IMPEACHMENT.

Trial of President Andrew Johnson for High Crimes and Misdemeanors.

Senator Sumner Indignant at Mr. Nelson's Remarks of Tuesday.

ANOTHER SPICY DISCUSSION IN COURT.

Continuation of Mr. Evarts' Brilliant Argument.

Definition of Concussion and Discussion.

WASHINGTON, April 29, 1868.

Perhaps the largest audience that has yet appeared during the trial filled the galleries of the Senate today. Even the entrances were occupied in the afternoon, and standing room was impossible. The Diplomatic Gallery had all its seats taken up, Mr. Thornton, the British Minister, and Anthony Trollope being conspicuous among its occupants. Of course, Mr. Evarts was the means of attracting this immense attendance. The fame of his beautiful exordium yesterday had gone abroad through Washington, and a great many persons, having unwittingly missed Judge Groesbeck's great peroration and felt inconsolable in consequence, were determined that Mr. Evarts at least should not escape them; so that, from one cause or another, the Senate wore a full and brilliant look, though the day was exceedingly gloomy.

Senator Sumner created somewhat of a flutter by his resolution to censure the language used by Judge Nelson yesterday in his reply to Manager Butler's unscrupulous attack. Mr. Sumner, with a very horror-stricken look on his face at the bare idea of Butler and Nelson dreaming of measuring off twelve paces and making targets of each other, wanted to put in his anti-sanguinary protest, and, if possible, have Nelson taken out by the Sergeant-at-Arms and treated to a cold bath; but Sumner was put to rest by having his resolution laid over, and Judge Nelson got an opportunity to tell the Senate the date of the letter which Butler wrote about Alta Vela. The date, as read by the Judge, proved to be the 9th of March, and thus established the correctness of the counsel's statement, as well as of my despatch published in the HERALD of the 17th inst. Mr. Butler has rather got the worst in this argument, which was shown by his failure to say anything in reply. The idea of Sumner dreading pugilistic consequences is the subject of merriment here in Washington, as it is well known that Butler never accepts challenges to mortal combat, according to the rules of the code duello.

The explanation of Judge Nelson, with the several interruptions by Senators, took up about half an hour, and at its conclusion Mr. Evarts resumed his argument. It was listened to with the profoundest attention, and evidently made a deep impression among radicals as well as conservatives. It was solid and convincing rather than persuasive or eloquent. Mr. Evarts appeals not to the feeling, but to the minds of his audience. He deals but little in tropes and figures, relying principally upon hard reasoning and legal argument, though occasionally indulging in lively hits, such as that by which he dissipated to-day the astronomical theory of Manager Boutwell. His remarks on this absurd portion of Mr. Boutwell's address provoked frequent peals of laughter, which were with difficulty suppressed by the gavel in the hands of the smiling Chief Justice. Mr. Evarts seems as yet not to have reached the heavy portion of his argument, and will probably occupy the whole of to-day.

It appears now to be settled that Mr. Stanbery will follow Mr. Evarts, should the weather prove favorable to his going out next Friday. Manager Bingham will close the case and will occupy two days.

It is authoritatively denied that Senator Henderson, of Missouri, has received threatening letters from his State, with a view to forcing him to vote either way in the pending trial of the President. This story appears to have originated in the imagination of some parties who would wish themselves to be considered in the confidence of certain Senators.

PROCEEDINGS OF THE COURT.

Twenty-sixth Day.

UNITED STATES SENATE CHAMBER, WASHINGTON, April 29, 1868.

The court was opened in due form. In spite of the unfavorable weather the desire to hear Mr. Evarts had filled the galleries at an earlier hour than usual.

Senator Sumner submitted an order, reciting that Mr. Nelson, of counsel for the President, having used disorderly words directed to one of the Managers—namely,—"So far as any question that the gentleman desires to make of a personal character with me is concerned, this is not the place to make it; let him make it elsewhere, if he desires to do it;" and that language being discreditable to these proceedings, and apparently intended to provoke a duel, therefore that gentleman justly deserves the disapprobation of the Senate.

Mr. NELSON—Mr. Chief Justice and Senators——

Senator SUMNER—I must object, unless it is in direct explanation.

Mr. NELSON—All I desire to say this morning——

Senator SHERMAN—I object to the consideration of the order.

Mr. NELSON—All that I desire to do is to read the letters, as I suggested to the Senate yesterday.

The CHIEF JUSTICE—The order offered by the Senator from Massachusetts is not before the Senate if objected to.

Mr. BUTLER—I trust so far as I am concerned that on anything that arose yesterday from any language towards me no further action will be taken. As to the reading of the letters, I object to them until they can be proved.

Senator JOHNSON—I move to lay the resolution offered by the Senator from Massachusetts on the table.

The CHIEF JUSTICE—It is not before the Senate.

Mr. NELSON again endeavored to get the attention of the Senate.

Senator SUMNER—I must object to any person proceeding who has used the language in this chamber used by that gentleman.

The CHIEF JUSTICE—The Chief Justice thinks the Senate can undoubtedly give leave to the counsel to proceed if they see fit. If any objection is made the question must be submitted to the Senate.

Senator TRUMBULL—After what has occurred, and the statement having been received from the Managers, I think it is proper that the counsel should also have permission to make a statement in explanation, and I move that he have leave.

Senator SUMNER—I wish to understand the motion made by the Senator from Illinois. Is it that the counsel have leave to explain his language of yesterday?

Senator JOHNSON—Debate is not in order.

The CHIEF JUSTICE—No debate is in order.

Senator TRUMBULL—My motion is that he have leave to make his explanation inasmuch as one of the Managers has made an explanation. I think it due to the counsel.

The motion was decided in the affirmative without a division.

Mr. NELSON—Mr. Chief Justice and Senators, I hope you will allow me, before I make an explanation, to say a single word in answer to the resolution of the Senator. My remarks were made in the heat of what I esteemed to be very great provocation. I intended no offence to the Senate in what I said, and if anything is to be done with the resolution I trust the Senate will permit me to defend myself against the imputation. As the honorable Manager desires that this thing should end here, however, I meet it in the same way. So far as I am concerned I have nothing more to say of a personal nature. I will read the letters as a part of my explanation.

Senator HOWE and others objected.

The CHIEF JUSTICE—The Chief Justice is of the opinion that the leave does not extend to the reading of the letters. If any Senator makes the motion it can be done.

Senator DAVIS—I rise to a point of order. After the Senate has permitted one of the counsel to make an explanation I make the question whether a Manager has any right to interpose an objection? I think a Senator may have such right, but I deny that the Manager has any such right.

The CHIEF JUSTICE understood the motion of the Senator from Illinois (Mr. Trumbull) to be confined to an explanation of the personal matter which arose yesterday, and as it did not extend to the reading of the letters it is a question to be submitted to the Senate. But leave can be given if the Senate sees fit.

Senator HOWE—I had leave respectfully to object to the reading of the letters proposed to be read by the counsel.

The CHIEF JUSTICE—No debate is in order.

Senator HOWARD—I raise an objection to the letters being read until after they have been submitted to the Managers for examination.

Senator HENDRICKS—I move that the counsel be allowed to read so much of the letters as will show what date they bear.

Senator TIPTON—I call for the regular order of the morning—the defence of the President.

The CHIEF JUSTICE—The regular order is the motion of the Senator from Indiana (Mr. Hendricks).

Senator HOWE called for a restatement of the motion.

Senator HENDRICKS—The motion I made is that the attorney for the President be allowed to read so much of the letter as will show its date and the place at which it was written.

The motion was agreed to.

Mr. NELSON—The first letter to which I alluded is the letter bearing date March 9, 1868, addressed by Benjamin F. Butler to Colonel J. W. Shaffer, Washington, D. C.

Senator JOHNSON—Is that the original letter or a copy?

Mr. NELSON—I understand it to be an original letter. My understanding is that these are the genuine signatures of Benjamin F. Butler, Mr. Logan and Mr. Garfield. I am not acquainted with the handwriting and only speak from information. The Senate will allow me to read it. It is a very short one. I do not mean——

Senators HOWARD and HOWE objected.

The CHIEF JUSTICE—The counsel cannot read it under the order made.

Mr. NELSON—The fact that I want to call attention to is that this letter, in the caption, bears date on the 9th of March, 1868. It is signed by Benjamin F. Butler. Below the signature "I concur in the opinion above expressed by Mr. Butler, signed, John Logan." Below that are the words "And I; signed John A. Garfield." There is no other date on that letter, except the 9th of March, 1868.

Senator JOHNSON—Is the handwriting of the date the same as the signature?

Mr. NELSON—The handwriting and the date are in precisely the same handwriting as the address. The body of the letter above the signatnre, as I take it, is in a different handwriting. On the 16th of March, 1868, Mr. Chauncey S. Black addressed a letter to the President, stating that he inclosed the copy of the letter which I just adverted to, and in order that the Senate may understand it. You will observe that the copy is, as I believe, identical with the original letter which I have produced here.

Senator HOWE objected to any argument, and

The CHIEF JUSTICE cautioned the counsel.

Mr. NELSON—If your Honor please, I cannot explain the matter without explaining this fact—I am not trying to make any argument.

Senator HENDRICKS—My motion was that the counsel should be permitted to read so much as would show the date; not to go further, except so far as may be in direct explanation to the argument of Manager Butler.

Mr. NELSON—I cannot explain about the date of this copy unless I tell you the difference between those papers which I have read. It is impossible for me to explain the date. All that I can say is that this copy bears the same date as the original, and bears the additional signatures of Messrs. Koontz, Stevens, Moorhead, Blaine and Bingham, and that there is no other date to this letter except the caption of the letter; and you will see that the copy is precisely like the original down to the words "and I, John A. Garfield," and then came the words "I concur," signed by Messrs. Koontz, Stevens, Moorhead, Blaine and Bingham, and on that paper there is no date.

Senator TIPTON—I move that the gentleman be permitted to proceed for one hour.

The CHIEF JUSTICE—The counsel for the President, Mr. Evarts, will proceed.

Mr. Butler (walking over to the desk of the President's counsel) extended his hand for the letters, and Mr. Nelson, after saying something in an inaudible tone, handed them to him; but Mr. Butler thereupon turned away, seemingly irritated by the accompanying remark.

Senator CAMERON offered the following order:—Ordered, that the Senate, sitting as a Court of Impeachment, shall hereafter hold night sessions, commencing at eight o'clock P. M. to-day, and continuing until eleven o'clock, until the arguments of the counsel for the President and the Managers on the part of the House of Representatives shall be concluded.

Senator JOHNSON objected and the order went over.

Mr. BUTLER—Mr. President, shall these orders which have been read be placed on the record?

The CHIEF JUSTICE—The Chief Justice is unable to answer that question. He takes it for granted that no argument can be made without the consent of the Senate.

Mr. NELSON—All that I desired to do was this:—I told the honorable Manager he could have them, provided he returned the originals to me. I am perfectly willing that he should take them with that understanding.

The counsel then sent the letters to Mr. Butler by a page.

Mr. BUTLER (drawing back indignantly)—No, sir.

Mr. NELSON—I will deposit them with the secretary, sir, for the present.

Mr. BUTLER—Let the originals go on file.

Mr. EVARTS then took the floor in continuation of his argument. He said:—Mr. Chief Justice and Senators, if, indeed, we have arrived at a settled conclusion that this is a court, that it is governed by the law, that it is to confine its attention to the facts applicable to the law and regarded solely as supposed facts to be embraced within the testimony of witnesses or documents produced in court, we have made some progress in separating, at least from your further consideration, much that has been pressed upon your attention heretofore. If the idea of power and will is driven from this assembly, if the President is here no longer exposed to attacks on the same principle that men claim to hunt the lion and harpoon the whale, then, indeed, much that has been said by the honorable Managers and much that has been urged upon your attention from so many quarters, falls harmless in your midst. It cannot be said in this Senate, *Fertur numeris leges solutis*, that it is caused by numbers and unrestrained by law. On the contrary, right here is life and power, and you are, as its servants in this investigation, here. It follows from this that the President is to be tried on charges which are produced here, and not on common fame. Least of all is he to be tried in your judgment, as he has been arraigned, hour after hour, upon charges which the impeaching authorities in the House of Representatives deliberately threw out as unworthy of impeachment and unsuitable for trial. We, at least, when we have an indictment brought into court and another indictment ignored and thrown out, are to be tried on the former and not on the latter, and if, on the 9th of December last, the House of Representatives, with which, by the constitution, rests the sole impeaching power under this government, by a vote of 107 to 57, threw out all the topics which make up the inflammatory address of the Managers, it is enough for me to say that, for reasons satisfactory to that authority, the "House of Representatives," those charges were thrown out. So, too, if this be a trial on a public prosecution, and with the ends of public justice alone in view, the ordinary rules for the restraint of prosecuting authorities apply here, and I do not hesitate to say that this trial, to be in our annals the most conspicuous in our history, to be scrutinized by more professional eyes, by the attention of more scholars at home and abroad, to be preserved in more libraries, to be judged of as a national trait, and a national criterion forever, presents the unexampled spectacle of a prosecution which overreaches judgment from the very beginning, and invades, impugns and oppresses at every stage the victim which it pursues. Now, the duty of constraint upon a prosecuting authority under a government of law pursuing only public justice is scarcely less severe than that which rests upon the judge himself, to select evidence that is not pertinent, to exclude evidence, knowing that it bears upon the inquiry; to restrict evidence, knowing that the field is thus closed against the true point of justice, is no part of a prosecuting attorney's duty or power, whatever may be permitted in the contests of the forum and the zeal of contending lawyers for contending clients. There is no such authority, no such duty, no such permission for a public prosecutor, much less when the proofs have been thus kept narrowed. When the charges are thus precise and technical is it permissible for a prosecuting attorney to enlarge the area of declamation and invective? Much less is it suitable for a public prosecutor to inspire in the minds of the court prejudice and extravagant jurisdiction. Now it has usually been supposed that on an actual trial involving serious consequences forensic discussion was the true method of dealing with the subject and we lawyers appearing for the President being, as Mr. Manager Butler has been politic enough to to say, "attorneys whose practice in the law has sharpened but not enlarged their intellect," have confined ourselves to this method of forensic discussion. But we have learned here that there is another method of forensic controversy which may be called the method of concussion. Now I understand the method of concussion to be to make a demonstration in the vicinity of the object of attack, whereas the method of discussion is to penetrate the position, and if successful, capture it. The Chinese method of warfare is the method of concussion, and consists of a great blowing of trumpets, sounding of gongs and shouts and shrieks in the neighborhood of the opposing force. When all this rolls away and the air is freer the effect is to be watched for. But it has been reserved to us in our modern warfare, as illustrated here in the rebellion, to present a more singular and notable instance of the method of warfare by concussion than has been known before—a fort impregnable by the methods of discussion—that of penetrating and capturing it—has been on large scale attempted to be captured by the method of concussion, and some hundreds of tons of gunpowder, placed in a vessel near the walls of the fort, have been made the means to the conclusion of this vast experiment. Dissatisfied with that trial and its results the honorable Manager who opened this case seems to have repeated the experiment in the vicinity of the Senate. (Laughter.) While the air was filled with epithet the dome shook with invective. Wretchedness, misery, suffering and blood were made the means of this explosive mixture, and here we are surviving concussion, and, after all reduced to the humble and homely method of discussion which belongs to "attorneys whose intellects have been sharpened but not enlarged by the practice of law." (General and continuous laughter.) Mr. Evarts then considered Mr. Boutwell's definition of impeachable offences, and argued at length that no action could be so construed which did not proceed from malice and evil intention, supporting this view by quotations from the records of the Humphrey trial, and also by the language of Burke, in accusing Warren Hastings, when he expressly stated that the assertions and proof of evil intent were indispensable. Mr. Evarts held that the best way to determine the nature of offences which may be deemed high crimes and misdemeanors is to consider the punishments prescribed for them. He referred to the belittling epithets applied by the Managers to the punishment of denunciation, and in forcible terms depicted the character and magnitude of the disgrace which such punishment involves. He claimed that the description of penalties provided in the Tenure of Office law for its infraction showed the comparatively trivial nature of the offence. A maximum but no minimum of punishment is provided, so that in the discretion of the court before whom the indictment should be tried the offender could be let off with a fine of six cents, and imprisonment of one day. He also read from the debate on this subject, at the time when the bill was prepared, in which Mr. Williams and other Senators said there should be no minimum fixed, because the offence might arise from inadvertance, and would not probably in any case have a character of moral guilt. Mr. Evarts then considered the general debates on the bill, and proposed to prove that the offences charged were not made or to be considered penal but were of a political nature, and then that even the alleged infractions did not take place. He claimed that all belief of the President's former personal turpitude must be laid aside, and it must be considered that he was unimpeachable before twelve o'clock on February 21. He then argued that even if the removal of Mr. Stanton had been actually effected, no change in the relations of the War Department to the rest of the government would have ensued, and hence that the mere act could not be considered as dangerous to the public safety. On this subject Mr. Evarts said:—It cannot be doubted that there was a general and substantial concurrence of views in Congress, among all the public men in the service of the government, and among the citizens generally that the situation disclosed to public view and public criticism between a head of a department and the President of the United States was not suitable for the public service and was not to be encouraged as a situation in the conduct of the Executive, and that there was a general opinion among thoughtful and considerate people that however much the politics of the Secretary of War might be regarded as better than the politics of the President, if they would uphold the form of government and recognize the official rights that belong to the two positions, it was a fair and just thing for the President to expect the retirement of the Secretary of War rather than that his just and necessary powers should be crippled. It follows that the whole thing, in act, in purpose and in conduct, is a formal contravention of a statute. I will not say how criminal that may be. I will not say whether absolute, inflexible, personal obedience to every law of the land may not be exacted under penalty of death from everybody holding public station. That is a matter for the legislatoris. Now, when you consider that this new law really reverses the whole action of the government, that, in the language of Senators and Representatives, who spoke in its behalf, it revolutionizes the practice of the government, and when you consider that the only person in the United States whom that law in relation to the holders of offices was intended to affect or could by its terms affect, was the President of the United States; when you consider that nobody was subjected to it, that it was made a rule, a control, a restraint, a mandate, a direction to nobody else in the United States except the President, just as distinctly as if it had said in its terms if the President shall remove from office, he shall be punished by fines and imprisonment, and when you know that it was claimed that the President under the constitution had a right to remove from office, you at once see that by a necessary exclusion and conclusion it was an act political in its nature, and that its violation in support of and in obedience to a higher obligation of the constitution should bring no such consequences as are attempted to be inflicted here. Now, whenever anybody puts himself in that position it cannot be made a crime in the moral judgment, or in the judicial determination of the sentence and measures. Mr. Evarts then briefly considered the question of what was meant by unconstitutional law, and said it was a paradox. It can be no offence to violate the provisions of such a mere piece of paper. Continuing, Mr. Evarts said:—I claim that the President has no greater right in relation to a law which operates upon him in his public duty, and upon him exclusively, to raise a question under the constitution to determine what his right and what his duty is, than every citizen has in his private capacity when a law infringes upon his constitutional rights. I say that Congress has no right to pass unconstitutional laws, and to say that everybody is to obey them just as if they were constitutional, and to be prevented from raising the question whether they are constitutional is, of course, trampling the constitution and those who obey it in the dust. Who will obey the constitution as against an act of Congress which invades it, if the act of Congress with its sword of justice can cut off his head, and the constitution has no power to save him, and there can be nothing but debate hereafter, whether he was properly punished or not, gentlemen, neglect the first and necessary constitutional government of this nation? But again, the form of the alleged infraction of this law, whether it is constitutional or not, is not such as to bring any person within any imputation. I will not say of any formal infraction of the law, but of any violent, wilful resistence to or contempt of the law. Nothing was done whatever, except to issue a paper and have it delivered, which puts the posture of the thing in this condition and nothing else. The constitution says, we will suppose, that the President has a right to remove the Secretary of War. The act of Congress says that the President shall not remove the Secretary of War. The President says, "I will issue an official order which will raise the same question between my conduct and the statute that the statute raises between itself and the constitution." As there is, and can be, and ever should be, a reference of a law to the revision and determination of the Supreme Court or some other court, so when the constitution and the law are, or are supposed to be, at variance or inconsistent, everybody upon whose rights this inconsistency intrudes has a right, under the usual condition of conduct, to put himself in a position to act under the constitution and not under the law. The President of the United States has it all on paper thus far. The constitution is on paper. The law is on paper, and he issued an order on paper, which is an assertion of the constitution and a denial of the law. That paper has legal validity if the constitution sustains it, and is illegal, invalid and ineffectual—a mere *imbelle telum*—if the law prohibits it and if the law is conformed to the constitution. Therefore, it appears that nothing was done but the mere course and process in the exercise of right claimed under the constitution, without force, without violence, and making nothing but the attitude of assertion, which, if questioned, might raise the point of judicial determination. Now, Senators, you are not, you cannot be unfamiliar with the principles of our criminal law, the good sense and common justice of which, although it sometimes is pushed to extremes, approves itself to every honest mind, and that is, that criminal punishments under any form of statutory definition of crime shall never be made to operate upon a class, even of force and violence, which are, or probably may be, believed to be done under claim of right. It is for that purpose that the animus, the intent, the *animus furandi* in cases of larceny, the malice prepense in cases of murder, are made the substance of the crime. And nothing is felt to be more approvise, nothing has fewer precedents in the history of our legislation or of our judicial decisions than any attempt to coerce the assertion of peaceful and civil claims of right by penal enactments. It is for that reason that our communities and our lawgivers have always frowned upon any attempt to coerce the right of appeal under any restrictions or any penalties or courts. Civil rights are rights available and practical, just according as the people can avail themselves of men, and the moment you attach a punishment to the assertion of a claimed right you infringe upon one of the necessary liberties of the people. Now, I ask your attention, although I confess that I do it with reluctance and contrary to my own taste and judgment, very much to what is but a law level of illustration and of argument. But day after day it has been pressed upon you that a formal visitation of a statute, although made under claim of a constitutional right and duty, honestly felt by the President, is, nevertheless, a ground of impeachment not to be impeded or prevented by any of those considerate inducements. I ask your attention to what is but an illustration of the great principle that penal laws shall not be enforced in reference to an intent governed by a claim of title. A poacher had set his wires within the domain of the lord of a manor and had caught a pheasant in the wires, which the gamekeeper took possession of—the wire and the dead pheasant. The poacher approached him with threats of force and violence and took from him the wires and the dead pheasant. The poacher was arrested and tried for robbery. Vaughn Baron says:—"If the prisoner demanded the wires under the honest conviction that he had a right to them, though he may be liable for trespass in setting them, it is not robbery. The gamekeeper had a right to take them, and when so taken they never could have been recovered from him by the prisoner. Yet, still, if the prisoner acted under the honest belief that the property in them continued in himself, I think it is not a robbery. If, however, he used it simply as a pretence it would be robbery. The question for the jury is whether the prisoner did honestly believe that the property was himself or not." Thus does the criminal law of a people distinguish between technical and actual faults. What mean the guarantees of the constitution? What mean the practice and habits of English liberty, which will not allow anybody enjoying that liberty to be drawn into question criminally upon any technical or formal view of law? What mean those fundamental principles of our liberty that no man shall be put on trial for accusation of crime, though formally committed, unless the Grand Jury shall choose to bring him under inculpation, and that when thus brought under inculpation he shall not be condemned by any judge or magistrate, but by the condemnation of his peers. Certainly, we have not so far forgotten our liberties and on what they rest that we should bring a President of the United States under the formal apparatus of iron oppression, which by necessity, if you set it agoing, shall, without crime, without fault, without turpitude, without the moral fault even of violating a statute which he believed to be binding upon him, bring about those monstrous consequences—monstrous in their condemnation—of depriving him of his office and the people of the country of an executive head.

On reassembling, at thirty-five minutes past two o'clock P. M., Mr. EVARTS expressed his surprise at the Managers' denunciation of those who peacefully resisted laws which they deemed unconstitutional. It was the duty of every ministerial officer to raise a question in favor of the constitution, and in the highest degree it was the duty of the special defender of the constitution. He referred to the case of Newell against the Auditor of the State of New York, in which the latter successfully resisted the issue of a loan of six millions of dollars. Also to the New York law imposing a tax on brokers' sales, which was resisted and pronounced void by the United States Supreme Court; and to the action of Mr. Lincoln in suspending the habeas corpus in Florida; in causing the arrest of the Maryland Legislature, and creating military commissions in a time of peace. Congress, by endorsing all of these acts, confirmed the doctrine that motive must always be considered, and that mere infraction of law was not in itself a ground for punishment. Mr. EVARTS continued:—I may as conveniently at this point as afterwards pay some attention to the astronomical punishment which the learned and honorable Manager (Mr. Boutwell) thinks should be applied to this novel case of impeachment. Cicero, I think, it is who says that a lawyer should know everything, for sooner or later there is no fact in history, in science, or in human knowledge, that will not come into his argument. Profoundly sensible of my ignorance, being devoted to a profession which sharpens and does not enlarge the mind, I can admire without envying the superior knowledge evinced by the honorable Manager. But nevertheless, while some of his colleagues were paying attention to an unoccupied and unappropriated island on the surface of the seas, Mr. Manager Boutwell, more ambiguous, had discovered an untenanted and unappropriated region in the skies—(laughter)—reserved, he would have us think, in the final counsels of the Almighty as a place of punishment for convicted and deposed American Presidents. Now, at first I thought that his mind had become so enlarged that it was not sharp enough to observe that the constitution had limited the punishment. (Laughter.) But on reflection I saw that he was as legal and logical as he was ambiguous and astronomical, for the constitution has said "removal from office," and has put no limit to the distance of removal. (Great laughter.) So, without shedding a drop of his blood or taking a penny of his property or ironing his limbs, he is sentenced to removal from office and transportation to the skies. (Laughter.) This is the great undertaking, and if the learned Manager can only get over the obstacle of the laws of nature the constitution won't stand in his way. (Laughter.) I can think of no method but that of a convulsion of the earth that should project the deposed President to this infinitely distant space; but a shock of nature of so vast an energy and so great a result might unsettle even the so firm members of Congress. (Laughter.) How shall we accomplish it? Why, in the first place, nobody knows where that space is but the learned Manager himself (laughter), and he is the necessary deputy to execute the judgment of the court. Let it then be provided that, in case of your sentence of deposition and removal from office, the honorable, the astronomical Manager shall take into his own hands the execution of the sentence, the President made fast to his broad and strong shoulders, and, having essayed the flight by imagination, better prepared to execute it in form, taking advantage of ladders as far as ladders would go, to the top of this high capital, and spurning them with his feet, the Goddess of Liberty let him set out upon his flight—(laughter)—while the house of Congress and all the people of the United States shall shout "*Sic itur ad astra*." (Laughter long and continued.) Here an oppressive doubt strikes me. How will the Managers get back? How, when he gets beyond the power of gravitation to restore him, will he get back? and so ambitious a wing as he could never stoop to a downward flight. No doubt as he passes through the expanse that famous question of Carlisle, by which he points out the littleness of human affairs, "What thinks Bootes of them as he leads his hunting dogs over the zenith in their leash of sidereal fire," will occur to the Managers. What, indeed, would Bootes think of this new constellation (laughter) looming through space beyond the power of Congress to send for persons and papers? (Laughter.) Who shall return and how decide in the contest there begun in this new constellation thus established? Who shall decide which is the sun and which is the moon? Who shall determine the only scientific test, which reflects hardest upon the other? (Laughter). I wish to draw your attention now to what I regard as an important part of my argument, a matter of great concernment and influence for all statesmen and all lovers of the constitution, to the particular circumstances under which the two departments of the government now brought in controversy are placed. I speak not of persons, but of the actual constitutional division of the two policies. Now, the office of President of the United States, in the view of the framers of the constitution, in the experience of our national history and in the estimation of the people, is an office of great trust and power. It is not dependent on any tenure of office, because the tenure of office is a source of original commission; yet it is, and is intended to be, an office of great authority, and the constitution in its co-ordinate departments cannot be sustained without maintaining all the authority that the constitution has intended for the Executive office. But it depends for its place in the constitution upon the acts that its authority is committed to the suffrage of the people, and that when this authority is exerted it is not by individual purpose or will. Why? The mere strength that a single individual can oppose to the corrective power of the Congress of the United States. It is because and as the people, who by their suffrage have raised the President to his place are behind him, holding up his hands, speaking with his voice, sustaining him in his high duties, that the President has his place under the constitution, its great power is safe then, to the people, for the reasons I have stated, and it is safe to the President, because the people are behind him and have exhibited their confidence in him by their suffrage. But when one is lifted to the Presidential office who has not received the suffrage of the people for that office, then at once discord, dislocation, deficiency begin; then at once the great powers of the office which are consonant with a free constitution and with the popular will owe the breath of life to the continuing favor of the people. Then it is that in the criticisms of the press, in the views of the people, these great powers strictly within the constitution seem to be despotic and personal. And then you are subject to another difficulty that our vicious system of politics has introduced, and that is in our nominations for the two offices, selecting always the true leader of the popular sentiment of the time for the place of President. We look about for a candidate for the Vice Presidency to attract the minority, and to assuage difficulty and to bring in inconsistent supporters. Coupled with this phase, when the Vice President becomes President of the United States, not only is he in the attitude of not having the popular support for the great powers of the constitution, but of not having the authoritative support for the fidelity and maintenance of his authority. Then, adhering to the original opinion, to the very opinions and political attitudes which form the argument for placing him in the second place, he is denounced as a traitor to his party, and is watched and criticised by all the leaders of that party. I speak not particularly in reference to the present incumbent and the actual condition of parties here, but all the public men, all the ambitious men engaged in the public service and in the carrying on of the government, in their own views and the interest and duties of the party. All have framed their views and established their relations with the President who has disappeared, and they then are not in the attitude of support, personal or political, that should properly be maintained among the leaders of a party. Then it is that ambitious men, who had formed their purposes both for the present and the future upon the faith of Presidential domination find their calculations disturbed. Then it is that prudence and wisdom find that terrible evils threaten the conduct of the government and the nation. This we all know by looking back at the party differences in times past, as in the time of the Presidency of Mr. Tyler, when an impeachment was moved against him in the House of Representatives and had more than one hundred supporters, and when it was found after it was all over that there was nothing in the conduct of Mr. Tyler to justify it. So, too, a similar imputation will be remembered on the conduct of Mr. Fillmore. Then the opposition seized upon the opportunity, entered into the controversy, urged on the quarrel, but did not espouse it; and thus it ended in the President being left without the support of the guarantees of authority which underlie and vivify the constitution of the United States—namely, the favor of the people; and so when this unfortunate, this irregular condition of the Executive office, concurs with a time of great national conjointure, then at once you have at work the special or peculiar operation of forces upon the executive office, which the constitution left unprotected and undefended, without the full measure of support which every department of the government should have in order to resist the others. Passing on to dangers which may shake and bring down the very pillars of the constitution itself, I suggest then to you as wise men that you understand how, out of circumstances for which a man is responsible, attributable to the workings of the constitution itself, there is a weakness, and a special weakness, in the Presidency of the United States, which is as it were an undefended fort; and to see to it that an invasion is not urged and made successful by the temptation that is offered. This exceptional weakness of the President under our constitution is accompanied in the present state of affairs by the extraordinary development of party strength in Congress. There are in the constitution but three barriers against the will of a majority in Congress. One is that it requires a two-thirds vote to expel a member of either House, another is that a two-thirds vote is necessary to pass a law over the objections of the President, and the third is that a two thirds vote of the Senate, sitting as a court of impeachment, is necessary for conviction. And now these last two protections of the executive office have disappeared from the constitution in its practical working by the condition of parties, which has given to one the firm possession, by three-fourths, I think, in both houses of Congress and the control of the government of each of the other branches of the government. Reflect upon this. I don't touch upon the particular circumstance that the non-restoration of the States has left members in both houses less than they might under other circumstances be. I do not calculate on whether that absence increases or diminishes the proportion that there would be in parties. Perhaps their presence woule even aggravate the political majority which overrules practically all the calculations of the President's protection by the guarantee of the constitution. What did the two-thirds mean? It meant that in a free country where intelligence is diffused it was impossible to suppose that there would not be a somewhat equal division of parties. It was impossible to suppose that the excitement and zeal of party would call all the members of it into any extravagancies, I do not call them extravagancies in any sense of reproach. I merely speak as to the extreme measures which parties may be disposed to adopt. Certainly, then, there is ground to reflect, before bringing to the determination this great struggle between the co-ordinate branches of the government, whether the co-ordination in the constitution can be preserved or whether it is better to urge a test which may operate upon the framework of the constitution and upon its future, unattended by any exception of a peculiar nature, which governs the actual situation. Ah! that is the misery of human affairs, that distresses come when the system is least prepared to receive them. It is misery that disease invades the frame when health is depressed and the powers of the constitution to resist it are at the lowest ebb. It is misery that the gale rises and sweeps the ship to destruction when there is no room for it and when it is on a lee shore, and if concurrently with the dangers to the good ship her crew be short and her helm unsettled, and disorder begins to prevail, and there comes to be a final struggle for the maintenance of the mastery against the elements, how wretched is the condition of that people whose fortunes are embarked in that ship of State! What other protection is there for the presidential officer but these two-third guarantees of the constitution and the Supreme Court, placed there to determine the lines of separation and of duty and of power, under the constitution, between the Legislature and the President? Under the evidence proposed and rejected, the effort of the President was, when the two-thirds majority had urged the contest against him, to raise a case for the Supreme Court to decide; and then the Legislature coming in, by its special jurisdiction of impeachments, intercepts his efforts and brings his head again within the mere power of Congress, where the two-thirds rule is equally ineffectual as between the parties to the contest. This is a matter of grave import, of grave consideration, and is to be in the eye of history one of the determining evidences of this great controversy; for, great as is the question in the wisdom of the Managers and of ourselves, and in the public intelligence of the people as to how great the power shall be on one side or the other, with Congress or with the President, that question sinks into absolute insignificancy compared with the greater and higher question—the question which has been in the minds of officers and publicists and statesmen since our constitution was founded, whether—it was in the power of a written constitution to draw lines of separation and to put buttresses of defence between co-ordinate branches of the government. With that question settled adversely, with the determination that we can devour and, having the power, will devour the other, then the balances of the American constitution are lost and lost forever. Nobody can reinstate in paper what has once been struck down in fact. Mankind is governed by instances not by resolutions. Then there is placed before the people of the country an attempt to establish new balances of power, by which the powers of the different departments being more firmly fixed one can be safe against the other, but who can be wiser than our fathers, who greater, who juster than they; who more considerate and more disinterested than they; and if their descendants had not the virtue to maintain what they so wisely and so nobly established, how can these same descendants hope to have the virtue or the wisdom to make a better establishment for their posterity? Now, Senators, I urge upon you to consider whether you will not recoil from settling so tremendous a subject under so special, so disadvantageous, so disastrous circumstances as I have portrayed to you. A strong executive, an absolute veto with a longer term, with more permanent possession and control of official patronage will be necessary if the wise and just and considerate measure of our ancestors shall not be allowed to prevail in your judgments; or if that be distasteful, unacceptable, inadmissible, then we will swing out to the omnipotence of Congress and return to the exploded experiment of the confederation where Congress was executive and legislative all at once. There is one other general topic which is not to be left unnoticed on account of the very serious impression it brings upon the political situation, and which forms a staple of pressure on the part of the Managers. I mean the very peculiar political situation of the country itself. The suppression of the armed rebellion and the reduction of the revolted States to the power of the government left a problem of as great difficulty in human affairs as was ever presented to the action of any government. The work of pacification after so great a struggle, where so great discontents had originated controversies and so much bitterness prevailed, its formal settlement presents a work of great difficulties, but there concurred with it a special circumstance, which by itself would have taxed all the resources of statesmanship. I mean the emancipation of the slaves, which had thrown four million of men, not by the process of peace, but by the sudden blow of war, into the possession of their freedom, which had placed at once and against their will all the rest of the population under those who had been their slaves. Now the process of adaptation of society and of law to so great a social change as that, even when accomplished in peace and not disturbed by the processes of war and by the discontent of a suppressed rebellion, was so much as any courage or any prosperity as is given to governments can expect to carry through successfully. When these two great political facts concur and press upon a government, how vast, how difficult, how impracticable and unmanageable seems the position of affairs! But this does not represent the measure, or even the principal feature of the difficulty. When the government, whose arms had triumphed and suppressed resistance, is itself, by the theory and action of the constitution, the government which by positive law is to maintain its authority, the process is simple; but under our complex government the restored constitution surrenders their domestic affairs at once to local governments of the people who have been in rebellion; and then arises what has formed the staple of our politics for the last four years—what has tried the wisdom, the courage and the patriotism of all. The question is how far, under the constitution as it stands, the general government can exercise absolute control in the transition period between war and peace, and how much found to be thus manageable should be committed to the changes in the constitution, when we understand that the great controversy in the formation of the constitution itself was how far the general government shall be entrusted with the domestic concerns and that the people of the States were not willing to entrust the general government with their domestic interests, we see at once how wide, how deranged, how difficult the arena of the controversy of constitution, of law and of differences of opinion, as to what was or is constitutionality, and as to what change should be or ought to be made in the constitution to meet the practical situation. When you add to this that as the people are divided on those questions, and as the parties of force on one side and on the other are the loyal masses and the rebel mass, and whoever divides from his neighbor, from his associate, from his party adherents in this line of constitutional opinion and in this line of governmental action, which seems to press the least changes on the constitution and the least control on the masses lately in rebellion will be suspected and charged as an ally of traitors and rebels, you have at once disclosed how the names of traitor and of rebel, which belonged to the war, have been made current phrases of political discussion. I do not question the rectitude, nor do I question the wisdom, of any positions that have been taken as matter of argument, as matter of faith, or as matter of action in the disposition of this peculiar situation. I only attract your attention to the necessities and the dangers of the situation itself; both in reference to public order and in reference to the changed condition of the slave we were urged *stare super vias antiquas*. It is not the question of standing upon ancient ways, for we have now before us the very problem of the situation, as it was then law to get on the ancient ways from those paths which disorder and violence and rebellion had forced us into. And here it was that the exasperations of politics came up, mingled with charges of infidelity to party and of moral and political treason to the State. How many theories did we have in this Senate? If I am not mistaken, an influential, able and eloquent Senator was disposed to take the Declaration of Independence into the working forces of our constitution as a sort of pre-constitution. In the other House a great leader was disposed to treat it on the transconstitutional necessities which the situation itself imposed. And thus it was that minds trained in the old school, attached to the constitution, were unable, as orators and as reasoners, to adopt these learned phrases. And now, let me urge it, that all this is within the province of politics, and free governments