. Chief Justice, on these and kindred questions, that I respectfully submit that we have a right respectfully to demand at the hands of your Honor a judicial exposition of the meaning of the constitution. It will be for you, under your own sense of duty, under your own construction of the powers conferred upon you by the constitution of our common country, to decide for yourselves whether this respectful question will be answered or not.

Senator YATES at four o'clock suggested that if the counsel desired it the court might adjourn.

Mr. NELSON intimated that he did feel somewhat fatigued, but would proceed if the court did not now desire to adjourn.

The Senators submitted the question and the court thereup