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THE TRIAL OF ANDREW JOHNSON

1868

A Thesis Presented for the
Degree of Master of Arts

By
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This thesis, submitted by Frank H. Moffitt, in partial fulfillment of the requirements for the Degree of Master of Arts, is hereby approved by the Committee of Instruction in charge of his work.

Committee

Director, Graduate Division
My purpose in writing this thesis is to present the legal points involved in the trial, and to discuss the case on its legal strength. Many historians have said that the impeachment and trial was a political scheme of the Republicans in Congress to remove President Johnson from office and put in a man of their own choice. This statement is undoubtedly true, but the case itself was undoubtedly decided on the legality of the charges contained in the articles of impeachment.

While the accounts of the impeachment trial of President Johnson as they appear in Rhodes, Stryker, Winston, Welles and Blaine are helpful in giving a general picture of the trial, their presentation of the arguments of the prosecution and defense fail to make it clear whether President Johnson committed a crime or not. Nor do they include in their writings the articles of impeachment on which President Johnson stood trial.

As popular a history as Beard's conveys the impression that President Johnson was acquitted in the trial of impeachment only because the Senate lacked one vote necessary to find him guilty. This would lead a reader to believe that President Johnson had committed a crime, but was acquitted on a close vote.

Chapter one contains an account of the preparation made by the Senate for the trial, and the presentation of the case by the prosecution and defense. Chapter two deals with the final arguments, and special care has been taken in this chapter to include the legal points and to show how they were handled by each side. The third chapter gives the final vote of the Senate on the impeachment articles, and also the attempts made by members of the House to influence the vote of certain Senators. In the appendix is found the articles of impeach-
ment which contained the charges against President Johnson. There is included also, "An Act Regulating the Tenure of Certain Civil Offices," the act that the President was charged with having violated.
CHAPTER I

PRESENTATION OF THE CASE
CHAPTER I

On Monday, February 24, 1868, the House of Representatives, by a vote of 126 to 47, decided to impeach President Johnson. The Senate was informed of this decision, and were requested to make all necessary preparation for the trial.

The House next proceeded to frame articles of impeachment, and on March 3, eleven articles were adopted. These articles contained the charges upon which the impeachment was based against the President. The House next elected seven members to present the impeachment to the Senate. These members were: John A. Bingham, George S. Boutwell, James F. Wilson, Benjamin F. Butler, Thomas Williams, John A. Logan, and Thaddeus Stevens. This group of men, of whom John A. Bingham was chairman, are hereafter referred to as the managers of the impeachment.

While the legal ability of the managers was unquestioned, many of them were known to use unscrupulous methods in the winning of their cases.

The Senate, when informed that the President was to be brought to trial, formulated a set of rules, by which they were to be governed when organized as a court of impeachment. On March 3, the Senate sent word to the House that they had completed their preparations for the trial, and that on the next day they would be ready to listen to the formal presentation of the case against the President.

The next day March 4, the Senate received an opinion from Chief Justice Chase. He stated that when the Senate sat on impeachment cases it sat as a court. That until the Senate was so organized it had no right to adopt rules of procedure, nor to listen to the presentation of articles of impeachment. The Senate disregarded the opinion of the Chief Justice and, on the same day listened to the articles of impeachment.
The House of Representatives resolved itself into a committee of the whole and accompanied its managers to the Senate chamber. Bingham, chairman of the managers, read the eleven articles of impeachment to the Senate.¹

The first article charged President Johnson with attempting to remove Edwin M. Stanton, then Secretary of War, from office. That action of the President was in violation of an act entitled "An Act to Regulate Certain Civil Offices".² The second and third articles dealt with a letter which Johnson had written to General Lorenzo Thomas. This letter authorized Thomas to become Secretary of War ad. interim. The articles charged that the letter was sent in violation of the Constitution and the law entitled "An Act to Regulate Certain Civil Offices". This law was commonly referred to as the tenure of office act.

The fourth, fifth, sixth, seventh and eighth articles all charged that President Johnson had conspired with Thomas in an unlawful attempt to gain control of the War Office. The ninth article also dealt with an unlawful conspiracy. It stated that President Johnson sent for General William Emory, who was in command of the military troops in Washington, and had attempted to induce Emory to disobey a military act. This act forbade any orders to be issued to the army except those issued through the general of the army. Article ten referred to three speeches made by the President. It charged the President with speaking against the United States Government and especially against the thirty ninth Congress. The eleventh article contained a combination of the charges found in the other ten. It had been drawn up by

1. The Articles of Impeachment will be found in the appendix. 53-63
2. The Act to Regulate Certain Civil Offices will be found in the appendix. 64-66
Stevens and was referred to as the "Omnibus article".

After Bingham had finished reading the articles, the Senate resolved to begin the trial of the President on the following day. Notice was sent to Chief Justice Chase to that effect and the Senate then adjourned.

Thursday, the fifth, an impeachment court was organized. The Chief Justice, had given his opinion that the Senate was a court and should be governed by court rules. He therefore took the prescribed oath, and then proceeded to administer it to the Senators. The Senators arose in their place and took the oath as their names were called. When Benjamin Wade's name was called, his right to sit on the trial was challenged. The complaint was made that should the President be convicted, Wade, who was now president of the Senate, would become President of the United States. Under such circumstances, Wade's vote would be influenced by his opportunity to become President.

Senator Sherman from Ohio, came to the defense of Wade. He stated that Ohio was entitled to two votes on the impeachment and therefore Wade would have to be allowed to sit on the trial. The debate on that question continued until adjournment. When the Senate met the next day this question was settled by a vote of 24 to 20 in favor of allowing Wade to sit on the trial. Wade, thereupon, took the prescribed oath.

The Senate next issued a summons to President Johnson demanding him to appear, either in person or by attorney, on Friday the thirteenth, and to answer the several charges made against him in the articles of impeachment, adjourned until the thirteenth.

When the Senate met on Friday, President Johnson did not appear, but he was represented by his counsel. Henry Stanberry as chairman, recorded the appearance of President Johnson as required in the summons. He then asked that forty days be granted to the President's counsel to prepare answers
to the articles of impeachment. A heated debate arose over the extension of time and at last it was put to a vote of the Senate. They decided that President Johnson should file answers to the articles within ten days.

During this ten day interval the President lost the services of one of his counsel, Judge Black. An American firm, of which Black was the leading attorney, claimed the guano on the island of Alta Vela. The Dominican government, to whom the island belonged, had leased the island to another American firm. Black urged the President to send an armed vessel to Alta Vela and take possession of the island. The President had refused to take such action. On March 9, 1868 President Johnson had received a letter urging him to take action in the Alta Vela case. This letter was signed by three of the managers of the impeachment, Butler, Stevens, and Bingham. The President refused to respond to the letter and when Black heard about it he resigned from the President's counsel.

When the court met again, on Monday the 23rd, the President's counsel appeared to represent him. The members consisted of Henry Stanbery, Benjamin R. Curtis, William M. Evarts, William S. Groesbeck, and T. A. R. Nelson. Stanbery was lawyer of first rank, and when the impeachment began he was Attorney-General. He resigned that position to become chairman of the President's counsel. Curtis, when he appeared in the impeachment case, was fifty-nine years of age, and was just at the height of his power. He had served six years on the Supreme Court bench, and was well known for his ability as a lawyer. Evarts came from New York where he had gained prominence in his profession. He proved to be one of the most able lawyers on the Presidents counsel, being surpassed in ability only by Curtis. Little was known of Groesbeck when he came from Ohio to fill the place left vacant by Judge Black. Nelson was a lawyer from Tennessee and a close friend of President Johnson.
The President's answers to the articles of impeachment were read before the Senate. The answer to article one stated that President Johnson had a constitutional right to remove a cabinet member. That Stanton was not protected by the tenure of office act, and furthermore that the tenure of office act was unconstitutional. The answer to the second and third articles admitted that President Johnson authorized Thomas to act as Secretary of War ad interim, but that President Johnson in so doing had violated no law. That there was at that time a vacancy in the War Office, and furthermore, the letter which authorized Thomas to act as Secretary of War ad interim had not constituted an appointment.

The President's answers to the conspiracy articles, denied that he had conspired with either Thomas or Emory. The answer to the tenth article, which charged President Johnson with making improper speeches, admitted that he had delivered the speeches referred to, but denied that they were grounds for impeachment. The answer to article eleven, which contained a combination of all the charges, referred back to the answers to the first ten articles.

The main contention of President Johnson, as put forth in all his answers, was that he had violated no law, nor had he issued any order, or committed any act with the intention of violating any law or the Constitution of the United States.

After the answers to the articles were read, Evarts asked that thirty days time be granted to the counsel for the President to enable them to prepare for the trial. After a lengthy argument over granting more time, the Senate voted down the request, and then adjourned until the next day.

The next day, March 24, 1868, the Senate was notified that the House of Representatives had considered the answers to the articles of impeachment, and found them insufficient. The House, therefore, intended to maintain their
charges as set forth in the articles of impeachment.

The question of the amount of time to be allowed the President's counsel to prepare for the trial was again brought before the Senate. It was finally agreed that the trial should begin on Monday, March 30, and the Senate adjourned to that day.

On, Monday, March 30, 1868, the trial of the President was begun. It was the first time that a President of the United States had been impeached and brought to trial. People in large numbers had gathered to witness the proceedings. Admission to the Senate chamber, where the trial was to be held, was granted by ticket. These tickets were issued to Senators, Representatives, Cabinet Members, Judges of the Supreme Court, and members of the President's counsel. They, in turn, gave them to their friends. This method of admission to the Senate chamber was soon abandoned, and the doors were opened to the public.

The case against the President was opened by Benjamin Butler, one of the managers of impeachment. Butler was from Massachusetts and had a reputation of being a keen lawyer, but he was not always truthful, nor square in his dealings. He had served as General in the army during the Civil War, and carried a military air about him that sometimes bordered on the comic. He was coarse in both manners and speech, but he was doubtless sincere in his convictions that President Johnson should be removed from office, how or on what pretext this was to be done he did not care.

Butler's speech was well prepared and consumed about three hours in delivery. He began, by saying, that in other countries when the people wished to rid themselves of their ruler, it could only be done by assassination or by the overthrow of the government. In the United States the Constitution provided that a President could be removed from office upon impeachment for, and
and conviction of treason, bribery or other high crimes and misdemeanors.

The Constitution did not define high crimes and misdemeanors. Since these were the two charges on which President Johnson was to be tried, Butler proceeded to offer a definition which he had formulated. He said, "We define, therefore, an impeachable high crime or misdemeanor to be one in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest, and this may consist of an official oath, or of duty, by an act committed or omitted, or without violating a positive law, by the abuse of discretionary powers from improper motives, or for any improper purpose." This definition of an impeachable crime as given by Butler was all inclusive. He next informed the Senate that it was not a court, but a constitutional tribunal, and as such it was a law unto itself. He called attention to the fact that the Senate had formulated its own rules of procedure. Also it had refused the right of challenge of one of its members when it voted to allow Wade to sit on the trial. To further prove his case Butler cited a number of impeachment cases in both the United States and England.

The managers of the impeachment in upholding the contention that the Senate was a tribunal and not a court, refused to recognize the Chief Justice as such, but constantly referred to him as "Mr President". The reason they took this stand appeared to be that they were afraid to try the President on the legal points as charged in the articles. If they could get the Senate to disregard court procedure and to allow them to conduct the trial as they pleased, they felt sure of convicting the President.

4. Ibid., 30-31
Butler next reviewed the articles of impeachment. He admitted that the President might have had the power to act as he had, but still it was an act of official misconduct and therefore impeachable. The President, continued Butler, justified his actions on the authority vested in him by the constitution, which gave him the power to remove any executive officer and to fill such a vacancy, temporarily at least. If this could be proven by the President’s counsel, then under the first eight articles the President ought to go free. But, Butler insisted that such a power was more than a president of a Republic had any right to exercise; and if the constitution gave him such powers, then the presidential office itself ought not to exist. This was the contention presented in the first eight articles of impeachment. The last three articles raised the inquiry as to whether President Johnson had so conducted himself that he should no longer hold any constitutional office.

Since the main charges in the articles dealt with the removal of Stanton, Butler next discussed the legality of that removal. He maintained that under the tenure of office act, Stanton had a right to serve during the term of the President who appointed him and one month thereafter. Stanton was appointed by Lincoln and was entitled to serve the four years of Lincoln’s term. President Johnson had no presidential term of his own but was serving Lincoln’s term. If Stanton were to be expelled from office it should have been done as soon as Johnson became President. The fact that President Johnson allowed Stanton to continue to discharge the duties of the War Office, after Lincoln’s death, constituted an appointment. If the defense denied that this was an appointment and that Stanton was serving Lincoln’s term, still Butler maintained that President Johnson had committed a crime in that he allowed Stanton to exercise the duties of the War Office without any authority. This reasoning of Butler’s was very illogical. According to him President Johnson committed a crime when
he attempted to remove Stanton.

When Johnson suspended Stanton, he did so under the tenure of office act, the Senate not then being in session, and he reported the same with his reasons to the Senate at its next meeting. In that action he followed the letter of the law. When the Senate failed to concur in the removal, Stanton was reinstated according to the tenure of office act. President Johnson, continued Butler, recognized the act to be legal by acting under it. Later, on February 21, 1868, President Johnson removed Stanton in direct violation of the act. He had said that his sole purpose in removing Stanton was to test the tenure of office act which he believed was unconstitutional. He held that he had a right to violate the act for the purpose of bringing the matter before the Supreme Court. Butler denied the right of a President to judge a law and maintained that after a law was passed it was the duty of the President to execute it, to do otherwise would be to violate his oath of office.

Article nine which charged a conspiracy between President Johnson and Major General Emory was passed over by Butler with but a few remarks. He admitted that if the facts charged in the article were to stand alone they would be hard to prove, but it was the circumstances that surrounded the article that gave it its weight. After the House had begun impeachment proceedings, President Johnson had called in Emory for an interview. Emory was in command of the military forces in the city of Washington. It was charged that President Johnson had attempted to induce Emory to disobey the military act, passed in 1867, restraining the President from issuing orders except through the General of the Army (Grant), and to aid him (Johnson) in an attempt to gain control of the War Office.

The tenth article charged President Johnson of having made improper speeches, mainly against the Thirty-nineth Congress. Although this article
contained very little as to points of law, Butler spent a good deal of time on it, mostly in abuse of the President.

The eleventh article was passed over with merely a few comments, as Butler said it contained nothing but what had been charged in the other articles. Furthermore the Senate if it failed to convict President Johnson under the first ten articles must also acquit him under the eleventh.

At different points in his speech, Butler spoke of the danger of having a person at the head of the government who overrode the laws and disobeyed the constitution. In closing he warned the Senate that should they allow President Johnson to go free, never again could the American people by constitutional methods guard against the violation of laws by an executive. Attached to his speech was a brief of authorities upon the laws of impeachable crimes and misdemeanors, which was filed but not read. 5

Immediately after Butler had finished speaking the managers proceeded to produce their evidence against the President. It consisted first of a series of documents. The list was as follows:

1. The President's oath of office.
2. The certificate authorizing Johnson to become President after the death of Lincoln.
3. The nomination of Stanton as Secretary of War by Lincoln, dated January 13, 1862.
4. The concurrence upon Stanton's nomination by the Senate, dated January 15, 1862.
5. The message of President Johnson to the Senate stating his reasons for the removal of Stanton.
6. An extract from the Senate Journal showing that the Senate did not concur upon the removal of Stanton.
7. The commission of Stanton as Secretary of War. 6

5. Butler's speech is found in Supplement to Congressional Globe, op.cit., 29-51
6. Ibid, 53-54
These documents were all read in full and then filed, after which the examination of the witnesses began.

Charles Creecy, clerk in charge of the appointments in the Treasury Department, testified that prior to the passage of the tenure of office act, a certain form of commission had been used in making appointments, and that after the act was passed a new form of commission was used which conformed with the new law. The testimony was used to prove that Johnson had recognized the tenure of office act to be constitutional, when he had ordered the form of commissions changed. This point and the fact that President Johnson had suspended Stanton under the tenure of office act were the two major points on which the counsel of the President had to find answers.

Van Horn and Moorhead were called to the stand and gave in detail what took place between Stanton and Thomas on the morning of February 22nd. Their was the time when Thomas attempted to take charge of the War Office. When he arrived at the office he found a number of men present including Van Horn, Moorhead and Stanton. He told Stanton that he had come to take charge of the War Office, but Stanton refused to give up the position and ordered Thomas to his own room. Thomas then went across the hall to visit with General Schriver. Stanton followed him. What took place in Schriver's room did not come out at this time, but was later told when Thomas took the stand. It was shown, however, that there was no hostile feeling between Thomas and Stanton, and that force was not attempted or ever referred to.

Walter Burliegh was next sworn in and he related a conversation he had with Thomas. Stanbery, chairman of the President's counsel, objected to that testimony. The Chief Justice, however, thought it was admissible, but his right to judge was challenged by Senator Drake. The Senate thereupon retired to discuss the matter in secret. After an absence of three hours it returned
a decision in favor of admitting the evidence. The Senate also decided that
the question of admitting testimony should hereafter rest with them. The Chief
Justice might give his opinion as to whether evidence was admissible or not, but
should his decision be challenged it would be settled by vote. In this matter
the Senate was not following court procedure but rather that of a tribunal.
Thus Butler's argument had been accepted on determining Senate procedure.

The conversation between Thomas and Burleigh, which was now allowed to
be put in evidence, had taken place on the night of February 21. Thomas had
stated that he intended to take charge of the War Office at ten o'clock the
next day, and if Stanton resisted, Thomas would meet force with force. Samuel
Wilkeson said Thomas had stated if need be, he would call on General Grant for
force to enable him to obtain possession of the War Office.

George Karsner, an old man from Delaware, testified that Thomas had
made the remark that he (Thomas) was going to kick Stanton out of office.
These threats of Thomas were used by the managers to prove the alleged conspir-
acy between Thomas and President Johnson to gain control of the war office.

In order to prove the charges in the ninth article, which were that
President Johnson had conspired with Emory in an attempt to gain control of the
military forces in and about Washington, Emory was put on the stand. He testi-
fied that he had been called by President Johnson and asked what changes had
been made in the location of troops about the city. He had told the President
of the changes and had assured him that there were no others, as all orders in
that branch of the army came through him according to the Army Appropriation
Act. President Johnson thereupon asked to see a copy of the act. After reading
Section II which stated that all orders and instructions relating to military
operations issued by the President or Secretary of War should be issued through
the General of the Army, President Johnson gave it as his opinion that the act
was unconstitutional. This testimony of Bracy destroyed the force of the charges in the ninth article. The President had not conspired with Bracy; he had merely asked about the location of the troops in the city, and had given his opinion on the constitutionality of the Army Appropriation Act. That was the first blow to the case against the President as set up by the managers. Up to that point they had built up a convincing argument, not on law to be sure, but on the supposed evil intentions of President Johnson. But in the ninth article even the unlawful motives charged against the President failed to receive the indorsement of their own witness.

The fifth and sixth days of the trial were spent in going over the speeches of President Johnson in an attempt to prove the charges of the tenth article. Several reports of the speeches were read and a good deal of argument took place as to the validity of the reports. Most of the discussion was of little consequence as it dealt with punctuation, pronunciation, and emphasis given to different sections. The speeches had been delivered, but they referred to the Thirty-nineth Congress and not to the Congress then in session. If the speeches furnished a cause worthy of impeachment it appeared strange that the Thirty-nineth Congress had taken no action. Then too, the report had been broadcast that while on a speaking tour, the President had been under the influence of liquor. The absence of any such charge, both in Butler's speech and in the testimony convinced the public that such a report was false. Therefore, the tenth article, like the ninth, did more harm than good in the case against President Johnson.

The presentation of the evidence by the managers of the impeachment had occupied five days. It was completed on Thursday, April 9, and the case was

7. These testimonies are found in Supplement to Congressional Globe, op. cit., 53-123
turned over to the counsel for President Johnson.

The case for President Johnson was opened by Benjamin Curtis. He was a lawyer of first rank and in appearance was a striking contrast to Butler who opened the case for the House of Representatives. Curtis was most exact in language, posture, and dress. He was a lawyer who used not gestures and oratory, but points of law to win his cases.

The Senate consisted of fifty-four members, twelve Democrats and forty-two Republicans. The Democrats were sure to vote for acquittal. About twelve Republicans came to the trial with their minds already made up to vote for conviction and the remainder intended to hear the evidence both for and against the President before they passed judgment. It was to this group, whose minds were still open, that Curtis addressed his speech. If he, and his colleagues, could but convince seven of these men of the innocence of the President, then their case would be won. It required a two-thirds vote or thirty-six to convict the President. If seven Republicans voted with the twelve Democrats for acquittal, the decision would acquit the President by a vote of thirty-five to nineteen.

Curtis began his speech by reminding the Senators of their oath to do impartial justice and also asked them to judge, not on foregone conclusions, party spirit nor political schemes, but rather upon the law and facts of the case. With this introduction he proceeded to take up the articles of impeachment. As he saw it, the chief point to be decided by the first eight articles was whether or not Stanton was affected by the tenure of office act. If he could show that the removal of Stanton did not come under the law, then he would have refuted the main charge in the articles. He read the tenure of office act and then proceeded to attack the argument made by Butler, that under the law Stanton should serve the full two terms for which Lincoln was elected.
In the first place, Stanton had never received an appointment during Lincoln's second term. Therefore had Lincoln lived, he could have dismissed Stanton, under the tenure of office act, one month after his second term began. The act stated that a secretary should hold his office during the term of the President who appointed him, but it did not extend this term to all succeeding terms for which the President shall be elected. Furthermore Stanton, when he was removed, was not serving Lincoln's term as contended by Butler but rather President Johnson's term. According to the United States Constitution, in case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President. Therefore a term may not be for four years, there are limitations and death is one of them. Upon Lincoln's death his term ended, and Johnson became president. It was now Johnson's term and Stanton had never been appointed by him as Secretary of War.

In answer to the fact that President Johnson had ordered commissions changed to conform with the tenure of office act, and that he, Johnson, had suspended Stanton according to the law, Curtis pointed out that although the President thought the tenure of office act was unconstitutional he was willing to conform to it. Thus he followed the law and made appointments under it. Also, in order, to show his good intentions, and to avoid a conflict with Congress, he suspended Stanton under the act. When the suspension of Stanton was not confirmed by the Senate the President, then proceeded to exercise his power of removal vested in him by the Constitution. That he intentionally disobeyed the law was not true. He was of the opinion that the law was unconstitutional, but furthermore, he also contended that Stanton was not protected by the law. This was not alone his impression but that of his entire cabinet, including Stanton himself. At the time the law was passed it was discussed in
a cabinet meeting. The members of the cabinet agreed that it was unconstitutional and also that in no way did it affect the present members.

Curtis went on to show why the term of office of cabinet members had never been made a fixed length of time, until of course, the present tenure act had been passed. Cabinet members according to the Constitution were the advisors of the President, they were to perform such duties as were assigned to them under the direction of the President. They were to be the immediate confidential assistants of the President, for whom he was responsible but in whom he was expected to repose complete trust and confidence. When that confidence was once lost it was time that a change should be made in the cabinet.

In answer to article two, which charged that the letter issued to Thomas appointing him Secretary of War ad interim was unlawful, because, there was then no vacancy in that office, Curtis replied in a few well chosen words. He maintained that the power of removal was vested in the President, and as soon as Stanton received the notice of removal a vacancy existed. Then the President had the legal right to fill that vacancy until a nomination could be made, sent to the Senate, approved by it, and a commission issued. This was the exact course which President Johnson attempted to follow. The letter of authority to Thomas was not a commission and was never intended to be so. The President had nominated Thomas Ewing Secretary of War and had sent his name to the Senate for their approval on February 21, 1868.

The conspiracy articles were dealt with in pairs, the fourth and sixth charged a conspiracy between Thomas and the President in violation of the act to define and punish certain conspiracies. Curtis referred to the law and showed that it was merely a military act, and, furthermore, it did not affect persons in the District of Columbia. As to the employment of threats, force or intimidation none had been used, and none had been proven by the testimony
produced by the managers. The fifth and seventh articles simply alleged an unlawful conspiracy but came under no law at all.

The ninth article which charged a conspiracy between President Johnson and General Emory had little grounds for support. Curtis called the attention of the Senate to the fact that the alleged conspiracy had been disproved by the witness whom the managers called in to support it.

The tenth article which dealt with the speeches of President Johnson was next taken up. Curtis stated that according to the Constitution the people of the United States were guaranteed freedom of speech. President Johnson had merely exercised that right, but the managers had charged that he used improper speech. In answering this charge, Curtis asked who would judge whether a speech was correct and proper? In this case it would be the United States Senate. If the Senate were allowed to pass on the kind of language to be used by Federal Officers then freedom of speech was gone, and in its place would be that freedom of speech which caused so many to lose their lives under the rule of the Tudors and Stuarts.

The eleventh article was passed over, with the remark from Curtis that it contained nothing which was not found in the other articles. He closed his speech with a few remarks on the importance of the trial.

After Curtis had finished speaking the Senate took a fifteen minute recess. When it was over, and the Senators had resumed their seats, the counsel for the President proceeded to produce their evidence.

General Thomas, the first witness for the defense, was called to the stand. He testified that he had received a letter from President Johnson authorizing him to act as Secretary of War ad interim, and that he had gone to the War Office and informed Stanton of that fact. Stanton had then asked if he was to vacate at once or if he would be allowed time to remove his private
property. Thor told Stanton to act at his pleasure. He then left the War Office and went to his own room, where he proceeded to make a copy of the letter authorizing him to act as Secretary of War ad interim. Stanton had requested a copy of the letter and when Thomas returned to the War Office and handed Stanton the copy, Stanton said he didn't know whether he would obey the order or whether he would resist. Stanton then handed to Thomas an order which he had just issued. It forbade Thomas to issue any orders as Secretary of War ad interim.

From the War Office Thomas had gone directly to President Johnson to report what had taken place. He was about to relate the conversation he had had with the President when Butler objected. Butler maintained that the conversation had taken place after the crime had been committed. The letter of authority had been given to Thomas and an order of the removal of Stanton had been issued. These two things constituted the crime. What happened after that, continued, Butler, had no bearing on the case. Bingham, in an attempt to exclude the testimony of Thomas told the Senate that this was the first time in his experience that an attempt to introduce as testimony the declarations of a criminal made after the crime had been committed, had ever been made.

Stanbery of the President's counsel, pointed out that Thomas was not being impeached and was therefore free to give testimony. The dispute was voted on by the Senate and by a vote of forty-two to ten it was decided that the conversation between Thomas and the President was admissible. Thomas then related how he had reported to President Johnson what had happened in the War Office. The President thereupon replied "Very well; go and take charge of the office and perform the duties." Continuing the testimony, Thomas told of his

8. Supplement to Congressional Globe, op. cit., 140
9. Ibid. 140
conversation with Karsner of Delaware. Karsner had asked Thomas when he was going to kick Stanton out, and Thomas made reply, "Oh, we will kick him out by and by". The idea had come from Karsner, as Thomas hastened to state, and that as far as he was concerned he had no ill feelings against Stanton. That and the similar conversations with Burleigh and Wilkeson, in which Thomas had stated that he would break down the doors of the War Office, and apply to Grant for help, had taken place on the evening of February 21st.

On the morning of the 22nd, according to Thomas, he was arrested and taken before Judge Carter. There he was required to give five thousand dollars bail and then released. He then went to President Johnson and told him what had happened. Thereupon President Johnson told Thomas that he wanted the case to come before a court. Thomas then went to the War Office and demanded Stanton to give up the office, but Stanton refused. Thomas sat down and he and Stanton had a friendly talk. Whiskey was brought in and they drank equal drinks.

Butler in his cross examination of Thomas used all the wiles he was capable of, and succeeded in mixing Thomas up on two dates. But Thomas stood fast on his testimony and gave the impression of being an inoffensive old man who was doing his best to tell the truth.

The testimony as given by Thomas quite thoroughly disproved the charges made in the conspiracy articles. Johnson had at no time advised Thomas to use force, and Thomas had at no time attempted to use force, threats or intimidation. The knowledge of the friendly drinks taken by Stanton and Thomas, when they were, according to the managers, on the verge of coming to blows, made such charges appear ridiculous.

William T. Sherman was next sworn in. He had been tendered the position

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10. Supplement to Congressional Globe, op. cit., 141
of Secretary of War at two different times by the President, once on January 25th and again on January 30th. The counsel for the President wanted to put in evidence the conversations which Sherman had with the President at these times, in an effort to show the motives back of these attempted appointments. The defense objected on the ground that a criminal could not testify as to his reasons for his acts. Still the articles charged unlawful intentions, and the counsel for the President claimed that this evidence of Sherman's was needed to disprove such contentions. The debate over this question was long and heated. The senate, three different times voted the testimony inadmissable. Senator Reverdy Johnson then put the following question to Sherman: "When the President tendered to you the office of Secretary of War ad interim on the 27th of January, 1868, and on the 31st of the same month and year, did he, at the very time of making such tender, state to you what his purpose in so doing was?"11

This question was voted on by the Senate, and to the surprise of the managers, was admitted by a vote of 26 to 22.12 The testimony then given by Sherman revealed nothing in the way of unlawful intentions.

Documentary evidence was next produced which gave the names of all the cabinet members and also how they had received their position, whether by appointment made in recess, confirmed by the Senate, or merely acting ad interim.

It showed that fifteen ad interim appointments had been made up to date.13

Evidence was then introduced, over the objections of the managers, which proved that after Thomas was arrested no attempt was made to bring him to trial. President Johnson wanted Thomas to stand trial because that would bring the case

11. Supplement to Congressional Globe, op. cit., 169
12. Ibid. 169.
13. Ibid. 194.
before the Supreme Court, where he had often times said he wanted it.

In order to prove that the appointment of Thomas was merely an **ad interim** appointment, the counsel for the President introduced the nomination of Thomas Ewing to be Secretary of War. This nomination had been made by President Johnson and sent to the Senate on February 22, 1868. President Johnson never intended that Thomas should be Secretary of War, he was merely to act Secretary of War **ad interim** until an appointment could be made.

When this evidence had been given, Evarts asked that the Senate adjourn until the next day. This request angered Butler and he attacked the motion for adjournment in a disgraceful speech. 14 Evarts said in referring to Butler's speech, "I have never heard such a harangue before a court of Justice, but I cannot say that I may not hear it again in this court." 15 The Senate adjourned until the next day.

When the court met the next day, Friday, April 17, most of the time was spent in going over the speeches of President Johnson as charged in article ten. After these speeches had been thoroughly gone over, and nothing new or important had been revealed, Gideon Welles, Secretary of the Navy took the stand. He disclosed the fact that he had heard of the movement of troops about the city, and had gone to the President to find out the cause. When Welles learned that President Johnson knew nothing about the affair he advised the President to call General Emory and learn the purpose of the shifting of troops. This testimony of Welles plus that which had been given by General Emory completely disproved any conspiracy between President Johnson and General Emory as charged in article nine.

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14. Butler's speech is found in *Supplement to Congressional Globe*, op. cit., 208-209
Welles' testimony brought out the fact that President Johnson supposed that Thomas was in charge of the War Office, Stanton only requiring time to remove his personal belongings. Also that the nomination of Thomas Ewing to be Secretary of War had been written out on February 22nd.

The counsel for the President attempted to have Welles testify what had gone on at the cabinet meeting when the tenure of office bill was brought before them. An objection was raised to this testimony, and the Senate by a vote of 20 to 29 refused to admit it. The Senate also refused to admit testimony to prove that the cabinet members including Stanton, were of the opinion that secretaries appointed by Lincoln were not protected by the tenure of office act. Welles was not allowed to testify, and the other members of the cabinet who were present, as witnesses, were never sworn in.

The exclusion of evidence, by the Senate, made it very apparent, to everyone concerned, that President Johnson was not to receive a fair trial. To be sure, before this time evidence on both sides had been objected to, and voted inadmissible. But no testimony as important as that which the cabinet members could give, nor any which had such a direct bearing on the case had hitherto been barred.

This practically closed the presentation of the case by the defense and the Senate adjourned over Sunday. On, Monday, April 20th, a few minor points were discussed and it was then decided that in closing the trial as many managers, and members of the President's counsel, could speak as wished to do so. But the case would be opened by the managers and also one manager should speak last. Senators who wished to do so could file their opinion of the trial on or before two days after the final vote was taken.

16. Supplement to Congressional Globe, op. cit., 231
17. Twenty-seven Senators filed opinions. Ibid. 417-526
CHAPTER II

THE FINAL ARGUMENTS
CHAPTER II

The Senate met on Wednesday, April 22, 1868, to hear the final arguments of the managers and of the defense. According to the Senate rules, the case was to be opened and closed by one of the managers. The rule also provided that in case a manager, or one of the counsel for the President did not choose to address the Senate, he might file a written argument. John A. Logan, one of the managers took advantage of the rule and filed his argument.¹

George S. Boutwell opened the argument for the House, and spent parts of two days in presenting his case against the President. He stated the chief issue was whether President Johnson had violated the constitution and the law when he attempted to remove Stanton and to appoint Thomas. Boutwell said that President Johnson claimed the right of removal under the constitution. In answer to this, he first called attention to what power an evil minded executive might exert if he could, unrestricted, remove from all offices, officers in the executive department. He next turned to the Constitution and discussed a number of points which were familiar to everyone, and which had little or no bearing on the case. In regard to the motives for Stanton’s removal, Boutwell charged President Johnson with a deliberate attempt to gain absolute control of the Government. He claimed that when President Johnson tendered the War Office to Sherman, he knew very well that Sherman would resign the War Office at any time President Johnson requested him to do so. When Sherman refused the nomination of Secretary of War President Johnson selected Thomas for the position. Thomas was a broken, old man, one that could be used as a tool. As soon as President Johnson heard that the House had started impeachment proceedings he sent to the Senate the nomination of Thomas Ewing. Ewing was well known and an excellent

¹ Supplement to Congressional Globe, "Trial of Andrew Johnson", 40th Congress, 2nd Session, Washington, D. C. 1868, 251
citizen, but he was seventy-nine years of age, and would also have been merely a tool of the President. Continuing, Boutwell stated that General Cox had been mentioned to President Johnson as a candidate for Secretary of War. Cox was not the type of man to fall in with the President’s schemes, and so had never been considered.

The tenure of office act, said Boutwell, was legally passed and it was the duty of the President to execute it. This act made no change in the power of the President to remove during the session of the Senate. The President had never had the power to remove an executive officer when the Senate was in session without the consent of the Senate. The tenure of office act provided for the suspension of an officer during the recess of the Senate. President Johnson had recognized the act to be a law by suspending Stanton under that provision. The act also stated that a cabinet officer should hold office for the term of the President by whom he was appointed and one month thereafter. Boutwell maintained that Stanton, at the time he was removed, was serving Lincoln’s term. The constitution stated that a president’s term should be for four years. The death of the President had no affect upon the term or the office, the Vice President took the President’s place, but the term remained the same. The testimony, which the defense had endeavored to bring in, to prove the opinion of the cabinet members on the constitutionality of the tenure of office act would have been worthless, said Boutwell. The cabinet members had known the opinion of the President in regard to the act, and in order to hold their offices they were compelled to agree with him.

The claim that President Johnson’s sole purpose in removing Stanton was to test the constitutionality of the tenure of office act, was attacked by Boutwell. He pointed out that President Johnson had suspended a number of officers, in conformity with the law. This proved that he had not desired to
test the act, he would have done so at his earliest opportunity. Should he
have wanted merely to test the act he would have applied for a writ of quo
warranto through the Attorney General. Had President Johnson proceeded by a
writ of quo warranto, an official opinion in regard to the tenure of office act
would have soon been issued. The fact that he made no such application, argued
Boutwell, proved that he had not wanted to bring the law before the courts, but
that his purpose in the removal of Stanton was to seize the office of the War
Department for corrupt purposes.

An attempt was made by Boutwell to make something out of the conspiracy
articles, but he failed to add any strength to them, and admitted that in such
articles there was nothing but circumstantial evidence to prove them. His re-
marks on the tenth article likewise carried little weight. He gave, however, a
new view to the charge made in the article. He held that the House had not
arraigned the President for slander or libel against the United States Congress,
but the charge was whether or not a man who could utter such words should hold
the Presidential office. He closed his speech by emphasizing the importance of
convicting President Johnson. According to Boutwell, President Johnson was not
a fit person to remain on the earth, but should be transported to that part of
the southern Heavens known to astronomers as the hole in the sky.¹

Boutwell’s speech was one of the weakest given during the trial. He
appeared afraid to attack the case on the points of law. In some parts of his
speech he went into minute detail but merely gave well known facts. Where a
vital issue in the case had to be faced, he failed to make his point, but he was
apt at avoiding or misconstruing the real issues. Before an ordinary jury his
speech might have been considered passable, but the Senators gave it very little

¹ Boutwell’s speech is found in Supplement to the Congressional Globe,
        op. cit., 268-286
attention. A recess was taken while he was speaking and when the Senators resumed their seats again, only forty-four were present. Ten had heard enough for one day.

Thomas A. R. Nelsen, from Tennessee, was the first to speak for the defense. Nelson was a personal friend of President Johnson, and knew all about his record during the War, both as a member of Congress and as military governor of Tennessee.

Nelson could no longer sit quietly by and allow the President's character to be questioned. The managers had charged President Johnson with trying to overthrow the constitution, of being a traitor to his country, and in numerous other ways of being a man unfit to be President. In answer to these charges, Nelson made a strong personal appeal. He reviewed President Johnson's career in the Senate during the years of 1860 and 1861. He told of the speeches President Johnson had made in defense of the nation at a time when all other Senators were afraid to speak. He recalled how Johnson, at Lincoln's suggestion, had accepted the position of military governor of Tennessee, a very dangerous post, and how he had faithfully executed the duties of that position. When he became President he had not, explained Nelson, broken with the party which had elected him Vice President. He had made every effort to promote peace and harmony within the party. He had kept Lincoln's cabinet. He had attempted to follow the plan of reconstruction that had been outlined by Lincoln, and at all times he had been faithful to his oath of office.

The contention, made by Butler, that the Senate was a tribunal and not a court was next attacked by Nelson. He claimed that Butler had no right to base his opinion on former trials of impeachment, because no President had ever been tried, and therefore there would be no rules of precedent to follow. The const-

2. Supplement to Congressional Globe, op. cit., 274
stitution used the word trial, and trial meant a judicial proceeding. Butler had also informed the Senate that they were bound by no law, but were a law unto themselves. Nelson refuted this stand of Butlers, when he told the Senate that its duty under the constitution was legislative. Butler had asked the Senate to set itself up as the law of the country, to judge the constitution. Nelson protested that the Senate had to act in accordance with the constitution. The American people were the only ones who had a right to change any of its provisions.

Nelson next turned his attention to the tenure of office act. He declared that the act was unconstitutional. In order to support his contention, concerning the act, he referred to the debate in the House in 1789, which took place on the bill to establish the Department of Foreign Affairs. At this time the question came up about the removal of cabinet members. It was agreed that since they were the advisors of the President, and that he was to be held responsible for their actions; no restrictions should be placed on him in regard to removals.

Further Nelson said that President Johnson had asked the advice of the Attorney General in regard to the tenure of office act, and had received an opinion stating that the law was clearly unconstitutional. During Jackson's administration the question of removal of executive officers had been taken up by the Senate, and it was then decided that the President had the constitutional power to remove. In regard to the tenth article which dealt with the President's speeches Nelson asserted that President Johnson was merely using his constitutional right of freedom of speech. And furthermore the speeches referred to in the article, were not official communications, but that they were private and personal.

The next speaker in the impeachment trial was Groesbeck of the President's

3. Nelson's speech is found in Supplement to Congressional Globe, op. cit., 286-310
counsel. Groesbeck had taken no part in the trial up to this point, and there was a doubt in the minds of some of the Senators as to his ability. He had a well prepared speech, but was unable to do much in the way of oratory because of illness. The presentation of his part of the defense, however, made a great impression on the Senate.

Groesbeck told the Senate that impeachment was not invented for the purpose of trying officers who had been elected by the people, and to start such a practice would be dangerous to the country. It had never been done before and if started now would really put the control of the government in the hands of the House and Senate.

Groesbeck answered the contentions that the Senate was a tribunal and not a court, by citing statements and extracts from all of the impeachment cases which had been held in the United States. In each of previous impeachment trials the Senate had been referred to as a court. As a court Groesbeck made an appeal to them, to try the case of the President upon the evidence offered and not on party policy or newspaper rumors.

The first eight articles, Groesbeck continued, were built upon two acts of the President; the removal of Stanton and the issuing of the letter of authority to Thomas. If the President had a right to remove Stanton then a vacancy would be created in the War Office and the President would have the right to issue the letter to Thomas. The whole case against the President, as Groesbeck saw it, dealt with the removal of Stanton, and on this point he spent most of his time. He contended that Stanton was not protected by the tenure of office act. Stanton had been appointed by Lincoln on January 16, 1862, during his first term. Stanton’s commission read, to serve at the pleasure of the President. He had neither received an appointment under Lincoln’s second term nor under President Johnson’s term. The very terms of the commission under which he
served, Groesbeck claimed, gave a President the right to remove him at will.

Groesbeck then attacked the removal of Stanton, from a different angle. If Stanton was within the tenure of office act, what would be the position of the President? The President at all times had the right to construe a doubtful law, continued Groesbeck. President Johnson not only thought Stanton was outside the act, but to verify his opinion of the law he had called his cabinet together to discuss the act. They had informed him that, in their opinion Stanton was not included under the tenure of office act. The Attorney General had been at that cabinet meeting, and it was his duty to inform the President on points of law. President Johnson relied on the opinion of the Attorney General when he stated that Stanton was not protected by the act. Had it then been proven that Stanton did come under the tenure of office act, still Groesbeck maintained that President Johnson was innocent, because he had acted upon the advice of the Attorney General.

Groesbeck next attacked the tenure of office act. He quoted from congressional acts, that had been passed, establishing the several departments in the President's cabinet. In every case the acts had stated that the removal of the cabinet members referred to should be by the President. The tenure of office act stated that removal was to be made by the President with the consent of the Senate. To this President Johnson had objected, as in his opinion it tended to curtail his constitutional power of removal. He had consulted his cabinet concerning the act, and had come to the conclusion that it was unconstitutional. He then desired to test the law by bringing a case before the courts. Manager Boutwell had stated that a President had no authority to judge a law, but his duty was to faithfully execute all laws. Groesbeck maintained that the President was not merely the constable of the nation, but it was the President's duty to understand a law before he executed it. The oath of office required a
President to preserve, protect, and defend the Constitution of the United States. Should a President execute an unconstitutional act he would be doing so in violation of his oath of office. A President must therefore be allowed, continued Groesbeck, some method of judging a law.

The fact that President Johnson had suspended Stanton, according to the tenure of office act, and had thereby recognized its constitutionality was a strong fact in the case against the President. Groesbeck answered the point by saying that President Johnson had come to the conclusion that he could no longer trust Stanton in the War Office. Stanton had ceased to attend cabinet meetings, and refused to communicate with the President. The confidence between Stanton and the President was gone and therefore President Johnson had decided that Stanton would have to be removed. He first had suspended Stanton under the tenure of office act, and at the next meeting of the Senate gave the reasons for the suspension. Had the Senate concurred on that suspension Stanton would have been out of office. That was what President Johnson had thought would happen. He would have then been rid of Stanton without contesting the tenure of office act. When the Senate refused to concur on the suspension of Stanton, President Johnson decided to bring the case before the courts. He removed Stanton from office, and appointed Thomas. He defended his acts, on the power of removal vested in him by the constitution. Groesbeck also said that the President was of the opinion that Stanton was not protected by the tenure of office act and furthermore the act itself was unconstitutional.

Groesbeck said very little about the other articles of impeachment, but left them for the discussion of the other members of the Presidents counsel. The main charge in the articles was that President Johnson had violated the

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4. Groesbeck's speech is found in Supplement to the Congressional Globe.
tenure of office act in the attempted removal of Stanton. Groesbeck had successfully answered that charge, and when he had finished speaking the articles were shorn of their strength.

The next person to address the Senate was Stevens, one of the managers of the impeachment. Stevens was an old man, and so weak that he had to be carried to and from the Senate chamber. Despite his physical condition he was anxious to do all in his power to convict the President. His speech was written out, and he stood reading from his manuscript for a few minutes, but became too weak to stand, and obtained permission to take a seat. He continued to read for about half an hour when, his voice became too weak to be heard. He then gave his manuscript to manager Butler who finished the reading.

Stevens confined his discussion to the eleventh article. This article had been included in the articles of impeachment at his request and he felt it his duty to defend it. He maintained that it made no difference as to the intentions of the President in regard to the removal of Stanton, but the question at issue was had President Johnson disobeyed the law. The tenure of office act was duly passed on March 2, 1867 and it was the President's duty to obey and execute the law. President Johnson in violation of the law had removed Stanton and appointed Thomas. The counsel for the President contended that Stanton's case was not within the provisions of the tenure of office act. That Stanton was appointed by Lincoln during his first term, and had never received an appointment during President Johnson's term. Stevens claimed that President Johnson did not have a term of his own, but was serving Lincoln's term. The constitution provided that the term of a president should be for four years, and in case of the death or removal of the President the powers and duties of the office should devolve on the Vice President. Nothing is said in the constitution as to a change of term, the term of four years remains the same. Therefore, continued
Stevens, President Johnson was serving in Lincoln's term, and since Stanton had been appointed by Lincoln, he was entitled to serve the full four years of that term and one month thereafter. The President's claim that he had removed Stanton with the desire to test the constitutionality of the tenure of office act was not valid, Stevens maintained. The act had been tested and decided to be a law when it was passed over the President's veto by a two-thirds vote of the Senate and the House. It now became the duty of the President to execute the law, but he had not obeyed it himself and had attempted to induce others to disobey it.

Stevens next discussed the difference of opinion between President Johnson and Congress in regard to reconstruction in the South. He told how President Johnson had attempted to bring the Southern States back into the Union, and that Congress had objected and formulated a method of their own for reinstating the Southern States. President Johnson had attempted to block Congressional Reconstruction at every turn, according to Stevens, and had even advised the Southern States to disobey the laws passed by Congress.

Stevens in opening his speech had stated that he meant to discuss article eleven on purely legal grounds, and not in a mean or partisan spirit. Also that abuse and railing accusations had no place before such a dignified tribunal. That Stevens really meant these statements is doubtful. That he did not live up to them is certain. Before he had spoken ten minutes, his extreme hatred for President Johnson could no longer be concealed and his speech turned out to be a masterpiece of abuse.5

Williams, a manager of the impeachment, followed Stevens, and addressed the Senate for two days. He was a warm friend of Stanton and an avowed enemy 

5. Stevens' speech is found in Supplement to Congressional Globe, op. cit., 320-324
of President Johnson. His speech was filled with hatred and bitterness. He used metaphors and similes continually in an attempt to degrade the President. Of all the speeches that were made against President Johnson, his was the most bitter and abusive. He informed the Senate that the House had not wished to bring impeachment proceedings, but it was forced upon them by the acts of President Johnson. Nelson, in his speech, had reviewed the patriotic work of President Johnson in the Senate, and as a military governor of Tennessee. Williams in answer hinted that even at those times President Johnson was laying the foundation for the overthrow of the government. He next, reviewed a long list of acts committed by President Johnson after he took office, in an attempt to prove that President Johnson's sole purpose was to gain control of the government. He stated that President Johnson had attempted to bring the Southern States back into the Union by a method of his own. He had created offices unknown to the law, and filled them with his friends. He had abused the pardoning power in releasing the leaders of the rebellion, and in return he expected them to support him. He had attempted to block Congress at every turn and had grossly abused his veto power. These acts, Williams contended, had been overlooked by the House in an effort to keep peace with the President. But when President Johnson removed Stanton, the House could no longer continue to allow him to over ride the laws and were compelled by the American people to impeach him. Williams, next, discussed the constitutionality of the removal of Stanton but added nothing new to the case. He repeated what the managers who spoke before him had said, that Stanton was appointed by Lincoln and the term that President Johnson was serving was Lincoln's term. Stanton was therefore protected by the tenure of office act which stated that cabinet members should serve for the full term of the President who appointed them and one month thereafter.
Williams next turned to the tenure of office act, he maintained that President Johnson had recognized the constitutionality of the act when he suspended Stanton under it. The testimony that the counsel of the President tried to introduce to show the opinion of the cabinet members in regard to the act would have been of no value, continued Williams, because it went on the assumption that the President was not responsible for his acts. This was the type of argument that filled Williams' speech. He talked for two days; he heaped every abuse possible upon the President. In his closing remarks he made a fiery appeal for President Johnson's removal. He spoke of the plea of the President’s counsel for mercy, and in answer he said, "Mercy to whom? To the loyal men whose carcasses are piled in carts like those of swine, with the gore dripping from the wheels, in that holocaust of blood, that carnival of murder which was enacted in New Orleans?" He then told the Senate that it was the cry of the loyal people that this "bold, bad man" should be removed.

Evarts, of the President’s counsel, was to follow Williams, and the Senate chamber was packed with people desirous of hearing him speak. But Butler had not been heard from for many days, and this was his chance to appear once more before a crowded chamber. He rose to his feet and in a heated speech attacked Nelson for the description he had given of the reason for the resignation of Judge Black from the President’s counsel. Butler maintained that the letter he had signed urging the President to send an armed vessel to Alta Vela was dated before the impeachment had begun. Nelson, rose, in a fit of anger, and made answer to Butler. He was called to order by the Senate; Nelson, begged pardon of the Senate, and asked that he might be allowed to produce the letter.

6. Supplement to Congressional Globe, op. cit., 335
7. Williams' speech is found in Ibid. 324-335
on the next day, so as to verify the date. When the letter was brought in the next day, it bore the date of March 9, 1668. Butler was wrong, but he had succeeded in bringing about the most disgraceful scene of the whole trial.

Evarts, next, addressed the Senate. He was from New York and was considered a lawyer of first rank. Stanbery chairman of the President’s counsel was sick and had not been able to attend the trial for a number of days. The chief place in the President’s defense, therefore was left to Evarts. His speech occupied three days in delivery, and was the best given during the entire trial.

He first called the attention to the fact that President Johnson had been elected by the people and should he be put out of office, the people would want to know the reason. The answer, that, President Johnson had attempted to remove a cabinet member, would not be satisfactory, because the people were accustomed to having cabinet members removed by the President. If President Johnson was removed from office, the Senate intended to put their president pro tem, Wade, in the president’s chair. To this Evarts made the objection that Wade had never been chosen by the people for that position, and furthermore, it would set up a precedent whereby the Senate and House could remove a President and Vice President, duly elected by the people, and put in office men of their own.

To the question of whether the Senate was a court, Evarts pointed out that the constitution provided that the President upon impeachment should be tried, and if proven guilty he should be removed from office. The word tried, referred to a court, and the judgement, to be removed from office, could only come from a court. Evarts charged manager Butler of trying to convince the Senate it was not a court, so the managers could win their case not on points of law, but on party politics, abuse and loud speeches.

Evarts, by use of his ready wit, succeeded in turning back upon the managers some of the taunting remarks they had flung at the President and his
counsel. This humor of Evarts helped as much as anything toward a vote of acquittal for the President. The points of law in the case had been gone over many times, until they were familiar to every Senator. Evarts, not only went over the charges made in the articles, but he dealt with them in a way which made them appear ridiculous. He showed that the managers themselves disagreed as to the value of the charges made in the articles. Butler had considered it worthless to discuss the eleventh article, for as he said if the President was not convicted on the first ten it was useless to vote on the eleventh. Stevens had spent his whole time on the eleventh, as he thought even a "country lawyer" might find answers to the charges in the first ten articles but the eleventh was unanswerable.

The first article to be discussed by Evarts was the tenth, which contained the speeches of President Johnson. Evarts told the Senators that during the trial he had been forced to listen to speeches which were less rhetorical and far more abusive than those made by President Johnson. Evarts did not stop on the eleventh article but said he would leave it for the managers to dispose of. He next took up article nine. It charged a conspiracy between General Emory and President Johnson. This charge was groundless and had even been disposed of and disproved by the managers themselves. Evarts made a joke of it, and then turned his attention to the articles charging a conspiracy between President Johnson and Thomas. He stated that the alleged conspiracy consisted of the letter of authority to Thomas authorizing him to become Secretary of War ad interim. This letter was in writing and was a public document. In the examination of witnesses the managers had, after a good deal of work, succeeded in proving that aside from the written order to Thomas, the President had made the statement that he wished to uphold the laws and the Constitution. This statement according to the managers carried with it the gravest suspicions, because it was not
part of the regular routine in making appointments. This charge was also made laughable by the able Evarts. He further pointed out that no force had been used to obtain the War Office, and that Stanton still held control of it. There were only two charges left in the articles of impeachment, the appointment of Thomas and the removal of Stanton.

Evarts first took up the matter of the appointment of Thomas. He called attention to the fact that the letter issued to Thomas carried with it no commission and was therefore not a real appointment, but merely an ad interim appointment. The Constitution said nothing in regard to ad interim appointments but it had been the practice of former Presidents to make such appointments to fill vacancies, until a person should be nominated and confirmed by the Senate.

In dealing with the removal of Stanton, Evarts, referred the Senate to its own discussion of the tenure of office act when it was before them to be voted upon. It was the opinion of the Senate at that time, 1867, that the cabinet members under Johnson were not included in the act. Senator Sherman of Ohio, a member of the committee on the tenure of office bill had been asked to explain the bill, and among other things he had stated that if the President died the cabinet should go out of office.

Manager Boutwell in his argument had maintained that it made no difference whether the tenure of office act was constitutional or not, the charge was that President Johnson had violated it. Evarts questioned the logic of convicting the President under a law that was not valid. He then proved that the charge made under article one did not in itself come under the tenure of office act. The first article charged no removal, but merely an attempt to remove. The tenure of office act provided a penalty only in case of actual removal. Stanton had never been removed so his case was not covered by the act.
The managers had maintained that Congress possessed, through its power of legislation, the right, not only to create offices, but also to fix the length of term of any office not otherwise provided for in the constitution. Evarts did not debate that question since he felt it had nothing to do with the case. He even went so far as to concede that the managers were correct in the stand as far as this was concerned. But he maintained that did not affect Stanton and his term of office. Stanton, Evarts explained, held a commission which stated he should hold office at the pleasure of the President. Congress might pass a law which would determine the length of term of cabinet officers but they had no power to appoint men to hold these offices. That power was vested in the President. Had Stanton received a commission under the tenure of office law, and had the law been constitutional then his term of office would have been fixed by the act. But Stanton had never been appointed under the law, and therefore he served from day to day at the pleasure of the President. President Johnson had revoked the commission held by Stanton, and had every reason to believe Stanton would surrender the War Office. When he did not President Johnson had tried by a peaceable means to bring the matter into the courts.

Evarts had discussed all the legal points charged in the articles, and had made answers to them. He had shown that President Johnson had violated no law or the Constitution, nor had he committed any act worthy of impeachment. Evarts speech was the best given during the entire trial and when he concluded there was no legal strength left to the articles of impeachment. Evarts' speech is found in Supplement to Congressional Globe, op. cit., 337-368.
of the defense. But from that time he had been forced to retire, and the work
devolved upon Evarts. Despite his illness and the advice of his physician,
Stanbery was determined to be heard in the defense of the President. On account
of his physical condition he was able to speak for only a few minutes, and he
then asked that the Senate adjourn until the next day to enable him to continue
his speech. This request of Stanbery was granted, and the next day he again
attempted to address the Senate. He became so weak, however, that he handed his
manuscript to a friend to be read while he rested. After a short interval,
Stanbery arose and finished his speech.

The very apparent weakness, and distress under which Stanbery was labor­
ing caused a sympathetic feeling to prevail in the Senate chamber.

In his review of the articles, Stanbery, maintained, as had already been
stated by Evarts, that Stanton was not protected by the tenure of office act.
Stanton had never received an appointment under the law, and so it could not fix
his term of office. Stanbery next proved that even though Stanton were protec­
ted by the tenure of office act, still President Johnson had committed no crime.
Article one charged an attempt to remove Stanton but in order to violate the
tenure of office act, there would have to be a complete removal. Stanton was
still in the War Office, no attempt had been made to remove him. But his com­
mission which gave him authority to serve during the pleasure of the President
had been revoked. This the President had the right to do, but it did not cons­
stitute a removal.

Stanbery continued in his argument to prove that should the tenure of
office act be unconstitutional the President had committed no crime by trying
to test it before the courts. Whether the law was constitutional or not Pres­
ident Johnson had the right to construe the law for himself. All the points of
law had been taken up previously by other speakers and, Stanbery, although he
added nothing new to the case, summed up the arguments in a masterly manner. His closing remarks were a plea for justice. He maintained that President Johnson had done nothing that called for impeachment, but that he was a true lover of the Constitution. The Senate need not be afraid to acquit him for as Stanbery said the Constitution and the laws of the country would safely be guarded by such a man.9

The case for the President was closed with the conclusion of Stanbery's speech. One person was yet to address the Senate. John Bingham had been chosen by the House of Representatives to represent them in the closing argument against President Johnson. He was a forceful and fluent speaker, one who had the power of talking for hours on either side of a question.

He opened his speech by saying that he wished to address the Senate not in a partisan spirit, nor in a spirit of resentment, but upon the issues of the case. Hardly were those words out of his mouth when he launched forth into a bitter attack on President Johnson. He even called attention to the disgraceful appearance President Johnson had made before the Senate on March 4, 1865.10 Bingham appeared to realize the hopelessness of attempting to answer the arguments of the President's counsel on the points of law involved in the case. He therefore misconstrued the issues, mis-stated arguments, and vilified the President and his counsel. He held that the counsel for the President had claimed President Johnson had a right to set aside any law or provision of the Constitution. This position had never been taken by the President or his counsel, but that did not prevent Bingham from discussing it at some length. He declared that a President had no power to even question a law that had been

9. Stanbery's speech is found in Supplement to Congressional Globe, op. cit., 369-379
10. This was the date of the inaugural ceremonies of Lincoln and Johnson. Johnson had appeared before the Senate apparently under the influence of liquor.
duly passed. He stated, also, that should Congress pass a law declaring that the President should no longer be commander-in-chief of the army the President would have to abide by the act. According to Bingham, the President was not to protect the Constitution against laws passed by Congress, that was the solemn duty of the people. Whether the tenure of office act was constitutional or not Bingham did not care. He claimed that any act passed by Congress was a law until it had been repealed, and the tenure of office act had not been repealed. President Johnson had violated the law in his attempt to remove Stanton. Bingham spent two days discussing the power of the President to control the executive offices of the Government but his argument was inconclusive.

Bingham concluded his speech by making a plea for the conviction of President Johnson. People who had sat quietly through the great speeches of Evarts and Curtis, now broke out in applause. This demonstration had undoubtedly been planned on the part of the managers to help convince the Senate that impeachment was demanded by the people. Whatever the cause, Bingham's speech was not stirring enough to warrant such an outbreak. The Chief Justice called for order but was greeted with laughter and hisses. The Senate ordered that the galleries be cleared and the order was carried out. The trial was over, the case was in the hands of the Senate, and they choose to deliberate on it behind closed doors.

11. Bingham's speech is found in Supplement to Congressional Globe, op. cit., 379-406
CHAPTER III

THE ACQUITTAL
CHAPTER III

When the Senate met on Thursday May 7, 1868 it decided to adjourn until Monday May 11, and on that day to deliberate, behind closed doors, on the articles of impeachment. Each senator was to be allowed fifteen minutes to express his views, and could speak but once.

Even before the final arguments were over it was generally felt that the only hope of conviction rested on the attempted removal of Stanton and the appointment of Thomas. However, if conviction was not forth coming on those charges, the managers pined their hopes on the eleventh article which was a combination of all the other articles and had been concocted to catch wavering senators.

From the very beginning of the trial the Republican representatives had studied every vote that had been taken in the Senate. A study of the votes had shown that there were eleven Republican senators who sometimes voted with the Democrats and sometimes with their own party. They were Fessenden of Maine, Grimes of Iowa, Henderson of Missouri, Fowler of Tennessee, Trumbull of Illinois, Van Winkle and Willey of West Virginia, Anthony and Sprague of Rhode Island, Sherman of Ohio, and Ross of Kansas. With these eleven members of the Senate the managers used every method possible to secure a vote of conviction. Secret meetings were held and an intensive program was outlined to whip the wavering senators into line. They were threatened with assassination, the people from their home states were stirred up and asked to send letters and telegrams to them demanding conviction.

Thadeus Stevens went one step further. He was afraid that threats would not enable the managers to obtain votes enough to pronounce the President guilty. He therefore, on May 8, 1868, reported to the House a bill for the admission of
Arkansas. Arkansas would be under the influence of the Republican party and her senators could be counted on to vote for conviction. The fact that senators coming from Arkansas had not heard the evidence nor been at the trial made no difference to Stevens, as he said a person did not need to be present at the trial to convict a man like Johnson.

During most of the trial General Grant had thrown his influence on the side of the President. The managers knew the value of Grant's influence on the people and so they devised a scheme to win him over to their side. They offered Grant the Republican nomination for President if he would support them in the impeachment. At first Grant had refused, but by the first of May he had changed his mind. In a conversation with Senator Henderson, Grant attempted to convince Henderson that he should vote for conviction. According to Grant, Wade was sure to be President in a few days and the cabinet had already been picked. Butler was to be Secretary of State. The other members of Wade's cabinet were not mentioned by Grant.

The Senate met behind closed doors on Monday May 11. The Chief Justice read a view he had prepared on the charges. He informed the Senate that the main charge was the attempt to prevent the execution of the tenure of office act, and all other charges hinged on the main one.

Final deliberations on the articles began at eleven o'clock in the morning and continued until eleven at night. No reporters were allowed at the meeting and consequently there was no record made of what took place, nor of the speeches made by the senators. Individual senators however, kept a record of each other as they discussed the charges against the President, and that material

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became general knowledge as soon as the session was over. Grimes, Fessenden and Trumbull had delivered speeches favorable to the President on all the articles. Sherman could not be expected to vote for the first article, but he was convinced of the President's guilt on the second. Van Winkle and Willey were sure to vote against article one. Henderson had consumed his entire time speaking against the first eight articles. Ross had remained stubbornly silent and Fowler spoke so unreliable that no one could tell which way he would vote. Anthony and Sprague were sure to vote for conviction on at least one of the articles.

Of the eleven wavering senators only four were known to be ready to vote for conviction. One more was needed in order to obtain the necessary thirty-six votes. The House went into a secret session and Stevens reported a bill for the admission of North Carolina, South Carolina, Louisiana, Georgia and Alabama. If these states were admitted, ten more senators would be ready to judge the President.

The Senate met on the twelfth, the day appointed to vote on the articles. Senator Howard was not in his seat. He had been sick for a number of days and was unable to attend. The managers were anxious for postponement, as it would give them more time to bring pressure to bear on certain senators. It was agreed to adjourn and meet again on Saturday, May 16.

The Republican representatives from Missouri formed a committee and proceeded to call on their backsliding senator Henderson. They told him that he was to be governed by the party that had elected him. That if he did not vote for conviction he would never again hold a public office. This argument at first seemed to have the desired effect. Henderson offered to resign. The Governor of Missouri could then appoint someone to fill the vacancy. But it was not his resignation that was wanted, it was his vote. The next day Henderson received a telegram from St. Louis asking him to vote for the eleventh article. This telegram angered Henderson and in answer he wired that he was
sworn to do impartial justice and he expected to do it like an honest man. From that time on he stood firmly for acquittal.

The senators from West Virginia were allowed no peace, but it soon became known that Van Winkle was writing an opinion of the trial and he favored the President on all the articles. Willey had not yet made up his mind. He was however, a prominent Methodist. That Church was holding a convention in Chicago, and on May 14 they set aside an hour to pray to God to save the senators from error. And error meant voting for acquittal. Willey was nevertheless not sure for conviction and remained a problem for the managers up to the time of voting.

The managers attempted to obtain an opinion from Fowler of Tennessee, but he would give them no satisfaction. Of the eleven doubtful senators the managers could only count on Sherman, Anthony and Sprague to vote for conviction. Two more were needed. Grimes, Fessenden, Trumbull, Henderson, and Van Winkle were sure to vote for acquittal. Fowler would give no opinion, but Willey was counted for conviction. The one remaining senator of the eleven was Edmund G. Ross of Kansas.

Ross had been appointed to the Senate by the governor of Kansas, July, 1866. He took the place of James H. Lane who had died. He was a Republican and was expected to vote with the majority in the conviction of the President. His votes during the trial had been carefully studied and they revealed that he sometimes voted with the President and sometimes against him. The managers turned most of their attention to Ross, because, as it seemed, on his vote alone might depend the whole outcome of the trial. He was watched continually, his whole political life was probed, he was threatened with everything from political ruin to assassination, and still he remained silent. Pomeroy, his brother senator from Kansas, worked with him continually, and claimed that Ross had
given his word that he would vote for conviction on the first and maybe the
eleventh articles. Ross denied that and said that no man had received positive
assurance that he would vote for conviction or acquittal. He was a problem
until the last and no one knew how he would vote.

The attempts to influence senators to vote for conviction ceased, for a
time at least, on Saturday, May 16, when the Senate met to take the vote on the
articles. The Senate chamber was packed with people from all over the country.
At twelve o'clock the Chief Justice called the Senate to order. Senator Williams
of Oregon moved that the Senate vote on the eleventh article first. A vote was
taken on that motion which resulted in 34 yeas and 19 nays. Of the doubtful
senators all had voted in the negative, except Grimes who was absent. Wade had
voted for the first time during the trial, but he voted as was expected, with
the majority. This vote of 34 to 19 increased the nervous tension of the Senate.
Should the vote on the articles stand the same way the President would be acquit­
ted.

Senator Edmunds moved that the Senate proceed to vote on the articles,
but Fessenden asked that the Senate postpone voting for half an hour as Grimes
was not yet present. Grimes had been taken suddenly ill, but promised that he
would be present on the day of voting. At that moment Grimes was being carried
in. He was placed in his seat. The Senate was ready to pass judgement. The
eleventh article was read by the clerk, and when the Chief Justice ordered that
the roll be called there was a breathless silence in the Senate chamber. The
first name to be called was Anthony. He rose in his place and the Chief Justice
put the question: "Mr Senator Anthony, how say you? Is the respondent, Andrew
Johnson, President of the United States, guilty or not guilty of a high misde-
meanor, as charged in this article?Anthony was one of the eleven, wavering, Republican senators, but he had been outspoken for conviction on some of the articles. He voted guilty! The roll call continued, the Republicans voting guilty and the Democrats not guilty. When Fessenden’s name was called there was another moment of intense feeling as Fessenden rose in his place. The managers still had hopes that he would vote for conviction on the eleventh article, but he voted not guilty. Fowler followed Fessenden and likewise voted not guilty. Grimes’s name was next to be called, and he, assisted by his friends, rose and voted not guilty! Henderson had once offered to resign, but he was there in his place. It was thought that he might with hold his vote. He promptly dispelled any such hopes and voted not guilty. The voting continued, each senator voting as was expected of him, until the name of Ross was called. The last hope of the managers hung on his vote! The rest of the doubtful senators had already given opinions and the way they intended to vote was general knowledge. Sherman, Sprague and Willey would vote for conviction. Trumbull and Van Winkle were pledged for the President. In order to convict the President five of the eleven wavering senators would have to vote for the articles. The managers only had four of the votes at their command. Anthony had cast his vote for conviction and Sherman, Sprague, and Willey could be counted on to follow his example. Ross was the man to decide the fate of Andrew Johnson! He rose and pronounced the President not guilty. The impeachment had failed! The clerk continued to call the roll and the senators in answer to their names cast their votes. The way they would vote was already known and consequently few people paid any attention to the roll call. Representatives talked out loud and moved back and forth. After the roll had been completed the Chief Justice ordered the clerk to read the first article. Senator Williams at once moved that the Senate take a

fifteen minute recess. The motion was voted down. A request was then made that
the Chief Justice announce the result of the vote on the eleventh article. The
clerk was ordered to read the list of those voting guilty and of those voting
not guilty. The result of the vote was thirty-five guilty, and nineteen not
guilty. Williams moved that the Senate sitting as a court of impeachment ad-
journ until May 26. Senator Hendricks objected to the motion on the ground that
the Senate was in the process of voting on the articles, and until that was com-
pleted adjournment was not in order. The objection was overruled and the Senate
adjourned until May 26.

As soon as the Chief Justice left the chair, the Senate went into a leg-
islative session. The House had decided to adjourn until May 26, so its members
could attend the Republican convention which was being held at Chicago, but the
Senate had work before it. Bills to admit six southern states had been passed
by the House and were before the Senate for consideration. The question arose
as to whether senators from these southern states would be allowed to vote on
the remaining articles. The question was debated but never voted upon. The
Senate settled the whole controversy by refusing to consider the bills for the
admission of new states.

The House also went into a legislative session. A resolution was offered
by Stevens requesting the Senate to give the House an official copy of the pro-
cedings of the last two days of the trial. The purpose was, as Stevens said,
to investigate to see if any corrupt methods had been used to influence senators
to vote not guilty. Another resolution was passed empowering the managers to

4. Supplement to the Congressional Globe, op. cit., 412
5. Congressional Globe, 2nd Session, 40th Congress, Part III, 2529-30
send for witnesses, collect papers, employ a stenographer and appoint sub-com­mittees to take testimony.** They began at once to overhaul and question senators.

Butler went to the telegraph offices and investigated every message in an attempt to pick up some clue of bribery. He also forced the banks to disclose the accounts of senators. Ross was the senator against whom most of the abuse was aimed. The other members of the Senate had voiced their opinions on the remaining articles, but not so with Ross. He had intimated at one time that he might vote for the first article and he was known to be in doubt concerning the second and third.

When the Senate met on May 26 the chamber was as crowded as it had been on the sixteenth. There were still ten articles to be voted upon, and the changing of one vote would mean conviction.

Senator Williams made the motion to vote on the second article first. The motion was carried and the clerk read the article. The roll was called and each senator in response to his name voted the same as he had on the eleventh article. Ross had again disappointed the managers. There was still one more hope! The third article was read. Ross again voted for acquittal. The result of the voting stood 35 guilty and 19 not guilty. Williams then moved that the Senate sitting as a court of impeachment adjourn without day. The Chief Justice recorded a judgment of not guilty after the motion to adjourn had carried by a vote of 34 to 16. The trial was over. Stanton relinquished the War Office at once, and three days latter the Senate confirmed the nomination of General Schofield. Johnson renominated Stanbery Attorney-General, but the Senate out of spite refused to concur on the nomination. The position was then offered to Curtis but he declined. Thereupon Evarts name was sent to the Senate and was at once confirmed.

6. Congressional Globe, 2nd Session, 40th Congress, Part III, 2528
Even after the final vote was taken the managers were active in an attempt to prove corruption had been used to influence senators. The Senate also appointed a committee to examine evidence in order to ascertain whether or not any of its members had been unduly influenced in casting their votes. The whole disgraceful affair finally died out. Butler in his report to the House admitted that he had found nothing, and the Senate committee never reported.

The impeachment proceedings failed because of the legal content contained in the articles. The main charge in the articles was the attempted removal of Stanton, contrary to the tenure of office act. The counsel for the defense had conclusively proven that Stanton was not protected by the tenure of office act. He had never received a commission under the act, but the commission under which he served read to hold office at the pleasure of the President. Furthermore President Johnson had not violated the tenure of office act. The act referred to removals and Stanton had never been removed, he still held control of the War Office. The articles had charged President Johnson with an attempt by threats and intimidation to remove Stanton, but no such attempt had been made and none was proven during the trial. The articles charging a conspiracy between President Johnson and Thomas had no grounds for support and were never voted on at the trial. Also article ten which charged the President with using improper speech had no legal strength.

The impeachment and trial of President Johnson was a political scheme of the leaders in the House and the Senate to remove the President from office and fill the vacancy with a man of their choice. Had they succeeded in their attempt to remove President Johnson a most fatal precedent would have been established. No future President would be secure in his office who differed on political questions with the majority of the members of Congress. The outcome of the trial
of President Johnson however established a precedent the other way. Any future Congress, with the result of the trial of President Johnson before them, will think twice before they attempt to remove a President for political reasons.

Of the seven Republicans who voted to acquit President Johnson, Henderson was the only one who ever held another political office. During Grant's administration he was placed in charge of Whiskey Ring prosecution in St. Louis, and in 1884 was made chairman of the Republican convention that nominated Blaine.

President Johnson after his presidential term was completed, retired to his home in Tennessee. In 1874 he was elected to the United States Senate, which position he held until the time of his death, July, 1875.
APPENDIX
Articles exhibited by the House of Representatives of the United States, in the name of themselves and all the people of the United States, against Andrew Johnson, President of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors.

ARTICLE I

That said Andrew Johnson, President of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, unmindful of the high duties of his office, of his oath of office, and of the requirements of the Constitution that he should take care that the laws of the United States be faithfully executed, did unlawfully and in violation of the Constitution and of the laws of the United States issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War, said Edwin M. Stanton having been theretofore duly appointed and commissioned, by and with the advice and consent of the Senate of the United States, as such Secretary, and said Andrew Johnson, President of the United States, on the 12th day of August, in the year of our Lord 1867, and during the recess of said Senate, having suspended by his order Edwin M. Stanton from said office, and within twenty days after the first day of the next meeting of said Senate, that is to say, on the 12th day of December, in the year last aforesaid, having reported to said Senate such suspension, with the evidence and reasons for his actions in the case and the name of the person designated to perform the duties of such office temporarily until the next meeting of the Senate, and said Senate thereafterward, on the 13th day of January, in the year of our Lord 1868, having duly considered the evidence and reasons reported by said Andrew Johnson for said suspension, and having refused to concur in said suspension, whereby and by force of the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, said Edwin M. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice, and said Edwin M. Stanton, by reason of the premises, on said 21st day of February, being lawfully entitled to hold said office of Secretary for the Department of War, which said order for the removal of said Edwin M. Stanton is in substance as follows, that is to say;

Executive Mansion,

Washington, D. C., February 21, 1868

Sir: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon
receipt of this communication.
You will transfer to Brevet Major General Lorenzo
Thomas, Adjutant General of the Army, who has this day been
authorized and empowered to act as Secretary of War ad interim,
all records, books, papers, and other public property now in
your custody and charge.

Respectfully yours,
ANDREW JOHNSON.
Hon. Edwin M. Stanton, Washington D. C.

Which order was unlawfully issued with intent then and
there to violate the act entitled "An act regulating the tenure
of certain civil offices," passed March 2, 1867; and with the
further intent contrary to the provisions of said act, in violation
thereof; and contrary to the provisions of the Constitution of
the United States, and without the advice and consent of the
Senate of the United States, the said Senate then and there being
in session, to remove said Edwin M. Stanton from the office of
Secretary of War, and being then and there in the due and lawful
execution and discharge of the duties of said office, whereby
said Andrew Johnson, President of the United States, did then
and there commit, and was guilty of a high misdemeanor in office.

ARTICLE II

That on said 21st day of February, in the year of our
Lord 1868, at Washington, in the District of Columbia, said
Andrew Johnson, President of the United States, unmindful of
the high duties of his office, of his oath of office, and in
violation of the Constitution of the United States, and contrary
to the provisions of an act entitled "An act regulating the
tenure of certain civil offices," passed March 2, 1867, without
the advice and consent of the Senate of the United States, said
Senate then and there being in session, and without authority
of law, did, with intent to violate the Constitution of the
United States and the act aforesaid, issue and deliver to one
Lorenzo Thomas a letter of authority in substance as follows;
that is to say:

EXECUTIVE MANSION,
WASHINGTON, D. C., February 21, 1868.

Sir: Hon. Edwin M. Stanton having this day been removed
from office as Secretary for the Department of War, you are
hereby authorized and empowered to act as Secretary of War
ad interim, and will immediately enter upon the discharge of
the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the
records, books, papers, and other public property now in his
custody and charge.

Respectfully yours,
ANDREW JOHNSON.
To Brevet Major General Lorenzo Thomas, Adjutant
General United States Army, Washington, D. C.

then and there being no vacancy in the said office of Secretary
of War; whereby said Andrew Johnson, President of the United
States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE III

That said Andrew Johnson, President of the United States on the 21st day of February, in the year of our Lord 1868 at Washington, in the District of Columbia, did commit and was guilty of a high misdemeanor in office, in this, that, without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War ad interim, without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time, and which said appointment, so made by said Andrew Johnson, of said Lorenzo Thomas, is in substance as follows, that is to say:

EXECUTIVE MANSION,
WASHINGTON, D.C., February 21, 1868.

Sir: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,
ANDREW JOHNSON.

To Brevet Major General Lorenzo Thomas, Adjutant General United States Army, Washington, D. C.

ARTICLE IV

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent by intimidation and threats unlawfully to hinder and prevent Edwin M. Stanton, then and there the Secretary for the Department of War, duly appointed under the laws of the United States from holding said office of Secretary for the Department of War contrary to and in violation of the Constitution of the United States, and of the provisions of an act entitled "An act to define and punish certain conspiracies," approved July 31, 1861, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high crime in office.
ARTICLE V

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, and on divers other days and times in said year, before the 2nd day of March, A. D. 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and in pursuance of said conspiracy did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE VI

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas by force to seize, take, and possess the property of the United States Department of War, and then and there in the custody and charge of Edwin M. Stanton, Secretary for said Department, contrary to the provisions of an act entitled "An act to depine and punish certain conspiracies," approved July 31, 1861, and with intent to violate and disregard an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.

ARTICLE VII

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and his oath of office, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas with intent unlawfully to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary of said Department, with intent to violate and disregard the act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, whereby said Andrew Johnson, President of the United States, did then and there commit a high misdemeanor in office.
ARTICLE VIII

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War, on the 21st day of February, in the year of our Lord 1866, at Washington, in the District of Columbia, did unlawfully and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in the office of Secretary for the Department of War, with intent to violate and disregard the act aforesaid, then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing, in substance as follows, that is to say:

EXECUTIVE MANSION,

WASHINGTON, D.C. February 21, 1866.

Sir: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his control and charge.

Respectfully yours,

ANDREW JOHNSON.

To Brevet Major General Lorenzo Thomas, Adjutant General United States Army, Washington, D.C.

Whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE IX

That said Andrew Johnson, President of the United States, on the 22d day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, in disregard of the Constitution and the laws of the United States, duly enacted, as Commander-in-Chief of the Army of the United States, did bring before himself then and there William H. Emory, a major general by brevet in the Army of the United States, actually in command of the department of Washington and the military forces thereof, and did then and there, as such Commander-in-Chief, declare to and instruct said Emory that part of a law of the United States, passed March 2nd, 1867, entitled "An act making appropriations for the support of the Army for the year ending June 30, 1868, and for other purposes," especially the second section thereof, which provides, among other things, that "all orders and instructions relating to
military operations issued by the President or Secretary of War shall be issued through the General of the Army, and, in case of his inability, through the next in rank, was unconstitutional and in contravention of the commission of said Emory, and which said provision of law had been theretofore duly and legally promulgated by general order for the government and direction of the Army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory, in his official capacity as commander of the department of Washington, to violate the provisions of said act, and to take and receive, act upon, and obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the Army of the United States, according to the provisions of said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE X

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and court­esies which ought to exist and be maintained between the executive and legislative branches of the Government of the United States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States and the several branches thereof; to impair and destroy the regard and respect of all the good people of the United States for the Congress and legislative power thereof, (which all officers of the Government ought inviolably to preserve and maintain,) and to excite the odium and resent­ment of all the good people of the United States against Con­gress and the laws by it duly and constitutionally enacted; and in pursuance of said design and intent, openly and publicly and before divers assemblages of the citizens of the United States, did on the 18th day of August, in the year of our Lord 1866, and on divers other days and times, as well before as afterward, make and deliver with a loud voice certain intem­perate, inflammatory, and scandalous harangues, and did therein utter loud threats and bitter menaces as well against Congress as the laws of the United States duly enacted thereby, amid the cries, jeers, and laughter of the multitudes then assem­bled and within hearing, which are set forth in the several specifications hereinafter written, in substance and effect, that is to say:
Specification First.— In this, that at Washington, in the District of Columbia, in the Executive Mansion, to a committee of citizens who called upon the President of the United States speaking of and concerning the Congress of the United States, said Andrew Johnson, President of the United States, heretofore, to wit, on the 18th day of August, in the year of our Lord 1866, did in a loud voice, declare in substance and effect, among other things, that is to say:

"So far as the executive department of the Government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and (to speak in common phrase) to prepare, as the learned and wise physician would, a plaster healing in character and coextensive with the wound. We thought and we think, that we had partially succeeded; but as the work progresses, as reconstruction seemed to be taking place, and the country was becoming reunited, we found a disturbing and marring element opposing us. In alluding to that element, I shall go no further than your convention and the distinguished gentlemen who has delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and occasion justify.

We have witnessed in one department of the Government every endeavor to prevent the restoration of peace, harmony and Union. We have seen hinging upon the verge of the Government, as it were, a body called, or with asumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union, when its very step and act tended to perpetuate disunion and make a disruption of the States inevitable."

"* * * We have seen Congress gradually enroach step by step upon constitutional rights, and violate, day after day and month after month, fundamental principles of the Government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself."

Specification Second.— In this, that at Cleveland, in the State of Ohio, heretofore, to wit, on the 3rd day of September, in the year of our Lord 1866, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare in substance and effect, among other things, that is to say:

"I will tell you what I did do. I called upon your Congress that is trying to break up the Government."

"* * * In conclusion, beside that, Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the union of these States? No; on the contrary, they had done everything to prevent it; and because he stood now where he
did when the rebellion commenced he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had undertaken to poison the minds of the American people."

Specification Third. — In this, that at St. Louis, in the State of Missouri, heretofore, to wit, on the 8th day of September, in the year of our Lord 1866, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare in substance and effect, among other things, that is to say:

"Go on. Perhaps if you had a word or two on the subject of New Orleans you might understand more about it than you do. And if you will go back—if you will go back and ascertain the cause of the riot at New Orleans, perhaps you will not be so prompt in calling out 'New Orleans.' If you will take up the riot at New Orleans and trace it back to its source or its immediate cause, you will find who was responsible for the blood that was shed there. If you will take up the riot at New Orleans and trace it back to the Radical Congress you will find that the riot at New Orleans was substantially planned. If you will take up the proceedings in their causes you will understand that they there knew that a convention was to be called which was extinct by its powers having expired: that it was said that the intention was to enfranchise one portion of the population, called the colored population, who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made, and take up the facts on the Friday and Saturday before that convention sat, you will there find that speeches were made incendiary in their character, exciting that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. You will also find that that convention did assemble in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the Government of the United States; and every man engaged in that rebellion in that convention, with the intention of superseding and upturning the civil government which had been recognized by the Government of the United States, I say that he was a traitor to the Constitution of the United States, and hence you find that another rebellion was commenced having its origin in the Radical Congress."

"So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed; and every drop of blood was shed is upon their skirts, and they are responsible for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been introduced here, and you have
provoked questions of this kind, though it does not provoke me. I will tell you a few wholesome things that have been done by this Radical Congress in connection with New Orleans and the extension of the elective franchise.

"I know that I have been traduced and abused. I know it has come in advance of me here, as elsewhere, that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the Government; that I had exercised that power; that I had abandoned the party that elected me, and that I was a traitor, because I exercised the veto power in attempting and did arrest for a time a bill that was called a 'Freedman's Bureau' bill; yes, that I have been slandered. I have been traduced, I have been maligned, I have been called Judas Iscariot, and all that. Now, my countrymen here to-night it is very easy to indulge in epithets; it is easy to call a man a Judas and cry out traitor; but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot—Judas. There was a Judas and he was one of the twelve apostles. Oh! yes, the twelve apostles had a Christ. The twelve apostles had a Christ, and he never could have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been may Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Summer? These are the men that stop and compare themselves with the Saviour; and everybody that differs with them in opinion, and try and stay and arrest the diabolical and nefarious policy, is to be denounced as a Judas." * * * a

"Well, let me say to you, if you will stand by me in this action; if you will stand by me in trying to give the people a fair chance, soldiers and citizens to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

"Let me say to you, in concluding, that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts, and the jeers, I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help I will veto their measures whenever any of them come to me."

Which said utterances, declarations, threats, and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of, a high misdemeanor in office.
ARTICLE XI

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, and in disregard of the Constitution and laws of the United States, did heretofore, to wit: on the 18th day of August, 1866, at the City of Washington, in the District of Columbia, by public speech, declare and affirm in substance that the Thirty-Ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same; but, on the contrary was a Congress of only part of the States, thereby denying and intending to deny that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, and also thereby denying and intending to deny the power of the said Thirty-Ninth Congress to propose amendments to the Constitution of the United States; and in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterward, to wit: on the 21st day of February, 1868, at the city of Washington, in the District of Columbia, did unlawfully and in disregard of the requirements of the Constitution, that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, by unlawfully devising and contriving, and attempting to devise and contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension therefore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War, and also by further unlawfully devising and contriving, and attempting to devise and contrive, means then and there to prevent the execution of an act entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867, and also to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867; whereby the said Andrew Johnson, President of the United States, did then, to wit: on the 21st day of February, 1868, at the city of Washington, commit and was guilty of a high misdemeanor in office.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting any time hereafter any further articles or other accusation or impeachment against the said Andrew Johnson, President of the United States, and also of replying to his answers which he shall make unto the articles herein contained and preferred against him, and of offering proof to the same and every part thereof, and to all and every article, accusation, or impeachment which shall be exhibited by them as the case shall require, do demand that the said Andrew Johnson may be put to answer the high crimes and
misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.¹

An Act Regulating the Tenure of Certain Civil Offices.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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 like manner appointed and duly qualified, except as herein 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.

Sec. 2. And be it further enacted, That when any officer appointed as aforesaid, excepting judges of the United States courts, shall, during a recess of the Senate, be shown, by evidence satisfactory to the President, to be guilty of misconduct in office, or crime, or for any reason shall become incapable or legally disqualified to perform its duties, in such case, and in no other, the President may suspend such officer and designate some suitable person to perform temporarily the duties of such office until the next meeting of the Senate, and until the case shall be acted upon by the Senate, and such person so designated shall take the oaths and give the bonds required by law to be taken and given by the person duly appointed to fill such office; and in such case it shall be the duty of the President within twenty days after the first day of such next meeting of the Senate, to report to the Senate such suspension, with the evidence and reasons for his action in the case, and the name of the person so designated to perform the duties of such office. And if the Senate shall concur in such suspension and advise and consent to the removal of such officer, they shall so certify to the President, who may thereupon remove such officer, and, by and with the advice and consent of the Senate, appoint another person to such office. But if the Senate shall refuse to concur in such suspension, such officer so suspended shall forthwith resume the functions of his office, and the powers of the person so performing its duties in his stead shall cease, and the official salary and emoluments of such officer shall, during such suspension, belong to the person so performing the duties thereof, and not to the officer so suspended: Provided, however, that the President, in case he shall become satisfied that such suspension was made on insufficient grounds, shall be authorised at any time before reporting such suspension to the Senate as above provided, to revoke such suspension and reinstate such officer in the performance of the duties of his office.
Sec. 3. And be it further enacted, That the President shall have power to fill all vacancies which may happen during the recess of the Senate, by reason of death or resignation, by granting commissions which shall expire at the end of their next session thereafter. And if no appointment, by and with the advice and consent of the Senate, shall be made to such office so vacant or temporarily filled as aforesaid during such next session of the Senate, such office shall remain in abeyance, without any salary, fees, or emoluments attached thereto, until the same shall be filled by appointment thereto, by and with the advice and consent of the Senate, and during such time all the powers and duties belonging to such office shall be exercised by such other officer as may by law exercise such powers and duties in case of a vacancy in such office.

Sec. 4. And be it further enacted, That nothing in this act contained shall be construed to extend the term of any office duration of which is limited by law.

Sec. 5. And be it further enacted, That if any person shall, contrary to the provisions of this act, accept any appointment to or employment in any office, or shall hold or exercise or attempt to hold or exercise, any such office or employment, he shall be deemed, and is hereby declared to be guilty of a high misdemeanor, and, upon trial and conviction thereof, he shall be punished therefor by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court.

Sec. 6. And be it further enacted, That every removal, appointment, or employment, made, had, or exercised, contrary to the provisions of this act, and the making, signing, sealing, countersigning, or issuing of any commission or letter of authority for or in respect to any such appointment or employment, shall be deemed, and are hereby declared to be, high misdemeanors, and, upon trial and conviction thereof, every person guilty thereof shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court: Provided, That the President shall have power to make out and deliver, after the adjournment of the Senate, commissions for all officers whose appointment shall have been advised and consented to by the Senate.

Sec. 7. And be it further enacted, That it shall be the duty of the Secretary of the Senate, at the close of each session thereof, to deliver to the Secretary of the Treasury, and to each of his assistants, and to each of the auditors, and to each of the comptrollers in the treasury, and to the treasurer, and to the register of the treasury, a full and complete list, duly certified, of all the persons who shall
have been nominated to and rejected by the Senate during such session, and a like list of all the offices to which nominations shall have been made and not confirmed and filled at such session.

Sec. 8. And be it further enacted, That whenever the President shall, without the advice and consent of the Senate, designate, authorize, or employ any person to perform the duties of any office, he shall forthwith notify the Secretary of the Treasury thereof; and it shall be the duty of the Secretary of the Treasury thereupon to communicate such notice to all the proper accounting and disbursing officers of his department.

Sec. 9. And be it further enacted, That no money shall be paid or received from the treasury, or paid or received from or retained out of any public moneys or funds of the United States, whether in the treasury or not, to or by or for the benefit of any person appointed to or authorized to act in or holding or exercising the duties or functions of any office contrary to the provisions of this act; nor shall any claim, account, voucher, order, certificate, warrant, or other instrument providing for or relating to such payment, receipt, or retention, be presented, passed, allowed, approved, certified, or paid by any officer of the United States, or by any person exercising the functions or performing the duties of any office or place of trust under the United States, for or in respect to such office, or the exercising or performing the functions or duties thereof; and every person who shall violate any of the provisions of this section shall be deemed guilty of a high misdemeanor, and, upon trial and conviction thereof, shall be punished therefore by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding ten years, or both said punishments, in the discretion of the court.

2. United States Statutes at Large, Vol. XIV, Boston, 1868, Chapter 154, page 430-432