IMPEACHMENT.

Trial of President Andrew Johnson for High Crimes and Misdemeanors.

Proceedings of the Court in Open and Secret Session.

Speech of Senator Grimes in Favor of the Respondent.

The Formula to be Observed in Rendering the Verdict.

Reports and Speculations Regarding the Result.

Exciting and Amusing Scenes and Incidents.

WASHINGTON, May 11, 1868.

This has been a day of peculiar excitement in Washington—an excitement blended of the elements which enter into the interest attending on a great horse race where thousands of dollars are at stake, the feeling on the eve of a Presidential election, the nervous curiosity of a public execution and the fluttering anxiety which awaits the drawing in some tremendous lottery. This commingled state of feeling was of course attributable to the varied issues at stake, and was certainly very peculiar in its manifestations. Seldom has a day passed in which men's minds have alternated so much between delight and despondency, between hope and grim disappointment. The contradictory reports, side by side, on the same day of a great battle in the late war, hardly produced a more conflicting and bewildering sensation than the bulletins which flew momentarily like wildfire from the Capitol through the city of the varying status of doubtful republican Senators on the question of impeachment. Men's faces showed a kaleidoscopic grouping of the various passions to which human nature is subject. Hope and fear, love and hate, elation and depression, self-interest and patriot pride, were depicted in rapidly shifting lines as one batch of rumors succeeded another.

Of course all the newsmongers, betting men, office seekers and anxious politicians went to the Capitol, and in half an hour after the Senate went into secret session. A considerable crowd had collected in the corridors of the Senate and in the Rotunda. A good many patronized Forney, as that oracular individual was supposed to know something more precious than gold at that particular moment. He endeavored to make his assurances as comforting as possible, and on the strength of his placid and *couleur de rose* representations several enthusiastic middle aged gentlemen were induced to perpetrate formidable bets in hard cash and champagne suppers.

The Court shut itself up at ten o'clock, after excluding three or four solitary spectators from the galleries. In the ample space in front of the principal entrance to the Senate Chamber groups of twos and threes began to collect before noon, eagerly canvassing the prospect. Newspaper correspondents came on the scene early, and made themselves busy seeking for news or originating speculations. Some twenty or thirty minutes after the Court retired an unfortunate Senator was injudicious enough to answer a card sent into him inviting an interview with one of his constituents, the village editor of some terrific impeachment organ. Hardly had he made his appearance when he was pounced upon by half a dozen others, dragged into a corner and pumped dry of everything his memory was capable of retaining, which was very little, and gave small satisfaction to the crowd, beyond the assurance that such a Senator had certainly expressed himself determened to vote for conviction on the twelfth and thirteenth articles. Information of this character made fun, but gave no basis for bets. Cards, notes and verbal messages soon became all the rage from the outsiders to the members of the Court. The pages, messengers and doorkeepers were kept in a perfect flutter of excitement, and as a result the card or the note intended for one Senator found its way into the hands of another, and *vice versa*.

An hour elapsed after the closing of the doors, and the members of the Court began to drop out at more frequent intervals, exchange a few words with their tormentors, and suddenly return. Two hours elapsed, and the outsiders became extravagantly impatient to learn something at all definite from within, something to hang a speculation or a bet upon, and their wishes, after much earnest solicitation, were to some degree gratified.

It was just noon when a well known and jovial Senator made his appearance in the corridor in response to the request of some friend of his whose pecuniary interests to a large amount were involved in the fate of impeachment. A more than usually lengthy interview followed, and the result was soon known by everybody in the corridors, in the adjacent rooms, in the Rotunda, outside the Capitol, and away up Pennsylvania avenue, through the hotels, and into the very recesses of the White House. Stewart, the lion of Nevada, hath oped his mouth and pronounced Andrew Johnson guilty of high crimes and misdemeanors. Pomeroy, of Kansas, upon whose shoulders the tail end of Jim Lane's mantle seems to have fallen, followed in the same key. Edmunds, of Vermont, and Sherman, untrue to conservative anticipation, did also echo the impeachers' wrath. Grimes, of Iowa, alone stood up and pronounced impeachment an unmitigated bore, a nuisance, a humbug, and he for one washed his hands out of it. These were not his exact words, of course, but they were what they meant.

But enough glory for two hours. Straight way the news was sent through every pore of Washington, and by every electric pore leading therefrom, that conviction was a certainty, and that the friends of the President had better hide their diminished heads. Betting became immediately very fierce on one side. Impeachers pushed here and there, seeking for the advocates of acquittal, and holding out such inducements as ten to one to strike a wager on the result. The conservatives began to look blue and felt mortified at being taunted with such extravagant odds, without feeling justified from the complexion of the news in closing with any bet whatever.

The Senators came out more frequently now, as it was approaching lunch time, and each in turn was pounced upon as a vulture is supposed to pounce upon a gentle dove, without much politeness or ceremony. "Who spoke last?"—"Who is speaking now?"—"What did he say?"—"What did you say?"—"How will he vote?"—"How will you vote?" are a few in the shower of questions that fell on the ears of the unhappy members of that bewildered High Court. Some bore the awful ordeal through which they were forced to pass in a spirit of Christian meekness, others frowned ominously, and must have wished in their souls for one brief minute of Hercules' club, that they might slay their torturers on the spot.

There was one, however, who rose to the level of the occasion, and who, though his politics are of an inky and repugnant character, extorted admiration from his enemies, some of whom are looking on, by the truly magnificent style in which he shook off the cloud of cormorants that fastened on him and hovered around him after he escaped from the confined air of the Senate chamber. This was Senator Drake. Drawing out his arms as a shoemaker might do in the act of sewing on a leather sole, he cast off on either side two fellows who had glued themselves on to his shoulders, and sent them spinning over the tesselated pavement. Then he went boldly forth untrammelled to his lunch.

Just before the recess was declared the impeachers got up a splendid canard, one that it was supposed would travel to the other end of the avenue and strike terror into the souls of the anti-impeachers. Trumbull, the trusted, and one of the highest-toned and noblest Roman Senator of them all, was declared to have made a speech strongly in favor of conviction, and intended to carry the rest of the Senate to the same conclusion. The news travelled some distance, when it was suddenly arrested by the counter declaration, spoken in *propria persona* by Senator Trumbull himself, that he had made no speech at all, and had up to that time expressed no opinion.

Recess over, the crowd of visitors to the Capitol began to augment, and the whole atmosphere was strongly impregnated with an impeachment flavor. The very grounds around the Capitol seemed to exhale the favorite odor, and the majority of people in the corridors appeared more or less exhilarated from inhaling the prevailing aroma. While every articulation and every echo at the Capitol spoke conviction, acquittal, and nothing but acquittal, was the assuring note borne on the breeze to the White House and syllabled in every breath that reached the Presidential ear. About five o'clock strange and ominous bulletins began to be issued, and this time the tune was changed. A few hours before "the star" of the President had been declared extinguished, but now the astronomers of the political sky pronounced it once more in the ascendant. Trumbull at last had spoken and so had Fessenden, two Senators whose shoulders tower very much above the heads of a good many others in their party; and these men disregarded the eleven articles with more heterodox contempt than ever the wayward wanderers from the faith of Luther spurned the Thirty-nine. And Henderson, of Missouri, had spoken all the way down to the eighth article without finding a single peg whereon to hang a charge of guilty. On the other three he failed to speak, but it is not anticipated that he will find anything more heinous in them. The joint repudiation of impeachment by Trumbull and Fessenden was a terrific bombshell, scattering the betting element of the impeachers in all directions, and sending Thad Stevens home with as sore and sensitive a scalp as he ever experienced. Of course the news of this defection spread all over town, into hotels, barrooms, fashionable drawing rooms, private firesides, street cars, theatres and every place where any two or three persons of the most ordinary intelligence were congregated.

Soon after this another recess was taken, and the rather significant event took place of Senators Fessenden, Trumbull, Henderson, Van Winkle, Grimes, Sprague and Chief Justice Chase going home in company to dine with the last named gentleman. It may be a trifling circumstance, but the impeachers take it sadly to heart. The radicals admitted there was demoralization somewhere in their ranks. Thus spoke one distinguished light of the House of Representatives, when the course of Trumbull and the others was mentioned, "Hell is too far away to make itself felt." And thus did another comfort himself on learning the same intelligence, "Money and opposition to Wade has caused all this; but we will have an investigating committee to find out who are the fellows that took the treasury bribes." And a third great legal light despairingly ejaculated, "Give it up—all gone to hell."

Willard's Hotel during the afternoon and evening was a scene of much interest. The corridors, reading rooms, barroom, parlors and stoops were crowded with excited people discussing the verdict. The sidewalk on the avenue and Fourteenth street was obstructed by equally excited throngs, and the words "conviction" or "acquittal" was heard on every side. In truth, the subject was so generally and eagerly discussed that it appeared as if everybody had a direct personal interest at stake in the issue. People talked much of betting, but there was very little of that thing done. The friends of acquittal seemed to have it all their own way, as they offered large bets even, but found few takers. The only substantial bets I heard of throughout the evening were two of five hundred dollars each, offered by a republican, in favor of acquittal. The same party, one Dr. Kendig, circulated through Willard's at a later hour, offering similar amounts or wagers, but was not taken up by any one.

The result of the proceedings, so far as let out after the recess, was to occasion the deepest kind of despondence among the radicals inside and outside of Congress. "We give it up"—"The party is gone"—"No use to hope any longer"—were expressions that fell upon the ears at every step. A number of radical Congressmen congregated about the hotels and offices of newspaper correspondents and talked over the matter in the most melancholy of moods. One radical Senator ground his teeth and said, "We will flay that Fessenden alive yet." Denunciations of Trumbull and Grimes were frequent and loud, some people saying that the former had better not go back to Illinois if he had any regard for his comfort and safety.

General Grant's connection with the result was also spoken of, and in a curious way. It was given out by Congressmen as if they uttered it by authority that Grant would certainly decline the Chicago nomination should the President be acquitted. Others declared that Chase, Fessenden, Trumbull, Grimes, Henderson and Company intend to build up a new party, with the Chief Justice at its head, and that this new party would place Chase in nomination for the Presidency, thus confirming the despatch I sent you last week on the same subject.

The President himself remained extraordinarily cool during the whole day. He was besieged by numerous visitors, and received them all in a quiet, calm and dignified way. In the afternoon he took a walk through the Presidential grounds in company with some members of his family and Miss Smythe, of New York. During the evening he was again compelled to receive a number of visitors, who came as couriers from the seat of war to explain the latest movements of the contending Senators or to learn from the Executive reliable news.

After receiving his visitors to-night at the White House President Johnson went to a grand May ball at the National theatre, in company with his daughter, Mrs. Patterson, Mrs. Stover and Colonel Morrison. His appearance was cheered loudly.

The Very Latest from the High Court.

In the early part of the evening the lobbies thinned out so much that not more than a dozen were seen remaining true to their posts. These were principally public scribes on the alert for the slightest circumstance that could be supposed to give a feather weight to the verdict. The Senators, after their second recess, entered into the spirit of the debate with refreshed vigor, and for a considerable length of time none appeared in the lobbies, but gave their undivided attention to the drift of the speeches. Very soon, however, the crowd in the lobbies and parlors began to increase, and the eager search for information recommenced in good earnest. The spirits of the radicals, having been so deeply depressed by the developments of the afternoon, seemed but little improved. When they assembled in the evening all, without exception, Managers included, announced that they had lost all hope of conviction, and they looked as though they felt the truth of what they said. Of the Managers, all of whom except Stevens were on hand during the evening, working like beavers, Mr. Logan seemed the most dejected. Messrs. Boutwell and Wilson seemed to accept the situation with a good deal of fortitude. Ben. Butler was constantly on the move, looking sternly defiant, and a portion of the time he was accompanied by Mr. Stanton's son. The excitement among the watchers at the doors of the Senate was intense. They crowded together close to the door, and the time was spent in comparing lists and in discussing the probabilities in regard to how certain Senators would go who were considered doubtful. As soon as a Senator made his appearance at the door he was instantly besieged for intelligence from within, and the information elicited could easily be ascertained by the outsiders of the crowds in the change which was immediately observed in the faces of the listeners. Most of the evening was consumed by the undoubted radicals in explaining how they intended to vote, and the mere fact that none other of the reported doubtful Senators had kicked over the traces was sufficient to elevate the hopes of the radicals, and they gradually gained courage as the evening wore away. When at length the Senate adjourned, and it was found that no additional evidence of defection had manifested itself, the impeachers confidently expressed their belief that the list of republican Senators who intended to vote for acquittal would not go beyond five. One Senator, whose opinion is looked upon as possessing considerable weight in prognosticating political issues, remarked that conviction was sure of one majority, but added that it was impossible to arrive at any definite conclusion as the views of the Senators as expressed take such a wide range of the articles. Three of the Board of Managers who were in attendance in the lobbies this evening gave their opinions to the effect that conviction was dead. This seemed to be the view of a number of members also present. Notwithstanding the efforts made to keep up the spirits of the friends of conviction, by the time the Senate adjourned doubts of success were again in the ascendancy.

During the proceedings this evening Senator Sherman was not present. Senator Howard is also very ill at his residence, and great fears are entertained that he will not be able to be in attendance to-morrow. The greatest concern is manifested in the fact that more of the doubtful Senators than the four who have already given their views have not spoken. This the radicals say looks bad for their cause, for the reason that these parties do not wish to go before the country in advance of their vote. A prominent radical observed this evening that Fessenden, Grimes, Henderson and Trumbull were sure to take with them four more. Those mentioned are Fowler, Van Winkle, Anthony and Willey. Some doubts are expressed in regard to Frelinghuysen, but these are traceable to a proposition which he is said to have made to postpone the question for a month. At the close of the session Williams, of Oregon, proposed to vote on the eleventh article first, as it is thought a convictable number can be rallied in support of this charge. Objection being made the motion went over until to-morrow, when the question will be disposed of before the public will be allowed to enter the galleries. At the hour of adjournment the solution of the problem of impeachment seemed to be in as much doubt as during the afternoon. It was evident that the anxious crowds who thronged the lobbies left dissatisfied with the unaccomplished work of the Senate.

Arrangement to Telegraph the Verdict.

Arrangements have been made to transmit direct from the Senate gallery to all points in the United States and Canada, and through the Atlantic and Cuba cables to Europe and the West Indies, the verdict of the Senate on the articles of impeachment simultaneously with its announcement in the Senate chamber.

PROCEEDINGS OF THE COURT.

Thirty-fourth Day.

UNITED STATES SENATE CHAMBER, WASHINGTON, May 11, 1868.

The Senate met at ten o'clock, pursuant to order, with about twenty Senators in their seats at the opening.

After the reading of the journal the CHIEF JUSTICE said—The Senate meets this morning, under the order, for deliberation, and the doors will be closed unless some Senator makes a motion now.

Mr. SHERMAN—Before the doors are closed I will submit a motion that I believe will receive the unanimous consent of the Senate. To-morrow will be a day of considerable excitement, and I move that the Sergeant-at-Arms be directed to place his assistants through the galleries, with directions, without further orders from the Senate, to arrest any person who violates the rules of order. I believe that there is an order to that effect now.

Mr. EDMUNDS—It is a standing order.

Mr. SUMNER—An intimation to the Sergeant-at-Arms would be sufficient.

The CHIEF JUSTICE stated that the Sergeant-at-Arms had already taken that precaution.

Mr. SHERMAN suggested that notice be given in the morning papers.

Mr. WILLIAMS suggested that as there will probably be many strangers in the gallery to-morrow the Chief Justice, before the call of the roll, admonish all persons that no manifestation of applause or disapproval will be allowed in the Senate under penalty of arrest.

This proposition meeting with general approbation Mr. Sherman withdrew his motion.

The doors were closed at twenty minutes past ten.

Proceedings in Secret Session.

The doors having been closed, the CHIEF JUSTICE stated that in compliance with the desire of the Senate he had prepared the questions to be addressed to Senators upon the articles of impeachment and that he had reduced his views to writing, which he would read.

Mr. BUCKALEW submitted the following motion, which was considered by unanimous consent and agreed to:—

Ordered, That the views of the Chief Justice be entered upon the journal of proceedings of the Senate for the trial of impeachment.

The following are the views of the Chief Justice:—

SENATORS—In conformity with what seemed to be the general wish of the Senate when it adjourned last Thursday, the Chief Justice, in taking the vote on the articles of impeachment, will adopt the rule sanctioned in the case of Chase, Peck and Humphrey. He will direct the Secretary to read the several articles successively, and after the reading of each article will put the question of "guilty or not guilty," each Senator rising in his place, in the form used in the case of Judge Chase:—"Senator ——, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor as charged in this article?" On putting the question on articles four and six, each of which charges a crime, the word 'crime' will be substituted for the word "misdemeanor." The Chief Justice has carefully considered the suggestion of the Senator from Indiana (Mr. Hendricks), which appeared to meet the approval of the Senate, that in taking the vote on the eleventh article the question should be put on each clause, and found himself unable to divide the article as suggested. The article charges several facts, but they are so connected that they make but one allegation, and they are charged as making one misdemeanor. The first fact charged is in substance that "the President publicly declared in August, 1866, that the Thirty-ninth Congress was a Congress of only part of the States, and not a constitutional Congress," intending thereby to deny its constitutional competency to enact laws or propose amendments to the constitution; and this charge seems to have been made as introductory and as qualifying that which follows, namely: that "the President, in pursuance of this declaration, attempted to prevent the execution of the Tenure of Office act by contriving and attempting to contrive means to prevent Mr. Stanton from resuming the functions of Secretary of War after the refusal of the Senate to concur in his suspension; and also by contriving and attempting to contrive means to prevent the execution of the Appropriation act of March 2, 1867, and also to prevent the execution of the Rebel State Government act of the same date." The gravamen of the article seems to be that the President attempted to defeat the execution of the Tenure of Office act, and that he did this in pursuance of a declaration which was intended to deny the constitutional competency of Congress to enact laws or propose constitutional amendments, and by contriving means to prevent Mr. Stanton from resuming his office of Secretary of War, and also to prevent the execution of the Appropriation act and the Rebel State Government act. The single substantive matter charged is the attempt to prevent the execution of the Tenure of Office act and the other facts alleged, either as introductory and exhibiting this general purpose or as showing the means contrived in furtherance of that attempt. This single matter, connected with the other matters previously and subsequently alleged, is charged as the high misdemeanor of which the President is alleged to have been guilty. The general question, guilty or not guilty of high misdemeanor, as charged, seems fully to cover the charge, and will be put to this article, as well as to the others, to the Senate direct. In the tenth article the division suggested by the Senator from New York (Mr. Conkling) may be more easily made. It contains a more general allegation, to the effect that "on the 18th day of August the President, with the intention to set aside the rightful authority of Congress and bring it into contempt, delivered certain scandalous harangues, and therein uttered loud threats and bitter menaces against Congress and the laws of the United States enacted by Congress, thereby bringing the office of President into disgrace, to the great scandal of all good citizens," and sets forth in three distinct specifications the harangues and menaces complained of in respect to the several specifications, and then the question of guilty or not guilty of a high misdemeanor, as charged in the article, can be also taken. The Chief Justice, however, sees no objection in putting the general question on this article in the same manner as the others, for whether particular questions be put on the specifications or not the answer to the final question must be determined by the judgment of the Senate, whether or not the facts alleged in the specifications have been sufficiently proved, and whether if sufficiently proved they amount to a high misdemeanor within the meaning of the constitution. On the whole, therefore, the Chief Justice thinks that the better practice would be to put the general question on each article, without attempting to make any sub-division, and will pursue this course if no objection is made. He will, however, be pleased to conform to such directions as the Senate may see fit in this matter.

Whereupon Mr. SUMNER submitted the following order, which was considered by unanimous consent and agreed upon:—

Ordered, That the questions be put as proposed by the presiding officer of the Senate, and each Senator shall rise in his place and answer "Guilty" or "Not guilty" only.

On motion of Mr. SUMNER the Senate proceeded to consider the following resolution, submitted on the 28th of April last:

Resolved, That the following be added to the rules of procedure and practice in the Senate when sitting as the trial of impeachment:—

"On the conviction by the Senate, it shall be the duty of the presiding officer forthwith to pronounce the removal from office of the convicted person, according to the requirement of the constitution. Any further judgment shall be on the order of the Senate."

After debate the Chief Justice announced that the hour of eleven o'clock A. M., fixed by order of the Senate for deliberation and debate, had arrived, and that Senators could now submit their views upon the several articles of impeachment, subject to limits of debate fixed by the twenty-third rule.

At ten minutes before two o'clock the Senate took a recess of twenty minutes. On reassembling there was further deliberation until half-past five o'clock, when, on motion of Mr. CONNESS, the Senate took a recess until half-past seven.

Proceedings of the Evening Session.

A large number of persons were in the rotunda of the Capitol to-night, waiting to hear from the Senate, which resumed its secret session at half-past seven o'clock. Only those privileged to enter the Senate side of the building, including members of the House and reporters for the press, were permitted to approach the immediate vicinity of the Senate. Some occupied the adjacent rooms, while others stood in the passage ways, all anxious inquirers for impeachment intelligence.

It was ascertained that Senators Conness, Harlan, Wilson and Morton spoke in favor of and Senator Buckalew in opposition to the conviction of the President. The expectation by outside parties had been that those who are regarded as doubtful on the republican side would express their views.

Mr. EDMUNDS submitted the following:—

Ordered, That the order of the Senate that it will proceed at twelve o'clock noon to-morrow to vote on the articles of impeachment be rescinded.

This was not acted on.

Mr. WILLIAMS offered the following:—

Ordered, That the Chief Justice, in directing the Secretary to read the several articles of impeachment, shall direct him to read the eleventh article first, and the question shall be then taken upon that article, and thereafter the other ten successively as they stand.

This lies over.

A motion that the Senate meet at half-past eleven o'clock to-morrow morning, to sit with open doors, was agreed to.

It is generally conceded that the first article of impeachment will not be agreed to.

Senator Howard is ill at his lodgings.

At eleven o'clock the Senate adjourned.

SENATOR GRIMES OPPOSED TO IMPEACHMENT.

Argument of Senator Grimes, of Iowa, in Secret Session.

WASHINGTON, May 11, 1868.

The following is the argument delivered by Senator Grimes to-day, in the secret session of the court, against impeachment:—

MR. PRESIDENT AND SENATORS—The President of the United States stands at the bar of the Senate charged with the commission of high crimes and misdemeanors. The principal offence charged against him is embodied in various forms in the first eight articles of impeachment. This offence is alleged to consist in a violation of the provisions of the first section of an act of Congress entitled "An act regulating the tenure of certain civil offices," approved March 2, 1867; in this, that on the 21st of February, eighteen hundred and sixty-eight, the President removed or attempted to remove Edwin M. Stanton from the office of Secretary for the Department of War, and issued a letter of authority to General Lorenzo Thomas as Secretary for the Department of War *ad interim*. The House of Representatives charge in their three first articles that the President attempted to remove Mr. Stanton, and that he issued his letter of authority to General Thomas with an intent to violate the law of Congress, and with the further intent to violate the constitution of the United States. The President, by his answer, admits that he sought to substitute General Thomas for Mr. Stanton at the head of the Department of War, but insists that he had the right to make such substitution under the laws then and now in force, and denies that in anything that he has done or attempted to do he intended to violate the laws or the constitution of the United States. To this answer there is a general traverse by the House of Representatives, and thereon issue is joined. Of that issue we are the triers, and have sworn that in that capacity we will do "impartial justice according to the constitution and the laws." It will be perceived that there is nothing involved in the first eight articles of impeachment but pure questions of law growing out of the construction of statutes. Mr. Johnson's guilt or innocence upon those articles depends wholly on the fact whether or not he had the power, after the passage of the Tenure of Office act of March 2, 1867, to remove Mr. Stanton and issue the letter of appointment to General Thomas, and upon the further fact, whether, having no such legal authority, he nevertheless attempted to exercise it "with intent to violate the constitution of the United States." Mr. Stanton was appointed Secretary for the Department of War by Mr. Lincoln, on the 15th day of January, 1862, and has not since been reappointed or recommissioned. His commission was issued to continue "for and during the pleasure of the President." His appointment was made under the act of August 7, 1789, the first two sections of which read as follows:—"There shall be an Executive Department, to be denominated the Department of War, and there shall be a principal officer therein, to be called the Secretary for the Department of War, who shall perform and execute such duties as shall from time to time be enjoined on or entrusted to him by the President of the United States, and the said principal officer shall conduct the business of the said department in such manner as the President of the United States shall from time to time order and instruct. There shall be in the said department an inferior officer, to be appointed by said principal officer, to be employed therein as he shall deem proper, and to be called the chief clerk of the Department of War, and whenever the said principal officer shall be removed from office by the President of the United States, and in any other case of vacancy, shall, during the same, have charge of the records, books and documents." At the same session of Congress was passed the act of July 27, 1789, establishing the Department of Foreign Affairs. The two first sections of the two acts are precisely similar, except in the dsignation of the two departments. Upon the passage of this last act occurred one of the most memorable and one of the ablest debates that ever took place in Congress. The subject under discussion was the tenure of public officers, and especially the tenure by which the Secretaries of the Executive departments should hold their offices. Without going into the particulars of that great debate, it is sufficient to say that the reasons assigned by Mr. Madison and his associates in favor of a "tenure during the pleasure of the President" were adopted as the true constitutional theory on this subject. That great man, with almost a prophetic anticipation of this case, declared on the 16th day of June, 1789, in his speech in the House of Representatives, of which he was a member from Virginia, that "it is evidently the intention of the constitution that the first magistrate should be responsible for the Executive Department. So far, therefore, as we do not make the officers who are to aid him in the duties of that department responsible to him he is not responsible to the country. Again, is there no danger that an officer, when he is appointed by the concurrence of the Senate and his friends in that body, may choose rather to risk his establishment on the favor of that branch than rest it upon the discharge of his duties to the satisfaction of the executive branch, which is constitutionally authorized to inspect and control his conduct? And if it should happen that the officers connect themselves with the Senate they may mutually support each other, and for want of efficacy reduce the power of the President to a mere vapor, in which case his responsibility would be annihilated and the expectation of it unjust. The high executive officers joined in cabal with the Senate would lay the foundation of discord and end in an assumption of the executive power, only to be removed by a revolution of the government." It will be observed that it is here contended that it is the constitution that establishes the tenure of office, and in order to put this question beyond future cavil Chief Justice Marshall, in his "Life of Washington," volume two, page 162, says:—"After an ardent discussion, which consumed several days, the committee divided, and the amendment was negatived by a majority of thirty-four to twenty. The opinion thus expressed by the House of Representatives did not explicitly convey their sense of the constitution. Indeed, the express grant of the power to the President rather implied a right in the Legislature to give or withhold it at their discretion. To obviate any misunderstanding of the principle on which the question had been decided, Mr. Benson moved in the House, when the report of the Committee of the Whole was taken up, to amend the second clause in the bill so as clearly to imply the power of removal to be solely in the President. He gave notice that if he should succeed in this he would move to strike out the words which had been the subject of debate. "If these words continued," he said, "the power of removal by the President might hereafter appear to be exercised by virtue of a legislative grant only, and consequently be subjected to legislative instability, when he was well satisfied in his own mind that it was by fair construction fixed in the constitution. The motion was seconded by Mr. Madison, and both amendments were adopted." And Judge Marshall adds, "As the bill passed into a law it has ever since been considered as a full expression of the sense of the Legislature on this important part of the American constitution." And Chancellor Kent says, when speaking of the action of this Congress, many of the members of which had been members of the Convention that framed the constitution, the chiefest among them, perhaps, being Madison, who has been called the father of that instrument:—"This amounted to a legislative construction of the constitution, and it has ever since been acquiesced in and acted upon as of decisive authority in the case. It applies to every other officer of the government appointed by the President and Senate whose term of duration is not specially declared. It is supported by the weighty reason that the subordinate officers in the Executive Department ought to hold at the pleasure of the head of that department, because he is invested generally with the executive authority, and every participation in that authority by the Senate was an exception to a general principle and ought to be taken strictly. The President is the great responsible officer for the faithful execution of the law, and the power of removal was incidental to that duty, and might often be requisite to fulfil it." (Kent's Com. 3:19.) Thus the constitution and the law stood as expounded by the courts, as construed by commentators and publicists, as acted on by all the Presidents, and acquiesced in by all of the Congresses, from 1789 until the 2d of March, 1867, when the Tenure of Office act was passed. The first section of this act reads as follows:—"That every person holding any civil office, to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in a like manner appointed and duly qualified, except as herein otherwise provided." Then comes what is "otherwise provided." "Provided that the Secretaries of State, of the Treasury, of War, of the Navy and of the Interior, the Postmaster General and the Attorney General shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate." The controversy in this case grows out of the construction of this section. How does it affect the act of 1789? and does it change the tenure of office of the Secretary for the Department of War as established by that act? To that inquiry I propose to address myself. I shall not deny the constitutional validity of the act of March 2, 1867—that question is not necessarily in this case. The first question presented is, is Mr. Stanton's case within the provisions of the Tenure of Office act of March 2, 1867? Certainly it is not within the body of the first section. The tenure which that provides for is not the tenure of "any" Secretary. "All" Secretaries whose tenure is regulated by this law at all are to go out of office at the end of the term of the President by whom they shall be appointed, and one month thereafter, unless sooner removed by the President, by and with the advice and consent of the Senate, while all other civil officers are to hold until a successor shall be appointed and duly qualified. The office of Secretary has attached to it one tenure, other civil officers another and different tenure, and no one who holds the office of Secretary can—by force of this law—hold it by any other tenure than the one which the law specially assigns to that office. The plain intent of the proviso to the first section is to prescribe a tenure for the office of Secretary different from the tenure fixed for other civil officers. This is known to have been done on account of the marked difference between the heads of departments and all other officers, which made it desirable and necessary for the public service that the heads of departments should go out of office with the President by whom they were appointed. It would, indeed, be a strange result of the law if those Secretaries appointed by Mr. Lincoln should hold by the tenure fixed by the act for ordinary civil officers, while all the other Secretaries should hold by a different tenure. That those appointed by the present and all future Presidents should hold only during the term of the President by whom they may have been appointed, while those not appointed by him should hold indefinitely, and this under a law which undertakes to define the tenure of all the Secretaries who are to hold their offices under the law, I cannot come to that conclusion. My opinion is, that if Mr. Stanton's tenure of office is prescribed by this law at all, it is prescribed to him as Secretary of War under and by force of the proviso to the first section, and if his case is not included in that proviso it is not included in the law at all. It is clear to my mind that the proviso does not include and was not intended to include Mr. Stanton's case. It is not possible to apply to his case the language of the proviso unless we suppose it to have been intended to legislate him out of office—a conclusion I consider wholly inadmissible. He was appointed by President Lincoln during his first term of office. He cannot hereafter go out of office at the end of the term of the President by whom he was appointed. That term was ended before the law was passed. The proviso, therefore, cannot have been intended to make a rule for his case, and it is shown that it was not intended. This was plainly declared in debate by the Conference Committee, both in the Senate and in the House of Representatives, when the proviso was introduced and its effect explained. The meaning and effect of the proviso were then explained and understood to be that the only tenure of the Secretaries provided for by this law was a tenure to end with the term of service of the President by whom they were appointed, and as this new tenure could not include Mr. Stanton's case, it was here explicitly declared that it did not include it. When this subject was under consideration in the House of Representatives, on the report of the Conference Committee on the disagreeing votes of the two houses, Mr. Schenck, of Ohio, chairman of the Conference Committee, on the part of the House, said:—"It will be remembered that by the bill as it passed the Senate it was provided that the concurrence of the Senate should be required in all removals from office, except in the case of the heads of departments. The House amended the bill of the Senate so as to extend this requirement to the heads of departments as well as to their officers. The Committee of Conference have agreed that the Senate shall accept the amendments of the House. *But inasmuch as this would compel the President to keep around him heads of departments until the end of his term who would hold over to a further term, a compromise was made by which a further amendment was added to this portion of the bill so that the term of office of the heads of departments shall expire with the term of the President who appointed them*, allowing these heads one month longer." When the bill came to the Senate and was considered on the disagreeing vote of the two houses, Mr. Doolittle, of Wisconsin, charged that although the purpose of the measure was in his opinion to force the President against his will to retain the Secretaries appointed by Mr. Lincoln, yet that the phraseology was such that the bill if passed would not accomplish that object. Mr. Sherman, of Ohio, who was a member of the Conference Committee and assisted to frame the proviso, said, "I do not understand the logic of the Senator from Wisconsin. He first attributes a purpose to the Committee of Conference, which I say is not true. I say that the Senate have not legislated with a view to any person or any President, and therefore he commences by asserting what is not true. We do not legislate in order to keep in the Secretary of War, the Secretary of the Navy or the Secretary of State." Then a conversation arose between the Senator from Ohio and another Senator, and the Senator from Ohio continued thus:—"That the Senate had no such purpose is shown by its vote twice to make this exception. That this provision does not apply to the present case is shown by the fact that its language is so framed as not to apply to the present President. The Senator shows that himself and argues truly that it would not prevent the present President from removing the Secretary of War, the Secretary of the Navy and the Secretary of State, and if I supposed that either of these gentlemen was so wanting in manhood and in honor as to hold his place after the politest intimation by the President of the United States that his services were no longer needed, I certainly, as a Senator, would consent to his removal at any time, and so would we all." Did any one here doubt the correctness of Mr. Sherman's interpretation of the act when he declared that it "*would not prevent the present President from removing the Secretary of War, the Secretary of the Navy and the Secretary of State*?" Was there any dissent from his position? Was there not entire acquiescence in it? Again said Mr. Sherman, "In this case the Committee of Conference—I agreed to it, I confess, with some reluctance—came to the conclusion to qualify to some extent the power of removal over a cabinet minister. We provide that a cabinet minister shall hold his office not for a fixed term, not until the Senate shall consent to his removal, *but as long as the power that appoints him holds office*." But whatever may have been the character of the debate at the time of the passage of the law, or whatever may have been the contemporaneous exposition of it, I am clearly convinced that the three Secretaries holding over Mr. Lincoln's administration do not fall within its provisions under any fair judicial interpretation of the act; that Mr. Stanton held his office under the act of 1789, and under his only commission issued in 1862, which was at the pleasure of the President, and I am consequently constrained to decide that the order for his removal was a lawful order. Any other construction would involve us in the absurdity of ostensibly attempting to limit the tenure of all cabinet officers to the term of the officer having the power to appoint them, yet giving to three of the present cabinet ministers an unlimited tenure. If the construction contended for by the Managers be the correct one, while four of the present cabinet officers will go out of office absolutely and without any action by the Senate, on the 4th of April next, they having been appointed by Mr. Johnson, the three Cabinet officers appointed by Mr. Lincoln will hold by another and different tenure and cannot be removed until the incoming President and the Senate shall mutually agree to their removal. If I have not erred thus far in my judgment, then it follows that the order for the removal of Mr. Stanton was not a violation of the constitution of the United States by reason of its having been issued during the session of the Senate. If Mr. Stanton held his office at the pleasure of the President alone, under the act of 1789, as I think he did, it necessarily follows that the President alone could remove him. The Senate had no power in reference to his continuance in office. I am wholly unable to perceive, therefore, that the power of the President to remove him was affected or qualified by the fact that the Senate was in session. It has sometimes been put forward, as it was by Mr. Webster in the debate of 1837, that the usual mode of removal from office by the President during a session of the Senate had been by the nomination of a successor in place of A B removed. This would naturally be so in all cases except the few in which the officer could not be allowed, consistently with the public safety, to continue in office until his successor should be appointed and qualified, and also should refuse to resign. Such cases cannot often have occurred; but, when they have occurred, I believe the President has exercised that power which was understood to belong to him alone, and which, in the statute tenure of most officers, is recognized, by the acts of Congress creating them, to be the pleasure of the President of the United States. A number of cases of this kind have been put in evidence. I do not find either in the debates which have been had on the power of removal or in the legislation of Congress on the tenure of offices any trace of a distinction between the power of the President to remove in recess and his power to remove during a session of the Senate, an officer who held solely by his pleasure. And I do not see how such a distinction could exist without some private distinct provision of law to make and define it. I know of no such provision. If that was the tenure by which Mr. Stanton held the office of Secretary for the Department of War—and I think it was—then I am also of the opinion that it was not a violation of the constitution to remove him during a session of the Senate. If Mr. Stanton held under the act of 1789 no permission of the President to continue in office, no adoption of his as Secretary for the Department of War could change the legal tenure of his office as fixed by law or deprive the President of the power to remove him. My opinion on the matter of the first article is not affected by the facts contained in it that the President suspended Mr. Stanton, and sent notice of the suspension to the Senate and the Senate refused to concur in that suspension. In my opinion, that action of the President could not and did not change the tenure of Mr. Stanton's office, as it subsisted by law at the pleasure of the President; or deprive the President of that authority to remove him which necessarily arose from that tenure of office. If the order of the President to Mr. Stanton was a lawful order, as I have already said I thought it was, the first question under the second article is whether the President did anything unlawful in giving the order to General Thomas to perform the duties of Secretary for the Department of War *ad interim*. This was not an appointment to office. It was a temporary designation of a person to discharge the duties of an office until the office could be filled. The distinction between such a designation and appointment to office is in itself clear enough, and has been recognized, certainly, since the act of February 13, 1795. Many cases have occurred in which this authority has been exercised. The necessity of some such provision of law in cases of vacancy in offices which the Executive cannot instantly fill must be apparent to every one acquainted with the workings of our government, and I do not suppose that a reasonable question can be made of the constitutional validity of a law providing for such cases. The law of 1795 did provide for such cases, and the President, in his answer, says he was advised that this was a subsisting law not repealed. It may be a question whether it has been repealed; but from the best examination I have been able to bestow upon the subject I am satisfied it has not been repealed. I do not propose to enter into the technical rules as to implied repeals; it is a subject of great difficulty and I do not profess to be able to apply those rules. I take only this practical view of the subject. When the act of February 20, 1863, was passed, which it is supposed may have repealed the act of 1795, it is beyond all dispute that vacancies in office might be created by the President, and there might be the same necessity for making temporary provision for discharging the duties of such vacant offices as was provided for by the act of 1795. The act of 1863 is wholly silent on this subject. Why should I say that a public necessity provided for in 1795 and not negatived in 1863 was not then recognized, or why should I say that if recognized it was intended by the act of 1863 that it should not thereafter have any provision made for it? Comparing the act of 1863 and the cases it provided for, I see no sufficient reason to say that it was the intention of Congress in 1863 to deprive the President of the power given by the act of 1795 to supply the temporary necessities of the public service in case of vacancy caused by removal. But if I thought otherwise I should be unable to convict the President of a crime because he had acted under the law of 1795. Many cases of *ad interim* appointments have been brought before us in evidence. It appears to have been a constant and frequent practice of the government, in all cases where the President was not prepared to fill an office at the moment when the vacancy occurred, to make an *ad interim* appointment. There were one hundred and seventy-nine such appointments specified in the schedule annexed to the message of President Buchanan, found on page 584 of the printed record, as having occurred in little more than the space of thirty years. I have not minutely examined the evidence to follow the practice further, because it seems to me that if, as I think, the President had the power to remove Mr. Stanton, he might well conclude—and that it cannot be attributed to him as a high crime and misdemeanor that he did conclude—that he might designate some proper officer to take charge of the War Department until he could send a nomination of a suitable person to be Secretary; and when I add that on the next day after this designation the President did nominate for that office an eminent citizen, in whose loyalty to our country and in whose fitness for any duties he might be willing to undertake the people would be willing to confide, I can find no sufficient reason to doubt that the President acted in good faith and believed that he was acting within the laws of the United States. Surely the mere signing of that letter of appointment, neither attended nor followed by the possession of the office named in it, or by any act of force, of violence, of fraud, of corruption, of injury or of evil will not justify us in depriving the President of his office. I have omitted to notice one fact stated in the second article. It is that the designation of General Thomas to act *ad interim* as Secretary of War was made during a session of the Senate. This requires but few words. The acts of Congress and the nature of the cases to which they apply admit of no distinction between *ad interim* appointments in the session or out of the Senate. A designation is to be made when necessary, and the necessity may occur either in session or in recess. I do not deem it necessary to state any additional views concerning the third article, for I find in it no allegations upon which I have not already sufficiently indicated my opinion. The fourth, fifth, sixth and seventh articles charge a conspiracy. I deem it sufficient to say that in my judgment the evidence adduced by the House of Representatives not only fails to prove a conspiracy between the President and General Thomas to remove Mr. Stanton from office by force or threats, but it fails to prove any conspiracy in any sense I can attach to that word. The President by a written order committed to General Thomas required Mr. Stanton to cease to act as Secretary for the Department of War, and informed him that he had empowered General Thomas to act as Secretary *ad interim*. The order to General Thomas empowered him to enter on the duties of the office and receive from Mr. Stanton the public property in his charge. There is no evidence that the President contemplated the use of force, threats or intimidation, still less that he authorized General Thomas to use any. I do not regard the declarations of General Thomas, as explained by himself, as having any tendency even to fix on the President any purpose beyond what the orders on their face import. Believing as I do that the orders of the President for the removal of Mr. Stanton and the designation of General Thomas to act *ad interim* were legal orders, it is manifestly impossible for me to attach to them any idea of criminal conspiracy. If those orders had not been in my judgment lawful I should not have come to the conclusion upon the evidence that any actual intent to do an unlawful act was proved. The eighth article does not require any particular notice after what I have said of the first, second and third articles, because the only additional matter contained in it is the allegation of an intent to unlawfully control the appropriations made by Congress for the military service by unlawfully removing Mr. Stanton from the office of Secretary for the Department of War. In my opinion no evidence whatever tending to prove this intent has been given. The Managers offered some evidence which they supposed might have some tendency to prove this allegation, but it appeared to the Senate that the supposed means could not under any circumstances be adequate to the supposed end, and the evidence was rejected. Holding that the order for the removal of Mr. Stanton was not an infraction of the law, of course this article is, in my opinion, wholly unsupported. I find no evidence sufficient to support the ninth article. The President, as Commander-in-Chief of the army, had a right to be informed of any arrangements of the military service concerning which he thought proper to inquire. His attention was called by one of his secretaries to some unusual orders. He sent to General Emory to make inquiry concerning them. In the course of the conversation General Emory himself introduced the subject, which is the gist of the ninth article, and I find in what the President said to him nothing which he might not naturally say in response to General Emory's inquiries and remarks, without the criminal intent charged in this ninth article. I come now to the question of intent, admitting that the President had no power under the law to remove Mr. Stanton and appoint General Thomas Secretary for the Department of War *ad interim*. Did he issue these orders with a manifest intent to violate the laws and the constitution of the United States, as charged in the article; or did he issue them, as he says he did, with a view to have the constitutionality of the Tenure of Office act judicially decided? It is apparent to my mind that the President thoroughly believed the Tenure of Office act to be unconstitutional and void. He was so advised by every member of his Cabinet when the bill was presented to him for his approval in February, 1867. The Managers on the part of the House of Representatives have put before us, and made legal evidence in this case, the message of the President to the Senate dated December 12, 1867. In that message the President declared "that the Tenure of Office law did not pass without notice. Like other acts it was sent to the President for approval. As is my custom I submitted its consideration to my Cabinet for their advice upon the question whether I should approve it or not. It was a grave question of constitutional law, in which I would of course rely most upon the opinion of the Attorney General and of Mr. Stanton, who had once been Attorney General. Every member of my Cabinet advised me that the proposed law was unconstitutional. All spoke without doubt or reservation, but Mr. Stanton's condemnation of the law was the most elaborate and emphatic. He referred to the constitutional provisions, the debate in Congress especially, to the speech of Mr. Buchanan when a Senator, to the decisions of the Supreme Court and to the usage from the beginning of the government through every successive administration, all concurring to establish the right of removal as vested by the constitution in the President. To all these he added the weight of his own deliberate judgment, and advised me that it was my duty to defend the power of the President from usurpation and to veto the law." The counsel for the respondent not only offered to prove the truth of this statement of the President by the members of the Cabinet, but they tendered in addition thereto the proof that the duty of preparing a message setting forth the objections to the constitutionality of the bill was devolved on Mr. Seward and Mr. Stanton. They also offered to prove that the meetings of the Cabinet at which Mr. Stanton was present, held while the Tenure of Office bill was before the President for approval, the advice of the Cabinet in regard to the same was asked by the President and given by the Cabinet, and thereupon the question whether Mr. Stanton and other Secretaries who had received their appointments from Mr. Lincoln were within the restrictions upon the President's power of removal from office created by said act was considered, and the opinion expressed that the Secretaries appointed by Mr. Lincoln were within such restrictions; and that at the Cabinet meeting between the passage of the Tenure of Civil Office bill and the order of the 21st of February, 1868, for the removal of Mr. Stanton, upon occasions when the condition of the public service, as affected by the

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