

## IMPEACHMENT OF THE PRESIDENT.

NOVEMBER 25, 1867.—Ordered that the report, with the testimony, be printed, (the report of the majority and the views of the minorities be printed together,) and the further consideration postponed until Wednesday, the 4th day of December next.

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Mr. BOUTWELL, from the Committee on the Judiciary, submitted the following report, stated by him to have been prepared by Mr. Williams, of Pennsylvania, with the exception of the specifications at the conclusion thereof :

*The Committee on the Judiciary, to whom was referred the resolution of the 7th of March last, authorizing them "to inquire into the official conduct of Andrew Johnson, Vice-President of the United States, discharging the present duties of the office of President of the United States, and to report to this House whether, in their opinion, the said Andrew Johnson, while in said office, has been guilty of acts which were designed or calculated to overthrow or corrupt the government of the United States, or any department or officer thereof; and whether the said Andrew Johnson has been guilty of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes and misdemeanors, requiring the interposition of the constitutional powers of this House," respectfully report :*

That in the performance of the important task assigned to them, they have spared no pains to make their investigations as complete as possible, not only in the exploration of the public archives, but in following every indication that seemed to promise any additional light upon the great subjects of inquiry; and they submit herewith the result of that portion of their labors in the voluminous exhibit that accompanies this report.

In order, however, to direct the attention of the House to such portions of the somewhat heterogeneous mass of testimony which they have been compelled to present without the order or arrangement that might have facilitated its examination, as are regarded by them as most material to the issue, they will now proceed to state as briefly as possible the leading facts which they suppose the inquiry to have developed beyond dispute, along with their own conclusions therefrom, and the reasons by which they have been influenced in reaching them. In so doing they must be allowed the indulgence which a comprehensive scrutiny, running over a two years' administration of the affairs of a great government, through an unexampled crisis of the State, and involving the very highest matters that can engage the attention of a free people, would seem to necessitate, and must, at all events, excuse.

The charges made, and to which the investigations of the committee have been especially directed, are usurpation of power, and violation of law, in the corrupt abuse of the appointing, pardoning, and veto powers; in the corrupt interference in elections, and generally in the commission of acts amounting to high crimes and misdemeanors under the Constitution; and upon this recital they were charged with the more general duty of inquiring into the official conduct of the President of the United States, and of reporting "whether he had been guilty of any acts which were designed or calculated to overthrow, subvert, or corrupt the govern-

ment of the United States, or which, in contemplation of the Constitution, would constitute a high crime or misdemeanor, requiring the interposition of the constitutional power of the House."

It will be observed, then, that the great salient point of accusation, standing out in the foreground, and challenging the attention of the country, is *usurpation of power*, which involves, of course, a violation of law. And here it may be remarked that perhaps every great abuse, every flagrant departure from the well-settled principles of the government, which has been brought home to its present administration, whether discovering itself in special infractions of its statutes, or in the profligate use of the high powers conferred by the Constitution on the President, or revealing itself more manifestly in the systematic attempt to seize upon its sovereignty, and disparage and supersede the great council to which that sovereignty has been intrusted, is referrible to the one great overshadowing purpose of reconstructing the shattered governments of the rebel States in accordance with his own will, in the interests of the great criminals who carried them into the rebellion, and in such a way as to deprive the people of the loyal States of all chances of indemnity for the past or security for the future, by pardoning their offences, restoring their lands, and hurrying them back—their hearts unrepentant, and their hands yet red with the blood of our people—into a condition where they could once more embarrass and defy, if not absolutely rule the government which they had vainly endeavored to destroy. It is around this point, and as auxiliary to this great central idea, that all the special acts of mal-administration we have witnessed, will be found to gravitate and revolve, and it is to this point, therefore, as the great master-key which unlocks and interprets all of them, that the attention of the House will be first directed.

It is a fact of history that the obstinate and protracted struggle between the executive and legislative departments of this government, arising out of the claim of more than kingly powers on the one hand, and as stoutly maintained by the assertion of the just rights of sovereignty lodged with it by the people, on the other, which has convulsed this nation for the last two years, and presented a spectacle that has no example here, and none in England since the era of the Stuarts, began with the advent of the present Chief Magistrate. The catastrophe which lifted him to his place, while it smote the heart of the nation with grief and horror, was the last expiring armed effort of the insurrection. The capital of the rebel government had fallen. Its chiefs were fugitives. Its flag was in the dust. The strife of arms had ceased. The hosts that had been gathered for the overthrow of this nation had either melted away in defeat and disaster, or passed under the conquering sword of the republic. The extraordinary mission of the Executive was fulfilled. Although, as the commander-in-chief, he might possibly treat with a belligerent in arms, the cessation of the war in the overthrow of the rebellion, and the unconditional surrender of its armies, had determined that power. To hold the conquered territory within our military grasp until the sovereign power of the nation residing in its representatives—the same which had girt the sword upon the thigh of its Executive, and placed the resources of the country in men and money at his command—should be ready to declare its will in relation to the rebels it had conquered, was all that remained for him to do. But the duties of the true sovereign were not yet at an end. An extent of territory of almost continental dimensions, desolated by war, but still swarming with millions of people, was at our feet, awaiting the sentence which it had deserved. The local governments, swept away, as they had been, in the opinion of the President himself, by the whirlwind of the rebellion, were in ruins. Whole communities were in anarchy; the courts outlawed; the social tie dissolved; a system of pretended laws existing, in deadly conflict with the law of the conqueror; a people subdued but sullen and full of hate, and hostile as ever, to the power that had overthrown them; a loyal element asking for

protection; a new and anomalous relation without a parallel in history, about which the wisest of statesmen might well hesitate and differ, superinduced by the fratricidal strife that had ruptured the original ties, and placed its objects in the condition of public enemies; a large army to be disbanded, and such indulgence extended, such punishments inflicted, and such securities demanded for the future, as the interests of peace and justice might require. Never in the history of this or any other state have questions more numerous and vital, more delicate or difficult, requiring graver deliberation, or involving the exercise of higher governmental powers, presented themselves for the consideration of a people; and never was a Congress convoked in a more serious crisis of a state. The duties and responsibilities of the men who formed and organized the Union of these States, and of those who assembled here in 1861 to consult upon and provide the means for suppressing this great rebellion, were as nothing in the comparison, and demanded certainly no higher sagacity, and no broader wisdom, than the task of bringing back the dismembered States, and re-fusing these jarring and discordant elements into one harmonious whole. For this great work, the supreme Executive of the nation, even though he had been endowed by nature and education with the very highest of organizing faculties, was obviously unfitted by the very nature of his office. If Mr. Lincoln had survived, it is not to be doubted, from his habitual deference to the public will, that, although a citizen of a loyal State and enjoying the public confidence in the highest possible degree, he would have felt it to be his duty to convoke the representatives of the people, to lay down his sword in their presence, and to refer it to their enlightened and patriotic judgment to decide what was to be done with the territories and people that had been again brought under the authority of the government by our arms. The bloody hand of treason unfortunately hurried him away in the very hour of the nation's triumph. But if there were reasons which would have made this duty an imperative one with him, how powerfully were they re-enforced by the double effect of the tragedy that not only deprived the nation of its trusted head, but cast the reins of government upon a successor. The new President was himself in the doubtful and delicate position of a citizen of one of the revolting States, which were to be summoned for judgment before the bar of the American people. It was, perhaps, but natural that he should sympathize with the communities from which he had mainly differed only on prudential reasons, or, in other words, as to the wisdom of the revolt at that particular juncture of affairs. If other arguments had not sufficed to convince him of the necessity of referring all these great questions to the only tribunal on earth that had the power to decide them, it ought to have been sufficient that he owed alike his honors and his accidental powers, to the generous confidence of the loyal States, whose representative it was. But this was not the idea of Mr. Johnson. He feared, apparently, the people of the loyal States. He expected, of course, that they would insist, as they had a right to do, upon such conditions as would secure to them, if not indemnity for the past, at least the amplest securities for the future. Instead, therefore, of convoking the Congress of the United States to deliberate upon the condition of the country, he seems to have made up his mind to undertake that mighty task himself, to forestall the judgment and the wishes of the loyal people, and to neutralize effectually their power to undo his work, by bringing in the rebel States themselves to participate in the deliberations upon any and all questions which might be left for settlement.

To effect this object he issues his imperial proclamations, beginning with that of the 29th of May, in virtue, as he says, of his double authority as President of the United States, and commander-in-chief of its armies, declaring the governments of those States to have perished; creating, under the denomination of provisional governors, civil offices unknown to the law; appointing to those offices men who were notoriously disqualified by reason of their partici-

pation in the rebellion from holding any office under this government, and yet allowed to hold the same, and exercise the duties thereof, at salaries fixed by himself, and paid out of the contingent fund of the War Department, in clear violation of the acts of July 2, 1862, and 9th February, 1863.

Declaring, moreover, at the same time, that the governments of these States had been destroyed, he assumes it to be his individual right, as being himself the state—or rather the “United States”—to execute the guarantee of the Constitution by providing them with new ones, and accordingly directs his pretended governors to *order* conventions of such of the people as it was his pleasure to indicate, to make constitutions for them, on such terms and with such provisions as were agreeable to himself.

Unprovided, however, of course, in the absence of Congress, with the necessary resources to meet the expenses of these organizations, he not only directs the payment of a portion of them out of the contingent fund of the War Department, but with a boldness unequalled even by Charles I, when he, too, undertook to reign without a Parliament, provides for a deficit, by authorizing the seizure of property and the appropriation of moneys belonging to the government, and directing his governors to levy taxes for the same purpose from the subject people.

He maintains these governors in authority until he has coerced the rebel States into absolute submission to the terms imposed by him, and exercises his pardoning power, under their direction, in aid of this great work, to qualify the rebel officers elect, whose title to popular favor was known to rest almost exclusively on the services rendered by them in the armies of the confederacy, and their known hostility to the government of the Union.

In all this he proceeds without interruption, in the interregnum of the law-making power, exerting the highest functions of sovereignty, and dealing with the affairs of this nation as though he were its absolute master, without even vouchsafing a thought, according to the testimony of his cabinet ministers, as to the rights or the existence of the paramount department of this government; without a voice to remonstrate or an arm to stay him; and with a press and people lulled into security by occasional outgivings, official as well as otherwise, that all this imperial work was merely provisional or temporary, and subject, of course, to the ultimate jurisdiction of Congress in the premises.

Having thus accomplished all that it was possible for him to do, by giving to these States a colorable claim to seats, and procuring the election of candidates who were expected to assert it, when he is at last compelled once more to meet the high council of the nation, to which he is made responsible under the Constitution, he rends away the veil which had so thinly disguised his purposes, and proclaims to the representatives of the people that these States are already fully organized, restored to all their antecedent rights, and now only waiting to be admitted, with no power in Congress, as a legislative body, to deliberate or refuse, and no jurisdiction but the right of each house for itself to determine upon the election returns and other formalities touching the individual case of the applicant, and nothing more. If there had been a doubt as to the *animus* of the President in seizing into his hands the whole sovereignty of the nation, proceeding without a Congress, and trampling remorselessly under foot every statutory enactment and every constitutional limitation that stood in his way, that doubt was now resolved. The Congress of the United States, true to its high mission, and with a courage and constancy that were worthy of the best traditions of the British Commons, at once refused to register the imperious edict of the Executive, and asserted its privilege of revising his whole action in the premises, and settling for itself, as the representative of the American people, the terms upon which the rebellious States should be allowed to re-enter the family circle of the Union. The result was an immediate and indecent outburst of the wrath of the Executive, in torrents of fierce and fiery denunciation, in which the two

houses were impeached as traitors in actual rebellion against the men whom they had conquered; their commissions disputed; their rights, authority, and privileges denied; their members individually arraigned and singled out for public obloquy; nay, even charged with the bloodiest designs upon the life of their detractor; and the determination subsequently boldly avowed to traverse their counsels, and overrule their will, by the employment of the patronage of his office, and the exertion of the veto, and every other power placed by the Constitution in his hands; and all this for no other reason than because they had exercised their undoubted prerogative of resisting, in the name of the loyal States and people, a plan of reconstruction prearranged by himself, and intended to be imposed on the country against the will of the men who had just scattered in flight the battalions of the traitor confederacy, and in the interest of the very men who had so causelessly rebelled against the benign rule of this great nation.

Concurrent, however, with this kingly process of reorganization, pursued with so much earnestness and pertinacity during the long and unhappy interregnum of the legislative power, were other measures of state, of less publicity, perhaps, but equally arbitrary and lawless in themselves, which, as merely subordinate and auxiliary to the leading idea, were but a part of the same great conspiracy against the people of the loyal States, although of such a nature in themselves as not to challenge the public observation, because it was not essential that they should be disclosed before the admission of the southern members. Chief amongst these were the surrender and transfer to the rebels, only partially subdued, of untold millions of property captured or confiscated by the government, or belonging to it in its own right by purchase or in virtue of its own expenditures.

It is a fact well known to the House and country that the rebel States were permeated by a system of railroads embracing many thousand miles, and furnished with all the costly apparatus required for their successful operation. These roads were generally constructed and owned by private corporations, aided, in some cases, by the States in which they were located, either by direct loans of their public bonds, or by a guarantee of the securities of the companies. Some of them, however, were built by the States themselves, and one, at least—the Piedmont railroad, between Greenborough and Danville—by the rebel government. By that government, however, they were all employed and used, with the undoubted consent of their directors and stockholders; and it is not to be denied that they constituted one of its most powerful and effective agents in carrying on the war against the Union. As an instrument of aggression they became, of course, by the law of nations, a legitimate subject of capture; and this principle was not only expressly affirmed, but extended so as to embrace all property so used, by the act of Congress of August 6, 1861. Many of them were actually captured from the enemy by our armies during the progress of the war, repaired and reconstructed at great expense, placed under military control, and used to the extent for which they were required for the convenience of the government. One of them—the Nashville and Northwestern, in the State of Tennessee—which had been previously abandoned by the company in an unfinished condition, was completed by the War Department, on the urgent importunity of Andrew Johnson, then military governor of that State, and under his special supervision, at an expense to the government of nearly two millions of dollars. In all, or nearly all the cases of actual capture, the roads had been dismantled and broken up, as far as practicable, and their rolling-stock run off into remoter States. In the case of the Nashville and Chattanooga—of which more hereafter—an expenditure of upwards of four millions of dollars was incurred in the article of repairs, while its rolling-stock had been carried South, where it earned in rebel employment twelve hundred bales of cotton, which the company has been allowed by Mr. Johnson to bring to market, and ship beyond

the seas, for its own interest, while it is still allowed to say that the parties who claimed, and realized the proceeds, were not consenting to the use. All these roads, which were required for military purposes, had of course to be supplied with the necessary running equipments, at an enormous outlay.

Here then was an immense property, amounting in value, perhaps, to hundreds of millions of dollars, within the ownership or control of the government, and upon the disposition of which, there was no tribunal except the Congress of the United States that was competent to pass. It had been already settled by high authority, that, under the Constitution, which gives to Congress "the power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States," there was no power in any of the executive departments of this government to dispose of a dollar's worth of the public property without the special authority of an act of Congress; (1 Paine's C. C. R., 646,) and the very principle that the whole question of the disposition of the captured railroads and their running stock, after the termination of the war, would belong exclusively to the legislation of the country, had been already distinctly recognized and affirmed in the report of the Quartermaster General, approved by the Secretary of War, of the date of August 9, 1864, in answer to an application for an account, and settlement, and restoration of the Nashville and Northwestern, and Nashville and Chattanooga roads, made by a certain Michael Burns, the president of both companies—a known sympathizer with the rebellion, but an intimate and confidential friend of Andrew Johnson, the then military governor—re-enforced by a special letter of recommendation from the latter to Mr. Lincoln, indorsing him as "a gentleman of high standing, an esteemed friend, and a worthy gentleman," to whose active co-operation the government was largely indebted in the construction of one of these roads. If it was important, as claimed by the administration, either to reduce the expenses of the government, or to facilitate the commerce of the rebel States, that it should get rid of this burdensome property, it was an easy matter to have followed the obvious course, by convoking Congress in order to obtain their advice and authority in the premises; and the very fact that it was important to dispose of that property as early as practicable, is a confession of the necessity for such an assemblage. And yet, strange as it may seem, the idea of the necessity of resorting to the aid of the sovereign legislative power of the nation, where it was clear that scarcely a single step could be legally taken without it, does not seem to have been considered worthy even of a passing thought from the President. The captured railroads were surrendered to their lately rebel proprietors, along with all the rolling stock which they could identify as originally their own, and even the portion of the Nashville and Northwestern road which was built by the government itself, without any consideration whatever; while the cars and machinery, supplied by the government at its own expense, were turned over to the same parties without sale, on an appraisalment made by officers of the government selected for that purpose, at a long credit, and without any security whatever. But this is not all. Where the States themselves were proprietors, the transfer and surrender were made to the provisional governments set up by the President, and claimed by him to be thoroughly reinstated by his acts.

To show, however, not only the process, but the apparent influences under which this usurpation was effected, the undersigned will refer to the history of these gigantic operations, which, although running into the next session of Congress, were not supposed by the President to be of sufficient importance for its consideration, as that history stands revealed upon the public records, and the testimony of witnesses.

On the 8th of May, 1865, and, of course, immediately upon the surrender of the rebel armies in Virginia, a letter was written to the Secretary of War by Governor Peirpoint, suggesting that the government should put the railroads in that

State in running order. This letter was referred to General Grant, who declined to advise repairs except where they might be necessary to keep up communications with the garrisons, but suggested at the same time that facilities should be allowed to the *loyal* stockholders for repairing and running their roads at the earliest day, *with such restrictions, however, as would prevent disloyal stockholders from receiving any of the profits.*

On the 19th of the same month the Quartermaster General, in answer to an application made for the surrender of the Orange and Alexandria railroad, and in apparent forgetfulness of the opinion expressed by himself during the administration of Mr. Lincoln, in affirmance of the exclusive jurisdiction of Congress in the premises, submits the outlines of a general plan for the disposition of the captured railroads. Its leading features were, that the roads should be turned over as fast as they could be dispensed with by the military authorities, to the parties applying, who might seem to have the best claim, and be able to operate them; that no charge should be made for expense of material or operation; that all material used in construction and repairs, and all damaged material left along the roads, should be considered a part of, and be surrendered with them; that no payment or credit should be allowed for occupation or use during the military necessity that compelled the United States to take possession of them, by capture from the public enemy, their recovery and repairs being regarded as a full equivalent for the use; that all moveable property, including rolling stock belonging to the government, should be sold *at auction*, after full public notice, to the highest bidder; that all rolling stock and material, the property before the war of railroads, and captured by the forces of the United States, should be placed at the disposal of the roads that originally owned it; that roads not operated by the quartermasters' department should be left in possession of the parties thus holding them, subject only to the removal of any agent who had not taken the oath of allegiance; that when the superintendents declined to take the oath, a receiver should be appointed to administer its affairs and account to the board that might be recognized as the legal and loyal one; and that where the States were bondholders, the roads should be surrendered to their boards of public works, and where no such board, and the States unwilling to take charge of them, a receiver should be appointed by the Treasury Department to take charge of them as abandoned property.

The noticeable features of this plan are, that it treats the subject as entirely in the control of the Executive; that it proposes to donate to the companies all material used and damaged, as a part of their roads, and to surrender without equivalent the rolling stock, an instrument of war captured from the enemy, and belonging unquestionably to the United States; that it supposes an equitable liability for the use of a road captured from the public enemy, which could be fairly met only by a claim for salvage and repairs; that it proposes a public sale by auction of the government stock proper; that it recognizes the rebel State governments as legitimate, and surrenders property to them; and that it concedes the importance of an oath of allegiance, and provides for the removal of every administrator who has not taken it. This plan, although approved by the Secretary of War, was not eventually adopted in all its features.

Just at this crisis, however, reappears upon the stage a personage already named, who plays a part so painfully conspicuous in the extraordinary drama that was just opening, as to entitle him to the special notice of the historian of these transactions. That personage is Michael Burns—the same already spoken of—a man shown to have been notoriously disloyal while the star of the confederacy was in the ascendant at Nashville, who had acquired considerable wealth by the prosecution of a gainful trade in that city, and whose admitted sympathies for the rebellion had earned for him the distinguished compliment of having his name attached to a battery fitted out there for the wholesale murder of the defenders of the Union. How far he had contributed to its equipment

does not appear. Being personally, however, a non-combatant, on account either of his years, or perhaps of his greater discretion than others, who surrendered themselves to their impulses, and in the enjoyment of an unusual measure of the confidence of Andrew Johnson, he seems to have found his account in remaining at Nashville, and following the retreating armies of the rebellion only with his prayers. He was wise in this, if he may be believed when he says that, *although his sentiments were well known to the military governor, he was never asked to take the oath of allegiance, and could get a pass at any time to go through either line.* Certain it is, that he did obtain a special letter of introduction, as already stated, to the late President, indorsing him as a gentleman of high standing, to whom the War Department was largely indebted for his cooperation, and on the faith of which he proceeded to Washington, and claimed the restoration of the roads of which he was president, which was refused, not only for the reason that the subject belonged exclusively to Congress, as already remarked, but *because the government had expended more money on them than the stockholders themselves.* Discouraged probably by these results, he seems to have abandoned the pursuit, until the change in the fortunes of his friend, the military governor, seems to have suggested a renewal of the application, under the auspices of Mr. Patterson, the son-in-law of the President.

On the 27th of June, Mr. Burns, upon assurances no doubt previously received by him, as stated by himself, addresses a letter to Brigadier General Donaldson, chief quartermaster of the department of the Cumberland, wherein he informs that officer of an interview with the President of the United States, in which he had been told that the government was willing to turn over to the Nashville and Northwestern Railroad Company, their road, along with the tools necessary for keeping it in repair, and such rolling stock as would be required to operate it, to be held subject to the military authority, and taken at a valuation when a general settlement could be had with the government; and indicates the amount of stock which will be required for that purpose. This letter was referred to the Quartermaster General, who, in a report to the Secretary of War, dated on the 7th of July, declares the proposition inadmissible, and besides reiterating the views embodied in his plan of the 19th of May, and protesting against any other disposition of the rolling stock or machinery belonging to the government except on the terms of a sale *at public auction*, or an alternative hiring, concludes by saying, that the department is not competent to make any such final settlement, as is suggested by Mr. Burns, in view of the supposed application of the act of January 31, 1862, to railroads seized or captured within the rebel States.

On the 20th of July, Lieutenant Colonel Bliss reports to General Donaldson the decision of the Quartermaster General, to the effect that this, and most other railroads in that department, should be relinquished to their owners at the earliest possible day, but no rolling stock along with them except on terms of *public sale* or hire; that these views are concurred in by the Secretary of War; and that directions have been given to the general military manager (General McCallum) to transfer these roads in accordance therewith.

The plan of the 19th May, which had been approved by the Secretary, did not, however, square with the views of the President, who substituted another of his own, in an order of the 8th of August, directing the military commander of that department to turn over, as early as practicable, all roads in Tennessee and their continuations in the adjoining States, to the respective owners thereof, upon the conditions therein contained.

The material points of difference between this order and the previous one were:

First. That each and every company should be required to reorganize, and elect a board of directors whose loyalty should be established to the satisfaction of General Thomas.

Second. That an inventory should be taken of the rolling stock and other property, distinguishing between that originally belonging to the roads, and such as was furnished by, and belonging to the government.

Third. That the rolling stock of the government should be turned over to the companies at a fair valuation by competent and disinterested parties, on giving bonds satisfactory to the government therefor, payable in twelve months, or at such other time as might be agreed on.

Fourth. That statements should be made *in triplicate* of all expenditures by the government for repairs, with a full statement of receipts and transportation on government account.

Fifth. That all railroads in Tennessee should be required to pay all arrearages of interest due on bonds issued by that State prior to its secession, to aid in the construction thereof, before declaring dividends to stockholders.

The noticeable facts appearing here are, first, that, to save appearances and cover the donation to rebel stockholders, a loyal board of managers is prescribed as an ostensible condition precedent; second, that the arrangement looks not only to the surrender of the captured stock without equivalent, but to the *private* sale, at an appraised value, of such as had been furnished by the government, upon a long credit, and without any security; third, that it looks as obviously to the obligation of the government to account and settle with these rebel companies for the military use of their roads in suppressing the insurrection; and, fourth, that it provides with great care for all arrearages of interest on bonds issued by the State of Tennessee. The reason of this last precaution will appear hereafter.

Accompanying the order was a form of bond, prepared by General Thomas, pledging the individual liability of the directors, on the ground that the companies were disabled by pre-existing incumbrances from furnishing the necessary security upon their corporate property. This they refused to sign, and as it seemed a pre-determined point that the arrangement should not be balked in any way, another order was issued on the 14th of October, extending the benefit of the previous order of August 8 to all railroads within General Thomas's command, and authorizing the transfer of the rolling stock, upon the condition, if preferred to the latter order, and the security thereunder demanded by General Thomas, that the property should be distributed according to the actual need of the several roads, and that the companies should give their corporate bonds alone, in the form thereto annexed, for the payment of the appraised value, in equal monthly instalments, with interest at the rate of seven and three-tenths per cent. within two years; thereby substituting the said monthly instalments with interest, along with the reservation of a lien on the property sold, and the right to re-enter and repossess in case of a default, with a restriction on the power to sell or convey without the consent of the United States. Whether the law could be so altered by Executive mandate as to make such a security effective, is a question which the Committee do not feel called upon to examine, in a case where the whole transaction was manifestly against law, and no title passed to the purchaser.

On terms analogous, if not altogether identical with these, an immense amount of rolling stock and machinery belonging to the government, and costing it a sum that cannot now be ascertained, was transferred, together with the railroads themselves and the stock captured along with them, to the rebel proprietors, at the appraised or nominal value of \$7,370,196 16, of which, after deducting the sums allowed in the way of credit for government transportation, the merest trifle has yet been paid, while the perishable security itself, always subject to casualty and destruction, if it ever amounted to anything, is depreciating from day to day. The testimony shows that many of these favored rebels have been absolutely indifferent to their obligations, while, on the plea of poverty, the larger portion

have been indulged from time to time, for the admitted reason that the government was powerless to compel payment, while Congress and the people have been as completely ignored in regard to all these matters, as if they had no interest in the government at all; and the amount still due and unpaid, at the date of the last return from the department, was over six and a half millions of dollars, (\$6,508,076 30.)

To illustrate, however, the way in which these things have been managed, the undersigned will now recur to the two leading cases of the Nashville and North-western, and Nashville and Chattanooga roads; the former built mainly, as already stated, by the government, at the urgent instance and under the personal supervision of Andrew Johnson, at a cost of nearly two millions, and the latter captured from the enemy, and repaired at an expense of over four millions of dollars.

These roads both passed, under the orders of August 8 and October 14, into the hands of their president, Michael Burns, for the use of the stockholders, who were mainly rebels, along with the rolling stock and machinery employed by the government thereon, at a valuation in the former case of \$529,201 45, and in the latter of \$1,556,551 73, for which the bonds of these companies respectively, were taken on the 30th of November, 1865, payable in monthly instalments with interest, as aforesaid, in two years from their date.

Before proceeding, however, with the history of the debts thus made, it will not be amiss to show how, and in what spirit, the above named orders were observed in the delivery.

It will be supposed, of course, that the preliminary condition of a loyal board of directors, at the least, even though the suggestion of General Grant as to the loyalty of the stockholders themselves, was treated with the coolest indifference, would be enforced at all events, if only for the purpose of saving appearances. The testimony shows, however, so far as the committee is in possession of the facts, that this provision was substantially disregarded, and that while observing the forms, the requisition of loyalty was treated as of no consequence whatever. A few examples will serve to indicate how little difference it made whether even the directors were faithful to the government or not.

In the case of the Memphis and Charleston railroad, the reference is to the President himself. A list of directors is presented to him, of whom a part only are designated as "undoubtedly loyal," and the question is asked, not whether they are *loyal*, but whether they are *satisfactory*. Ignoring, however, the condition of loyalty which he had prescribed himself, he answers by certifying that "from his personal knowledge of several of the within named gentlemen, and from representations made to him as to the others, he has no hesitancy in regarding them as a *proper* and perfectly *acceptable* board of directors."

In the case of the Tennessee and Alabama railroad, on a reference to the Hon. J. A. Fletcher, secretary of state, for his opinion as to the loyalty of fifteen directors named for that company, he makes the following answer:

"I. S. Claybrook, Frank Boardman, Samuel Henderson, M. G. L. Claiborne, and William Parke, are good and loyal men. Thomas F. Perkins, R. H. Bradley, John M. Gavock, John B. McEwen, William P. Cannon, and B. B. Toon, have all been more or less in sympathy with the rebellion, but are regarded as honorable men, and will probably discharge their duties loyally. C. W. Hance, Absalom Thompson, James Andrews, and A. C. Mayberry, are all liable to the objection of disloyalty. Thompson is the only one of them whose fidelity has been indorsed to me by acquaintance. Mayberry fled south in 1862, and only returned after Johnston's surrender. This is a bad sign, but it is said he ran to save his negroes. On the whole, the board is about as good as it can be made out of the material to be had. It is said every prominent loyalist among the stockholders is on the board, and the least objectionable of the rebel stockholders were chosen."

In the case of the Nashville and Chattanooga railroad, one of those whose history it is proposed to narrate specially, on account of Mr. Johnson's personal connection therewith, the names are submitted to General Thomas, along with

the following communication, showing that they were selected under the advice of the President himself :

"NASHVILLE, August 18, 1865.

"GENERAL: I have the honor to submit for your approbation a list of directors elected on the 16th instant, at a stockholders' meeting held in this city, to conduct the affairs of the Nashville and Chattanooga Railroad Company for the ensuing twelve months, in accordance with instructions received from Washington, dated August 8. I would respectfully state that these persons elected as directors were elected in most instances, and as far as practicable, at the suggestion of the President of the United States.

"M. BURNS,

"President Nashville and Chattanooga Railroad Company."

Upon a reference of their names to the Hon. A. J. Fletcher, he answers as follows :

"M. BURNS, a man whose main object under all circumstances is to make money; loyal to the 'powers that be,' whether rebel or Union.

"WILLIAM T. BERRY, always loyal to the government.

"J. R. KNOWLES, a loyal and good man.

"JAMES WOOD, once got wrong, but is a quiet man, and is now considered safe.

"ANSON BROWN, once a very decided rebel; remained so till lately. It is said he 'submits.'

"A. NELSON, sympathized with the rebellion, but is a good man, and will do his duty.

"N. E. ALLOWAY, was once disloyal, but is a shrewd and sensible man, and will probably do his duty. He will have much influence in the board.

"JOHN M. HILL, once a rebel, but considered reliable at this time.

"LEVI WADE, once a rebel; present status unknown.

"JAMES H. GRANT, not known at the capital as a Union man.

"EDWARD COOPER, congressman elect.

"W. S. HUGGINS, unknown.

"JOHN T. HENDERSON, unknown.

"WILLIAM E. ELEASER, once an obstinate rebel, and was sent north for his refusal to take the oath of allegiance; present status not known.

"Most of these men are of high standing, and will probably do no disloyal act, but the weight of their sympathies will be with the 'down-trodden South.'"

From this answer it appears that but *two* of the *fourteen* men selected under the advice of the President could be indorsed as loyal, while the most that could be said of the board was that "they would *probably* do no *disloyal* act, but that the weight of their sympathies would be with the *down-trodden South*."

It was to these men, however, appointed at the instance and in the interest of the President, that this road, with the four millions of money expended on it by the government, and all the rolling stock it could identify as having been its own, before and during the war, was handed over, along with more than a million and a half of other government property.

And this brings us back to the special history of the debts incurred by the two Tennessee roads, which rejoiced alike in the administration of Michael Burns, and the distinguished favor of the President.

On the 11th of April, 1866, Mr. Burns, the president of both, having then paid nothing to the government, addresses to Captain R. S. Hamill, chief quartermaster of the military railroads in the division of the Tennessee, a note requesting that the time for the payment of the first instalment due on the bond of the Nashville and Northwestern Railroad Company, be extended to one year from the date of the bond, from which period the instalments to commence and continue to be paid monthly thereafter—no apology being vouchsafed for the default, and the only inducement for further indulgence suggested, being a promise to pay the accruing interest on the last day of each month, *if possible*; and on the following day the terms are accepted without objection.

No regard is paid, however, to this promise until the 16th of January following, (1867,) when Mr. Burns addresses another note to the Hon. J. S. Fowler, senator from Tennessee, who had been previously employed by him in his effort to obtain the possession of these roads, informing him that Major Hamill had notified him that he would take possession of the Northwestern road on the 20th of the (then) current month, for the non-payment of the debt due to the United States, which would be, as he says, a dead loss to the State and the United

States; and asking him to have the order suspended until the road was finished, which would be in the month of June following. As in the former instance, no excuse is offered for the further default, but on the 19th of the same month, Major Hamill is ordered to suspend any action until further instructions, and to report immediately the state of the account, along with his reasons for taking possession of the road.

On the 20th of January, Major Hamill reports the state of the accounts, showing the bond of \$529,201 45, of the date of November 30, 1865; a notification by himself to pay in April, 1866, and the extension granted at that time; the fact of additional purchases by Mr. Burns to the amount of \$5,079 55; the refusal, or at least the "studied neglect" of that gentleman, after repeated solicitations, to execute an additional bond, and his second notification that he would retake possession of the property if the bond was not immediately executed, "as the only means whereby the studied indifference manifested by him regarding all matters pertaining to the indebtedness of the company to the government could be overcome." He adds, moreover, that the total amount received from the company up to that time was only \$26,404 74, none of which was paid in money, but all consisting in credits for transportation services.

On the 18th of February, in reply to a letter from the chairman of the Judiciary Committee, inquiring the cost to the government of the Nashville and Northwestern road, General Rucker communicates to the Secretary of War the report of Colonel Crilley, acting quartermaster of the United States military railroads, of the date of February 15, showing the total cost to the government for construction of new road, up to September 1, 1864, to have been \$1,469,732 20; and on the 21st of the same month he submits to the Secretary of War a supplementary report, of the 19th of February, from the same officer, inviting attention to the fact that there was nearly a million and a half of dollars overlooked that was properly chargeable to the company, on account of the construction of their road, which, with the debt owing by them for property purchased from the government, on which only \$26,704 74 had been paid, and amounting, with interest till January 31, to \$552,422 09, would make a total of \$2,022,155 29 due the United States, which the company appeared to be making no effort to pay. General Rucker suggests, moreover, that in making this transfer without receiving or demanding reimbursement, the government "has to this extent, *apparently through inadvertence*, transferred its own property," and asks that the proper action may be had thereon. It does not appear, however, that any notice has been taken of this communication, and the company holds the \$2,000,000 of government property, without payment and without security.

The case of the Nashville and Chattanooga road involves, however, some additional facts, which will go far to explain the indifference of the government.

The amount of rolling stock purchased in this case was, as already shown, over a million and a half of dollars; more, according to the confession of Burns to the witness James, than the road could ever pay. On the 5th of April, 1866, in consequence, no doubt, of the threat of Major Hamill, already referred to, he addresses a note to that officer, informing him that the company will pay within five days one instalment on its bond, together with the accrued interest on the amount of purchase, and that, *so far as possible*, the subsequent instalments would be paid thereafter as they fell due. On the 15th of April this proposition is communicated to General Whipple, who replies, by letter of the 17th, that "as the money which should have been applied to liquidate the debt due the United States, has been paid out and gone beyond the control of the company, we can do no better than accept the proposition of Mr. Burns, which you are authorized to do, and compel prompt compliance with the conditions thereof in future."

Mr. Burns, however, in the mean while, has carried his case to another and a higher court, where he is confident of making better terms. On the 20th of April, and within three days after the date of General Whipple's answer, a certain John

McClellan, of Nashville, then at Washington, and acting for Mr. Burns, addresses a letter to the President, informing him that he has been requested by Mr. Burns to say that he is sorely pressed by the officers of the government to pay in part for the material he had purchased; that he was induced to believe that it would not urge the payment of these claims until time could be had to make a settlement for the use of the road, on a basis proposed by him (Burns) to Quartermaster General Meigs, in the presence of Mr. Lincoln; that, acting on this belief, he had advertised that he was ready to pay the interest on the bonds of the company in New York on a given day, and made all his preparations for it, but in the mean time the above demand was made, accompanied by threats that they would again seize the road. He concludes by saying: "Now what he (Mr. Burns) most urgently desires of you is that the payment of these claims be ordered to be suspended until the settlement can be made, or to give him time to make the road earn the money. The road is doing well, and all that the company want is time. *The amount now on deposit to meet the interest of bonds would pay the amount now due the government.*

"You see how ruinous it would be to him, to the credit of the company, and the credit of the State, if he is forced to comply with this demand."

This communication, signed by the writer "*for Mr. Burns,*" is referred by the President to the Secretary of the Treasury, "*with directions that the collection be suspended until further orders,*" and by that officer turned over to the Secretary of War, who sends it to the Quartermaster General for his action. The last named officer reports on the 22d of May, that he had caused the order to be carried out; suggesting at the same time, with some degree of emphasis, "that the indebtedness of this company is the largest incurred by any railroad, amounting to \$1,564,836 29, on which the instalments and interest now (then) due amount to \$325,398 99."

It thus appears that Mr. Burns, having paid nothing, and being largely in arrears to the government, which was substantially without security for all this immense debt—confessing at the same time that he has money enough to pay it—showing by his own testimony that besides the proceeds of a large amount of cotton, the earnings of his railroad stock in the service of the enemy, which he is allowed to bring to market, he had realized over half a million of dollars out of the use of this very property, and claiming a settlement with the government upon the basis of the act of January 31, 1862, and showing no disposition whatever to pay a dollar of this money—is allowed, and in effect authorized by the President, to postpone the claim of the government, and to apply it to the payment of the bonds of a practically insolvent company, composed mainly of rebel stockholders, to save the credit of himself, the company, and the State, for which he had so tenderly and patriotically provided in his order of the 8th of August.

The surprise of the House and nation will not be diminished when they are informed that this same cherished object of the presidential favor, who had been so specially accredited by him to Mr. Lincoln, on grounds substantially admitted by himself to be false, instead of recognizing any pecuniary obligation to the government, has the effrontery to deny that it has built any more than *five* miles of the road in question, and to insist that instead of owing it money, it is, on the contrary, very largely indebted to him, as well for the use of the road it *built*, as of the road it *captured*; while he has the candor to avow at the same time, that it has not been his *intention* to pay, except upon a settlement in which the government shall be charged for that use, and that "knowing himself to be right," he is ready "to go to the utmost end and resist, by all legal means," any effort on the part of the government to dislodge him. Nay, he is not even prepared to deny that he may have told Sloss, who was the president or manager of another of the indebted railroads, "that he was a fool to pay, and might escape by delay," and may have advised others in the like predicament, "that there was

no use in making their payments when there was money due them." In his testimony before the committee, he admits that "he would have had no difficulty in paying for the stock purchased by him, if he had neglected to pay the accumulated interest on the bonds," but says that "he was not inclined to do it from the fact that he believed there was a debt owing to the roads." In his evidence before the special committee on southern railroads, he remarks that the company had an interest account of nearly \$500,000, and also a large floating debt, the former on the bonds of the company, indorsed by the State, and the latter for labor, wood, &c., accruing *during the war and before*, and that he paid all his debts honestly as far as he was able, but knowing the government was in the company's debt, he thought they might reasonably wait a little until he settled with them. And in all his negotiations, including his last letter to the President, he maintains this attitude, which, it must be admitted, is in entire harmony with the order of the President to make out the account of the receipts of the government for the use of these companies. It is by no means clear that it was intended by him that these debts should ever be paid. Burns so understood him, and says he thinks the action of the government towards himself was influenced partly by the consideration that he owed nothing, and that it (the government) was well aware that it was in his debt.

How it was that a man like this could be so indulged, in a case where there was no security and no disposition to pay, as to allow him to take the very money of the government, and apply it to the payment of the bonds of a rebel company, and a floating debt incurred, as is admitted, to some extent, while the State was a part of the rebel dominions, is one of those mysteries which Congress and the people will have a desire to understand. It has a special solution, however, that will make it perfectly intelligible, not in the magnetic power of the individual over a man whose will seems to have been the law to all around him—not even in the magnificent offer to him by Burns, when governor of Tennessee, on grounds of charity only, as insisted by himself, of half of his salary if he could obtain possession of these roads—but in mere relations of business and interest, in which he was able to make himself useful to the President.

It will be recollected that after stating, in the letter last referred to, his desire and readiness to pay the interest on the railroad bonds, the culminating argument is put in the pithy utterance: "You see how ruinous it would be to him, (Burns,) to the credit of the company, and the credit of the State, if he is forced to comply with this demand." Under ordinary circumstances there could be no particular force in such an appeal as this. But there was no mystery here. Burns was a friend; a member of the President's family, who had been previously retained as counsel in the matter of the surrender and transfer, was a considerable stockholder; and the President himself a creditor of both the company and the State, as the holder of thirty thousand dollars of their bonds, nineteen thousand of the former under the guarantee of the State, and the residue of the State itself, upon neither of which had any interest been paid since the commencement of the war! It was of course his interest that the credit of both should be protected, and the result was that the arrears of interest on his railroad bonds were paid, and the credit of the State, which had aided all its railroad companies by liberal contributions of the same sort, and for which the President had evinced so much solicitude in his order of the 8th of August, to that extent maintained and re-enforced; while the higher claim of the government, whose great interests had been intrusted to his hands, was indefinitely postponed! How far the general policy adopted by him in the treatment of the captured railroads of the south, may have been influenced by his pecuniary relations with the Nashville and Chattanooga railroad, and the seceding State of Tennessee, can only be conjectured. It looks, however, to the Committee, as though the key to much of his extraordinary conduct upon so great a question might be not inappropriately sought in the facts they have just detailed.

It was not, however, in this particular agency alone that the financial skill of this man, whose main object, according to Mr. Fletcher, was under all circumstances to make money, was called into requisition for the personal advantage of the President, and to the detriment of the government; although the transaction itself, originating while he was military governor of Tennessee, and only consummated during his administration here, may be possibly regarded by the House rather as the subject of a civil remedy, than one of so high a nature as impeachment.

It appears from the evidence, that in the latter part of the summer of 1862, a loan was effected by Mr. Johnson, then military governor of Tennessee, in connection with the Hon. J. S. Fowler, then comptroller of the State, from the Union and Planters' Banks of Nashville, of the sum of \$40,000, in the paper of those banks, which was then at a discount of from twenty to twenty-five per cent. below the legal tender circulation of the country, on their two notes of \$20,000 each, redeemable in the same funds, for the purpose of paying, and relieving the families of a regiment of loyal soldiers which had been raised in that city. The money was refunded by the government "from twelve to eighteen months afterwards, or perhaps more," to Mr. Fowler, who lodged it with the government depository at Cincinnati, on the 8th of July, 1864, took interest-bearing certificates therefor, and handed the same over to Governor Johnson, whose duty it became, of course, to take up the notes at once. They were permitted to remain unpaid, for the reason apparently that the money could be more profitably employed. In the mean while, however, the banks had become insolvent and passed into the hands of a receiver. Mr. Fowler testifies that he was much pressed to pay the notes, and much annoyed in reference to them—that he called the attention of Mr. Johnson to the matter after he became President, and that his answer was "let them call on me and I will attend to it." Mr. Burns says that about that time the banks became clamorous for their money; that Mr. Johnson desired to compromise, and thought they ought to take ten thousand dollars each, for the reason that their paper was at a large discount when received; and offered them that amount accordingly. On their refusal, he had recourse to Mr. Burns, and proposed through him to pay in Tennessee State bonds. The claim of the Planters' Bank was compromised in November, 1866, and paid on the draft of that gentleman for \$14,600. That of the Union Bank was satisfied in January, 1867, upon a like draft for \$15,000, although it is stated by him that the amount actually paid was \$16,250, the deficiency of \$1,250 being paid out of his own pocket, and the fact never yet disclosed to the President. During all this time, however, the funds were placed at interest, either in certificates of deposit or in the seven-thirty bonds of the government, purchased at a discount and sold at a large premium in December, 1866; and the effect is that Mr. Johnson has realized out of the government moneys, which should have been at once applied to the payment of the debt, the very snug sum of \$10,400, along with the interest and profits on the whole amount of \$40,000 advanced to him, for the period of about two years and a half. That it was an act of more than questionable propriety on his part, as military governor of Tennessee, will not, they think, be doubted by anybody, although they are not prepared to say that, however censurable in itself, it had any such reference to his official duties as President as would make it the proper subject of impeachment. They refer to it now mainly for the purpose of showing the relations of obligation and confidence existing between Burns and the Executive.

But a word more of Mr. Burns, who has accompanied the undersigned so far, before they part with him.

It is proper to add that the kindness of the Executive towards this individual was not exhausted by the benefactions that have been so largely commented on. The undersigned have already referred, in an incidental way, to the permit given to him by the President, to bring in and convey to market a large amount

of cotton claimed by him for one of his companies—the Nashville and Chattanooga—as the earnings of its rolling-stock, run off by the officers of the road upon the approach of our armies, and employed in illicit traffic within the lines of the confederacy. Mr. Burns states that he obtained it from Mr. Johnson as early as the month of May; that General Steedman, then commanding in Georgia, refused to allow the removal of the articles, and that he afterwards showed the order to General Thomas, who replied that he knew nothing about it, and did not wish to be bothered, but that he would give the requisite authority, if the witness would enter into bonds that it was the *bona fide* property of the company. The witness says that the order was the usual one issued at that time. There is no evidence, however, of any other transaction of the sort, as there was no law, in the judgment of the Committee, to warrant it. To determine whether there was, they will refer to the several acts of Congress on that subject.

By the 5th section of the act of 13th July, 1861, it is provided that when the inhabitants of any State are declared to be in a state of insurrection against the United States, all commercial intercourse between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful, so long as such condition of hostility shall continue, and all goods and chattels coming from said State into other parts of the United States shall be forfeited to the United States, with the proviso, however, that the President may, at his discretion, license and permit commercial intercourse with any part of such State or section so in insurrection, in such articles, for such times, and by such persons as he may think most conducive to the public interest, but such intercourse shall be carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury. The 5th section of the act of July 2, 1864, extends the prohibition to all commercial intercourse between all persons in those parts of the insurrectionary States which are comprehended within the military occupation of the national forces, whether with each other, or with persons residing or being within districts declared in insurrection, and not within those lines.

The fourth section of the act of March 3, 1863, enacts that all property coming into any of the United States not declared in insurrection, from within any of the insurrectionary States, through or by any other person than an agent duly appointed under the provisions of this act, or under a lawful clearance by the proper officer of the Treasury Department, shall be confiscated to the use of the government of the United States; and any person or persons by or through whom such property shall come within the lines of the United States unlawfully, as aforesaid, shall be adjudged guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned for any time not exceeding one year, or both, at the discretion of the court.

The act of July 2, 1864, makes it lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of the States declared in insurrection, and repeals so much of the fifth section of the act of 13th July, 1861, as authorizes the President to license or permit commercial relations in any State or section declared to be in insurrection, except so far as may be necessary to supply the necessities of loyal persons residing in insurrectionary States within the lines of actual occupation by the military forces of the United States, or so far as may be necessary to authorize persons residing within such lines to bring or send to market in the loyal States any products which they shall have produced with their own labor, or the labor of freedmen or others employed, and paid by them pursuant to rules relating thereto, which may be established under proper authority.

It seems clear, therefore, to the undersigned that, upon this state of the law,

there was no authority whatever left in the President to license or permit either the purchase or importation of the large amount of cotton, which Mr. Burns was thus allowed to bring within our lines, and send to market in the loyal States. The power conferred on him was only intended to legalize such honest traffic as might be conducive to the public interests, and to be exercised not on grounds of favoritism to individuals, but under regulations to be established by the treasury ; while in all other cases of property coming into any of the loyal States, except through the agents of that department, as captured or abandoned, it was not only to be confiscated to the use of the government, but the persons by or through whom it came were subjected to fine and imprisonment. Even that power, however, had been withdrawn to give place to a system which should confer a monopoly of that traffic on the government, except so far as might be necessary to enable parties residing within our lines to bring to market the produce of their own labor, or that of their employés. In the present case the property admitted was confessedly the earnings of the cars and locomotives that had been run off into the remoter rebel States, by the very officers of that company themselves, to prevent them from falling into the hands of our troops. The withdrawal of that stock itself was an act of flagrant disloyalty, if not absolute treason to the government, which, under the law of 6th August, 1861, made it the subject of prize and capture wherever found ; and the money earned by it in the service of the rebel government or its people was, at all events, the product of an illicit trade, which no imaginable state of circumstances, and no private claims of Mr. Burns could have excused the President for countenancing by favors such as these. He knew all the facts, or was bound to know them. His residence at Nashville, and his relations with Burns, would make this evident, without even the statement of that individual that he had explained the whole matter to General Thomas when he presented the President's order to that officer. It was his duty, under the law, to order the seizure of both the cotton and rolling-stock, for the use of the government, as soon as they came within his reach. If the President could pardon the past offence, and restore the property, as he has, in conformity with his unnatural policy, so uniformly done, he could at least grant no indulgence for future sin, by permitting its introduction in violation of a statutory interdiction that made the act a criminal one.

But colossal as all these operations were, they are quite equalled in enormity, and perhaps eclipsed in magnitude, by those which related to the surrender of individual property which had come into the possession of the government by capture, abandonment, or confiscation, within the meaning of the law. They will be better understood, however, by a reference to the statutes passed in relation thereto.

By the act of the 6th of August, 1861, it was provided that if any person or persons shall purchase or acquire, sell, or give any property of whatsoever kind or description, with intent to use or employ, or suffer the same to be used or employed in aiding or abetting the insurrection, or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment thereof, as aforesaid, all such property is declared to be lawful subject of prize and capture wherever found, and it is made the *duty* of the President to cause the same to be seized, confiscated, and condemned ; which is but a recognition, so far as the property is so employed, of the rule of the public law, which would extend even to a case where the property was forcibly taken from the owner, and used *in invitum*, subject only to a possible right to restitution by virtue of the *jus postliminii* in the event of a recapture, in case that rule applied to captures upon land.

By the act of 17th July, 1862, it was further provided that to insure the speedy termination of the rebellion, it should be the duty of the President to cause the seizure of all the estate and property of the persons therein named, and to use and apply the same, and the proceeds thereof, for the support of the army.

The parties designated are the officers and agents, military and civil, as well of the confederate government, as of the States which composed the same; persons owning property in any loyal State or Territory, or in the District of Columbia, who should give aid and comfort to the rebellion; and all other persons engaged therein, who should not, within sixty days after public warning and proclamation made by the President, lay down their arms and return to their allegiance; and to secure the condemnation and sale of any such property after seizure, so that it may be made available for the purpose aforesaid, it is further provided that proceedings *in rem*, as in admiralty and marine cases, shall be instituted in the name of the United States in any district court, and that if such property shall be found to have belonged to a person engaged in rebellion, or who has given aid or comfort thereto, the same shall be condemned as enemies' property, *and become the property of the United States.*

By the act of March 3, 1863, the Secretary of the Treasury is authorized to appoint agents to receive and collect all abandoned or captured property in any State declared to be in insurrection against the government, except such as had been used, or was intended to be used, for carrying on war against the United States, such as arms, ordnance, &c., and provides that any part of the goods or property received or collected by such agents may be appropriated to the public use, on due appraisal and certificate thereof, or forwarded to any place of sale within the loyal States, as the public interests may require, and that all sales of such property shall be at auction, to the highest bidder, and the proceeds paid into the treasury of the United States; with the proviso that any person claiming to be the owner of such abandoned or captured property might, within two years after the suppression of the rebellion, prefer his claim in the Court of Claims, and on proof of ownership, and that he had never given any aid or comfort to the rebellion, receive the residue of the proceeds, after paying expenses.

By the act of July 2, 1864, it is further provided that the agents so appointed shall take charge of, and lease, for periods not exceeding twelve months, the abandoned lands, houses, tenements, and shall also provide, in such lease or otherwise, for the employment and general welfare of all persons within the lines of military occupation formerly held as slaves, who are, or shall become, free; and that, moreover, property, real or personal, shall be regarded as abandoned where the lawful owner thereof shall be voluntarily absent therefrom, and engaged, either in arms or otherwise, in aiding and encouraging the rebellion.

The same act provides that all moneys arising from the leasing of abandoned lands, houses, or tenements, or from sales of captured and abandoned property, shall be paid into the treasury, and extends the operation of the first section of the act of March 12, 1863, so as to include property mentioned in the acts of July 13, 1861, and July 17, 1862, or, in other words, to lands.

And lastly, the act of March 3, 1865, provides for the establishment of a Bureau of Refugees, Freedmen and Abandoned Lands, to which shall be committed the supervision and management of all abandoned lands, and the control of all subjects relating to refugees and freedmen from the rebel States; and enacts that the commissioner appointed in pursuance thereof, under the direction of the President, shall have authority to set apart, for the use of loyal refugees and freedmen, such tracts of land within the insurrectionary States as shall have been abandoned, or to which the United States shall have acquired title by confiscation, or sale, or otherwise, and to assign to every male citizen, refugee, or freedman, not more than forty acres of land, for the term of three years, during which they are to be protected in the use and enjoyment at a certain annual rent, with privilege to the occupants at the end of the term, or at any time previous, to purchase and receive such title as the United States can convey, on paying the value thereof, as ascertained and fixed for the purpose of determining the rent.

Before the passage of this last-mentioned act, to wit, on the 14th of January,

1865, appeared, the famous Field Order (No. 15.) of General Sherman, issued with the approbation of the Secretary of War, reserving and setting apart the islands from Charleston south, the abandoned rice fields along the river for thirty miles back from the sea, and the country bordering the St. John's, for the settlement of the negroes made free by the war and the proclamation of the President, and providing that whenever three respectable negroes, heads of families, should desire to settle, and have selected a locality clearly defined, within the said limits, the inspector of plantations should give them a license to establish a peaceful agricultural settlement, when they might subdivide the land among themselves, and such others as might choose to settle near them, so that each family should have a plot of not more than forty acres of tillable ground, with the privilege to all those who had enlisted in the military service of the United States of locating their families in any of the settlements at pleasure, and acquiring homesteads and all other rights and privileges of settlers, as though present in person; and with a view to carry out this system, Brigadier General Saxton was detailed as inspector of settlements and plantations, with directions to furnish personally to each head of a family, subject to the approval of the President, a possessory title in writing, along with a description of the boundaries.

Under this order General Saxton testifies that he seized the Sea islands, upon which he colonized some forty thousand negroes, whereof each head of a family was to receive forty acres of land.

On the establishment of the bureau, the President ordered, as it became his duty to do, all officers of the government having property in their charge which was subjected to its management, to turn over the same thereto, and the Secretary of the Treasury, on the 27th of June, directed his subordinates, who had in their possession, or under their control, any abandoned or confiscable lands or tenements, to transfer the same accordingly: and under this order, and the act of Congress, General Saxton states that he seized, as assistant commissioner, about four hundred and fifty thousand acres of abandoned land, principally on the mainland, and including nearly the entire city of Charleston. This, however, was but a fractional part of the abandoned land which had been appropriated to the uses of the bureau, and passed to it by the act of Congress, while the abandoned lands themselves were but a part of the spoils which the fortunes of war had thrown into the power of the government, and had been solemnly dedicated to the highest and holiest of purposes. The personal property captured, and the lands either condemned or subject to confiscation for the treason of their owners, were an additional element whose account would baffle all calculation.

With all these immense interests, however, the President undertook to deal without the authority of Congress, in the interests of the traitors who were then but half subdued, and at the expense of the rightful beneficiaries, as if they had been his own, and with a prodigality that ignored the heavy burdens of the north, and all the services of its loyal soldiery, while it gave back with lavish hand to the rebel leaders, who had themselves so remorselessly confiscated every rood of ground that belonged to a loyal man, the baronial possessions which they had so justly forfeited by their crimes.

The undersigned have already dwelt at great length upon the surrender of the captured railroads, and the transfer of the rolling stock belonging to the government, without authority, and without security. They have also referred to the gratuitous return, or absolute donation to the rebel proprietors throughout the conquered States, of all the cars, locomotives and machinery that had been captured in war, at the expense of the lives of so many of our soldiers, who were in some cases brutally murdered for their attempt to seize them. Nothing is clearer than that this property was absolutely vested by the capture, and no more within the gift of the President than this Capitol. "The general law is, that on the completion of the capture the title vests in the captor, and is complete when the surrender has taken place and the *spes recuperandi* is gone. With respect to *booty*,

which refers to personal property captured on land, it is universally conceded that twenty-four hours' possession completes the title." (*Halleck*, 727, 780, *Wheat*; 632.) Nor has this principle been at any time questioned by the authorities. Even as to railroads themselves, the Secretary of War is careful to explain in his testimony, that the act of the government imported no transfer, but only a relinquishment of the possession, while in the letter of Acting Quartermaster Bliss, of the date of 25th of July, to Colonel Chandler, quartermaster of the military division of the Gulf, in answer to the demand of the New Orleans, Jackson and Great Northern Railroad Company, for a return of property, it is distinctly asserted that "the road, with its appurtenances, was taken possession of by right of capture, and its property became the property of the United States by the same right;" while it was, at the same time, stated that "so much as remained and is no longer required for military uses has been, in accordance with the general policy pursued, on grounds of public utility, toward railroad companies, ordered to be returned to the company." What was the value of the property thus surrendered, the Committee have had no means of ascertaining. It is sufficient, however, that it must have been immense. Nor is it any apology to say that some of the stockholders may have been loyal men, who could not be compromised by the acts of the directors, although that is the plea on which the present Attorney General has refused to allow proceedings under the acts either of 1861 or 1862, for the confiscation of the property of southern corporations. If the fact were even so, which is by no means probable, it was their misfortune to have been thus associated. In proceedings *in rem* the law does not pursue the owner. It is the chattel that offends, and it would be a poor defence for him, that he had intrusted it to an agent who had used it in battle against his country, or attempted to smuggle it across the lines, in violation of its laws. The least that could be expected, however, would be that those who plead their loyalty should come into court, as they are authorized by law, and show that they were not consenting to its use; in which case, if entitled on a recapture by virtue of the *jus post-liminii*, which is not generally understood, however, as applying to captures on land, their interests could be adjusted and reimbursement made out of the proceeds, after sale. To suppose, however, that the interests of a handful of loyal men, who had perhaps been exiled therefor, will cover a host of traitors, and shelter them from punishment, is more than even a truly loyal sufferer could desire. A few righteous men might have saved Sodom, but human justice cannot afford to follow such examples of forbearance. The case involves an assumption of power that no argument can excuse.

In the kindred matter, however, of the confiscated and abandoned lands, the acts of the President were not less arbitrary and unwarrantable.

The latter of these were made subject, as already shown, by the act of July 2, 1864, to leases for periods not exceeding twelve months, and subsequently vested in the Freedmen's Bureau, with authority to set them apart for the use of the refugees and freedmen, and to assign to every male citizen forty acres, for three years, at a specified rent, with the privilege of purchasing at or before the end of the term.

On the 29th of May, the day of the issue of the North Carolina proclamation, and within a little more than a month after the accession of the new President, he sent forth his proclamation of amnesty, under the authority apparently of the 13th section of the act of July 17, 1862, granting to all persons who had directly or indirectly participated in the existing rebellion, with sundry enumerated exceptions, amnesty and pardon with restoration of all rights of property, except as to slaves, and in cases where legal proceedings under the laws of the United States providing for the confiscation of property had been instituted, on the condition of an oath to support the Constitution and the Union, and faithfully to abide by all laws and proclamations made during the rebellion with reference to the emancipation of slaves with a proviso that special applications

might be made for pardon by any person belonging to the excepted classes; and under this invitation it was not long until the special exercise of the pardoning power in the excepted cases was brought into full play, as an auxiliary to the general policy of restoration indicated in his proclamation appointing provisional governors for the rebel States.

The plan of the President looked to the entire restoration of all rights of property, except where suits had been commenced, without which feature, doubtless, few of the excepted classes would have humbled themselves to the attitude of suppliants for the clemency of an individual so obnoxious to that class of men in the south as Mr. Johnson was at that time. By this it soon became apparent that he intended and understood, not only oblivion of the past, but the re-investiture of all rights that had not been divested either by legislation absolutely, or perished by the accidents of war. Instead, therefore, of taking any steps to execute the law, or to enforce the provisions of the confiscation act, as his duty under that act required him to do, he insisted that the mere exhibition of his act of grace was sufficient in itself to strip the bureau of all its possessions, and to rehabilitate the subject of it in his original estate. The Commissioner of the bureau, however, charged, as he was, with the interests of the exiled loyalists, as well as of the helpless wards of the republic, and faithful to his great office, took a different view of the matter, as will be found in his first annual report to Congress, in which he suggests that it was the evident intention of the law to give the bureau control over abandoned lands solely for the purpose of assigning, leasing, or selling them to refugees or freedmen; that for this end it had given to the bureau every right which an actual owner could have, except, perhaps, the right of sale; that, for all practical purposes, the tenure of the bureau had been considered almost identical with an estate, upon condition subsequent, the condition being the restoration of the property by competent authority to its former owners; and that accordingly the policy first adopted by the bureau was to return estates to those only who could show constant loyalty, past as well as present, for the very sufficient reasons that as it held property by authority of an act of Congress for certain definite purposes, it was supposed that this tenure must continue to exist until those purposes were accomplished, and that it could therefore be surrendered only when it was evident that the control over it was unauthorized and improper.

In accordance with these views, a circular was issued on the 28th of July, (No. 13,) providing: *First.* That all confiscated and abandoned lands, and other like property that now are or may hereafter come under the control of the bureau, are and shall be set apart for the use of loyal refugees and freedmen, and so much as may be necessary assigned to them, as provided in section four of the act establishing the bureau. *Second.* That all lands or other property within the insurrectionary States, to which the United States shall have acquired title by "confiscation or sale or otherwise" during the late rebellion, and all abandoned lands or other property in those States, become so by construction of law, and which remain unsold, or otherwise disposed of, are and shall be considered under the control of the bureau for the purposes herein set forth, and for the time authorized by the act establishing the same, and no part or parcel of said confiscated or abandoned property shall be surrendered or restored to the former owners or other claimants thereof, except such surrender be authorized by the Commissioner. *Third.* The pardon of the President will not be understood to extend to the surrender of abandoned or confiscated property, which by law has been set apart for refugees and freedmen, or is in use for the employment and general welfare of all persons within the lines of military occupation formerly held as slaves.

This order, however, although in obvious accord with the law, did not prove palatable to the President, and accordingly on the 16th of August he indorsed

the following on the papers of B. B. Leake, a rebel soldier, which seem to have been referred to him:

"Respectfully returned to the Commissioner of the Bureau of Freedmen, Refugees and Abandoned Lands. The records of this office show that B. B. Leake was specially pardoned by the President on the 26th ultimo, and was thereby restored to all his rights of property except as to slaves. Notwithstanding this, it is understood that possession of his property is withheld from him. I have therefore to direct that General Fisk, the assistant commissioner at Nashville, be instructed by the Commissioner of the Bureau of Refugees, &c., to relinquish possession of the property of Mr. Leake, held by him as commissioner, and that the same be immediately restored to said Leake. *The same action will be had in all similar cases.*

"ANDREW JOHNSON."

This peremptory order, which he had no authority whatever to make, was followed up by sending for the Commissioner to inform him that there was something in his circular (No. 13) which the President did not like, and it was accordingly superseded and annulled by another of the 12th of September, rewritten by himself, and designated as No. 15. In this, after the declaration, in the language of the law, that the bureau has charge of "such tracts of land as shall have been abandoned, or to which the United States shall have acquired title by confiscation, or sale, or otherwise," it is ordered, "first, that land will not be *regarded* as confiscated until it has been condemned and *sold* by decree of the United States court for the district in which the property may be found, and the title thereto *thus* vested in the United States; and, second, that abandoned lands held by this bureau may be restored to owners pardoned by the President, by the assistant commissioners, to whom such applications should be forwarded, so far as practicable, through the superintendents of the districts in which the land is situated; each application to be accompanied, first, by evidence of special pardon, or a copy of the oath of amnesty, where the applicant is not included in any of the classes therein excepted from the benefits of said oath; and, second, by proof of title."

While it has been a subject of unavailing and unredressed complaint, that loyal men, who have been ousted of their possessions by decrees of confiscation on the part of the rebel government, have not been restored by the President, but have been put to their actions of ejectment, and subjected to the law's delay before disloyal judges, the effect of this order, which assumed the right to direct the operations of an independent bureau, was a summary adjudication of a question of law in which the rights of third persons were involved, and belonging to another tribunal, which must decide at last upon the efficacy and extent of an instrument that must always, according to well-settled rules, be pleaded before it, and which tribunal must inevitably have decided under the exception as to suits depending in the proclamation of amnesty, that they were not affected in any case where the subject of the President's favor was not included in any of the excepted classes. The President not only assumes to override and annul the acts of Congress, and to set aside the national will as expressed therein, in relation to abandoned lands, by ordering their delivery upon his fiat, to the objects of his grace, but, with a coolness that is absolutely astounding, undertakes to eliminate from this statute the words "confiscation" and "otherwise," although put there disjunctively, and as distinguishable from "sale," and to change the word "or" into "and" by declaring that land shall not be regarded as confiscated until it has been condemned *and* sold by decree of the district court. And, as a consequence of this arbitrary exercise of power, the bureau is stripped by his act of its whole munificent endowment, not only of the lands of traitors abandoned within the meaning of the law, but even of those vested in the government by a regular judgment of condemnation, which divests the title of the delinquents in all prize courts, and vests the property in the United States by the very terms of the act of Congress, leaving only the process of sale as a means of converting it into money, which the government may waive, of course, if it de-

sires to use the property, where there are no other claimants upon the fund, and with which the delinquent, at all events, has nothing to do whatever. It is shown by the Commissioner in his testimony, that, as a result of these unauthorized orders, the whole plan of Congress, as well as the intent of the field order of General Sherman, has been not only traversed but substantially overthrown by the mere will of the President. In Virginia, particularly, as he remarks in his report, quite an amount of land—not less than one hundred and two pieces, according to the returns made to the committee—had been libel'ed and condemned, and were about to be sold just previous to the establishment of the bureau, when the sales were suspended by the Secretary of War in order that these lands might be turned over to the bureau for the benefit of the freedmen. He claimed, as he had a right to do, that these lands, though not actually sold, were already the property of the United States, and remonstrated with the President against the insertion of the word "*sold*" in the definition of confiscated property. He left the President with the understanding and *assurance* on his part, that the question would be referred to the Attorney General. When the circular came back to him from the President it was with the interpolation of the words "and sold." The then Attorney General (Mr. Speed) testifies that he has no recollection that any such question was ever submitted to him, and that it had always been his opinion that when sentence of condemnation was once pronounced, the whole affair passed into the courts, and was beyond the jurisdiction of the Executive. It seems clear, then, that under the pretence of a reference, the act was that of the President himself, without even the poor apology of an erroneous advice. It was enough that it was a part of his policy, and all this property was restored.

But all this was only a trifle in its comparative amount. As a result of this order, a very large amount of property was restored in all the rebel, and some of the loyal States. In the city of New Orleans alone the quantity held and surrendered was enormous. In South Carolina General Saxton says that besides the Sea islands, he had seized about 450,000 acres, when he was arrested by an order of the 2d of October, directing him to seize no more, and that upon his requisition on the Treasury Department for all the abandoned property in its possession, it had turned over to him nearly the entire city of Charleston—all of which was restored to its former owners. He stated in addition that he had received four hundred and fifty orders for the restoration of property in that city, each order covering from one to twenty-five dwellings, and eighty-five more for the restoration of plantations—one or more to each order—and that his successor had probably restored more than he had. He refused, however, to surrender the Sea islands without a special order in each case, because he did not consider the circular No. 15 as applying to them. On an application made by the Hon. William Aiken, as in other like cases, he accordingly indorsed the answer that "he had taken possession under the field order of General Sherman, which was issued under a great military necessity, with the approval of the War Department; that more than 40,000 destitute freedmen had been provided with homes under its provisions; that he should break faith with the freedmen now by recommending the restoration of these lands; and that in his view this order of General Sherman was as binding as a statute."

The South Carolina rebels, however—the same who had first fired upon our flag, and held high carnival upon the boulevards of Charleston, as they watched the walls of Sumter, with its feeble garrison, crumbling under the traitor missiles which they hurled against them—had now become by their defeat the masters of the government they had endeavored to destroy, while the helpless freedman, the only "faithful among the faithless," who was in the ranks of our armies, and had earned his settlement at the price of his blood, was no longer an object of consideration for this government. Nay, even as though we had unjustly offended these proud patricians, and were desirous to propitiate their good

will by something in the way of sacrifice, the government itself at once directs not only the surrender of the lands, but even the abandonment of its own offices and quarters, and the hiring of others—though afterwards modified into a retention of possession, to that extent, at a moderate rent. On the refusal, moreover, of General Saxton to surrender these lands without a special order, he was duly notified by one or two leading rebels that “they were to be given up; that the President had so informed them; and that he had better give them up quietly, or it would be the worse for him.” As a consequence of this refusal, a letter was written by William H. Trescott to the President, indorsed by Governor Orr, stating that it was impossible for him to do anything so long as General Saxton had control of affairs in that department, and urging his immediate removal, which was done; and thus a valuable officer of the Union armies seems to have been displaced at the instance of two notorious rebels, merely because he insisted on doing his duty, and stood in the way of the President’s policy. It was his duty so to refuse. If wrong was done, it was not his province to restore. The islands in question were captured and appropriated under an order which had the approval of the government. If they were not acquired by “confiscation or sale,” they were acquired “otherwise,” and that was by abandonment or lawful capture. Nor is it any more an answer, to say that the seizure of the lands of individuals is not in accordance with the usages of modern times, than it would be to insist that any process of condemnation is required in the case of a capture on land. Whatever may be said on the score of wisdom or humanity, the *usage* of nations is one thing and the *right* is another. As a matter of strict right, the law of nations authorizes it, although the usage of modern times is undoubtedly the other way. But the application of the usage itself is held to depend upon the principle of reciprocity. If one of two belligerents chooses to capture or confiscate the private estates of citizens of the other—as was the known practice of the rebel government—the other may retaliate; and even without this provocation, there is no power, as there is no common arbiter, that can gainsay or question the right of a conqueror to deal with the property of the conquered as may seem good to him. The right of General Sherman, the commander in the field, to make this order and appropriation was not doubted then, and is not doubted now, by the Secretary of War. If he was correct in this, it required no more than the actual seizure, and the approval of the government to perfect it, and the land thus seized was a property acquired “otherwise” than by “confiscation or sale,” and falling under the charge of the bureau within the very terms of the act of Congress. If the law-making power chose to disaffirm that title afterwards, or to surrender it back, as it has since substantially done, to the original owners, upon the terms of good behavior or otherwise, that was their affair, and theirs only. The Executive of the nation was without power in the premises.

It does not seem, however, to have been considered that even a pardon itself was in all cases absolutely necessary to the restoration of the lands. In the case of Trenholm & Co., notorious blockade-runners, all the property of the firm was surrendered on a special order of the President, issued without any pardon at all, one of the members of the firm admitting in his testimony that it issued in September, while his own pardon was of a later date. How many other cases there were of the same sort, the committee are not advised. In that of J. E. Davis, the brother of the president of the confederacy, and a large landholder in Mississippi, who for a long time refused to apply for a pardon, or even to concur in the mediation of his friends, who interceded for him, on the ground that he had done no wrong, the President indorsed on the application for a return of his property, on the 22d of May, 1866, the very curt and apparently impatient inquiries, “by what terms is this property held? Why has it not been restored upon the application of the owner?” To which it was answered by the Commissioner, on the following day, that the property was taken up by the Treasury Department as abandoned, and that Mr. Davis had never received it, because he

had refused to make application for his pardon, although he admitted that he was worth \$20,000. On the 12th of September, he exhibited a pardon, which, according to General Howard, was the first official information of the fact, although it is said to bear date on the 23d of March. It does not appear, however, in the list furnished by the President to the House on the 4th of May, (Ex. Doc. No. 99,) and if not antedated, it was very probably refused by the beneficiary. The firmness of the Commissioner alone seems to have prevented the surrender of the property on the terms on which it was demanded.

Nor was the munificence of the President in all cases even impeded by the fact of a judicial sale under a decree of condemnation. General Howard reports four cases of this sort in Louisiana, viz : those of Burth Leonce, Goodrich & Co., and A. W. Merriman, in one of which the property was valued at \$75,000, and another at \$13,000; and one, also, of F. W. Armistead, in Virginia. There is a fifth, however, in the former State, which is entitled to special notice for several reasons. It is that of the notorious Pierre Soulé, whose dwelling-house at New Orleans, which was then occupied as an asylum by the government itself, and was of great value, was condemned on the 10th of July, and actually sold and bid in for the government on the 26th of September, 1865, at \$23,500. This bid was, however, withdrawn by the consent of the marshal, because the officer who made it was not provided with funds to pay for it. On the 23d of October, Soulé received a special pardon, and on motion of his attorney and exhibition of the pardon on the 20th of November, a rule was taken on the government to show cause why the proceedings should not be discontinued and the property restored, which was heard on the 29th, and a decree of dismissal entered. The case is proved by General Howard to have been referred to the Attorney General in January for an opinion as to the validity of this decree, and the steps necessary to be taken for retaining the property, but no answer was vouchsafed; and on the 8th of March the resident commissioner was ordered to give actual possession of the property to Mr. Soulé, and it was done. It is due, however, to Mr. Speed, the then Attorney General, to say that he has no recollection of ever having been consulted in this case.

But whether the pardoning power extends to the remission of mere forfeitures, not touching the person, but recoverable only by proceedings *in rem*, is not, in the judgment of the undersigned, by any means clear on principle. It is not to be denied that the practice heretofore has, perhaps, recognized its efficacy to that extent. That practice will be found, however, to depend mainly, if not entirely, on the opinions of Attorneys General, who have looked for their authority in giving a construction to the terms of the Constitution to the analogies of the royal prerogative in England, which is not always a safe guide in the interpretation of a specific grant of power here. Where the penalty is a consequence of the conviction of the person offending, and a part of the judgment, it must fall, of course, with the offence; but when it consists merely in a forfeiture of property it does not seem to have been always so considered. Under the revenue and other laws, the power of remitting forfeitures has been sometimes lodged with the Secretary of the Treasury, and sometimes with the courts. If it had been considered a part of the pardoning power, it must have remained with the Executive, as it belongs to him only under the Constitution. They do not propose, however, to go into an argument upon a point that is not essential to their case.

But it is not to the mere subject of the remission of forfeitures of lands and chattels that the executive government has confined its beneficent operations. With the same habitual contempt for the law that seems to have governed it in all its measures, it has gone so far as not only to restore lands which had been vested in the United States by judgment of law, but even to pay back the proceeds of sales of personal property made under the law, in the face of a direct command to pay them into the treasury, and a reference for remedy, of such

parties as might feel themselves aggrieved, to the courts alone. Governors Parsons and Sharkey, whose supposed influence at court seems to have suggested their employment in cases of this description, both testify specifically to the payment of large sums of money arising from sales of cotton seized and forwarded to market by the agents of the Treasury Department. But the proof does not stop here. The records of the department show over sixteen millions of dollars received by the Treasurer from this source, of which upwards of six millions (\$6,174,379 '38) are proved by him to have been ordered into his hands *as a special agent*, for no other reason known to himself, "except, perhaps, that there were claims against it, and constant repayments, and that *if it once got into the treasury, there was no way of getting it out except by warrant under act of Congress.*"

Nor did the Secretary fail to avail himself of this ingenious expedient for evading the constitutional interdict, and dispensing with the action of the legislative authority. All of this money, with the exception of \$870,367 '83, has been checked out by him on requisitions signed by the Commissioner of Customs, and countersigned by himself; in some instances under the special direction of the President. The account shows, it is true, that \$2,600,000 of this money was "*covered into the treasury,*" on two of these requisitions. The residue, however, seems to have been applied at the mere discretion of the Secretary to the reimbursement of individual claimants, expenses, and other disbursements connected with this branch of the service. Among the former is a notable item of the date of November 22, 1866, "*refunding to B. F. Flanders the sum of \$800 '11, alleged to have been improperly covered into the treasury,*" and by this process withdrawn from it without warrant of law.

The cases shown by the Secretary, wherein the payments were made under the personal direction of the President, are *seven* in number. Two of these only, to wit, those of Mansfield & Co. and Mrs. Emily Miller, appear in the account of the Treasurer. It is to be remembered, however, that this account does not comprise those of the many supervising agents, upon whom orders were drawn *ab libitum* by the Secretary, who admits that until the special appointment of General Spinner all the claims were paid in that way. The reason assigned by the Secretary on his examination, as to one of these cases, was that *he* "believed it unjust to the claimant and disreputable to the government to send him to the Court of Claims," or, in other words, that it did not become a great nation, and was not its true policy, to *enforce the law* in that particular case, just as the Attorney General decides that it was not the policy of the government to enforce the laws of the same kind in regard to lands. Indeed, the policy of Congress enacted into law has not been generally recognized as the policy of the executive government. Whether the moneys thus withdrawn from the agents of the treasury were *in* the treasury or not, it is scarcely worth while to argue, although it would seem, on general principles, to be a question scarce susceptible of a doubt, whether, having once reached the hands of their proper custodian, they were not there, by construction of law, in virtue of his title to hold them as Treasurer of the United States. It is sufficient for the present purpose that they *ought* to have been there under the law. How much has been paid away in violation thereof, by a process which allowed so large a field for rebel attorneys, and so wide a scope for executive favoritism, it is impossible to say—the cases now referred to being only those where the property had been actually sold, and the proceeds realized.

It is not denied by the Secretary that large amounts of property were surrendered *in specie* upon the application of individual claimants, nor insisted by the undersigned that this might not, perhaps, be properly done in cases of clear mistake as to ownership, or when the loyalty of the owners was above all exception. There is a class of cases, however, suggested just at this point by the

production of another of the special orders of the President, that is equally deserving of the attention of the House.

It was remarked at the outset that it was a part of the programme of the Executive to meet the necessities of his policy, and dispense with the otherwise indispensable agency of Congress in the premises, not only by drawing unlawfully upon the contingent funds of the departments, whose heads were then subject to his will, but by absolutely donating to his new governments the spoils of the dead confederacy, and authorizing them to supply any deficiency by taxation.

The evidence of this charge is to be found in the following extract from a communication of the Secretary of State of July 8, 1865, to the provisional governor of North Carolina :

" Mr. Worth will make an estimate of the expenses which may attend the special trust conferred on you, namely, the organization of the State of North Carolina. The amount thus reasonably estimated will be paid *at the War Department* as an expense incident to the suppression of the rebellion. The estimate, however, will carefully exclude all expenses which may arise from the administration of the civil government of the State, including the charities thereof. It is understood here that *besides* cotton, which has been taken by the Secretary of the Treasury under act of Congress, there were quantities of resin and other articles, as well as *funds*, lying about in different places in the State *and elsewhere*, not reduced into possession by United States officers, as insurgent property. The President is of the opinion that you can appropriate these for the inevitable and indispensable expenses of the civil government of the State during the continuance of the provisional government. He is also of the opinion that you can *levy taxes or assessments* for the inevitable and indispensable expenses prescribed as aforesaid, and enforce their collection. Should you adopt this course, and find yourself impeded or embarrassed in the execution of the measure, you will then report to this department, and orders will be given by the War Department to the military authorities to take charge of the matter."

The result of these instructions was a correspondence between the treasurer of North Carolina and the Treasury Department at Washington, wherein it was claimed by the former that all property of the confederacy and of the rebel State governments, not seized till after General Schofield's proclamation, on the 27th of April, of a cessation of hostilities, as well as *moncys* in England arising from sales of cotton that had run the blockade, were intended to be embraced in them. To a despatch of the 19th of October, addressed to the Secretary, complaining of the seizures of cotton belonging to that State, and referring to these instructions, the Secretary replies that he did not consider them as having been intended to include that article, although confessing that the word "*besides*," as used by Mr. Seward in that connection, was "a little unfortunate." In a previous letter, however, of the 30th of June, to David Heaton, esq., the supervising special agent for that State, after referring to representations made to him by a delegation of citizens thereof, that "in consequence of the extreme destitution of the people, and the want of means at the disposal of the new State government, it would be almost impossible to put it fairly in operation," he proceeds as follows :

"Of course none of the property already turned over to or collected by our agents, *as such*, can properly be appropriated for that purpose, but I incline to the opinion that the public good will be as well promoted, and the true spirit of the laws on the subject as fairly carried out, by allowing the new organization to have the benefit of some of the ungathered *debris* scattered through the State as to have it gathered by agents of this department, and the proceeds thereof go into the treasury, and I have accordingly indicated to the gentlemen composing the delegation that our agents should not be *too inquisitorial* in their researches, or *too exhaustive* in their labors in this direction, and that *I have no objection* to the present State government having the benefit of any property which belonged to its rebel predecessor that it may be able to collect. I will thank you to so shape your action, and direct your subordinates as to substantially carry out the policy above indicated."

And in a subsequent letter of July 3, 1866, in reply to an inquiry by the Hon. Edwards Pierrepont, as to the detention by the government of one hundred and seventy-five bales of cotton claimed to belong to the same State, he reas-

serts the authority of the Executive to deal with these questions on the same footing as Congress or the law, in the following conclusion :

"The policy decided upon in relation thereto is that it should be taken to New York and sold, the proceeds to be held for such ultimate decision as might be made in the premises, either by the action of the Court of Claims, or Congress, or by order of the President."

The Secretary is under the impression that the like course was pursued in regard to others of the rebel States, and admits that no accounts have ever been rendered by or required from any of the provisional governments, of the property rightfully belonging to the United States, appropriated by them under this authority.

The special order of the President above referred to shows that even a larger measure of liberality was extended to the most criminal of all the revolting members, in the surrender to the provisional government of South Carolina of "the State works," located at Greenville, and consisting of buildings erected during the rebellion for the manufacture of arms, on lands donated for that purpose. On application made therefor, the case was referred by him not to the Attorney General for the law, but to the Secretary of State, as a sort of chancellor, for his opinion "whether (without waiving the right of the government, or admitting the legal claim to it asserted by the State authorities,) it would be *equitable and advisable* to allow them to retain the property in question on account of the expenses of the provisional government, in the same manner that the provisional government of North Carolina was allowed to take and retain possession of certain property for the same purpose." The Secretary responds, of course, that "the State of South Carolina, from the time when its provisional government was authorized, is to be considered not as an insurgent, or seditious, or hostile State, but as a State loyal to the Union;" that the State thus loyal "is impoverished, and needs and is entitled not only to forbearance, but to *magnanimity and favor*;" that it was obvious that much of the captured property would produce no considerable accessions to the treasury, and that if the net avails resulting from a sale would not exceed \$60,000, it might be properly relinquished after appraisement, "with the reservation, however, that after peace shall have been proclaimed, and the State of South Carolina shall have been fully restored to her federal relations, the subject shall be referred to the consideration of Congress." The President thereupon directed an appraisement of the property, with instructions for its relinquishment to the State in case it did not exceed in value the amount suggested; but without providing for any future reference to the supreme authority. It was appraised accordingly at \$33,928 79, and surrendered to the provisional government without any reservation whatever.

But the munificence of the President to his own governments did not stop with the *debris*, either of the dead confederacy or of the living Union. True to the paradoxical theory of his minister of state, "that from the time the provisional governments were authorized by him," and while holding and constraining them only by the power of the sword, "they were to be considered as States loyal to the Union, and entitled not only to forbearance, but to magnanimity and favor," he not only manifests his settled purpose of forcing these outlawed communities into their old relations, in defiance of Congress and the people, by the impotent device of reporting their votes on the constitutional amendment in regard to slavery, but presumes to endow them from the national domain by the issue to them, as members of the Union, of patents or certificates for their pretended shares of college scrip, covering a large amount of public land, under the provisions of an act of Congress, (July 5, 1862,) passed while they were in actual rebellion against the government, and authorizing the distribution thereof among the States for agricultural purposes. The testimony of the honorable James Harlan, then Secretary of the Interior, shows that upon the submission by him to the President, at a cabinet meeting, of a demand made by a gentle-

man representing himself to be the agent of the State of North Carolina, he was directed by that officer, with the assent of a majority of his cabinet, and in conformity, as he says, with "his settled policy, to permit each of the rebel States to receive and enjoy all the rights and privileges of any other State in the Union, on the ground that they had been fully restored," to cause the scrip to be issued accordingly. And the fact that it did issue, and that other scrip was in the course of preparation for the States of Georgia, Virginia, and Mississippi, is verified of record by the recitals of an act of the present Congress, approved by the President himself, in which the whole proceeding is solemnly declared to be unauthorized and illegal, and all further steps in that direction expressly prohibited. Enough, however, was done to show the utter contempt with which the opinion of Congress has been ever regarded, and the determined purpose of the Executive to bend the whole government to his own will.

The committee have not, in their remarks upon the restoration of rebel property, undertaken to inquire into the wisdom or humanity of either the principles of public law, or the enactments of Congress, which divested the titles of the owners, or appropriated it to the uses of the government. On that subject there are differences of opinion among the undersigned, while none of them would have favored a rigorous, universal, or indiscriminating enforcement, since the return of peace, of the penalties prescribed in order to the suppression of the revolt. That, however, is a question which has been already passed upon by the highest authority in this nation, and is not re-examinable here. If it were, it would be an easy task to show at least that the legislation of Congress has been distinguished by a spirit of moderation, forbearance, and magnanimity, that has no example in history. But even if it were otherwise, they are all agreed that it was no business of the Executive. His duty was only to execute the law as he found it, and carry out the policy recognized and established by it, so long as it was the law. The task of mitigating its severity, if it were even rigorous, belonged only to the Congress of the United States, and could be safely trusted with them only, to be exercised, if wisely exercised, with a judicious economy that would husband their resources of mercy, and dispense it at such times, and upon such conditions, as would enable them to conciliate the disaffected, and take security for the future good behavior of those who had offended unto death. That they would have so dealt is not to be questioned. But the assumption of the right of the mere executive officer of the nation to inaugurate a policy of his own, in contradiction of the will of the people, as already declared or hereafter to be declared by their representatives, and to force that policy upon the nation, by turning loose and reinstating all the offenders against its laws, in the possessions and power which they had legally forfeited, was a high crime against it, that deserves not only its censure and condemnation, but a measure of redress so large as not only to correct the evil, but to serve as an example and warning for all future time.

Akin to the subject just discussed is that of the abuse of the pardoning power, another of the articles of charge against the President, which the undersigned will now proceed to examine.

It is not disputed that this power is lodged with the Executive, under the Constitution, without any apparent limitation upon its exercise. It would be a false logic, and a poor statesmanship, however, to infer that it is without reasonable limitations altogether, and may be exercised without discrimination, to the great damage, and possibly to the entire destruction of the government. Every power granted by the Constitution is subject to such a qualification, and if susceptible of abuse, is only to be checked and controlled by the remedy of impeachment. It will scarcely be contended that in a state of war, such as that through which this nation has just passed, the Executive might turn loose the prisoners who were the captives of our spears, as fast as the fortunes of war delivered them into our hands, by according to them an absolute pardon of their

crime, although it is clear that he might do it without violating the letter of the law—or that he would not be impeachable and removable for the abuse, either upon considerations connected with the public safety, or on the footing of the traitorous purpose—the *animus*, in more technical language—which it might disclose.

And yet the exercise of the pardoning power by the present incumbent, as will be shown, if not resulting in the discharge of prisoners, *flagrante bello*, has been such in its effects as to turn loose, *nondum cessante bello*, with all their rights and powers of mischief fully restored, and place beyond the reach of punishment, either in person or estate, the very excepted classes who had been justly singled out in the proclamation of amnesty as the ruling spirits of the rebellion, and the most formidable of its agents; and this with the undoubted purpose of enlisting their means and influence, using them as auxiliaries against the government which had just subdued them, in carrying out his policy of reorganizing the rebel communities, and forcing those communities into the Union in defiance of the will of Congress, and of the people of the loyal States. It was with this process that the system of special pardon was first inaugurated, and it was precisely to this class of men that it seemed intended that the work should be especially intrusted. They were the known favorites of the still unsubmissive South. Their merits and popularity rested upon their services in the rebellion, and their known hostility to the government. To make treason honorable, they were elected to the conventions, and although disqualified by the proclamation, were invited to take their seats and participate in the work that was to restore them to their original power in the nation, by the offer, without regard to the merits of the case, of a free pardon, which they had not, perhaps, even condescended to ask. For this purpose the provisional governors were made the almoners of the Executive bounty, and the keepers of the Executive conscience. "Send hither list of members elected to the convention, in order that pardons may be issued," is the language of the State Department to Provisional Governor Johnson, of Georgia, in a telegram of October 27, 1865. "All those who are aspirants to seats in the convention will be pardoned upon your recommendation, and a submission of their names by telegraph," is the language of the President himself in another, of the 21st of September, to Holden, of North Carolina. In this exercise of the high prerogative conferred on him by the Constitution, the committee think he delegated a trust that was purely personal, and abused the power that the Constitution had given him.

If other evidence were wanted, however, to show how far this power was abused as an instrument to subserve the purposes of the President in forcing his policy upon the nation, it may be found in the case of the one hundred and ninety-three deserters from a West Virginia regiment, who were released from all pains and penalties, and restored to their forfeited pay and allowances, to the amount of some \$75,000, at the instance of a particular friend of the President, without knowledge of the facts, and upon no other argument, so far as the undersigned can ascertain, than the statement of a pardon-broker, and a letter purporting to have been written by a democratic candidate for Congress, to the effect that it would be doing him a great service by enabling them to vote at the approaching election, because he was well assured that their restoration would result in his election, provided it could be effected immediately. It was effected immediately. The letter of the pardon-broker, Mr. McEwen, of the 22d October, 1866, suggesting the fact that "these men were registered, and wanted to vote, but would be debarred, unless the disability was removed," was placed in the hand of the Hon. T. B. Florence, along with that purporting to be written by Mr. Andrews, the candidate referred to, on the following day, and a peremptory order was at once indorsed by the President, without so much as a reference for any other purpose than its execution. It is testified, however, by the Secretary of War, that no investigation was made by him, but that within a day or two after the order

had been sent to the Adjutant General for execution, he was advised by that officer that "he thought the President had been deceived, for he found that one or more of the persons ordered to be relieved had deserted to the enemy;" that he immediately went to the President, and asked him whether he was aware of the fact, and whether he desired to have such persons released; that the President replied in the negative, and directed him to have an investigation made as to how many of them belonged to that class; and that only one was found who belonged to it; but what investigation was made as to the others, he was unable to say.

From this subject the transition is an easy one, to that not only of the failure of the President to execute the laws, but to his absolute obstruction of public justice, in sheltering the violators of the law from the just punishment which it awarded to their crimes.

The Constitution makes it the duty of the President "to take care that the laws are faithfully executed," and there is no way in which he can evade this duty, except by the exercise of the pardoning power, in cases of offence against the United States. There is no intermediate course by which he can lawfully relieve the offender without incurring the responsibility that might attach to an act of pardon, but yet it is shown by the evidence that he has not only refused on system to enforce the laws enacted for the purpose of punishing treason against the state, but has interposed, through his subordinates, to prevent not only the exaction of forfeitures, but the prosecution of crimes connected with the rebellion. Mr. Chandler, the district attorney for the State of Virginia, testifies that on no less than nineteen indictments found and depending for treason, in that district, proceedings have been indefinitely stayed. In Kentucky, Alabama, and other States, according to the testimony of Attorney General Staubery, prosecutions of this sort were numerous, and the same is stated by him more specifically as to Kentucky, Missouri, and Maryland. And yet, so far as the undersigned are informed, they have been invariably arrested or dismissed, upon such reasons as will be found in the following passage from his testimony: "I considered that no one certainly was expecting that these trials should go on. If it was our duty to try parties indicted for treason, who had taken part in the rebellion, then it was not only our duty to try them, but to prosecute every one else who had been guilty of the same offence. We could not make fish of one and fowl of the other." And again, in answer to the question whether the duty to prosecute would not be determined by the fact of information made, he says: "That is a mode of proceeding. But if there was a public policy to prosecute persons for treason who were engaged in the rebellion; if it was thought necessary to vindicate the laws by such prosecution; and if it was our duty to go on and prosecute, we should be involved in more cases than we were involved in, and these were more than we could manage. I have distinct views on that subject as to the policy of going on with these trials for treason. They were general in Kentucky, Missouri, and Maryland. My own opinion was that the war had settled all the issues of the war. I did not myself think it necessary that the question whether secession is treason should be left to any twelve men anywhere." In his opinion, then, it was only a speculative question of casuistry or metaphysics that was involved, and none of the vindication of the law. He had "distinct views as to the policy of punishment." Both he and the President had a policy, which was, unfortunately, not that of the law, and that was to punish nobody. They had "more cases already than they could manage," and therefore they managed none even of those they had, except in the way of dismissing all of them. They could not discriminate, although the President had already discriminated in his first proclamation of amnesty. There were no great criminals to be made examples of although, in a better hour, and in the same instrument, he had already singled them out, and reserved them to be dealt with by the law. The right to pardon even the ex-

cepted classes was still open to him, if he did not choose to prosecute, but he had no right to accomplish the same object by indirection, where he may have shrunk from the responsibility of the act, by striding into the courts and using the law officer of the government to strike down their process by the mailed hand of executive authority; and yet this is precisely what he has done in all these cases.

But it is not in the matter of proceedings strictly criminal alone, that the course of public justice has been thus obstructed. The same policy exactly has prevailed in relation to proceedings *in rem* under the confiscation acts of 1861 and 1862. For a few months after the accession of Mr. Johnson, the district attorneys were advised, by circulars from the office, here, that they would be expected diligently to enforce these laws; and they proceeded accordingly to file their informations in the courts against all such property as they considered to be obnoxious to this proceeding. This process was, of course, not palatable to the South. The zeal and fidelity of the officer were made the subject of complaint at Washington. The rigor of the rule was relaxed. Attorneys, as shown by the testimony of Mr. Starbuck, who made reports of property that was liable to seizure, even in cases where it had belonged to the dead confederacy, were discouraged by the refusal of the government to prosecute. When they seized the cotton or other property of rebel corporations, accumulated in the service of the confederate government, to which all their resources had been devoted, they were instructed that the directors could not bind the stockholders, on the hypothesis that some of them might *possibly* be loyal, and the very curious argument, that, if the law were otherwise, the individual property of every *town* or *city* whose officers might have appropriated any portion of the public funds in aid of the rebellion, would be liable to confiscation! If permitted to proceed, however, the prerogative stepped in under Order No. 15, in the shape of a pardon, with the royal sign manual attached, to wrest the confiscated property from the hands of the government. And the whole mockery was ended, after the briefest life, by the order of October 19, 1865, conforming to that issued to the Freedmen's Bureau, and instructing them to make no more seizures under the confiscation act of July 17, 1862, until further orders from the department. Nor from that time forward have the inducements to official fidelity been any more flattering. The fate of James Q. Smith, the district attorney for Alabama, and apparently one of the most intelligent and faithful of these officers, who is admitted to have been driven from that State for his adherence to the Union, and his property sequestered, is evidence of this. Offending in the same way as General Saxton, his head fell, like that of Saxton, upon the remonstrance of certain members of the bar of middle Alabama—most of them, no doubt, consenting to his expatriation and the seizure of his property—on charges of ignorance and incapacity, oppression in office, and the exaction of illegal fees. His correspondence with the department shows that the first was grossly libellous. The second is just the complaint that was likely to be made against a faithful officer. And if dismissed on the third, for aught that appears, it was without a hearing and without evidence.

That this, however, has been, and is to the present day, the settled policy of the government, is a point not open to dispute. It is admitted by Attorney General Stanbery, in answer to a question put to him by the committee, that he has neither instituted nor directed any proceedings whatever in the courts, either criminal or civil, *in personam* or *in rem*, for the enforcement of the laws passed for the suppression of the rebellion. His reasons for arresting prosecutions for treason have been already detailed. In regard to the confiscation acts, he says that he found this policy prevailing when he came into office, and his own reasons for not enforcing them are that they were, in his judgment, only *war* measures, which had served their purpose, and run their course; and that it would, moreover, be an erroneous policy to confiscate property after the return of peace.

Mr. Speed agrees that this was the policy in his time, and that it had the approbation of the President. It is to be remarked, however, that it was the opinion of that gentleman, as communicated to the Senate by the President, so late as January 5, 1866, (Ex. Doc. No. 7,) that though active hostilities had ceased, a state of war still existed over the territory in rebellion; and we have the admissions of the President himself in his proclamations of April 2 and August 20, 1866, that until the last mentioned day, the peace of the Union was not re-established. It is to be remembered, moreover, that until the restoration of the judicial authority by the re-introduction of the courts into the conquered territory, it was impossible to execute these laws so far as they regarded lands. There was no apology, therefore, for refusing to enforce them, even supposing them to have been war measures only, at least until the return of universal peace was so solemnly proclaimed by the President. By the construction of these Attorneys General, they became absolutely inoperative with the first practicable opportunity of enforcing them. The main objection seems to have been, however, that the policy of the *law* was not in accord with that of the *President*. That any Attorney General holding his place by the tenure of the executive will, should agree with his principal, and think him wiser than the Congress of the United States, is perhaps entirely natural; but that he should allow himself to be betrayed into the opinion that the laws were not to be enforced because he or the President could possibly have made better ones, is a striking commentary on the effect of cabinet conclaves, in the long interregna of Congress, upon great affairs of state, on the part of men, who are, under the theory of our Constitution, but the ministers and not the supervisors of the legislative will. Nothing but the habit of *making* law, or *dispensing* with it, could have led to such a result.

The indisposition of the government, however, to bring to justice even the guiltiest of the rebel leaders is best exemplified in its treatment of two of their number—one the border agent, who was commissioned to organize invasions from the territory of a neutral state, and the other the head of the rebel confederacy.

It will be remembered that amongst the individuals charged by the President with the crime of complicity in the assassination of Mr. Lincoln, was Clement C. Clay, who, in addition to this offence, was held for the crime of setting on foot piratical expeditions to plunder and burn our cities. Though not arrested at the time, the fact of his confederation with the murderers of Mr. Lincoln was found by the sentence of a military commission, which received the approval of the President. Upon his surrender, after a short imprisonment, though laboring under so grave an imputation, he was released on his parole on the 19th of April, 1866. On an information lodged against him, subsequently, by the district attorney for the State of Alabama—the same who was removed, as already shown, for his superserviceable zeal—he was indicted for treason and conspiracy, and his property duly seized for confiscation under the act of 1862. On application, however, to the President, the proceedings for confiscation were dismissed, and his property restored on the 14th of February, 1867. On the 21st of the same month an order was issued to the district attorney of that State, suspending proceedings on the indictment, and, on the 26th of March, the same attorney was directed again to suspend proceedings *indefinitely*, and instructed, specially, not even to make the arrest.

In regard to the case of the leader of the rebellion himself, the committee are not agreed upon the propriety or necessity of indulging at present in any special commentary.

Next to the obstruction of the course of public justice, and the flat disobedience of the mandates of the law therein, is the abuse of the *appointing* power, and with it the power of *removal*, which, although not conferred on the President by the Constitution, has been generally conceded to him in practice since the foundation of the government, as an incident to the power to appoint, and only conceded,

perhaps, on the opinion expressed by Madison in the debate in the first Congress, in 1789, on the establishment of the department of foreign relations, that its abuse would be impeachable. And here it may be truly said that, among all the appliances used to coerce the national will, and force the policy of the President upon the country in opposition to the opinion of its Congress, there have been none more profligate and law-defying than those connected with the exercise of this tremendous power.

It is not to be denied that, for the last thirty years of our history, this great power has been again and again abused by the indiscriminate proscription of valuable public servants, for no other reason than to reward the hungry hordes who have followed upon the heels of a successful aspirant, or to punish those who have been independent enough, or perhaps unfortunate enough, to differ in their political opinions with the victorious candidate or party. To some extent, at least, it was to be expected that an incoming party should gather around it the men who most faithfully reflected its opinions, and it was perhaps not unreasonable that it should endeavor to strengthen itself by taking possession of the strong places of the government, so far as might be essential to the success of its administration. The power of appointment involves, like the pardoning power, the exercise of a discretion as large as it, with the advantage of a check against abuse in the association of the Senate. That of removal, however, like the same power of pardon, is without limits, except in the constitutional check against abuse by the remedy of impeachment. The measure of criminality would depend, however, in all such cases, not so much upon the act itself, as upon the *animus* with which it was done, and that is only to be reached by uncovering the hearts, and penetrating the hidden motives of those who may have discretion enough to disguise an unlawful purpose by an affectation of zeal for the public interests. And this has been precisely the difficulty heretofore. In the present case, however, we see, perhaps for the first time, the intent of the dispenser of the government patronage boldly and shamelessly avowed. The present incumbent, without a party to represent his opinions, except it may be in the rebel States, and in the very crisis of his mortal struggle with the Congress of the United States, has felt no hesitation in declaring in effect, in a public speech, and in the hearing of the whole nation, that the present is but a contest for power between the Congress and himself. The former, as he charges, is aiming to maintain its ascendancy in the government, and to perpetuate it by keeping its friends in office, and threatens accordingly to pass a law to prevent him from turning them out. "But," he remarks, "if you will stand by me in this action, God willing, I will kick them out just as fast as I can." And he is as good as his word. The axe is put in motion, and nearly two thousand heads fall on the scaffold in about four months, to the great detriment of the public service, while the argument in reply to the inquiry of Congress, as to the causes of their removal, is not official misbehavior, but "political reasons" only, which, as explained by the testimony of the Postmaster General, means that they favored the policy of the representatives of the people in preference to the scheme of the President. It is not, like those that have gone before it, even the case of a triumphant party coming into the possession of the government, upon a set of opinions that have received the indorsement of the nation, but that of a President almost without a follower, holding by the votes of those whose will he attempts to overrule, and employing the patronage they have so generously placed in his hands, for the public use, in the endeavor to make his own will supreme over this land.

But it is not only in the general fact of wholesale removal without cause, that Andrew Johnson has sinned against the nation's law. If there were even a precedent to excuse him thus far, there is more behind for which there is no example. Although the wisdom of the Constitution has associated with the President, the Senate of the United States, as an advisory body in the making of

appointments, he has practically ousted that body of its jurisdiction, and absorbed the whole appointing power in himself, by refusing in many cases to make nominations for vacancies that had been filled by him during the recess of the Senate, and retaining and reappointing not only the incumbents of these offices, but men who had actually been rejected by that body. The Secretary of the Treasury reports twenty-six cases out of one hundred and ninety-nine removals, in the customs and internal revenue service, of the former character, which he is pleased to ascribe to clerical inadvertence, although they are all alleged by him to have been duly returned to the President, and he was obliged to admit that he was speaking only by conjecture in regard to a point of which he was confessedly ignorant. The same number of cases is reported by him of re-appointments of the same individuals after rejection by the Senate, and after the adjournment of that body. A single case of the latter description is also reported by the Attorney General, while the Postmaster General returns a list of about seventy postmasters whose nominations were not sent in, and ten where the persons rejected were re-appointed. The apology is, in the former case, that the omissions were accidental, which could not well be, so long as the President keeps a record of these matters, and is so liberally provided with clerks. In the latter, the act was one of *commission*, where the idea of inadvertence is inadmissible. That they involve a violation of duty—a manifest breach of the spirit, if not the letter of the Constitution—and tend to overthrow the just balance of the government, and with it to endanger the liberties of the people, no man can seriously dispute. If the President may refuse to nominate for vacancies which have been filled by him during the recess, and continue the same officers, or can appoint others after the adjournment of the Senate—or if he may disregard their advice, by re-appointing the individuals whom they may have rejected, he may obviously keep up the succession, without advice, and perpetuate the power indefinitely in himself, while the Senate will cease to have any value, or any actual function as an advisory council in this government.

But this is not all. It is not the *Constitution* only that has been violated in the matter of appointments. It was necessary to get out of the way also the *laws* which Congress has enacted as a part of its policy in the suppression of the rebellion, and the restoration of the Union. By an act passed on the 9th of February, 1863, it was provided that no money should be paid from the treasury of the United States to any person acting or assuming to act as an officer, civil, military, or naval, as salary in any office not authorized by some previously existing law, unless where such office shall be subsequently sanctioned by law; and again by the act establishing a test oath, passed on the 2d of July, 1862, it was further provided that hereafter every person elected or appointed to any office of honor or profit under the government of the United States, either in the civil, military, or naval departments of the public service, shall, before entering on the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe a certain oath—being that generally known as the test oath—which oath so taken and signed shall be preserved among the files of the court, house of Congress, or department to which the said office may appertain.

The very first step in the process of executive reconstruction, the lawfulness of which its chief director and manager, the Secretary of State, to whose department it was assigned, does not hesitate to say he never doubted for a moment, involved a manifest violation of the Constitution of the United States, as well as both these laws. The project wanted southern managers. None were so fit, of course, for such a work as the traitor class, in whose interest it was apparently contrived. It was clear, moreover, that it could not be accomplished without money. In the place of provisional governor a new civil office was created by proclamation, that was unknown to our laws. To that office men were appointed and commissioned, without the advice of the Senate, who were

notoriously disqualified from taking the test oath by reason of their active participation in the rebellion, and salaries assigned and paid to them out of the contingent fund of one of the departments of the government. Nay, as if the very annals of despotism had been ransacked for examples, the stinted resources of the executive departments were, as already shown, to be eked out by the stranded wrecks—the unadministered assets—of the dead confederacy, which these extraordinary functionaries were allowed to seize and appropriate; and failing in this resource, they were still further authorized to quarter themselves, like the lieutenants of the Cæsars, or rather like so many Turkish pashas, by the sovereign power of taxation, upon the conquered provinces, claimed at the same time by the Executive to be States of this Union, at peace with the nation, with all their original rights restored, and with their functions only temporarily impaired!

Governor Parsons, of Alabama, testifies that he took the oath with a qualification as to so much of it as denied the agency of the party in the rebellion. Governor Sharkey swears that he took an oath that was prepared for him in the State Department, which was not the test oath, and “had nothing of that sort in it,” and that instead of filing it, as he should have done, he took it home with him. Their salaries were paid, however; and thus was this great law—a leading feature of the policy of Congress, enacted for the safety of the States, and to prevent the intrusion of traitors into the offices of the government, and the quartering of such men upon the resources of the loyal tax-payers—most flagrantly disregarded in every particular.

But it was not in these cases only that the law in question was trampled under foot. It was set aside intentionally in the appointment of officers in the customs and internal revenue service in the rebel States, who were known to be incapable of taking the oath required by law, and were accordingly allowed to amend and qualify it in such a way as suited their respective measures of patriotism. The fact was first brought to the notice of the House in the answer of the Secretary of the Treasury to a resolution of inquiry addressed to the President, showing fifty-four appointments of this character, with the admission that there were undoubtedly others whose oaths had not yet been received. The effect was, that the payment of salaries to the men so appointed was, from that time forward, out of the question; but, instead of conforming to the law by removing them at once, a special message was thereupon transmitted to Congress by the President, on the 5th of April, 1866, (Ex. Doc. No. 81,) suggesting a modification of the law, and conveying letters addressed to him by the Secretary of the Treasury and the Postmaster General, urging the necessity of the change. The argument of the Secretary, resting on a strong feeling of sympathy for the rebel appointees, who, according to his statement, were suffering for the want of their salaries, recites the fact that, in view of the opinion of “the President and his cabinet,” that “the revenue system ought to be established throughout the recently rebellious States with as little delay as practicable, and that the very unpleasant duty of collecting taxes from an exhausted and recently rebellious people should be performed by their own citizens, he had not hesitated to recommend, nor the President to appoint” men who might have been so connected with the insurgent State and confederate governments as to be unable to take the oath; and as the emergency seemed too pressing to admit of delay until the meeting of Congress, it was thought that the test oath might, in view of the great object to be attained, in some cases be *dispensed with*. “No one,” he says, “could have regretted more than yourself and the members of your cabinet, the necessity which existed for this course; but there seemed to be no alternative, and it was confidently hoped that under the circumstances of the case, it would be approved by Congress.” And he re-enforces the argument in favor of a change in the law by the suggestion, that as there were few persons of character or intelligence in those States who could qualify under the statute, he was “at a loss to know

where the right men could be obtained," and "was well satisfied that it would be *difficult*, if not *impossible*, to find them;" and that, moreover, "if the present incumbents should be dismissed, the public revenues would be seriously diminished."

It is clear, then, from this statement, that the law in question was knowingly violated, and that *on calculation*, with a view to a policy of restoration which was at variance with the will of Congress. And the former of these propositions is affirmed by the testimony of the then Attorney General, (Mr. Speed,) who states that he advised and voted against it as unlawful, and was supported in that view by one other member of the cabinet, (Mr. Stanton,) while Mr. Seward, who favored the proposition, admits that these appointments were made with a full knowledge of the disqualifications of the appointees under the law, and, upon full consultation, with the distinct and deliberate purpose of dispensing with it until Congress should be in a condition to modify it so as to meet the views of the Executive.

But the emergency was too pressing, according to the Secretary of the Treasury, to wait for the assembling of Congress. This, however, is the poorest of subterfuges. If the President had desired to confer with the Congress of the United States, or had hoped to secure their co-operation in his work, he would have called them together, as he could have done, long before the period of the pressing emergency which is supposed to have necessitated these violations of the law; and the very assertion of the necessity is a confession that he failed in his duty in not convoking them. He cannot plead his own default as an excuse for dispensing with the law. If it was necessary, as the Secretary and the Executive both suppose, that he should at once proceed to establish civil government in those States, and carry into effect the revenue laws, it was equally necessary that he should summon the law-making power to his aid, because it was clear that he could not get along lawfully without it. The Secretary's argument admits as much, but proposes that the President shall avoid this by doing the legislation himself, until Congress shall come here only to make the law conform to what their joint wisdom has determined that it ought to be. But the President had no real desire to see the representatives of the people of the loyal States. No spectacle could apparently have gratified him less. Nor had he any reason to believe that they would consent to repeal the test oath if here. If he had thought so, and it had been dispensed with merely because the urgency was such as to render it impossible to wait for them, they would have been scarcely allowed to assemble without having their attention invited to the infractions of that law, which had been necessitated by their absence, instead of being left to discover the fact themselves. But necessity has been called the tyrant's plea; and the apology made here is no more than a rehearsal of the argument of the crown lawyers in defence of the prerogative of making laws—which never was extended, however, to that of constructing governments—by proclamation. That prerogative perished in England with the Tudors. But others descended—a fatal inheritance—upon the unfortunate family of the Stuarts. It was the mistake of Charles I, to insist on governing without a parliament, as it was the error of the last of that dynasty to cling to the ancient but obsolete prerogative of dispensing with the laws, which tumbled him from his throne, and drove him and his family beyond the seas. It is a sort of apothegm that history repeats itself. It is but natural, of course, that tyranny should always follow the same road and employ the same devices; but it is something more than a common coincidence, to find that the very act which culminated in the ruin of the second James is precisely that which challenges our animadversion here. Both involved the dispensation with a law establishing a test oath as a qualification for office. In the former it was doubted by the ablest lawyers whether the prerogative did not extend thus far in special cases, and a judicial decision was obtained before a bench of pliable judges in affirm-

ance of it. But it was too late for such experiments. The British nation revolted, and the revolution, with its bill of rights, has swept away forever this last remnant of ancient tyranny. The only difference between the cases is that this is one of a *political* test, while that was a *religious* one. No monarch will ever venture to assert that prerogative again in England. It remains to be seen whether it can be asserted with impunity here.

The main apology, however, for this usurpation of power is, that it was difficult, if not impossible to find competent men who could take the oath, and that as a consequence the revenue must have been the sufferer.

It would have been well, perhaps, if the latter of these considerations had occurred to the President or Secretary, on the occasion of the wholesale decapitation of valuable and faithful officers in the same department of service in the North, in advance of the elections of 1866, for no other reason than because they did not favor the policy of the President. But was it true that good and loyal men could not be found within the rebel States? Were they sought after? Were they wanted? Or was it the policy of the President to favor the traitor class in this particular, as in others?

The evidence establishes the fact conclusively that there were loyal men enough within these States, notwithstanding the discouraging exhibit of the Secretary, to perform these duties, if it had been his policy to employ them. The fact that these States, or some of them, contributed so largely to the Union armies, while as a general thing, the truest and bravest of our friends amongst them, were driven into exile, ought to be a sufficient answer to the unjust reflection that there were no men of character there who had not bowed the knee to Baal. But the statement is as untrue as it was ungenerous, as has been already shown by the report of the Judiciary Committee of the House, in the 39th Congress, (Rep. No. 51) made on the 23d of April, 1866, upon a reference of the message and communications now referred to. It is there stated, upon the authority of a letter from the Treasury Department itself, that one of the newly appointed officers who could not qualify—Montgomery Moses by name—who was appointed collector of the first district of South Carolina, was for four years collector of war tax for Jeff. Davis, while, in the language of the writer, "all his sons were rebels, and are now sucking government pap, and plenty of Union men here are idle." It was further stated, moreover, that a communication was furnished to a leading paper of this city, about that time, to the effect "that General Spenser, who commanded a part of the three thousand federal Alabama troops, and the Union men of that State then here, would be happy to furnish to the Treasury and Post Office Departments, the names of hundreds of respectable, reliable, and intelligent Unionists in that State, who were able to take the test oath of office without mutilation or mental reservation;" and that another of the same sort, protesting against the repeal of the law, in the name of the loyal men of Virginia, declared that "there were a sufficient number of competent and loyal men incarcerated at Richmond and Salisbury, for no cause but devotion to the Union government, to fill all the federal appointments in that State; and that the same was true as to all the others, if such men had the least encouragement to apply for them." Some of them did venture upon the experiment; among others, Mr. J. J. Giers, of Alabama, who, although backed by the special indorsements of Mr. Lincoln, Generals Grant and Thomas, and even Andrew Johnson himself, when military governor of Tennessee, was postponed to a Mr. F. W. Sykes, who was a member of the rebel legislature of the same State. The Secretary admits, on his examination before the committee, that the inquiries made for loyal men were of parties whom they met with from the South, but most generally of the provisional governors, the most of whom were disqualified under the test oath law themselves; and says that "he supposes most of the persons they consulted had in some manner participated in the rebellion." The despatch of Provisional Governor Holden to the President, of October 19, 1865,

“Sir, please direct that no more appointments of collectors and assessors of internal revenue be made for this State, *until I can make nominations*”—goes far to prove that the selection of these officers was committed entirely to those illegal functionaries. On evidence like this, the House refused to alter the law, reconstruction in this way being no part of its policy. The favorites were of course obliged to retire, because it was evident that they could not be paid, and the Secretary of the Treasury himself gives testimony to the untruthfulness of the reasons upon which the President felt himself compelled to dispense with the law, by the admission that he finds no difficulty in securing loyal and unexceptionable men to fill all the offices!

The next article of charge is that which relates to the abuse of the veto power.

It is not denied, of course, that the Constitution has lodged this power with the President in the same general terms as are employed in reference to the pardoning power. It would be equally a mistake here, however, to suppose that it was intended to be free from all limitation, or was exercisable in all cases at his mere caprice, without any discrimination as to the object, and in such a way as to obstruct on system the action of the legislative power. The President is not, as he has been generally but too apt to suppose himself, a part of the legislature. It is not with him, as with the King of England, who, even under the still prevailing forms that mark the progress of the British constitution, is theoretically supposed to be the fountain of all law as well as honor, and may exercise the power of a Roman tribune, by absolutely *arresting* an act of legislation by his royal negative. The negative which the Constitution gives the President is but a suspensive one—a merely dilatory engine, or a sort of *brake* upon the movement of the legislative machine. The time was when its interposition was a very unusual one—as it is at this day in England, where it has slept for near two hundred years—and when it was considered by statesmen that the only proper occasion for its exercise was in cases where the objection arose out of the fundamental law, and the constitutional obligations of the President therefore necessitated dissent. The committee have not found it necessary, however, to resort to any extreme ground like this. It is sufficient, in their judgment, if it shall be found that this power has been systematically employed to defeat the will of the people, and accomplish the criminal designs of the Executive, and not for the purpose only of giving them time to reconsider the acts of their representatives. If the Declaration of Independence made it a special grievance that the King of England, in the exercise of his undoubted prerogative, had “refused his assent to laws the most wholesome and necessary to the public good,” and that he had “obstructed the administration of justice by refusing it to laws establishing judiciary powers,” it can scarcely be supposed that the men who put it forth intended that there should be no remedy short of revolution for its abuse.

On this point there seems to be no difficulty. Whatever may have been the motive in other cases, the present Executive has not hesitated to disclose the *animus* which has governed him. In his speech at St. Louis, he has unreservedly proclaimed in the hearing of the American people, that in this great struggle between the legislative power of the nation and himself, “he would *veto* its acts whenever they came to him.” And he has been as good as his word here also. In every instance, perhaps without an exception, where those acts looked to the pacification and restoration of the rebel States, and the protection of the Union element therein, he has interposed his objections, and exerted his power to defeat the will of the people of the loyal States. That he has not succeeded in this object, and brought the legislation of the country to a dead stand in everything that concerned the restoration of tranquillity, is to be set down exclusively to the fact that the rebels themselves, whom he sought to introduce, have not been allowed to hold a place in its councils.

The undersigned do not propose an inquiry into the sufficiency or sincerity

of the reasons upon which he has unsuccessfully attempted to thwart the will of the nation on so many important occasions, even though the recent change of posture, in regard to the meaning and effect of one of the last great acts of its legislation, might well invite a scrutiny into the motives upon which he refused to give it his assent. There is evidence, however, in regard to the veto of the bill for the admission of the Territory of Colorado, that does show an attempt to secure the support of the senators elect from that Territory, on the condition of the approval of the bill passed by the two houses of Congress. It may be contended, perhaps, that the fact is not made out by the conversations of the President himself, and that the agency of his private secretary (the Hon. Edward Cooper) might not possibly be considered, under his own disclaimer, as sufficient in law to criminate the supposed principal. If it had been the desire of the President, however, to secure the support of the new senators by such an offer, it is not to be supposed that he would have negotiated with them in any other way. "See Cooper," was the language used by the President to Mr. Scovill, of New Jersey, when the question became so delicate as to make it judicious to adjourn the conversation, and refer the question to an intermediary. Whether it was regarded as important that Cooper should "see" them, may be learned from the interview which followed the mysterious note inviting it, of which the handwriting was unknown to himself, and of which the detected writer, (Mr. Coyle, of the *Intelligencer*,) who could not deny it to be his own, was profoundly oblivious. The undersigned are of the opinion that no impartial man can read the testimony on this subject, in connection with the veto message itself, without seeing in it the evidence that the approval or disapproval of that bill, against which no constitutional objections were alleged, was made to depend entirely on the question whether the votes of the two senators could be secured in favor of the "policy" of the President.

The next in order of the charges on which your committee are required to pass, is that of a corrupt interference in elections.

This, however, is covered to a great extent by the abuse of the appointing power in the removal of public officers for reasons merely political, and the bestowal of their places on others, upon the terms of adherence to the policy of the President. A reference to the papers on file in the Post Office and Treasury Departments will show that this was the argument most relied on in nearly all the cases of appointments and removals. To descend into details on such a subject would be a task of infinite and by no means agreeable labor. The committee will content themselves with referring, in this connection, to the testimony of two only of the witnesses examined before them. One of these witnesses, a man named Geiger, of Ohio, who held the place of a travelling agent in the revenue service, at a salary of two thousand dollars a year and expenses, testifies that he was on actual duty some four or five months only of the time, and that he attended the Philadelphia convention, and made a long tour and multitudinous speeches in support of the President's policy. What important services he rendered to the government beyond this, does not very satisfactorily appear. Mr. Sloan, of the same State, who held another agency of the like description in the Post Office Department, states that, having understood the President wished to see him, he "called accordingly, and was informed by him that he was very anxious to head off the intense radicals, hoped that Ohio would not indorse them, and said it was very important that the schemes of those in Congress should not take possession of the hearts of the people;" that "he was anxious to have everything done to head them off," and that "in carrying out his views in Ohio, the offices should be given to his friends;" and that, in pursuance of this conversation, Colonel L. D. Campbell, Geiger, General Burnett, and himself, having united upon some changes, waited together on the President, and they were made.

The case of the general order business in New York, where heavy bur-

dens improperly imposed on commerce were appropriated, not only for the benefit of favorites, but for "political purposes," is another case that has been already made familiar to the House through the investigation of another of its committees. To have pursued this line of inquiry further, by a minute scrutiny into the contributions levied upon office-holders, either to support newspapers, or in the way of brokerage to favorites, would have involved a task of weariness and supererogation both, in a case where the facts are generally notorious, and their importance is greatly dwarfed in the presence of so many more flagrant and undeniable enormities. The presence and active participation of two of the heads of departments in a political convention at Philadelphia, having for its object the organization of a party to sustain the policy of the President, and defeat the will of Congress and the people, and one of those functionaries the prime agent in the removals from and appointments to office for "political reasons," is a fact well known to the country. The like had not happened before in its history. In the view of right-minded men, it was something more than a public scandal. Mr. Locke regards the employment of "the force, treasure and offices of the society, to corrupt the representatives, or openly to pre-engage the electors, and prescribe what manner of persons shall be chosen," as among those breaches of trust in the executive magistrate which amount to a dissolution of the government; for "what is it," he says, "but to cut up the government by the roots, and poison the very fountains of public security?" (Locke on Government, vol. 2, §222.) The like opinion has commended itself to the common sense of the people of England, and finds expression as well in the common law, as in their declaration of rights. Judge Blackstone says (1 Com., 178) that "as it is essential to the very being of Parliament that elections should be absolutely free, therefore all undue influences upon the electors are illegal, and strongly prohibited." The jealousy of the Commons is, however, better illustrated by the fact, that they have not only proclaimed it by solemn resolution to be "highly criminal in any *minister or servant under the Crown*, directly or indirectly, to use the power of office to influence the election of representatives, and that any attempt at such influence will always be resented by that House as aimed at its own honor, dignity, and independence, as an infringement of the dearest rights of every subject throughout the empire, and tending to sap the basis of this their free and happy constitution;" but that at the commencement of every session of Parliament, it is their usage to declare it to be "a high infringement of the liberties and privileges of the House of Commons, for any lord of Parliament or lord lieutenant of any county to concern himself in the election of any member of Parliament;" and in the same spirit it is provided by law that "if *any officer of the excise, customs, stamps*, or certain other branches of the *revenue*, presume to intermeddle in elections, by persuading any voter, or dissuading him, he shall forfeit £100, and be disabled from holding any office." Mr. Johnson has made of the revenue service of this nation, an engine to defeat its will, by confessedly removing unexceptionable officers for no other offence than because they would not use their places to advance his policy. Whether the appearance of his *ministers*, or "upper servants," on such occasions as have been described, and the exercise of their high trusts in aid of his great usurpation, and in slavish subordination to his will, are to be regarded as criminal here, and resented by this House, as a blow aimed at its independence, involving an infringement of the dearest rights of the people here, and tending to undermine our own free and happy Constitution, the House itself will decide. Standing alone and under ordinary circumstances, it might, perhaps, afford to pass it over. As one of the most potent agencies in the concerted, obstinate, and persistent attempt to overwhelm the legislature and the courts, and usurp all the powers of government, it cannot, we think, with due fidelity to the living generation and to posterity, permit it to go unrebuked or unavenged.

But the efforts of the President to break down the power of Congress and impose his own policy on the nation, have not been confined to the mere disregard of the law, or the abuse of the extraordinary powers conferred on him by the Constitution.

The history of the country shows that from the first moment at which it was ascertained that it was the determination of the law-making power to settle for itself the great question of the reconstruction of the government, all the power and influence of the administration were brought into play, not only to prevent the enactment of laws, but even the execution of those which it seemed good to Congress to enact in defiance of the will of the Executive, by denying their authority, and endeavoring to bring the representative body into public obloquy and contempt. The first unmistakable public exhibition of this determination on his part, is to be found, perhaps, as has been already remarked, in the memorable utterances of the 22d of February, 1866, provoked apparently by the exercise of the undoubted rights of Congress, in referring, for the consideration of a joint committee of the two houses, one of the most important questions in our history, instead of humbly and submissively accepting the instructions of the President in regard to its duties, along with the passage of a law for the protection of the loyal people of the South from the persecutions of the defeated but vindictive rebels, who were then rejoicing in the sunshine of Executive favor. It was not the first time that this great nation had been shocked and humbled by an exhibition so scandalous in itself, and so damaging to its reputation, in the person of its highest magistrate. It *was* the first time, certainly, when, in utter forgetfulness of the proprieties of the position, of the respect and decorum always to be observed by the co-ordinate departments of the government towards each other, and always so essential to the maintenance of their proper harmony and dignity, a chief magistrate of this republic had ever ventured to make of measures depending before the representative body the subject of public remark, or to call in question what was said by an individual member, by singling him out as an object of public animadversion. Although there was a time in British history when the King might send down for a refractory member, or perhaps even visit the House to administer to it a public reprimand, there has been no time since the revolution of 1688, when the Commons of England would not have resented this as a breach of privilege, as they would equally an attempt like that of the President in his first annual message, in December, 1865, to instruct them in regard to their duties; and there is no privilege enjoyed by that body which is not equally essential to the independence of this. Nor is the breach on the part of the Executive to be justified by anything that is said or done here. He has no right to know what occurs in either house of Congress. The Constitution provides expressly that no member shall be questioned for anything said by him in debate on either floor. It has, bestowed, moreover, no supervisory power on the President—nothing, indeed beyond the mere right to communicate officially, and in a decorous way, his objections to a bill, when it has duly reached him; while, on the other hand, it does make the President responsible to Congress, by lodging with it the power to inquire into his public conduct, and to impeach and remove him when necessary.

But the unseemly exhibition just referred to was not the mere ebullition of a transient displeasure with an individual, which died with the occasion. If it had been, it might, perhaps, have been excused as a mere infirmity of temper on the part of the distinguished censor. But it was an attack on the law-making power. It denied the lawfulness of the Congress itself, and disputed the validity of its acts as such. And it was followed up by others so gross and scandalous, as to disclose a systematic purpose on the part of the Executive to remove that obstacle out of his way, by denying its authority, and inculcating a spirit of disobedience to its enactments. To prove the truth of this, it

is only necessary to refer to his public characterization of the national legislature as "a body calling itself a Congress, and hanging, as it were, on the verge of the government;" his repeated declarations that it was composed of "usurpers," "traitors at the other end of the line," who were themselves in rebellion against the government, and incompetent to legislate for the people whom they had wrongfully excluded from a share in their deliberations. The echo of his last speech, denouncing the result of the action of Congress, as the establishment of a military despotism in the south, is still lingering on our ears.

Such language as this, coming from the Chief Magistrate of the nation, and followed up, as it was, by correspondent acts, in the then unsettled condition of the country, just emerging from a long and bloody war, and with a hostile population scarce half subdued, overflowing with rancor and bitterness against the Union which they hated, and all loyal men who had aided in their defeat, and ready to join hands with the first ally that might offer, to accomplish their cherished wish for the destruction of the government, was full of danger to the republic. If not intended, it was at least well calculated to subvert the government. It was a direct invitation, while the wounds of the South were still green and festering, to new rebellion, in which they were to be aided by all the power of the administration, backed by the whole anti-war democracy of the North—and it was so understood. If not dealt with as treason against the state, it was only because the war was supposed to be over. Promulgated as publicly during the continuance of actual hostilities, by any officer of the government, it would have cost him his commission and his liberty. If it did not reopen the strife of arms, or result in a *coup d'état* which would have turned over the whole government into the hands of the defeated rebels, it was only the constancy and fidelity of the loyal people of the North, in sustaining their Congress, that prevented it. The South was ready to respond. The armies of the Union had been withdrawn. In some parts the broken squadrons of the rebellion were silently mustering and reorganizing, under the color of *conservators* of the local peace. It had already, under this encouragement, unsheathed the sword against the white loyalist, and prepared the fetters for the black one. Mr. Goodloe, the United States marshal for the State of North Carolina, testifies (in January) that "the disposition of the people in that State had undergone a most unfavorable change during the last twelve months, in consequence, mainly, of the encouragement administered by the speeches of the President, and their idea that he would be able to resist the policy of Congress, and that in April, 1866, the rumor was prevalent at Wilmington, and circulated on the authority of a very intelligent lawyer who had just returned from Washington, that 'the President was going to bring 70,000 or 75,000 men to Washington, and was going to displace Congress and do as he pleased.'" Mr. Starbuck, the district attorney of the same State, testifies also to an "unfavorable change of sentiment, an increasing spirit of disaffection, and an outspoken feeling of disloyalty, occasioned as well by the position of the President during the first session of the thirty-ninth Congress, as by the too liberal exercise of the *pardonning* power; that it began with the division between the President and Congress; that the disloyal element took sides with the President, and that they were encouraged to believe that it would create a division in the North, and that in case of difficulty they would have friends there." The like testimony in regard to the revival of disloyal sentiment throughout the whole South is to be found in the evidence taken before, and annexed to the report of the joint Reconstruction Committee of the thirty-ninth Congress. How much private suffering and bloodshed it has involved to the loyal people of the South no man will ever know. The tragedies of Memphis and New Orleans, those great carnivals of murder, where ex-confederate soldiers in their traitor uniforms, and wearing the insignia of the rebellion, were let loose like wolves to riot in the blood of loyal men, only standing out more obtrusively than others in the foreground of the dark picture that overspreads the canvas, may, we think, be

fairly set down to the account of the President, who, in the latter of these cases, which he substantially justifies, while he throws the whole responsibility on Congress, ignoring the civil authorities of the State, commissioned known traitors to break up a legitimate assemblage of loyal men, and directed the military to sustain them in the act. All were but the consequences of the "instructions" issuing from the President. If they were not rehearsed in the streets of Baltimore, it is only to the well-timed expostulations of the leader of our armies that we are indebted for the fact. If the rebel States are not yet reconstructed, it is because he has unfitted their people for readmission into the old family circle of the Union; because he has taught them to disregard the authority of Congress; because he has encouraged them to believe that his will would prevail in this contest over that of the people's representatives; and because he has interfered with every forward step which they have taken in the pathway of peaceful and permanent restoration.

That, instead of acquiescing, as he was bound to do, he has endeavored to obstruct the plans of Congress by using his influence to prevent the adoption by the loyal, and the acceptance on the part of the rebel States, of the very liberal terms which it was pleased to offer, is a fact that might well rest on the evidence of two witnesses examined by the committee; one, Mr. Weatherby, of the pretended South Carolina legislature, and the other, Mr. Scovill, a senator from New Jersey, who severally called upon and conversed with him on that subject. To the former, who was sent up for this purpose in December, 1866, he remarked that "the Supreme Court had made a decision, perhaps the day before, which indicated the course they would take, and that he entertained a hope that he would be able to save the country by carrying out his policy on his plan." To the observation, however, that "the people of South Carolina were in such trouble that they were disposed to weaken on the subject of the constitutional amendment, if it would restore the country," he answered that "they had no assurance that it would restore the country; that it would give up everything; and he would regard it as the destruction of the Constitution and the country;" and Mr. Weatherby went home with his opposition strengthened. By the latter, who held, as he says, a casting vote in the senate of New Jersey, it was proved that he had an understanding with the President through his private secretary, (Mr. Cooper,) to whom he was referred by him, that he might control the offices in West Jersey, if not in the whole State, if he would sustain the policy of the administration, including the defeat of the constitutional amendment. But it is not necessary to rely on mere oral evidence. The fact is abundantly proved by the gratuitous message of June 22, 1866, (Ex. Doc. No. 57,) conveying the report of the Secretary of State on the resolution requesting the submission by him of the constitutional amendment recommended by Congress to the legislatures of the several States. The duty was a purely ministerial one, which required no more than a return of the fact that it had been performed. It pleased the President, however, to improve the occasion for the purpose of testifying his hostility to the amendment, with which he had nothing properly to do, and upon which his opinion had not been asked, by a public protest, in which, after referring to the peculiar importance of the proceeding, in view of the facts that the amendment was not submitted for his approval, and that, of the thirty-six States, eleven were excluded from representation, although, as he states, with the single exception of Texas, they had been entirely restored as States in conformity with the organic law, and of the doubt whether the action of Congress was in harmony with the sentiments of the people, and whether State legislatures, elected without reference to such an issue, should be called upon to decide upon the ratification, he concludes as follows:

"Waiving the question as to the constitutional validity of the proceedings of Congress upon the joint resolution proposing the amendment, or as to the merits of the article which it submits through the executive department to the legislatures of the States, I deem it pro-

per to observe that the steps taken by the Secretary of State, as detailed in the accompanying report, could be construed as purely ministerial, and in no sense whatever committing the Executive to an approval or recommendation of the amendment to the State legislatures, or to the people. On the contrary, a proper appreciation of the letter and spirit of the Constitution, as well as of the interests of sectional order, harmony and union, and a due deference for an enlightened public judgment, may at this time well suggest a doubt whether any amendment ought to be proposed by Congress, and pressed upon the legislatures of the several States for final decision, until after the admission of such loyal senators and representatives of the now unrepresented States as have been or as may hereafter be chosen in conformity with the Constitution and laws of the United States."

It is not to be denied, therefore, that so far as his influence as a public officer could go, and by means anything but proper and legitimate, he has endeavored not only to force his own policy upon the nation, but to prevent its concurrence in the plan suggested by the wisdom of its representatives for bringing about the restoration of the dismembered States, and securing the future peace and happiness of the republic. And that he still persists in maintaining this unprecedented and disastrous struggle against the popular will, and will make good his menaces by persevering in it, as he may do, as obstinately and bitterly to the end of his administration, although the nation may be racked and shattered to its foundations by the unnatural strife, seems to be too clear even to furnish a hope for those who would rather "bear the ills we have," and the greater that may ensue, than meet like men and statesmen the high and imperious requirements of public duty, by clearing the pathway to peace and rest.

Upon the foregoing state of facts, then, standing as they do almost entirely upon the public records, and not, of course, susceptible of successful contradiction, it becomes a question for the House to decide whether there are legal grounds for impeachment, and if so, whether the occasion is such as to make it their duty to exert their constitutional power for the public safety, and in the vindication of the violated law, by summoning the delinquent to answer before the highest tribunal of the country.

And here they would have been content to leave the case to the common sense of the House and country, as one whose very statement was sufficient in itself to compel from both the answer which they desired, if a doubt had not been suggested on this point so novel to themselves, that nothing but the respect which they owe to and feel for those who differ from them, would have induced them to trespass further upon the indulgence of the House by endeavoring to dispel.

In order, however, that the House may better understand the precise question at issue, they will here condense into a series of general propositions the several leading facts best entitled, as they think, to the consideration of the House, in the mass of evidence which they have taken.

These facts are—

1st. That the President of the United States, assuming it to be his duty to execute the constitutional guarantee, has undertaken to provide new governments for the rebellious States without the consent or co-operation of the legislative power, and upon such terms as were agreeable to his own pleasure, and then to force them into the Union against the will of Congress and the people of the loyal States, by the authority and patronage of his high office.

2d. That to effect this object, he has created offices unknown to the law, and appointed to them, without the advice or consent of the Senate, men who were notoriously disqualified to take the test oath, at salaries fixed by his own mere will, and paid those salaries, along with the expenses of his work, out of the funds of the War Department, in clear violation of law.

3d. That to pay the expenses of the said organizations, he has also authorized his pretended officers to appropriate the property of the government, and to levy taxes from the conquered people.

4th. That he has surrendered, without equivalent, to the rebel stockholders of southern railroads captured by our arms, not only the roads themselves, but the

rolling-stock and machinery captured along with them, and even roads constructed or renovated at an enormous outlay by the government of the United States itself.

5th. That he has undertaken, without authority of law, to sell and transfer to the same parties, at a private valuation, and on a long credit, without any security whatever, an enormous amount of rolling-stock and machinery, purchased by and belonging to the United States, and after repeated defaults on the part of the purchasers, has postponed the debt due to the government in order to enable them to pay the claims of other creditors, along with arrears of interest on a large amount of bonds of the companies, guaranteed by the State of Tennessee, of which he was himself a large holder at the time.

6th. That he has not only restored to rebel owners large amounts of cotton and other abandoned property that had been seized by the agents of the treasury, but has presumed to pay back the proceeds of actual sales made thereof, at his own will and pleasure, in utter contempt of the law directing the same to be paid into the treasury, and the parties aggrieved to seek their remedy in the courts, and in manifest violation of the true spirit and meaning of that clause of the Constitution of the United States which declares that no "money shall be drawn from the treasury but in consequence of appropriations made by law."

7th. That he has abused the pardoning power conferred on him by the Constitution, to the great detriment of the public, in releasing, pending the condition of war, the most active and formidable of the leaders of the rebellion, with a view to the restoration of their property and means of influence, and to secure their services in the furtherance of his policy; and, further, in substantially delegating that power for the same objects to his provisional governors.

8th. That he has further abused this power in the wholesale pardon, in a single instance, of 193 deserters, with restoration of their justly forfeited claims upon the government for arrears of pay, without proper inquiry or sufficient evidence.

9th. That he has not only refused to enforce the laws passed by Congress for the suppression of the rebellion, and the punishment of those who gave it comfort and support, by directing proceedings against the delinquents and their property, but has absolutely obstructed the course of public justice, by either prohibiting the initiation of legal proceedings for that purpose, or, where already commenced, by staying the same indefinitely, or ordering absolutely the discontinuance thereof.

10th. That he has further obstructed the course of public justice, by not only releasing from imprisonment an important state prisoner, in the person of Clement C. Clay, charged, among other things, as asserted by himself in answer to a resolution of the Senate, (Ex. Doc., 39th Congress, No. 7.) "with treason, with complicity in the murder of Mr. Lincoln, and with organizing bands of pirates, robbers, and murderers in Canada, to burn the cities and ravage the commercial coasts of the United States on the British frontier," but has even forbidden his arrest on proceedings instituted against him for treason and conspiracy, in the State of Alabama, and ordered his property, when seized for confiscation by the district attorney of the United States, to be restored.

11th. That he has abused the appointing power lodged with him by the Constitution:

1. In the removal, on system, and to the great prejudice of the public service, of large numbers of meritorious public officers, for no other reason than because they refused to indorse his claim of the right to reorganize and restore the rebel States, on conditions of his own; and because they favored the jurisdiction and authority of Congress in the premises.

2. In reappointing, in repeated instances, after the adjournment of the Senate, persons who had been nominated by him and rejected by that body as unfit for the place for which they had been so recommended.

12th. That he has exercised a dispensing power over the laws, by commissioning revenue officers and others unknown to the law, who were notoriously disqualified by their participation in the rebellion from taking the oath of office required by the act of Congress of July 2, 1862, allowing them to enter upon and exercise the duties appertaining to their respective offices, and paying to them salaries for their services therein.

13th. That he has exercised the veto power conferred on him by the Constitution, in its systematic application to all the important measures of Congress looking to the reorganization and restoration of the rebel States, in accordance with a public declaration that "he would veto all its measures whenever they came to him," and without other reasons than a determination to prevent the exercise of the undoubted power and jurisdiction of Congress over a question that was cognizable exclusively by them.

14th. That he has brought the patronage of his office into conflict with the freedom of elections, by allowing and encouraging his official retainers to travel over the country, attending political conventions and addressing the people, instead of attending to the duties which they were paid to perform, while they were receiving high salaries in consideration thereof.

15th. That he has exerted all the influence of his position to prevent the people of the rebellious States from accepting the terms offered to them by Congress, and neutralized, to a large extent, the effects of the national victory, by impressing them with the opinion that the Congress of the United States was blood-thirsty and implacable, and that their only hope was in adhering to him.

16th. That, in addition to the oppression and bloodshed that have everywhere resulted from his undue tenderness, and transparent partiality for traitors, he has encouraged the murder of loyal citizens in New Orleans, by a confederate mob pretending to act as a police, by holding correspondence with its leaders, denouncing the exercise of the constitutional right of a political convention to assemble peacefully in that city, as an act of treason proper to be suppressed by violence, and commanding the military to assist, instead of preventing the execution of the avowed purpose of dispersing them.

17th. That he has been guilty of acts calculated, if not intended, to subvert the government of the United States, by denying that the thirty-ninth Congress was a constitutional body, and fostering a spirit of disaffection and disobedience to the law and rebellion against its authority, by endeavoring, in public speeches, to bring it into odium and contempt.

And now, whether these grave facts, or any of them, involving undoubted usurpation of power, and repeated violations of law, and admitted to be worthy of the severest censure, are sufficient in themselves to authorize an impeachment within the meaning of the Constitution, is the question to be considered.

If they are not, then the exercise of powers as absolute as those of any monarch in Christendom is utterly remediless, and there are few cases in history where such a proceeding could have been rightfully instanced under our law, as there is none, in the opinion of the committee, that has been characterized by so many enormities.

To understand this question thoroughly, however, it is necessary to look into the history and uses of the proceeding, which has been derived by us from the constitution of the country whose laws and institutions have been so largely copied in the construction of our own government.

The practice of impeachment was borrowed originally from the Germans, who in their great councils sometimes tried capital accusations relating to the public, (4 Bl. Com. 260 ; Tacitus de Mor. Germ., 127,) and has been so reputed for its wisdom that it is to the want of this that the ruin of the republic of Florence is ascribed by its great historian. (Story's Com., sec. 744.)

The earliest instance of an impeachment by the Commons of England at the bar of the Lords, was in the year 1376, in the reign of Edward III. (Cushing's

Law Practice of Parliament, sec. 253.) Before this time, it had been the practice of the Lords to try either peers or commoners, without any previous complaint, for great public offences. (May on Parliament, 49, 50.)

"The object of these prosecutions in America, as well as in England, is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals, either from their own extraordinary influence, or from the imperfect organization and power of these tribunals." (Story's Com., sec. 688.) And it is said by Woodeson, in his lectures, (vol. 2, p. 601,) "such kinds of misdeeds as peculiarly injure the commonwealth by the abuse of high offices of trust, are the most proper, and have been the most usual grounds for this kind of prosecution. Thus, if a lord chancellor be guilty of bribery, or of acting grossly contrary to the duties of his office; if the judges mislead their sovereign by unconstitutional opinions; if any other magistrate attempt to subvert the fundamental law, or introduce arbitrary power; these have been cases adapted to parliamentary inquiry and decision. So, where a lord chancellor has been thought to have put the seal to an ignominious treaty, a lord admiral to neglect the safeguard of the sea, an ambassador to betray his trust, a privy counsellor to propound or support dishonorable measures, or a confidential adviser of the government to obtain exorbitant grants, or incompatible employments; because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offences, or to investigate or reform the general polity of the state." And to the same effect it is remarked again by the same author, (p. 591,) "it is certain that magistrates and officers intrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community, and at the same time in a manner not cognizable before the ordinary tribunals. The influence of such delinquents, and the nature of such offences may not unsuitably engage the authority of the highest court, and the wisdom of the largest assembly;" and again, (p. 611,) "impeachments are not framed to alter the law, but to carry it into more effectual execution, where it might be obstructed by the influence of too powerful delinquents, or not easily discovered in the ordinary course of jurisdiction by reason of the peculiar quality of the alleged crimes."

The same view is also taken by May in his Treatise on Parliaments, (page 473,) where he says: "Impeachment by the Commons for high crimes and misdemeanors beyond the reach of the laws, or which no other authority in the state will prosecute, is a safeguard of liberty well worthy of a free country, and of so noble an institution as a free Parliament. The times in which its exercise was needed were those in which the people were jealous of the Crown; when the Parliament had less control over the prerogative; when courts of justice were impure; when, instead of vindicating the law, the Crown and its officers resisted its execution and screened political offenders from justice." And he accounts for its infrequency in modern times by the fact that "the limitations of prerogatives, and the immediate responsibility of the ministers of the Crown to Parliament, have prevented the consummation of those crimes which impeachments were designed to punish;" and remarks that "for these reasons impeachments are now reserved for extraordinary cases and extraordinary offences." And again, (page 474:) "The purpose of impeachment in modern times is the prosecution and punishment of high crimes and misdemeanors chiefly of an official or political character, which are either beyond the reach of the law, or which no other authority in the state but the supreme legislative power is competent to prosecute."

It is stated, moreover, in the papers of the Federalist, (No. 65,) referring, of course, to the provision of the Constitution on that point, that "the subjects of the jurisdiction of a court of impeachment are those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may, with peculiar propriety,

be denominated *political*, as they relate chiefly to injuries done immediately to the society itself."

And in accordance with this is the language of Mr. Rawle, in his Treatise on the Constitution, page 19. "Its foundation," he remarks, "is that a subject intrusted with the administration of public affairs may sometimes infringe the rights of the people, and be guilty of such crimes as the ordinary magistrates either dare not or cannot punish." "The delegation of important trusts affecting the higher interests of society," he adds, "is always, from various causes, liable to abuse. The fondness frequently felt for the individual extension of power; the influence of party and prejudice; the seductions of foreign states, or the baser appetite for illegitimate emolument, are sometimes productive of what are, not inapily, termed *political* offences, which it would be difficult to take cognizance of in the ordinary course of judicial proceedings." Besides, "the involutions and varieties of vice are too many and too artful to be anticipated by positive law, and sometimes too subtle and mysterious to be fully detected in the limited period of ordinary investigation."

And again, (page 204 :) "The legitimate causes of impeachment can only have reference to public character and official duty. In general, those offences, which may be committed equally by a private person as a public officer, are not the subjects of impeachment. Murder, burglary, robbery, and, indeed, all offences not immediately connected with office, except the two expressly mentioned, are left to the ordinary course of judicial proceeding, and neither house can regularly inquire into them except for the purpose of expelling the member."

In the view, then, of these concurring authorities, historical as well as legal, which seem to settle the scope of the impeaching power in such a way as, in England at all events, would clearly bring each and all of the charges enumerated in the foregoing propositions within its legitimate range, is there anything in the terms of our Constitution, enacted in full view of them, to change the law in such a way that the boldest of usurpations, the grossest violations of duty, and the highest contempt of law, on the part of the Chief Magistrate of the nation, may run riot over the land, and shake the very pillars of the state, by convulsing the whole country to its foundations, without a remedy?

The objectors insist that there is. To understand them fully, however, it is necessary to refer to the terms of the instrument itself.

The fourth section of its second article provides that "the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of high crimes and misdemeanors." It, therefore, names but two offences specifically, and they are not charged here. Do the facts involved fall, then, within the general description of "other high crimes and misdemeanors," or are they excluded by the enumeration?

It is insisted, for the first time, we think, that they do not come within the meaning of the language used, because, although all confessedly in the popular sense the highest and gravest of misdemeanors, and many of them in the technical or common law signification of the terms, indictable as such in England, and, perhaps, in most of the older States, they are neither crimes nor misdemeanors here, because it has been held, with much diversity of opinion on the bench, and more at the bar, that there is no jurisdiction in the courts of the United States to punish criminally except where an act has been made indictable by *statute*, which, as the committee are constrained to think, is not a necessary logical result, even if the doctrine were incontrovertible, and to be considered as no longer open to discussion in the courts. It would not follow, as they suppose, that what was undoubtedly a crime or misdemeanor at the common law, in the view of the framers of the Constitution who sat under it, and used its language, and recurred so often to its principles, had become any the less a crime before the highest court for purposes of impeachment, because another tribunal, having no jurisdiction at all over the subject, may have decided that it is no longer cog-

nizable before them, even if it were essential, as there is no authority to show, that it should be a true crime within the meaning of the common law. There is a law of Parliament, which is a part of the common law, and by which only this question must be determined.

The objection has the merit at least of being a novel as well as a subtle one; well enough, perhaps, for the range of a criminal court, but too subtle by far for those canons of interpretation that are supposed to rule in the construction of the fundamental law of a great state. If it be a sound one, then there is no remedy in the Constitution but for the specific offences of treason and bribery, as there was no such thing as what it describes "as high crimes or misdemeanors" then known to the laws of the United States, and the government must perish whenever it is attacked from a quarter that could not have been foreseen. But could the statesmen who framed the Constitution have perpetrated so grave a blunder as this? Did they intend, instead of anchoring that power to the rock by a precision that should fix it there, and leave nothing open to construction, to leave it all afloat for future congresses to say what offences should be from time to time impeachable? Did they, when dealing with a question so mighty as the safety of the state, use words without a meaning, except what might be thereafter given to them by an ephemeral legislature, or invented by an uncertain and not always consistent court? or did they stand in the august presence, and under the not uncertain light of the common law of England, which they had claimed as their birthright, speaking the language, with a thorough understanding of its import, of the sages and statesmen who had illustrated its principles? Are their oracles to be read, as they would have been in England, or would be now in any of its colonies past or present, or are their solemn utterances to be measured by a language that they did not know? They committed no such error, and the suggestion that they did is one that does not seem to antedate the case to which it is at present applied.

To ascertain the meaning of the terms in question, there are but three possible sources to which the explorer can recur, and they are the Constitution itself, the statutes, and the parliamentary practice, or the common law of which it is a part. The Constitution, however, goes no further, as already shown, than to declare the two political offences of treason and bribery to be "high crimes and misdemeanors," and as such impeachable, while no statute has ever attempted it. Nor does it by any means follow that where an offence has been made so punishable as a crime, the right to impeach is a corollary. It is not every offence that by the Constitution is made impeachable. It must be not a crime or misdemeanor only, but a "high" one, within the meaning of the law of Parliament. There are, moreover, as suggested by Judge Story in his Commentaries, many offences of great enormity, which are made punishable by statute only when committed in a particular place. What is to be said of them? Are they impeachable if committed under one jurisdiction, and not so if perpetrated under another? There are, too, many others of a purely political character, which have been held again and again to be impeachable, that are not even named in our statute books, and many more may be imagined in the long future for which it would be impossible for human sagacity or perspicuity to provide. There is no alternative then left, unless the remedy is to fail altogether, except to resort to the parliamentary practice and the common law, or leave the whole subject in the discretion of the Senate, which would be inadmissible, of course, in a government of law.

The argument asserts that the offence must be an indictable one by *statute*, to authorize an impeachment. It is not even admitted, however, that this high and radical and only effective remedy for official delinquencies—and in this country, at least, it is no more than that—is to be confined to those offences which are known by these terms, within the technical meaning that has been assigned to them. In such a case as this no narrow interpretation can be allowed to defeat

the object of the law. A constitution of government is always to be construed in a broad, catholic sense, in order to suppress the possible mischief and advance the remedy. Those who maintain this doctrine strangely forget that there is a *parliamentary* sense, which conforms to the *popular* one, and is as much a *common law* sense as the one on which they rely. The object of the law is not to *punish* crime. That duty is assigned to other tribunals. The purpose here is only to remove the officer whose public conduct has been such as to disqualify him for the proper discharge of his functions, or to show that the safety of the state—which is always the supreme law—requires that he should be deposed. It refers not so much to moral conduct as to official relations—not, indeed, to moral conduct at all, except so far as it may bear on the performance of official duty. The judgment is not fine or imprisonment, as it may be in England, but only removal from office and disqualification for the future. One of the very objects of this extraordinary tribunal, as has been shown already, and will be further enforced hereafter, is to reach those very cases of official delinquency, against which no human foresight could provide, and which the ordinary tribunals are inadequate to punish. No ingenuity of invention, no fertility of resource can hedge round a high public officer by boundaries which the greater ingenuity of fraud or wickedness, may not be able to pass by sap, or scale. If a President, it may be that he may prove impracticable. He may ignore the law, and even wage war on the power that is intrusted with the making of it. He may nullify its acts by misconstruing or disregarding them, or denying their authority. He may be guilty of offences which are in their very nature calculated to subvert the government—all which things Andrew Johnson is shown clearly to have done. And yet these things, although high misdemeanors against the state, and fraught with peril to its life, may not be indictable as crimes. But will anybody say that the Constitution affords no remedy—that the arch offender must be borne with, and the state must die—merely because Congress has failed to provide, not the same, but a different punishment for the same offence? The cases in England show that this is not law there, as it is not reason, which is said to be the life of the law. The cases here, though all of offences that were not statutory crimes or misdemeanors, have been so few as to leave this question open, to be decided hereafter upon those great reasons of state that lie at the foundation of the law of Parliament, which is the rule that must govern ultimately here.

And in entire harmony with what has been just said is the following passage from Story's Commentaries:

"The offices to which the power of impeachment has been, and is ordinarily applied as a remedy, are of a *political* character. Not but that crimes of a strictly legal character fall within the scope of the power, but that it has a more enlarged operation, and reaches what are aptly termed political offences, growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests in the discharge of the duties of political office. These are so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide for them by positive law. They must be examined on very broad and comprehensive principles of policy and duty."—(Vol. 2, §764.)

And to the same effect is the following passage from Curtis: "Although an impeachment may involve an inquiry whether a crime against any positive law has been committed, yet *it is not necessarily a trial for crime*. The purposes of impeachment lie wholly beyond the penalties of the statute or customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that either in the discharge of his office, or aside from its functions, he has violated a law, or committed what is technically denominated a crime. But a cause for removal from

office may exist where no offence against positive law has been committed, as where the individual has, from immorality or imbecility, or maladministration, become unfit to exercise the office. The rules by which an impeachment is to be determined are therefore peculiar, and are not fully embraced by those principles or provisions of law which courts of ordinary jurisdiction are required to administer." (*Curtis on the Constitution*, 360.) And in accordance with this is the answer of Mr. Madison to the objection of a possible abuse of the appointing power. "The danger," he says, "consists merely in this, that the President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power, and the restraints that operate to prevent it? In the first place, he will be impeached by the House before the Senate for such an act of maladministration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust."

But this is not all. The undersigned have already suggested that the objection was a novel one. They now refer to the following quotation from Judge Story, to show that in this opinion they are by no means singular. In section 798 of his Commentaries, this eminent jurist says: "However much it may fall within the political theories of some statesmen and jurists to deny the existence of a common law, belonging and applicable to the nation in ordinary cases, no one has as yet been bold enough to assert that the power of impeachment is limited to offences positively defined in the statute book of the Union as impeachable high crimes and misdemeanors."

Fortunately, however, for the occasion, the whole question has been long foreclosed by practice and authority. "The Congress of the United States," (referring to Judge Story again) "has itself unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct, and the rules of proceeding, and the rules of evidence, as well as the principles of decision, have been uniformly regulated by the known doctrines of the common law, and parliamentary usage." And he further remarks, in this connection, that "in the few cases of impeachment which had theretofore been tried, no one of the charges had rested on any statutable misdemeanor." When he wrote the cases had been only three. In the first, which was that of Blount, in 1798, where the charge was of a conspiracy to invade the territories of a friendly power, although there was no decision on the merits, the impeachable character of the offence was affirmed by an almost unanimous vote of the Senate, expelling the delinquent from that body, as having been guilty of a high misdemeanor, in the very language of the Constitution. The second, (Pickering's,) in which a conviction took place, was against a judge of a district court, and purely for official misconduct. The third (Chase's) was against a judge of the Supreme Court of the United States, and was also a charge of official misconduct, but terminated in an acquittal. It is a noteworthy fact, however, that in the last-named case, (the only one in which the point was raised,) it was conceded by the answer, that a civil officer was impeachable for "*corruption*, or some high crime or misdemeanor, consisting in *some act done or omitted in violation of a law commanding or forbidding it.*" Two other cases have occurred since that time. The first, that of Judge Peck, in December, 1830, was for punishing a refractory barrister for contempt, as for "an arbitrary, unjust, and oppressive arrest and sentence, with intent to injure and oppress under cover of law." The case was clearly not of an indictable offence under any statute of the United States, but, though defended by the very ablest counsel, (Messrs. Wirt and Meredith,) it did not seem to have occurred to them, that the offence charged was not impeachable within the meaning of the Constitution. The other, that of Judge Humphreys, at the commencement of the rebellion, was upon charges of disloyal acts and utterances, some of which clearly did not set

forth offences indictable by statute of the United States, and yet upon all those charges, with one exception only, he was convicted and removed.

It is only necessary to add that the conclusion of Judge Story upon the whole case is, that "it seems to be the settled doctrine of the high court of impeachment, that, though the common law cannot be the foundation of a jurisdiction not given by the Constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law, and that what are, and what are not 'high crimes and misdemeanors' is to be ascertained by a recurrence to that great basis of American jurisprudence." And he adds to this, that "the power of the House to punish contempts, which are breaches of privilege not defined by positive law, has been upheld on the same ground; for if the House had no jurisdiction to punish until the acts had been previously ascertained and defined by positive law, it is clear that the process of arrest would be illegal."

And this, it is hoped, will dispose forever of the novel objection that is now interposed in the path of the nation's justice, in the defence of its greatest offender, and in a case that has no parallel in enormity in the parliamentary history of England. It is scarcely necessary to repeat that the charges, resting mainly upon record evidence, are not only of usurpation and abuse of admitted power, but of a contempt of law and of the legislative power that transcends anything in the annals of either the Tudors or the Stuarts.

It may be answered, however, as it has been, that all this was with the best intent, and that positive corruption must be shown to make the act impeachable. The President alleges a necessity in one case, of dispensing with the laws in consequence of the absence of Congress. The Attorney General insists that it was not the true policy of the country to enforce the laws against the rebels, and he accordingly refuses to do it. The Secretary of the Treasury holds the same opinion also as to the subject of captured and abandoned property, and he returns the proceeds, as the President returns the property itself.

An old but homely proverb says that the place most dreaded by the wicked is paved with good intentions. If such intentions, or even a supposed necessity could excuse the violation of the law, no transgressor would ever be punished, and no tyrant fail to show that what he had done was with the best designs, and for the purpose of saving the Constitution of the state. If Andrew Johnson can plead that he gave away, or sold the public property to rebels to promote their commerce, or that he dispensed with the test oath only to conciliate the disaffected, or collect the revenue, because of the absence of that Congress which he had refused to convene, the self-willed James II might even with a better grace have asserted that he had dispensed with the religious test in the interests of universal toleration. By way, however, of disposing of this apology, it may not be amiss to cite a few authorities:

"The rule is, that if a man intends to do what he is conscious the law—which every one is conclusively presumed to know—forbids, there need not be any other evil intention. (Bish. Crim. Law, §428, 11 S. and R. 325.) It is of no avail to him that he means at the same time an ultimate good."—*Ibid.*

"When the law imposes a prohibition it is not left to the discretion of the citizen to comply or not. He is bound to do everything in his power to avoid an infringement of it. The necessity which will excuse him for a breach must be instant and imminent. It must be such as to leave him without hope by ordinary means to comply with the requisitions of the law."—*Fir. Story I, 1 Gall. 150 S. P., 3 Wheat., 39., 1 Bish., sec. 449.*

"Whenever the law, statutory or common, casts on one a duty of a public nature, any neglect of the duty or act done in violation of it is indictable."—*1 Bish., sec. 537-389.*

"The same doctrine requires all those who have accepted, to discharge faithfully all public trusts. Any act or omission in disobedience of this duty, in a matter of public concern, is, as a general principle, punishable as a crime."—*Ibid., sec. 913.*

The only remaining question is whether, in view of all these facts, it will be the duty of this house to call the President to answer before the Senate, or

whether any considerations of mere public or party expediency, on either side of the House, ought to be allowed to prevail on them to let the accused go free.

And here there is but a single question that can legitimately enter into the discussion, and that is, whether, in view of the time which he has yet to serve, any apprehended jar or possible disturbance to the country, would probably outweigh the favorable results that might be expected from such an inquiry.

The undersigned are loth to enter into any mere mercantile statement of profit and loss in a case where the life of a great nation is in the balance. The people did not stop, like cold-blooded economists, to count the cost when the flag of the nation was fired upon at Sumter. They took counsel only of their instincts when they saw their country's ensign floating in the thick smoke of treason, and they rushed incontinently to its defence. The shock of that conflict has rocked the government to its foundations, but it has only seated those foundations deeper and more solidly than ever, while it has developed its amazing powers, and falsified the auguries of its world-wide enemies. If it could survive the catastrophe that smote down its great Chief Magistrate, and lifted Andrew Johnson into his place, it will not even feel the jar, when the mighty machine, freighted with the destinies of so many generations, shall rush over the prostrate form of the discarded servitor who had so nearly wrecked it. But even the temporary shock, if any, that such an event might occasion, were nothing to the chronic disturbance, the universal derangement produced by a standing obstruction of so long continuance, which has kept the South in anarchy for the last two years, and threatens, under the determined hostility to the congressional plans of reconstruction, to perpetuate the existing disaffection and insecurity of life and property for the remainder of his constitutional term. Mr. Johnson is, by virtue of his office, the executive minister of the law. To expect or hope, after his own utterances, and the long experience of the nation, that he will administer and execute in good faith the will of a body which he denies to be a Congress so long as the disloyal States are excluded, and denounces as a usurper, is to be sanguine beyond the usual measure of credulity that is allowed to man. The first step in the direction of effective restoration would seem to be, not the empirical and questionable process of abridging the constitutional powers of the executive magistrate, but the committal of this great work to the hands of those who will recognize the jurisdiction of Congress, and bow respectfully to its authority.

But there is another consideration of an equally important character. There are some things which the people cannot afford to overlook. Where a great principle is violated, or a great wrong is done by a high public officer, which threatens the existence of the state, or endangers it in the example, the people interested cannot safely stop to inquire whether the vindication of the law will alarm the timid or disturb the mercenary, or even as to the actual mischief which the special violation may have produced. A great poet has remarked that "our fears are traitors." Free government was not designed for coward races. It was not the weight of the exaction that drove the patriot Hampden to his single-handed struggle with the whole power of the British crown. The penny of taxation on the pound of tea was nothing to the men who sounded the tocsin of the revolution in the streets of Boston. It was against the principle that made them slaves that they revolted. They knew their rights. They had studied the British constitution in its principles and elements. They had sounded all its depths and shoals, and they knew precisely where their liberties were vulnerable. It is the testimony of Mr. Burke that there were no men living, who better understood the value of a principle, and it was because they belonged to a race which, according to the same great statesman, had the happy faculty of scenting danger on the breeze, and was indebted mainly for its freedom to the great fact of its extreme sensibility to attacks upon its cardinal maxims of liberty. That race, with all its admixtures, still governs this land. It may

possibly become familiarized to invasions of its cherished rights. It may come eventually, under false and unworthy teachers, to look upon the overthrow of its great landmarks of liberty as of so little importance as to be unworthy of notice. But when that time comes—when its blood shall be so diluted, and its susceptibilities so deadened, that the icy torpor of indifference shall steal over it, and the apologists of tyranny be allowed to impugn the motives of its assailants, and to say that it is better to bear with it, either because they want peace, or because the contemner of the laws is supposed to be powerless, or because his removal may result in a change of rulers—its history will be written. The first cunning usurper will seize upon its liberties, and a subservient Congress will ratify the act.

In view, then, of all that has been said, and upon the fullest consideration of the facts disclosed, your committee do solemnly pronounce and declare it as their deliberate judgment that Andrew Johnson, as President of the United States, is guilty of high crimes and misdemeanors within the meaning of the Constitution, in the exercise of his great office, of so grave a nature as to demand his immediate arraignment and trial therefor; and they do accordingly, in behalf of the loyal people of the United States, whose rights and interests he has betrayed, and whose government he has endeavored to subvert; in vindication of the law that he has violated, and the justice that he has contemned; and in the name of the thousands who have died in order that the republic might live, recommend and respectfully insist that he be impeached, and held to answer therefor before the Senate of the United States.

In accordance with the testimony herewith submitted, and the view of the law herein presented, the committee are of opinion that Andrew Johnson, President of the United States, is guilty of high crimes and misdemeanors, requiring the interposition of the constitutional powers of this house—

In that, upon the final surrender of the rebel armies, and the overthrow of the rebel government, the said Andrew Johnson, President of the United States, neglected to convene the Congress of the United States, that by its aid and authority legal and constitutional measures might have been adopted for the organization of loyal and constitutional governments in the States then recently in rebellion:

In that, in his proclamation to the people of North Carolina, of the 29th day of May, 1865, he assumed that he had authority to decide whether the government of North Carolina, and whether any other government that might be set up therein, was republican in form; and that, in his office of President, it was his duty and within his power to guarantee to said people a republican form of government, contrary to the Constitution, which provides that the United States shall guarantee to every State in this Union a republican form of government, and contrary, also, to a deliberate opinion of the Supreme Court, which declared that Congress is vested exclusively with the power to decide whether the government of a State is republican or not:

In that he did thereafter recognize and treat a plan of government, set up in North Carolina under and in conformity to his own advice and direction, as republican in form, and entirely restored to its functions as a State, notwithstanding Congress is the branch of the government in which, by the Constitution, such power is exclusively vested; and notwithstanding Congress did refuse to recognize such government as a legitimate government, or as a government republican in form:

In that, by public proclamation and otherwise, he did, in the year 1865, invite, solicit, and convene, in certain other States then recently in rebellion, conventions of persons, many of whom were known traitors who had been engaged in an attempt to overthrow the government of the United States, and urged and directed such conventions to frame constitutions for such States:

In that he thereupon assumed to accept, ratify, and confirm certain so-called constitutions framed by such illegal and treasonable assemblies of persons, which constitutions were never submitted to the people of the respective States, nor ratified and confirmed by the United States; thus usurping and exercising powers vested by the Constitution in the Congress of the United States exclusively:

In that he pardoned large numbers of public and notorious traitors, with the design of receiving their aid in such conventions, called by his advice and dictation, for the purpose of organizing and setting up such illegal governments in the States then recently in rebellion, prior to the annual meeting of Congress, with the intent thus to constrain Congress to accept, ratify, and confirm such illegal and unconstitutional proceedings:

In that he did within and for the States recently in rebellion create and establish, as a civil office, the office of provisional governor, so-called—an office unknown to the Constitution or laws of the land:

In that he appointed to such office, so created in said States respectively, men who were public and notorious traitors, he well knowing that they had been engaged in open, persistent, and formidable efforts for the overthrow of the government of the United States, and well knowing, also, that these men could not enter upon the duties of said office without committing the crime of perjury, or in manifest violation of the laws of the country:

In that he directed the Secretary of State to promise payment of money to said persons, so illegally appointed, as salary or compensation for services to be performed in said office, so illegally created contrary to the provisions of a law of the United States approved February 9, 1863, entitled "An act making appropriations for the support of the army for the year ending the thirtieth day of June, eighteen hundred and sixty-four, and for a deficiency for the signal service for the year ending June thirty, eighteen hundred and sixty-three":

In that he directed the Secretary of War to pay moneys to said persons for services performed in said office, so illegally created, which moneys were so paid under his direction, without authority of law, contrary to law, and in violation of the Constitution of the United States:

In that he deliberately dispensed with and suspended the operation of a provision of a law of the United States passed on the second day of July, A. D. 1862, entitled "An act to prescribe an oath of office, and for other purposes":

In that he appointed to offices created by the laws of the United States persons who, as was well known to him, had been engaged in the rebellion, who were guilty of the crime of treason, and who could not, without committing the crime of perjury or otherwise violating criminally the said act of July 2, A. D. 1862, enter upon the duties thereof:

In that, without authority of law and contrary to law, he used and applied property taken from the enemy in time of war for the payment of the expenses and the support of the said illegal and unconstitutional governments so set up in the said States recently in rebellion; and for a like purpose, and in violation of the Constitution and of his oath of office, he authorized and permitted a levy of taxes upon the people of said States, thus usurping and exercising a power which, by the Constitution, is vested exclusively in the Congress of the United States.

All of which acts were usurpations of power, contrary to the laws and Constitution of the United States, and in violation of his oath of office as President of the United States.

In that, the said Andrew Johnson, President of the United States, has, in message to Congress and otherwise, publicly denied, substantially, the right of Congress to provide for the pacification, government, and restoration of said States to the Union; and, in like manner, he has asserted his exclusive right to provide governments therefor, and to accept and proclaim the restoration of said

States to the Union; all of which is in derogation of the rightful authority of Congress, and calculated to subvert the government of the United States:

In that, in accordance with said declarations, he has vetoed various bills passed by Congress for the pacification and government of the States recently in rebellion, and their speedy restoration to the Union, and upon the ground and for the reason that the said States had been restored to their places in the Union by his aforesaid illegal and unconstitutional proceedings, thus so interposing and using a constitutional power of the office he held as to prevent the restoration of the Union upon a constitutional basis:

In that he has exercised the power of removal from, and appointment to, office for the purpose of maintaining effectually his aforesaid usurpations, and for the purpose of securing the recognition by Congress of the State governments so illegally and unconstitutionally set up in the States recently in rebellion; such removals and appointments having been attended and followed with great injury to the public service and with enormous losses to the public revenue:

In that, in the exercise of the pardoning power, he issued an order for the restoration of one hundred and ninety-three men belonging to West Virginia, who, upon the records of the War Department, were marked as deserters from the army in time of war; and this upon the representations of private and interested persons and without previous investigation by any officer of the War Department, and for the sole purpose of enabling such persons to vote in an election then pending in said State, and with the expectation that they would so vote as to support him in his aforesaid unconstitutional proceedings; he then well knowing that the men so restored, and by virtue of such restoration, would be entitled to a large sum of money from the treasury of the United States:

In that by his message to the House of Representatives of the 22d day of June, 1866, and by other public and private means, he has attempted to prevent the ratification of an amendment to the Constitution of the United States, proposed to the several States by the two Houses of Congress agreeably to the Constitution of the United States, although such proposed amendment provided among other things for the validity of the public debt of the United States, and rendered the payment of any claim for slaves emancipated, or of any debt incurred in aid of insurrection or rebellion against the United States impossible, either by the government of the United States or by any of the States recently in rebellion, he well knowing that the provisions inserted under and by his dictation in the said illegal constitutions for said States were wholly inadequate to protect the loyal people thereof, or the people of the United States against the payment of claims on account of slaves emancipated, and of debts incurred by such States in aid of rebellion, thus rendering it practicable and easy for those in authority in the aforesaid illegal and unconstitutional governments, thus set up, to tax and oppress the loyal people of such States for the benefit of those who had been engaged in the attempt to overthrow the government of the United States:

In that he has made official and other public declarations and statements calculated and designed to injure and impair the credit of the United States; to encourage persons recently engaged in rebellion against its authority to obstruct and resist the reorganization of the rebel States, so called, upon a republican basis, and calculated and designed also to deprive the Congress of the United States of the confidence of the people, as well in its patriotism as in its Constitutional right to exist, and to act as the department of the government which, under the Constitution, possesses exclusive legislative power; and all this with the intent of rendering Congress incapable either of resisting his said usurpations of power, or of providing and enforcing measures necessary for the pacification and restoration of the Union:

And that in all this he has exercised the veto power, the power of removal and appointment, the pardoning power, and other constitutional powers of his

office, for the purpose of delaying, hindering, obstructing, and preventing the restoration of the Union by constitutional means, and for the further purpose of alienating from the government and laws of the United States those persons who had been engaged in the rebellion, and who, without aid, comfort, and encouragement thus by him given to them, would have resumed in good faith their allegiance to the Constitution; and all with the expectation of conciliating them to himself personally, that he might thereby finally prevent the restoration of the Union upon the basis of the laws passed by Congress.

And, further, in that the said Andrew Johnson, President of the United States, transferred and surrendered, and authorized and directed the transfer and surrender of railways and railway property of the value of many millions of dollars, to persons who had been engaged in the rebellion, or to corporations owned wholly or in part by such persons, he well knowing that in some instances the railways had been constructed by the United States, that in others such railways and railway property had been captured from the enemy in war, and afterwards repaired at great cost by the United States, such transfer and surrender being made without authority of law, and in violation of law:

In that he directed and authorized the sale of large quantities of railway rolling stock, and other railway property, of the value of many millions of dollars, the property of the United States by purchase and construction, to corporations and parties then known to him to be unable to pay their debts then matured and due, and this without exacting from said corporations and parties any security whatsoever:

In that he directed and ordered subordinate officers of the government to postpone and delay the collection of moneys due and payable to the United States on account of such sales, in apparent conformity to an order previously made by him that the interest upon certain bonds issued or guaranteed by the State of Tennessee in aid of certain railways, then due and unpaid for a period of four years and more, should be first paid out of the earnings of the roads in whose behalf said bonds were so issued or guaranteed:

In that, in conformity to such order and direction, the collection of moneys payable and then due to the United States was delayed and postponed, and the interest on such bonds, of which he himself was a large holder, was paid according to the terms of his own order, thus corruptly using his office to defraud and wrong the people of the United States, and for his own personal advantage:

In that he has not only restored to claimants thereof large amounts of cotton and other abandoned property that had been seized and taken by the agents of the treasury in conformity to law, but has paid and directed the payment of the actual proceeds of sales made thereof, and this in violation of a law of the United States which orders and requires the payment into the treasury of the United States of all moneys received from such sales, and provides for loyal claimants as sufficient and easy remedy in the Court of Claims, and in manifest violation also of the spirit and meaning of the constitution wherein it is declared that no "money shall be drawn from the treasury but in consequence of appropriations made by law":

And further, in that the said Andrew Johnson, President of the United States, authorized the use of the army of the United States for the dispersion of a peaceful and lawful assembly of citizens of Louisiana, and this by virtue of a despatch addressed to a person who was not an officer of the army, but who was a public and notorious traitor; and all with the intent to deprive the loyal people of Louisiana of every opportunity to frame a State government republican in form, and with the intent further to continue in places of trust and emolument persons who had been engaged in an attempt to overthrow the government of the United States, expecting thus to conciliate such persons to himself and secure aid in support of his aforesaid unconstitutional designs.

All of which omissions of duty, usurpations of power, violations of his oath of office, of the laws, and of the Constitution of the United States, by the said

Andrew Johnson, President of the United States, have retarded the public prosperity, lessened the public revenues, disordered the business and finances of the country, encouraged insubordination in the people of the States recently in rebellion, fostered sentiments of hostility between different classes of citizens, revived and kept alive the spirit of the rebellion, humiliated the nation, dishonored republican institutions, obstructed the restoration of said States to the Union, and delayed and postponed the peaceful and fraternal reorganization of the government of the United States.

The committee therefore report the accompanying resolution, and recommend its passage.

GEO. S. BOUTWELL.  
FRANCIS THOMAS.  
THOS. WILLIAMS.  
WILLIAM LAWRENCE.  
JOHN C. CHURCHILL.

RESOLUTION providing for the impeachment of the President of the United States.

*Resolved*, That Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors.

Mr. Wilson submitted the following as the views of a minority :

We dissent from the conclusions arrived at by a majority of the committee, and ask leave to present a minority report.

On the third day of June, 1867, it was declared by a solemn vote in the committee, that, from the testimony then before them, it did not appear that the President of the United States was guilty of such high crimes and misdemeanors as called for an exercise of the impeaching power of this House. The vote stood yeas five, nays four. On the 20th instant this action of the committee was reversed, and a vote of five to four declared in favor of recommending to the House an impeachment of the President. Forty-eight hours have not yet elapsed since we were informed of the character of the report which represents this changed attitude of the committee. The recentness of this event compels a general treatment of some features of the case as it is presented by the majority, which otherwise would have been treated of more in detail.

The report of the majority resolves all presumptions against the President, closes the door against all doubts, affirms facts as established by the testimony in support of which there is not a particle of evidence before us which would be received by any court in the land. We dissent from all of this, and from the temper and spirit of the report. The cool and unbiased judgment of the future, when the excitement in the midst of which we live shall have passed away, will not fail to discover that the political bitterness of the present times has, in no inconsiderable degree, given tone to the document which we decline to approve.

Dissenting, as we do, from the report of the committee, both as to the law of the case and the conclusions drawn from the facts developed by the testimony, a due respect for the body which imposed on us the high and transcendently important duty involved in an investigation of the charges preferred against the President, impels us to present at length our views of the subject which has been committed to us by a most solemn vote of the House of Representatives. In approaching this duty we feel that the spirit of the partisan should be laid aside, and that the interests of the republic, as they are measured by its Constitution and laws, alone should guide us. And we most deeply regret that, in this regard, we cannot approve the report of our colleagues who constitute a majority of the committee. While we would not charge them with a design to act the part of partisans in this grave proceeding, we nevertheless feel pained by the tone, temper and spirit of their report. But regrets will not answer the demands of the present grave and commanding occasion; and we therefore re-

spond to them by presenting to the House the results of a careful, deliberate, and, as we hope, a conscientious investigation of the case before us.

The Constitution of the United States declares that "the House of Representatives \* \* \* shall have the sole power of impeachment." What is the nature and extent of this power? Is it as boundless as it is exclusive? Having the sole power to impeach, may the House of Representatives lawfully exercise it whenever and for whatever a majority of the body may determine? Is it a lawless power, controlled by no rules, guided by no reason, and made active only by the likes or dislikes of those to whom it is intrusted? Have civil officers of the United States nothing to insure them against an exercise of this power except an adjustment of their opinions and official conduct to the standard set up by the dominant party in the House of Representatives? Happily for the nation this power is not without its constitutional boundaries, and is not above the law. When we examine the Constitution to ascertain in what cases the power of impeachment may be exercised—for what acts civil officers may be impeached—we are informed that

"The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." (Art. II, sec. 2.)

In these cases only can the power of impeachment be lawfully used. It would seem to be difficult to mistake the import of this plain provision of the fundamental law of the land; and yet it is not free from conflicting interpretations. This conflict does not arise upon the terms "treason" and "bribery," for they are too well understood and too clearly defined in the Constitution and the laws of the land to admit of any disputation concerning them. They are both crimes of a high grade, and punishable upon indictment in the courts of the United States. They are offences against the public weal, with just and adequate penalties prescribed for them by the law of the nation. There is no difficulty in ascertaining the meaning of the Constitution, in so far as it relates to these crimes. Whatever conflict of opinion has arisen respecting the extent of the power of impeachment finds its origin in the terms "other high crimes and misdemeanors." These terms, it has been claimed, give a latitude to the power reaching far beyond the field of indictable offences. This doctrine is denied. Here arises the only doubt concerning the jurisdiction of the impeaching power of the House of Representatives.

The fact that the framers of the Constitution selected by name two indictable crimes as causes of impeachment would seem to go far towards establishing as the true construction of the terms "high crimes and misdemeanors," that all other offences for which impeachment will lie must also be indictable. Having fettered the House of Representatives by naming two well-defined crimes of the highest grade, it is not to be presumed that the same hands which did it clothed the House with the right to ramble through all grades of crimes and misdemeanors, all instances of improper official conduct and improprieties of official life, grave and unimportant, harmful and harmless, alike. It is unreasonable to say that the men who framed our Constitution, after undertaking to place a limitation on the power of impeachment, ended their effort by throwing away all restraints upon its exercise and placing it entirely within the keeping of those upon whom it was intended to confer only a limited power. There is something more stable than the whims, caprices, and passions of a majority established as a restraint upon this power by the Constitution. The House of Representatives may impeach a civil officer, but it must be done according to law. It must be for some offence known to the law, and not created by the fancy of the members of the House. As was very pertinently remarked by Hopkinson on the trial of Chase, "The power of impeachment is with the House of Representatives, but only for impeachable offences. They are to proceed against the offence, but not to create the offence, and make any act criminal and im-

peachable at their will and pleasure. What is an offence, is a question to be decided by the Constitution and the law, not by the opinion of a single branch of the Legislature; and when the offence thus described by the Constitution or the law has been committed, then, and not till then, has the House of Representatives power to impeach the offender."

A civil officer may be impeached for a high crime. What is a crime? It is such a violation of some known law as will render the offender liable to be prosecuted and punished. "Though all wilful violations of rights come under the generic name of wrongs, only certain of those made penal are called crimes." (Encyc. Brit., vol. xiii, 275.) The offence must be a violation of the law of the sovereignty which seeks to punish the offender; for no act is a crime in any sovereignty except such as is made so by its own law. In England no act is a crime save such as is so declared either by the written or unwritten law of the kingdom, and therefore only crimes by the law of England are indictable in England. Crimes are defined and punished by law—by the law of the sovereignty against which the crime is committed—and nothing is a crime which is not thus defined and punished. "Municipal law" (which, among its multiplicity of offices, defines and punishes crimes) "is a rule of action prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong." (1 Blackstone, 44.) Nothing is a crime which is not such a breach of this command or prohibition as carries with it a prescribed penalty. Hence Blackstone said: "All laws should be therefore made to commence *in futuro*." The citizen must be notified of what acts are crimes, and he cannot be lawfully punished for any others. The reasonableness of this rule was appreciated, and its enforcement provided for, by the convention which framed the Constitution of the United States, when they placed in that instrument the declaration that "no \* \* \* \* *ex post facto* law shall be passed." No act which was not a crime at the time of its commission can be made so by subsequent legislative or judicial action; and this doctrine is as binding on the House of Representatives when exercising its powers of impeachment as when employed in ordinary criminal legislation.

All that has been said herein concerning the term "crimes," may be applied with equal force to the term "misdemeanors," as used in the Constitution. The latter term in no wise extends the jurisdiction of the House of Representatives beyond the range of indictable offences. Indeed, the terms "crime" and "misdemeanor" are, in their general sense, synonymous, both being such violations of law as expose the persons committing them to some prescribed punishment; and, although it cannot be claimed that all crimes are misdemeanors, it may be properly said that all misdemeanors are crimes. Blackstone, in his Commentaries, states it thus: "In common usage, the word crimes is made use of to denote such offences as are of a more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentle name of misdemeanors only." Hale, in his Pleas of the Crown, states the doctrine in this wise: "Temporal crimes, which are offences against the laws of this realm, whether the common law or acts of Parliament, are divided into two general ranks, or distributions, in respect to the punishments that are by law appointed for them, or in respect of their nature or degree; and thus they may be divided into capital offences, or offences only criminal, or rather, and more properly, into felonies and misdemeanors. And the same distribution is to be made touching misdemeanors, namely: They are such as are so by the common law, or such as are specially made punishable as misdemeanors by acts of Parliament."

Thus it appears that the terms crime and misdemeanor merely indicate the different degrees of offences against law—crime marking the felonious degree, misdemeanor denoting "all offences inferior to felony." Both indicate indictable offences. They are terms of well established legal significance. There is nothing uncertain about them. The framers of the Constitution used these terms

as terms of art, and we have no authority for expounding them beyond their true technical limits.

An examination of the several provisions of the Constitution which have any bearing upon this subject will strengthen the position hereinbefore assumed. Section three, article one, reads thus: "The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present." When the Senate is organized under this section of the Constitution as a high court of impeachment, it is simply a court of special criminal jurisdiction—nothing more, nothing less. It is bound by the rules which bind other courts. It is as much restrained by law as any other criminal court. It is not a tribunal above the law, and without rule to guide it; if it were, it might well be addressed in the language of Burke, in one of his speeches in the Hastings case, when he said: "This high court, \* \* \* \* this highest court of criminal jurisdiction, exercised upon the requisition of the House of Commons, if left without a rule, would be as lawless as the wild savage, and as unprincipled as the prisoner that stands at your bar." (Burke's Works, vol. 8, p. 8.) No man would be safe before such a court—a court that could make the crime, determine its mode of proof, pronounce and execute judgment, without restraint from the Constitution or laws of the land. No such irresponsible engine of wrong and oppression has been created by the Constitution. The British constitution allows no such unrestricted power to the House of Lords. "An impeachment before the Lords by the Commons in Great Britain, in Parliament, is a prosecution of the *already known and established law*, and has been frequently put in practice, being a presentment to the most high and supreme court of criminal jurisdiction by the most solemn grand inquest of the whole kingdom," (4 Blackstone, 259;) and when this most high and supreme court of criminal jurisdiction is assembled for the trial of a person impeached for a violation of the "already known and established law," it must proceed according to the known and established law, for although "the trial must vary in external ceremony, it differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail." (Woodeson, vol. 2, 611.) A doctrine which would assert for the Senate of the United States greater and more despotic power in cases of impeachment than is possessed by the House of Lords will never be accepted by the American people.

If the Senate, sitting as a high court of impeachment, is not to be bound by the laws which bind other courts, why require the senators to be put on oath or affirmation? If this court may declare anything a high crime or misdemeanor which may be presented as such by the House of Representatives, and pronounce judgment against a civil officer thereon, why swear the members of the court at all? The oath is not a solemn mockery. It is prescribed for some good purpose. What is it? The form of oath adopted by the Senate in Chase's case affords a very satisfactory answer, and it is, therefore, here quoted, as follows: "You solemnly swear or affirm, that in all things appertaining to the trial of the impeachment of ———, you will do impartial justice according to the Constitution and laws of the United States." (Chase's Trial, vol. 1, p. 12.) This oath is very comprehensive. It covers the charge, the evidence, and all the rules thereof; the decisions upon all questions arising during the progress of the trial, and the final judgment. In all these several respects the members of the court are to be guided by the Constitution and laws of the United States. They can try upon no charges other than treason, bribery, or other high crimes and misdemeanors; and the offence charged must be known to the Constitution, or to the laws of the United States. The rules of evidence under and in pursuance of which crimes may be proved upon indictment in the courts of the United States are to

be observed. The judgment "shall not extend further than a removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States." The office of the oath is to insure a strict observance of these requirements of the Constitution and the laws. This seems clear without further reference to other provisions of the Constitution; but it is proper that we should look at all of its clauses bearing upon the question under discussion.

The Constitution having created a court for the trial of impeachments, prescribed its jurisdiction and placed a limitation on its power to pronounce judgment, then declares that "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law." It would seem difficult, indeed, to misunderstand this language. A civil officer convicted on impeachment is, notwithstanding such conviction, still liable to a prosecution for the same offence in the courts of ordinary criminal jurisdiction. How can this be if his offence be not an indictable crime? The court of impeachment cannot apply the usual statutory punishment. It cannot go beyond removal from, and disqualification to hold, office under the United States. The enforcement of other penalties for the same criminal conduct is left to the criminal courts of the country, after conviction upon indictment. Is not this substantially a constitutional direction to the court of impeachment not to convict a civil officer of any crime or misdemeanor for which an indictment will not lie? This view of the question was very forcibly stated by Mr. Martin, in his argument in Chase's case, in these words: "The very clause in the Constitution, of itself, shows that it was intended the persons impeached and removed from office might still be indicted and punished for the *same* offence, else the provision would have been not only nugatory, but a reflection on the enlightened body who framed the Constitution; since no person ever could have dreamed that a conviction on impeachment and a removal from office, in consequence, for *one* offence, could prevent the same person from being indicted and punished for *another* and *different* offence." (Chase's Trial, vol. 2, p. 137.) How can the force of this argument be avoided? Wherein does it lack the support of sound reason and good sense? But it does not rest merely upon the clauses of the Constitution above quoted; others, yet to be noticed, give it much additional strength, and these will now be examined.

The section of the Constitution securing the trial by jury reads as follows: "The trial of all crimes, except in cases of impeachment, shall be by jury." (Section 2, article 3.) Can it be successfully claimed that the word "crimes," as here used, is less comprehensive than it is where it occurs in section 4 of article 2? If not, then the crimes for which a civil officer may be impeached are the subjects of indictment or presentment; for such only can be tried by a jury. Any act which is a crime within the meaning of the last-named section is also a crime within the intent of the former, although the converse of this proposition is not true, as it is not every crime which a jury may try that will render a civil officer committing it liable to impeachment. For the latter purpose the crime must "have reference to public character and official duty," (Rawle on the Constitution, 204.) The plain inference to be drawn from the section is, "that cases of impeachment are cases of trials for crimes."

Again, in that part of the Constitution which clothes the President with the power to grant pardons, it is said, "He shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." (Article 2, section 2.) What is the meaning of the term "offences"? It cannot mean less than such acts as render offenders liable to punishment, else why is a pardon necessary, or even desirable? No one needs a pardon who has not committed a crime. A pardon shields from or relieves of punishment. Punishment follows trial and conviction. Trial and conviction for crime can be had only for a violation of an existing law declaring the act done a crime. The term offences, then, means crimes, in which, of course, is included misdemeanors.

High crimes and misdemeanors are subject to two jurisdictions—first, in the ordinary criminal courts of the country; second, in the high court of impeachment. The same party, for the same acts, may be on trial in both tribunals at the same time. If convicted in both cases the President may pardon the criminal and relieve him of the consequences resulting from a conviction by the first-named jurisdiction, but the Constitution forbids his interference with the last. The grant of power and the exception are both in the same clause of the same section, and the fact that they are thus intimately associated shows that they relate to the same subjects—indictable offences.

So intimately are these several sections and clauses of the Constitution connected with each other; so unerringly do they point in the same direction; so irresistibly do they suggest a consecutive train of thought; so perfectly does each part adjust itself to the whole, that it seems impossible to escape the conclusion that nothing less than an indictable crime or misdemeanor will support an impeachment of a civil officer of the United States. A fact recorded in the trial of Chase is very suggestive in this connection. Eight articles were preferred against him by the House of Representatives. It seems to have been admitted that all of the articles except the fifth charged him with criminal conduct. In regard to the fifth, his counsel made the point that it did not "charge in express terms some criminal intent on the respondent." The proof was as clear upon this article as it was upon the remaining seven. Thirty-four senators voted on the several articles, and while the votes on seven of them ranged from four to nineteen for conviction, every senator answered "not guilty" on the fifth. It is fair to conclude, in view of the proof submitted in support of the several articles, that the members of the court approved the position taken by the counsel of Chase on the trial.

It is claimed by those who oppose the doctrine herein advanced that it is contrary to the current of the English and American authorities. This is an error which a careful examination of the cases will not fail to expose. Comparatively little attention has been devoted to the power of impeachment, and to the laws and principles which govern it in this country. Popular opinion is more at fault with respect to this subject than perhaps any other within the entire range of the Constitution. It is generally considered a kind of unlimited, undefined, and undefinable power, whose proper office it is to supply all defects of law, and to provide all desired remedies respecting civil officers and their official conduct—a patent medicine for the speedy cure of all cases which baffle the skill of the regular practice. It seems strange that this idea should have become so prevalent, for it has not a fair, impartial, well-considered case in either the United States or Great Britain to support it.

The first case of impeachment by the House of Representatives was that of William Blount, a senator from the State of Tennessee, in 1797. The articles in this case were five in number. "The first charged the said William Blount with intending to carry into effect a hostile expedition in favor of the English against the Spanish possessions of Louisiana and Florida; the second, with attempts to engage the Creek and Cherokee Indians in the said expedition; the third, with having alienated the affections of the said Indians from Ben. Hawkins, an agent of the United States among the Indians, the better to answer his said purposes; the fourth, with having seduced James Cary, an interpreter of the United States among the Indians, for the purpose of assisting in his criminal intentions; and the fifth, with having attempted to diminish the confidence of the Cherokee Indians in relation to the boundary line, which had been run in consequence of the treaty which had been held between the United States and the said Indians." (*Annals of Congress, 5th Congress, vol. 1, pages 499, 919*) These charges were set out with great particularity, and were declared to be criminal breaches of Blount's "trust and station as a senator, in violation of the obligations of neutrality, and against the laws of the United States." They were undoubt-

edly regarded as indictable offences. Why they were so regarded will appear hereafter.

Blount appeared by his counsel, Jared Ingersoll and A. J. Dallas, who entered, in his behalf, a plea to the jurisdiction of the court. The plea set up four reasons why the court should not entertain jurisdiction of the case, though it appears that the matter was disposed of upon a single point. After argument, the following motion was voted on by the court: "That William Blount was a civil officer of the United States, within the meaning of the Constitution of the United States, and, therefore, liable to be impeached by the House of Representatives; that, as the articles of impeachment charge him with high crimes and misdemeanors, supposed to have been committed while he was a senator of the United States, his plea ought to be overruled."

The vote of the senators upon this motion stood—yeas 11, nays 14; and thereupon the managers of the House of Representatives and the counsel for Blount were informed that—

"The court is of opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed." (Ibid., vol. 2; pages 2318-'19.) This is the only point decided in the Blount case.

The next case presented by the House of Representatives was that against John Pickering, judge of the United States district court of the district of New Hampshire. He was charged with gross misconduct in the trial of a revenue case which grew out of the seizure of a certain vessel for a breach of the revenue laws, contrary to his "trust and duty as a judge of the said district court, against the laws of the United States, to the great injury of the public revenue, and in violation of the solemn oath which he had taken to administer equal and impartial justice;" and that he did this "wickedly intending to injure the revenues of the United States, and thereby to impair their public credit." This was the substance of three of the articles presented in the case. The other one (there being four in all) charged him with "being a man of loose morals and intemperate habits;" and that he appeared on the bench for the purpose of administering justice "in a total state of intoxication," \* \* "and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being," &c. (Ibid., first session 8th Congress, 321.)

Judge Pickering did not appear in the case, but his son sent to the Vice President a petition, which was laid before the court, asking for a postponement of the trial, and that, as his father was incapable of defending himself, he might be defended by his friends. The petition alleged, among other things, that "at the time when the crimes wherewith the said John [Pickering] stands charged are supposed to have been committed, the said John was, and for more that two years before and ever since has been, and now is, insane, his mind wholly deranged, and altogether incapable of transacting any kind of business which requires the exercise of judgment, or the faculties of reason; and, therefore, that the said John Pickering is incapable of corruption of judgment, no subject of impeachment, or amenable to any tribunal for his actions." (Ibid., 328.)

A discussion arose on this petition, in which the managers of the House of Representatives opposed the reception of the petition and the introduction of evidence in support. But the court decided to "hear evidence and counsel respecting the insanity of John Pickering," by a vote of—yeas 18, nays, 12. (Ibid., 332.) A number of depositions were read in support of the petition, and it will be difficult to find any fact in the case better supported, or more substantially proved, than that of the insanity of the respondent. This issue was a grave and pertinent one, and yet the court, after deciding to entertain it, and proceeding to its trial, finally disposed of the case as though no such issue had been raised. This conduct of the court is both remarkable and discreditable;

but not more so than its final action on the question of the guilt or innocence of the accused. Pickering was impeached for high crimes and misdemeanors. If convicted at all, the Constitution required that it should be for high crimes and misdemeanors, as there were no charges of treason or bribery in the case. In order that the guilt or innocence of the respondent should be directly passed upon by the court, without any improper evasion of its real and legal merits, Senator White moved that the "following question be put to each member upon each article of impeachment, viz: Is John Pickering, district judge of the district of New Hampshire, guilty of high crimes and misdemeanors upon the charges contained in the — article of impeachment, or not guilty?" The mover stated that he had borrowed the form of the question from the one used in the case of Warren Hastings. The question was fair in form, and presented the identical issue which the court was about to decide; but it did not suit the purposes of those who were determined to convict, and it was rejected by a vote of—yeas 10, nays 18. Thereupon Senator Anderson moved the following form, viz: "Is John Pickering, district judge of the district of New Hampshire, guilty as charged in the — article of the impeachment exhibited against him by the House of Representatives?" This form was adopted by—yeas 18, nays 9. (Ibid., 364.) So the court, after entertaining the plea of insanity and neglecting to decide it, on the foregoing evasive and unmeaning question, convicted Pickering on each article, and removed him from office; but this end was reached by a strict party vote. Senator Dayton said of the form of the question, and the reason of its adoption: "They were simply to be allowed to vote whether Judge Pickering was guilty as charged—that is, guilty of the facts charged in each article—aye or no. If voted guilty of the facts, the sentence was to follow, without any previous question whether those facts amounted to a high crime or misdemeanor. The latent reason of this course was too obvious. There were members who were disposed to give sentence of removal against this unhappy judge, upon the ground of the facts alleged and proved, who could not, however, conscientiously vote that they amounted to high crimes and misdemeanors, especially when committed by a man proved at the very time to be insane, and to have been so ever since, even to the present moment." (Ibid., 365.) If this rule is to be followed, any civil officer may be impeached, convicted, and removed from office, for acts entirely proper and strictly lawful. Who can wonder that members of the court denounced the whole proceeding as "a mere mockery of trial?" Surely, the case reflects no credit on the Senate which tried it, and in one short year the members of the body seem to have arrived at the same conclusion; for, on the trial of Judge Chase, the form of the question adopted to be propounded to each member of the court was as follows, viz: "Mr. —, how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the — article of impeachment?" (Ibid., 2d session 8th Congress, 664.) It is to be hoped that no one will ever quote the Pickering case as an authority to guide the House in presenting, or the Senate in trying, a case of impeachment. It decided nothing except that party prejudice can secure the conviction of an officer impeached in spite of law and evidence.

The next case carried to the Senate by the House of Representatives has gone into history as one "without sufficient foundation in fact or law." (Hildreth's History of the United States, vol. V. 254.) The case of Samuel Chase, a judge of the Supreme Court of the United States, is now referred to. Chase was impeached for high crimes and misdemeanors in eight articles. It is not necessary to set out the substance of these articles. One of them was founded on his conduct at the trial of John Fries for treason, before the circuit court of the United States at Philadelphia, in April and May, 1800—more than four years before his impeachment. Five of them were based on his conduct at the trial of James Thompson Callender "for printing and publishing, against the

form of the act of Congress, a false, scandalous, and malicious libel," &c., "against John Adams, then President of the United States," &c. The remaining two rested on his charge to the grand jury in and for the district of Maryland, in May, 1803, and his refusal to discharge the grand jury in and for the district of Delaware, in June, 1800. The articles portrayed the conduct of Judge Chase in as offensive a manner as the committee could command. The bitterness of Randolph appeared in every article, and the enemies of the accused felt confident of his conviction.

Chase answered minutely and elaborately to the several articles, and filed against each the following plea, viz.: "And the said Samuel Chase, for plea to the said article of impeachment, saith that he is not guilty of any high crime or misdemeanor, as in and by said first article is alleged; and this he prays may be inquired of by this honorable court, in such manner as law and justice shall seem to them to require." (Ibid., 117) This was the issue on which the case went to trial. The result was the acquittal of Chase on each article. This result was not owing to a failure of the evidence produced to support the facts alleged; for, so far as at least four of the articles are concerned, the allegations were supported in almost every particular; and had the same form of question been used on the conclusion of the trial as was adopted in the Pickering case, Chase, doubtless, would have been convicted. The questions propounded in both cases have already been quoted, and a mere glance at them will show how Pickering was convicted and Chase acquitted.

If this case establishes anything, it is that an impeachment cannot be supported by any act which falls short of an indictable crime or misdemeanor. This point was urged by the able counsel for Chase with great ability and pertinacity; and the force with which it was presented drove the managers of the House of Representatives to seek shelter under that clause of the Constitution which says: "The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior." (Manager Nicholson's Speech, Ibid., 597.) This provision, respecting the tenure of the judicial office, it was claimed would authorize the impeachment of a judge for misbehavior which would not support an indictment. The court did not approve this position, and very properly; for, as the Constitution provides that civil officers may be impeached for high crimes or misdemeanors, and nothing is known to the law as a high crime or misdemeanor which is not indictable, of course an impeachment for anything else would be improper.

If the position assumed by the managers in the Chase case, that a judge may be impeached for mere misbehavior in office not amounting to an indictable offence, because such conduct is a breach of the tenure by which the judicial office is held, is correct, what would be its effect on the case which this committee now have in hand? If resort must be had to the clause of the Constitution which prescribes the tenure of the judicial office to justify an impeachment of a judge on account of conduct not known to the law as a crime, does it not reach too far to serve the purposes of those who would impeach the President of the United States because of acts for which he may not be indicted? The President holds his office by a different tenure. The Constitution says: "The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years." (Art 2, sec. 1.) This provision of the Constitution stands firmly in the way of those persons who would tone down the term misdemeanor below the indictable standard by resorting to the clause fixing the judicial tenure. Judges hold their respective offices during good behavior; the President holds for a definite time—four years. If, therefore, the argument proves anything in the former case, it proves too much for the latter. If a judge may be impeached for non-indictable conduct, because he holds his office during good behavior, it follows logically that an officer who holds for a term of years cannot be so impeached. This exposes the fallacy of the entire argument.

In 1830, the House of Representatives carried another impeachment to the Senate for trial. This was the case against James H. Peck, judge of the district court of the United States for the district of Missouri. The charge against Judge Peck was of high misdemeanor in office. But one article was presented, which set out with great particularity the facts on which the accusation was based, and charged that the "said James H. Peck, judge as aforesaid, unmindful of the solemn duties of his station, and that he held the same, by the Constitution of the United States, during good behavior only, with intention wrongfully and unjustly to oppress, imprison, and otherwise injure Luke Edward Lawless, did, thereafter, at a term of the said district court of the United States for the district of Missouri, \* \* \* \* arbitrarily, oppressively, and unjustly, and under color and pretence that the said Luke Edward Lawless was answerable to said court, \* \* \* as for a contempt thereof," &c.; that he caused Lawless to be unlawfully arrested; that he unjustly, oppressively, and arbitrarily imprisoned said Lawless in the common prison, and suspended him from practicing in said court, "to the great disparagement of public justice, the abuse of judicial authority, and to the subversion of the liberties of the people of the United States." (Trial of Judge Peck, 51.)

Peck filed a lengthy answer, in which he justified his conduct. He alleged that "in all the actions and doings of the respondent in the premises, he avers that he was supported and justified by the Constitution and laws of the land." This was the issue tendered by the respondent. He did not rest upon any real or supposed weakness of the case as presented by the House of Representatives, but boldly declared that his conduct was proper, lawful and right. He elected to present an affirmative defence, and to rely upon the strength of his own cause, and the court sustained him; the vote stood—"guilty," 21; "not guilty," 22. (Ibid., 474.)

The next and last case of impeachment by the House of Representatives was that of West H. Humphries, judge of the United States district court for the several districts of the State of Tennessee, in 1862. Seven articles were preferred against Humphries. Each of them charged him, in direct or indirect terms, with the crime of treason, for they all occurred after the secession of South Carolina, and the assembling of armed men to enforce and render successful the treasonable position assumed by that State. The South Carolina convention passed the ordinance of secession on the 17th day of December, 1860. The first criminal act laid to the charge of Humphries was alleged to have transpired on the 29th day of December, 1860, at which time he urged the people of Tennessee to secede, and thus made himself a party to the treason which had already levied war against the United States in South Carolina. The third article charged him with having, in conjunction with others, organized armed rebellion and levied war against the United States; and all of the other articles charged treasonable acts upon him. (Congressional Globe, volume 48, page 2277.) Humphries was convicted, as it was right he should be. He was charged with a crime against the known law of the land; he was a traitor against the government of the United States.

Five cases only of impeachment have been presented to the Senate by the House of Representatives. One of them, as has been shown, was disposed of on a plea to the jurisdiction of the court, two resulted in the acquittal of the accused, and two in conviction.

An examination of the English cases will not, it is believed, lead to a different conclusion. Cases can doubtless be found wherein Parliament has exercised this high power in a most extraordinary manner, and convicted persons upon charges not indictable. The power of Parliament over the subject is far greater than that which the two houses of Congress can exercise over the citizen. The power of Parliament embraces impeachments, bills of attainder, and bills of pains and penalties. In times of high party excitement this power has been in

some cases most shamefully and oppressively exercised. Excitement arising from other causes has sometimes put this irresponsible engine of good and evil into motion. Hatsell gives an account of a most singular exercise of this power in these words: "On the 21st of May, 1368, the forty-second year of Edward III, the King, prelates, lords, and commons being in the white chamber, (after the business was over of reading the petitions and answers, with the aid granted by the commons, and the King's thanks,) there staid and dined with the King all the lords and many of the commons; and after dinner, returning into the white chamber, Sir John Lee was brought before them, and accused of divers misdemeanors, of imprisoning William Latimer, and, as steward of the King's household, for attacking divers persons, and making them answer to him out of councils, on which articles Sir John Lee, not being able sufficiently to excuse himself by law, was committed to the Tower of London until he should pay a fine according to the King's pleasure, and then the prelates, dukes, earls, barons, and commons departed."—(Vol. 4, p. 100.)

Now, although this singular after-dinner proceeding may have been very proper in the judgment of those who participated in it, and comes down to us white with age, it will hardly be contended that we should accept it as a precedent to be followed by the House of Representatives and Senate of the United States, notwithstanding it is embalmed in the history of the proceedings had in the Parliament of Great Britain. But even in this case, swimming as it did in the King's wine, the drunken lords and commons charged Sir John Lee with offences indictable at common law.

Some three hundred years later, the Earl of Strafford was impeached for treason, and high crimes and misdemeanors. The proceeding was likely to fail, or at all events was too slow for the excited populace. Parliament was forced to adopt the more speedy mode of a bill of attainder. Such a bill was passed, and Strafford was executed on the 12th of May, 1641. This attainder was afterwards reversed (but too late for Strafford) by the act 13 and 14 Charles II., chapter 29, in which Parliament records its own shame by stating the reasons for the passage of the act in these words: "That he [Strafford] was condemned upon accumulative treason, none of the pretended crimes being treason apart; that he was adjudged guilty of constructive treason; that the bill was forced through both houses by mobs of armed and tumultuous persons; that when the King signed the commission for giving the royal assent to the bill, he did it with exceeding great sorrow," &c. (4 Hatsell, 239.) The last fact recited is well supported by the King's letter to Strafford, given on the same page, and which reads as follows, viz:

"STRAFFORD: This misfortune that is fallen upon you by the strange mistaking and conjuncture of these times being such that I must lay by the thought of employing you hereafter in my affairs, yet I cannot satisfy myself, in honor or conscience, without assuring you now, in the midst of your troubles, that, *upon the word of a King*, you shall not suffer in life, honor, or fortune; this is but justice, and therefore a very mean reward from a master to so faithful and able a servant as you have showed yourself to be; yet it is as much as I conceive the present times will permit; though none shall hinder me from being your constant and faithful friend.

"CHARLES, R.

"WHITEHALL, April 23, 1641."

Within twelve days of the date of this letter the King signed the bill of attainder, and Strafford was executed. The wild, unbridled passions of the times were too much for King and Parliament. Strafford was really charged, tried, convicted, and executed by a mob. But whatever may be said against this case—and certainly enough may be said to deter the House of Representatives from adopting any part of it as a precedent to be followed—this much must be said in its favor—it charged Strafford with indictable crimes. The Commons, in no case worthy of notice, ever rested their action on any act which was not alleged to be criminal. In some cases mere pretexts were resorted to in support

of crimes charged ; in others, resort was had to strained constructions of the law ; but the necessity of the presence of an allegation of a known crime was, almost without an exception, recognized. Some of the efforts of the Commons to bring their cases within the rules of law were not very happy, though made by men of great learning and ability. Thus, in the case of Lord Chief Justice Scroggs, (1650,) who was charged with high treason, when some difficulty was found in sustaining the allegation by any definition of treason to be found in the laws of the realm, Mr. Sergeant Maynard, during the very able debate which took place in the House of Commons, undertook to preserve the consistency of Parliament, and to keep up a show of respect for the law, by advancing the following doctrine : he said, "What treason is, no man can define nor describe. The statute of 25 Edward III. does not do it. If another offence be committed, the Parliament shall judge whether it deserves the punishment of treason. Whatever offence deserves the punishment of a traitor, the Parliament may impeach, and the lords may judge accordingly." (4 Hatsell, 158.)

This doctrine would certainly afford a sufficient latitude of jurisdiction to enable Parliament to punish any obnoxious person. It was cunningly devised to answer the purpose of those who felt that they had need of some excuse for punishing as treason a course of conduct which did not range within the limits of any defined treason. The unsoundness of the position assumed by Maynard is presented in a strong light by a speech made on the same side by Sir Francis Winnington, who said : "The two great pillars of the English government are Parliament and juries ; it is this gives us the title of free-born Englishmen ; for my notion of free Englishmen is this : that they *are ruled by the laws of their own making*, and tried by men of the same condition as themselves. These two great undoubted privileges of the people have lately been invaded by the judges that now sit in Westminster Hall." (Ibid., 170)

Now, if Winnington was right, Maynard was wrong ; for if Scroggs, as a free Englishman, was to be ruled by laws relating to treason made by free Englishmen, how could he be impeached for that which was no treason by any law thus made ? Parliament makes the laws of England, not the courts. The House of Lords, when engaged in the trial of an impeachment, is a court to administer the law. If a law be not first made, how can a court administer it ? It was complained of Scroggs that he did not administer the law properly, and as free Englishmen had made it ; and the complaint was well founded. But this would not justify Parliament in following his example. The attempt of the actors in this case to appear consistent was successful only in rendering their inconsistency most palpable on the page of history.

The doctrine contended for by Maynard has never been adopted in any English case fit to be quoted as an authority. It belongs to another parliamentary power, and is thus referred to by Hatsell : "Where the courts of criminal judicature are equal to the trial of any offence, and can, by existing laws, inflict a punishment adequate to the crime, the same observations are applicable to bills of pains and penalties, viz : that recourse should never be had to extraordinary modes of proceeding. But if the crime is of a nature and magnitude deserving a punishment, in the particular case, far beyond what has by the law been deemed sufficient in similar but less atrocious misdemeanors, or if the rules of admitting evidence, or other forms, to which the judges in a court of law are bound to adhere, would preclude the execution of justice upon offenders whose imprisonment or banishment from the country were become a necessary sacrifice to the order and well-being of the public at large, it has been held, ever since the Revolution, and in the best times of this government, that such circumstances would reasonably justify a departure from the common forms of proceeding, and would entitle the legislature itself to take cognizance of the case, and by a bill of pains and penalties to avenge the mischief offered to the state, thereby to

hold out an example which might prevent similar offences in future." (Vol. 4, 103.)

Another writer states the matter thus: "All the modes of criminal prosecutions hitherto spoken of, whether by impeachment or otherwise, are vindications of the laws in being, on which they are wholly founded. But besides the regular enforcement of established laws, the annals of most countries record signal exertions of penal justice, adapted to exigencies unprovided for in the criminal code. Such acts of supreme power are with us called bills of attainder." (Woodeson 2, 621.)

That the principle supported by these authorities has been violated in many cases, in addition to those already referred to, is not doubted; but this does not at all detract from their force, and when we find that in all the cases an attempt was made to bring them within some known law, every violation of the principle but adds to its strength. Hatsell, in his *Precedents of Proceedings in the House of Commons*, gives fifty-nine cases of impeachment, ranging from the accession of James I. to 1780, and in every case wherein the facts on which the Commons based their action are given, a crime or misdemeanor, either at common law or by statute of Parliament, is disclosed. Of these cases, twenty-nine were for high treason; two for bribery and corruption in office; two for corruption in office; four for sedition; one for procuring illegal patents; one for extortion; one for unlawfully granting writs of privilege; one for arbitrary and illegal proceedings as a judge; one for the embezzlement of prize goods; one for smuggling; and twelve for high crimes and misdemeanors, in which the offences are not sufficiently described to justify a classification of them by name. Twenty-one of the fifty-five cases never went to trial before the Lords. Some of them were abandoned by the Commons before presentation to the House of Lords, some were dismissed by the Lords for want of prosecution, and several were disposed of by the more summary methods of bills of attainder and bills of pains and penalties.

These cases disclose many curious facts, and some very bad law. Some of them were based on most frivolous pretexts; others rested solely on the resentments of men of influence at court and of power in Parliament. The case of Lord High Treasurer Middlesex is an example of the latter class. In 1624 he was impeached for taking bribes, and convicted on some of the articles. This case and its consequences are charged to the resentment of the Duke of Buckingham, who was in high favor with the King. (4 Hatsell, 132.) Two years afterwards the Duke of Buckingham was impeached for a variety of offences in his administration. The King interfered to save him, and dissolved the Parliament. The Commons revived the case in the next Parliament; but before its conclusion Buckingham was assassinated. (Ibid., 134.) Individual resentment, partisan prejudice and excitement, and desire for revenge, instigated very many of the English impeachment cases. This is very well illustrated in the speech of Lord Carnarvon on the trial of the Earl of Danby—a speech that forms one of the foot-prints in the history of parliamentary impeachments which should ever remind the people of this nation that great caution should be used in the selection of English precedents. Carnarvon said: "My lords, I understand but little of Latin, but a good deal of English, and not a little of English history, from which I have learned the mischiefs of such kind of prosecutions as these, and the ill fate of the prosecutors. I could bring many instances, and those ancient; but, my lords, I shall go no further than the latter end of Queen Elizabeth's reign, at which time the Earl of Essex was run down by Sir Walter Raleigh. My Lord Bacon, he ran down Sir Walter Raleigh, and your lordships know what became of my Lord Bacon. The Duke of Buckingham, he ran down my Lord Bacon, and your lordships know what happened to the Duke of Buckingham. Sir Thomas Wentworth, afterwards Earl of Strafford, ran down the Duke of Buckingham, and you all know what became of him. Sir Harry

Vane, he ran down the Earl of Strafford, and your lordships know what became of Sir Harry Vane. Chancellor Hyde (Lord Clarendon) ran down Sir Harry Vane, and your lordships know what became of the chancellor. Sir Thomas Osborn, now Earl of Danby, ran down Chancellor Hyde; but what will come of the Earl of Danby your lordships best can tell. But let me see that man that dare run the Earl of Danby down, and we shall soon see what will become of him." (11 Howell, S. T., 632, 633.)

Did chance weld the chain which so closely holds these names together in the history of parliamentary impeachment? Was it not rather the natural product of misused power? The officer or party who misuses power may be considered fortunate indeed if the wheel of fortune returns no retribution. An advance beyond the law for the punishment of an obnoxious officer is always attended with danger, and English history is crowded with proof of the truth of this assertion. Almost every case which has stamped disgrace upon parliamentary impeachments is impressed with some departure from the known law of England, or with motives which should never enter the precincts of a court; still there is greater excuse for the appearance of such cases in the proceedings of Parliament than could be claimed for the Congress of the United States if it should choose to follow in the footsteps of these English precedents. Many of the most obnoxious parliamentary cases were the results of popular excitement. A great majority of the people of England were excluded from the exercise of the right of the elective franchise, and comparatively few officers were elective. "The King can do no wrong," and the Crown is hereditary, the wrongs, oppressions, and usurpations of the Crown carried no responsibilities beyond the ministers, who were selected by the irresponsible master whose work they were to do and whose crimes they were to assume; grievances, real or supposed, could not be corrected by the people at the ballot box. In times of great commotion, smarting under the effect of their grievances, they regarded an impeachment, a bill of attainder, or a bill of pains and penalties as the only remedy afforded them, and they insisted on its application, regardless of the consequences which might follow. The turbulent populace of London often gave swift motion to the wheels of parliamentary power. Kings, lords, and commons were overawed and forced to do great wrongs. Could this excitement have passed off through that great conservator of the public weal, the ballot-box, at times of oft-recurring elections, impeachments would have been far fewer and much more creditable. For want of this, some of the best men of England have been sent to the block, and Englishmen of to-day hang their heads in sorrow and shame when they look upon the recorded conduct of their ancestors.

When we take up the reports of the well considered cases of parliamentary impeachments, cases which were controlled by the judgments instead of the passions of men, we find but little difficulty in ascertaining the doctrines on which they rest. No unbiased mind can be misguided by them. They rest upon the known law of England, and were had for its enforcement. They exhibit the House of Lords sitting as a court and bound by the laws and rules which were observed by the other criminal courts of the realm, a court for the trial of offenders against laws which existed when the offences were committed, and which looked into those laws to see whether or no the persons arraigned at its bar had violated a "rule of conduct prescribed by the supreme power of the state."

In the year 1724 the Commons impeached the Earl of Macclesfield, lord chancellor of England, of high crimes and misdemeanors, in that he had unlawfully sold offices, masterships in chancery, for his own private gain. He had realized large sums of money from this source. This case is given at length in 16 How, State Trials, and the conviction hinged exclusively on the fact that he had committed an indictable offence. Of this case Lord Campbell remarks: "There has been a disposition in recent times to consider that Lord Macclesfield was wrongfully condemned. 'The unanimity of his judges,' says Lord Mahon, 'might

seem decisive as to his guilt, yet it may perhaps be doubted whether they did not unjustly heap the fault of the system on one man; whether Parker had not rather, in fact, failed to check gradual abuses, than introduced them by his authority or encouraged them by his example.' I must say that although it is impossible not to pity a man of such high qualities when so disgraced, and it must be acknowledged that, with good luck, notwithstanding all that he did, he might have escaped exposure and preserved an untarnished fame; yet, in my opinion, his conviction was lawful, and his punishment was mild. There can be no doubt that the sale of all offices touching the administration of justice (with the strange exception in favor of common law judges) was forbidden by the statute of Edward VI, and every chancellor who afterwards sold a mastership in chancery must have been aware that he was thereby violating that statute." (*Lives of the Lord Chancellors*, vol. 4, p. 554.)

The report of this case perfectly sustains this position of Lord Campbell. It establishes beyond doubt that had not Macclesfield's conduct been made criminal by the statute of Edward VI, he would not have been convicted. The action of both houses of Parliament outside of the case confirms this understanding of the record. Hatsell, (vol. 4, 258,) in a note to the case of Macclesfield, furnishes the following facts respecting the action had for the indemnity of the masters who had purchased offices of the lord chancellor. On the charge being sent to the House of Lords, Hatsell says: "The Commons immediately ordered in a bill for indemnifying the masters in chancery from the penalties of the act of 5th and 6th of Edward VI, chapter 16, against buying and selling offices, upon discovering what consideration they paid for their respective offices." The bill was quickly passed by both houses.

But we need not go outside of the very complete report of the case as given in the State Trials to sustain the declaration that the proceeding would have resulted in an acquittal of Macclesfield had the charges made against him not involved indictable crimes. Not one of the several able managers for the Commons pretended to claim a conviction in the absence of proof of an indictable crime. The effort of the managers throughout the entire trial was to show that such crimes had been committed by the accused earl. They claimed that the acts with which he stood charged were crimes at common law, by the statute of 12 Richard II. and of Edward VI.; in the language of one of the managers, "criminal by the common law and criminal by act of Parliament."

No unbiased mind can examine this case and arrive at a conclusion respecting it different from that which has been stated above. The doctrine of the case is, beyond all question, that an act, to be impeachable, must also be indictable.

The case was free from all passion, resentment, revenge, or partisan bias. It was well considered, and the vote in favor of conviction was unanimous. The case reflects the law of England respecting impeachments as well as any one that was ever tried by the House of Lords. The rules of law concerning crimes and their proof were observed and adhered to throughout, and Macclesfield was convicted because he was proved guilty of crimes declared by the law, and indictable in the courts, of England.

The case of Warren Hastings is another full of instruction. No one can read the twenty-two articles preferred against Hastings and fail to discover a multitude of crimes prescribed by the law of England. Bribery, peculation, usurpation of powers, official corruption, official oppression and extortion, all appear in the long array of crimes laid to the charge of Hastings, and each of them was indictable in the criminal courts of the realm.

Of these crimes Burke, in his speech on the third day, said :

"As to the crime which we charge, we first considered well what it was in its nature, and under all the circumstances which attended it. We weighed it with all its extenuations and with all its aggravations. On that review we are warranted to assert that the crimes with which we charge the prisoner at the bar are substantial crimes; that they are no errors or

mistakes, such as wise and good men might possibly fall into; which may even produce very pernicious effects, without being, in fact, great offences. The Commons are too liberal not to allow for the difficulties of a great and arduous public situation. They know, too well, the domineering necessities which frequently occur in all great affairs. They know the exigency of a pressing occasion which in its precipitate career bears everything down before it, which does not give time to the mind to recollect its faculties, to re-enforce its reason, and to have recourse to fixed principles, but, by compelling an instant and tumultuous decision, too often obliges men to decide in a manner that calm judgment would certainly have rejected. We know, as we are to be served by men, that the persons who serve us must be tried as men, and with a very large allowance indeed to human infirmity and human error. This, my Lords, we knew, and we weighed before we came before you. But the crimes which we charge in these articles are not lapses, defects, errors, of common human frailty, which as we know and feel we can allow for. We charge this offender with no crimes that have not arisen from passions which it is criminal to harbor; with no offences that have not their root in avarice, rapacity, pride, insolence, ferocity, treachery, cruelty, malignity of temper; in short, in nothing that does not argue a total extinction of all moral principle, that does not manifest an inveterate blackness, dyed ingrain with malice, vitiated, corrupted, gangrened to the very core. If we do not plant his crimes in those vices which the heart of man is made to abhor, and the spirit of all laws human and divine to interdict, we desire no longer to be heard on this occasion. Let everything that can be pleaded on the ground of surprise or error upon those grounds be pleaded with success; we give up the whole of those predicaments. We urge no crimes that are not crimes of forethought. We charge him with nothing that he did not commit upon deliberation; that he did not commit against advice, supplication, and remonstrance; that he did not commit against the direct command of lawful authority; that he did not commit after reproof and reprimand, the reproof and reprimand of those who are authorized by the laws to reprove and reprimand him. The crimes of Mr. Hastings are crimes not only in themselves, but aggravated by being crimes of contumacy. They were crimes not against forms, but against those eternal laws of justice which are our rule and our birth-right. His offences are, not in formal, technical language, but in reality, in substance and effect, *high crimes and high misdemeanors*."—(*Burke's Works*, vol. 7, pp. 13, 14.)

This is Mr. Burke's own interpretation of his articles against Warren Hastings. Apply to this the doctrine that acts which are *malum in se* are crimes at common law, and what must become of every attempt to torture this case into a prop to uphold the dangerous doctrine that public officers may be impeached for acts not known to the law as crimes or misdemeanors? It is believed safe to aver that every offence for which a conviction was really claimed by the managers on behalf of the Commons was known to the law of England as an indictable crime.

For some seven years the trial of this ponderous case "dragged its slow length along" before a conclusion was reached. During the whole trial the rules of the criminal law of England were applied to the case. Questions relative to which the Lords had doubts were submitted to the judges. The managers complained of some of the opinions of the judges; but the Lords followed the judges. The end of the case was an acquittal of Hastings. But it would be difficult to understand how this result could have been arrived at, if the doctrine that an impeachment may be had for acts not indictable had been countenanced by the Lords; for no one can doubt that the evidence disclosed sufficient in the way of mistakes, errors, and misbehavior to justify a conviction under that doctrine.

The last English impeachment case was that of Viscount Melville, in 1806. A very complete report of this case may be found in 29 How. S. T., 550 to 1482, inclusive, and it will well repay a careful perusal, as it was a thoroughly and calmly considered case, and undoubtedly presents the settled doctrine of the English law of impeachment.

Melville was treasurer of the navy, and the Commons charged him in ten articles with having "fraudulently, corruptly, and illegally" used, and permitted others to use, the public money intrusted to him, for private gain. Sir Samuel Romilly, solicitor general, who was one of the managers for the Commons, in his argument stated the case thus: "My Lords, the crimes imputed to the noble lord are of two kinds; they are offences against the common law, and a direct breach of a positive act of Parliament. The first and the tenth articles of impeachment relate only to offences at the common law, and the other articles

comprise in them offences at the common law, and likewise violations of the act of Parliament." (P. 1151.) He insisted that Melville's acts were indictable crimes, and in no part of his argument did he claim, nor did any other manager for the Commons claim, that a conviction could be justified on any other ground than that the evidence disclosed an indictable offence. No one during the entire course of the proceeding and trial questioned that such was the law of England.

At the close of the case the Lords sent three questions to the judges, substantially directing them to inform the House whether the facts recited constituted such unlawful proceedings on the part of Melville as "would have been a misdemeanor or punishable by information or indictment." The judges answered that they were not such unlawful acts as could be thus punished, (pp. 1469, '70, '71.) Melville was thereupon acquitted upon each of the ten articles preferred against him. And this closes the list of parliamentary impeachments in England.

Cases can be found in parliamentary history in conflict with the doctrine stated. But that it would be wise, safe, or lawful for the House of Representatives to follow such cases is utterly denied. If we are to be guided at all by English cases, let us resort to those which were the best considered, the latest, the most calmly tried, the most enlightened to be found on the records of Parliament, and not those that were moulded in the midst of revolution, directed by passion, and decided by unreasoning prejudice.

No precedent should be followed which is not founded in reason. The enlightenment of the present day should not be obscured, nor its progress obstructed, by the follies, mistakes, or passions of men who passed away centuries ago. Who would think of respecting the infamous ruling of Jeffreys in Sidney's case, because it was the act of a judge upon the bench? And yet who does not know that many of the parliamentary impeachments were as full of passion and as void of law as the court in which Sidney, and Russell, and Armstrong, and Baxter were tried?

The idea that the House of Representatives may impeach a civil officer of the United States for any and every act for which a parliamentary precedent can be found is too preposterous to be seriously considered. However well such precedents may answer present purposes, they may return to plague those who give them countenance. Those who hold to the doctrine that the "Senate is the *sole judge*" of what are high crimes and misdemeanors, and that "there is no revising court," (Am. Law Reg. Sept., 1867, p. 660,) forget how often appeals in this country are carried from senates, congresses, presidents, and courts to the high tribunal of the people at the ballot-box, and how inexorable are the mandates of reversal which proceed therefrom. The history of this country is crowded full of such appeals and of their results.

Another very important question may be here suggested. If only indictable crimes and misdemeanors are impeachable, by what law must they be ascertained? Must it be by the law of the United States, of the States, the common law, or by any or all of these?

In the case of the United States *vs.* Hudson and Goodwin, (7 Cranch, 32,) it was held that "the legislative authority must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offence," before the courts of the United States can exercise jurisdiction over it. This doctrine was affirmed by the case of the United States *vs.* Coolidge *et al.*, (1 Wheaton, 415,) and Chief Justice Marshall, in delivering the opinion of the court in *ex parte* Ballman and Swartwout, (4 Cranch, 95,) said; "Courts which originate in the common law possess a jurisdiction which must be regulated by the common law, until some statute shall change their established principles; but courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction." And it was in following these cases that Justice McLean held, in United States *vs.* Lancaster, (2 McLean's R., 433.) that "the federal government has no jurisdiction of offences

at common law. Even in civil cases the federal government follows the rule of the common law as adopted by the States, respectively. It can exercise no criminal jurisdiction which is not given by statute, nor punish any act, criminally, except as the statute provides." The same doctrine is followed in 1 Wash. C. C. R., 84; 2 Brock, 96; 1 Wood, and Minot, 401; 3 Howard, 103; 12 Peters, 654; 4 Dallas, 10, and note; 1 Kent's Com., 354; Sedgwick on Statutory and Constitutional Law, 17; and Wharton, in reviewing this question, says: "However this may be on the merits, the line of recent decisions puts it beyond doubt that the federal courts will not take jurisdiction over any crimes which have not been placed directly under their control by act of Congress." (Am. Criminal Law, 174)

Are these authorities founded in reason? If they are, why should they not be followed by the High Court of Impeachment, as well as other courts of the United States? The principle on which they proceed is that nothing is a crime against the United States which has not been declared so to be by the sovereignty of the republic; that only the laws of the United States can be enforced in the courts of the United States; that the United States do what other civilized and Christian governments do—enforce their own laws, for such only are rules of conduct prescribed for their own citizens. This seems to be reasonable; and if it is so, it would be difficult to find an excuse, or form a pretext, for not applying it to the tribunal intrusted with the jurisdiction to try cases of impeachment.

But it is claimed that the High Court of Impeachment is exempt from this jurisdictional limitation by the terms of the Constitution itself; that the Constitution establishes the court, confers its jurisdiction, and includes within it common law crimes, inasmuch as it says: "The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." This, it is said, opens the broad field of the common law for the ascertainment of offences for the commission of which civil officers may be impeached; that the terms treason, bribery, and other high crimes and misdemeanors, are common law terms, and are to be understood in the sense given them by the common law; that, as used in the Constitution, their import is the same as at common law. Is this true, to the extent stated? Suppose the impeachment is to be for treason, and some common law treason is attempted to be set up, what would be the result? The Constitution says: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." This puts an end to all attempts to impeach a civil officer of the United States for treason at common law. Then the term treason, as used in the Constitution, although it be a common law term, is shorn of its common law signification.

But it may be said that the term "bribery" is not defined in the Constitution, and, therefore, a civil officer may be impeached for bribery at common law. If this be true, why is it true? Bribery was, at the time the Constitution was formed, a crime known not only to the common law, but also to the laws of each of the thirteen States participating in the organization of the government of the United States. It was selected by name because it affected the administration of the affairs of the government in all of its departments—executive, legislative, and judicial—as treason touched the very life of the nation. Being thus selected by name, recourse may be had to the common law to ascertain the constituent elements of the crime thus named. "Courts may properly resort to the common law to aid in giving construction to words used in the Constitution," (3 Wheaton, 610; 1 Wood, and Minot, 448;) and as the Constitution used the word bribery, resort can be had to the common law to determine its meaning. Thus, the framers of the Constitution placed within the jurisdiction of the high court of impeach-

ment the two crimes which peculiarly affect the life and well-being of the nation—both being specifically named.

How is it with other offences? The Constitution says: "or other high crimes and misdemeanors." What other high crimes and misdemeanors? To what extent can the common law aid us in answering this question? If we go to the common law to find what a crime is, we discover that it is some act or omission in violation of law which may be punished in the mode prescribed by law. This is the general signification of the term crime at common law. It is not a naming of a specific offence. If the Constitution had named murder, arson, burglary, larceny, or any other crime, by its title; the common law could have aided us in arriving at its meaning, for all these, and a multitude of others, are crimes at common law. After wandering over the entire field of common-law crimes, how are we to tell those which will support an impeachment? Learned writers assert that those offences which may be committed by any person, such as murder, burglary, robbery, &c., are not the subjects of impeachment. (Rawle on the Constitution, 204) But these are all crimes, high crimes, and they meet us at every step in our gropings among the winding passages of the common law engaged in vain endeavors to determine what the Constitution means by the terms high crimes and misdemeanors. Can any mode of escape from this perplexity be devised except that which shall affirm that the phrase "or other high crimes and misdemeanors" means such other high crimes and misdemeanors as may be declared by the law-making power of the United States? Is it unreasonable to conclude that a civil officer can be impeached only for some crime or misdemeanor named by the Constitution or laws of the United States? This is the course pursued towards the citizen in private life. Why should greater uncertainty attend the public officer?

It will not do to answer these suggestions by stating hypothetical cases, and affirming that an officer who should do this, that, or another thing, ought to be impeached, and that it would be unsafe for the nation to permit such conduct to pass unchallenged and unpunished. The obvious answer to all this is, that everything which ought to be made a crime can be made so by legislation. The power is ample and the machinery perfect for all such work. If they are not used, the fault may not lie at the door of the delinquent officer. The statement of a supposed case of itself proves that a remedy may be provided. The remedy is to prohibit the doing of the thing supposed, and declaring its commission a crime. A case cannot be stated which will not suggest its own remedy. Every difficulty may be surmounted by appropriate legislation; and the question may very well be asked, What right has the House of Representatives and the Senate of the United States to sleep on their undisputed legislative powers and then resort to the common law of England for the punishment of civil officers, when no civil court of the United States can punish a citizen or foreigner for any crime from the highest to the lowest degree, except it be first prescribed by an act of Congress? The decisions of the courts of the United States that they have jurisdiction of no crimes not found in the statutes of Congress, give great force to the statement of Mr. Rawle in his work on the Constitution, that "The doctrine that there is no law of crimes except that founded in statutes, renders impeachment a nullity in all cases except the two expressly mentioned in the Constitution—treason and bribery, *until Congress shall pass laws declaring what shall constitute the other high crimes and misdemeanors.*" (Page 265.)

Rawle combatted the doctrine of the decisions referred to, and this it is which gives peculiar force to the language just quoted from him; for had he accepted the doctrine of the decision in the case of the United States *vs.* Hudson and Goodwin, it is perfectly evident that he would have declared the impeaching power inoperative, except so far as it relates to treason and bribery, until Congress, by legislation, should give it vitality.

Story also combatted this doctrine, and denied the correctness of the decisions upon which it is based. It was this which gave direction to those parts of his commentaries on the Constitution so freely quoted by those who claim that the power of impeachment is unlimited. He cites approvingly the remarks of Rawle above quoted. (Com. on the Constitution, section 796.) He affirmed that the courts of the United States have jurisdiction of common law crimes; but the decisions are against him. He states in his Commentaries on the Constitution that impeachments will lie for non-indictable offences; but the authorities which he cites are against him. He cites Rawle; but it has already appeared how that author surrenders the entire position. He quotes 2 Woodeson, lecture 40, but in this very lecture Woodeson says: "Impeachments, as we have seen, are founded and proceed upon *the laws in being*. A more extraordinary course is sometimes adopted. New and occasional laws have been passed for the punishment of offenders. Such ordinances are called bills of attainder and bills of pains and penalties." (2 Woodeson, 620.)

Offences known to the laws in being are indictable; and the Congress of the United States may not resort to bills of attainder and bills of pains and penalties; these are forbidden by the Constitution. But to what laws must the offences be known? To the law of the sovereignty against which they are alleged to have been committed.

Is there any foundation on which to rest a contrary doctrine? May not the case be stated as a syllogism thus: No officer is subject to the impeaching power for the commission of an act which is not indictable; common law crimes are not indictable in the courts of the United States; *ergo*, common law crimes will not sustain an impeachment by the House of Representatives of the United States?

The case of the United States *vs.* Hudson and Goodwin was decided by the Supreme Court of the United States in February, 1812, and its doctrine has been adhered to from that day to the present time. It is of some importance to remember this date, as it is subsequent to the impeachment of Blount, Pickering, and Chase, which may account for the failure to raise the question in those cases: "Can a civil officer be impeached for an offence which is not indictable under the laws and in the courts of the United States?" It was not necessary to raise it in the Peck case, for his defence, as has already been stated, was a justification of his conduct; while the Humphries case was founded on statutory offences, and no defence was made.

The duty now remains of presenting the facts upon which this case rests as they are developed by the testimony. This will be done in accordance with the arrangement of the charges in the preamble and resolution of the House.

The first charge is: "Usurpation of power and violation of law."

This is understood to relate mainly to the acts of the President relative to the reconstruction of the rebel States, and perhaps no better way of presenting this branch of the case (and the same may be remarked of the several branches) can be devised than to quote the most important passages of testimony and such official acts as require no proof, as will serve to cast light upon it.

To the question, "Did any one of the cabinet express a doubt of the power of the executive branch of the government to reorganize State governments in States which had been in rebellion, without the aid of Congress?" honorable Edwin M. Stanton answered as follows, *viz*:

A. None whatever. I had myself entertained no doubt of the authority of the President to take measures for the organization of the rebel States on the plan proposed during the vacation of Congress, and agreed in the plan specified in the proclamation in the case of North Carolina. It may be proper to add, in regard to the history of this subject, that on the day succeeding the date of the telegram to General Weitzel, and on the last day of Mr. Lincoln's life, there was a cabinet meeting, at which General Grant and all the members of the cabinet, except Mr. Seward, were present. General Grant at that time made a report of the condition of the country as he conceived it to be, and as it would be on the surrender

of Johnston's army, which was regarded as absolutely certain. The subject of reconstruction was talked of at considerable length. Shortly previous to that time I had myself, with a view of putting in a practicable form the means of overcoming what seemed to be a difficulty in the mind of Mr. Lincoln as to the mode of reconstruction, prepared a rough draught of a form or mode by which the authority and laws of the United States should be re-established and governments reorganized in the rebel States under the federal authority, without any necessity whatever for the intervention of rebel organizations or rebel aid. In the course of that consultation Mr. Lincoln alluded to the paper, went into his room, brought it out, and asked me to read it, which I did, and explained my ideas in regard to it. There was one point which I had left open; that was as to who should constitute the electors in the respective States. That I supposed to be the only important point upon which a difference of opinion could arise—whether the blacks should have suffrage in the States, or whether it should be confined for the purposes of reorganization to those who had exercised it under the former State laws. I left a blank upon that subject to be considered. There was at that time nothing adopted about it and no opinions expressed; it was only a *project*. I was requested by the other members of the cabinet, and by Mr. Lincoln, to have a copy printed for each member, for subsequent consideration. My object was simply to bring to the attention of the President and cabinet, in a practical form, what I thought might be a possible means of organization without rebel intervention. Mr. Lincoln seemed to be laboring under the impression that there must be some starting point in the reorganization, and that it could only be through the agency of the rebel organizations then existing, but which I did not deem to be at all necessary. That night Mr. Lincoln was murdered. Subsequently, at an early day the subject came under consideration, after the surrender of Johnston's army, in the cabinet of Mr. Johnson. The *project* I had prepared was printed, and a copy in the hands of each member of the cabinet and the President. It was somewhat altered in some particulars, and came under discussion in the cabinet, the principal point of discussion being as to who should exercise the elective franchise. I think there was a difference of opinion in the cabinet upon that subject. The President expressed his views very clearly and distinctly. I expressed my views, and other members of the cabinet expressed their views. The objections of the President to throwing the franchise open to the colored people appeared to be fixed, and I think every member of the cabinet assented to the arrangement as it was specified in the proclamation relative to North Carolina. After that I do not remember that the subject was ever again discussed in the cabinet. (Page 401.)

In the testimony of honorable William H. Seward, the following questions and answers occur, viz :

Q. Is the plan of reconstruction applied by the President to the rebel States a system of his own creation, or how was it agreed upon?

A. I think it grew during the administration of Mr. Lincoln and the administration of Mr. Johnson, and it was modified from time to time by the circumstances as they occurred. The first act of reorganization, as I have mentioned, was in the case of Tennessee. I think I am the author of that. I think, so far as I know, that plan of reconstruction was pursued, at least until the time I was taken sick and went to my bed, in the month of April, 1865. When I came out of the sick-room, the first day I went to the cabinet, I think the draught of the President's proclamation, or a plan of proclamation, was submitted to me. I found that it substantially accorded with what I had understood to be my own plan, and I accepted it as being the same.

Q. Do you refer to the proclamation now in the case of North Carolina?

A. I refer now to the general proclamation of amnesty and reconstruction of Mr. Johnson. How far it differed from other plans submitted, I do not remember. When this question came up before the President, and in cabinet, it was discussed and adopted during my sickness, and was understood and stated, I believe, as one which harmonized with what had previously been done, but modified by the circumstance of the close of the war, and other things.

Q. Was there not this difference, that Mr. Lincoln's plan was adopted during the war as a war measure, while Mr. Johnson's plan was adopted after the war had ceased?

A. There was a difference both of time and circumstance.

Q. I find the proclamation for the organization of a provisional government of North Carolina was dated May 29, 1865. Was that proclamation considered in cabinet before it was published?

A. That and the other proclamation referred to were all subjects of frequent discussion and very careful deliberation before any one was issued. I think that when the proclamation was reduced definitely to the form which it now has, it was submitted to the whole cabinet, but I cannot certainly say as to the fact that it was. My recollection is that all the provisions contained in it were carefully considered by the President in cabinet. I am not able to state, however, positively about that. I see, by looking at the date, that at that time I had only partially recovered, and I was unable to be in cabinet in all its meetings. I remember, when I arose from my sickness, that I took the papers then presented to me and made some suggestions to it in the way of amendment, which were accepted. (Pages 377, 378.)

The following will be found in the testimony of General U. S. Grant :

Q. Do you recollect the proclamation that is called the "North Carolina proclamation?"

A. Yes, sir; that was the first one published giving a State government.

Q. Did you have any conversation with the President as to the terms or purport of that proclamation?

A. I was, as I say, present when it was read. It was in the direction that I wanted. I was anxious to see something done to give some sort of temporary government there. I did not want to see anarchy.

Q. Did you give any opinion in favor of that proposition?

A. I did not give any opinion against it. I was in favor of that or anything else which looked to civil government until Congress could meet and establish governments there. I did not want all chaos left there and no form of civil government whatever. I was not in favor of anything or opposed to anything particularly. I was simply in favor of having a government there; that was all I wanted. I did not pretend to give my judgment as to what it should be. I was perfectly willing to leave that to the civil department. I asked no person what I should do in my duties; I was willing to take all the responsibilities; and I did not want to give my views as to what the civil branch of the government should do.

\* \* \* \* \*

Q. I understand you to say that you were very anxious, at the close of the war, that civil governments should be established in some form as speedily as possible, and that you so advised the President?

A. I so stated frequently in his presence.

Q. But that you advised no particular form or mode of proceeding?

A. I did not.

Q. Were you present when this North Carolina proclamation was read in the cabinet?

A. I would not be certain, but my recollection is that the first time I heard it read was the presence only of the President, the Secretary of War, and myself.

Q. Did you give your assent to that plan?

A. I did not dissent from it. That is just in accordance with what I have stated. It was a civil matter, and, although I was anxious to have something done, I did not intend to dictate any plan. I do not think I said anything about it or expressed any opinion about it at that time. I looked upon it simply as a temporary measure, to establish a sort of government until Congress should meet and settle the whole question, and that it did not make much difference how it was done so there was a form of government there.

\* \* \* \* \*

Q. I wish to know whether at or about the time of the war being ended you advised the President that it was, in your judgment, best to extend a liberal policy towards the people of the south, and to restore as speedily as possible the fraternal relations which existed prior to the war between the two sections?

A. I know that immediately after the close of the rebellion there was a very fine feeling manifested in the south, and I thought we ought to take advantage of it as soon as possible; but since that there has been an evident change there. I may have expressed my views to the President.

Q. What is your recollection in reference to that?

A. I may have done so, and it is possible I did; I do not recollect particularly. I know that I conversed with the President very frequently. I do not suppose that there were any persons engaged in that consultation who thought of what was being done at that time as being lasting—any longer than until Congress would meet and either ratify that or establish some other form of government. I know it never crossed my mind that what was being done was anything more than temporary. (Pages 832, 834, 835.)

This testimony presents the beginning of the reconstruction policy, so called, of President Johnson; and interweaves, to some extent, with the preceding administration.

It does not appear in any part of the testimony that the President or his advisers claimed exclusive jurisdiction in the matter of the reorganization of the rebel States. On the contrary, it does appear that no such claim was asserted. General Grant says that he was in "favor of anything which looked to civil government until Congress could meet and establish civil governments there."

On the same point the following question and answer disclose the opinion of Mr. Stanton :

Q. You have expressed an opinion as to the power to issue proclamations for reorganization. Do you mean by the opinion you have expressed to include any opinion as to the final legality of the organizations to be accomplished under such plan of reorganization; in other words, whether that reorganization would be final and conclusive, and that Congress would have no right to regulate and control it?

A. My opinion upon that point is only the opinion of an individual citizen. My opinion is that the whole subject of reconstruction, and the relation of a State to the federal government, is subject to the controlling power of Congress; and while I believe that the President and his cabinet were not violating any law, but were faithfully performing their duty in endeavoring to organize provisional governments in those States, I supposed then, and still suppose, that the final validity of such organizations would rest with the law-making power of the government. That, however, as I said, is but the opinion of an individual. (Page 406.)

And it will be remembered that the Secretary of State, acting for the President, on the 24th day of July, 1865, sent a telegram to the provisional governor of Mississippi in these words, viz :

W. L. SHARKEY, *Provisional Governor of Mississippi, Jackson :*

Your telegram of the 21st has been received. The President sees no reason to interfere with General Slocum's proceedings. The government of the State will be provisional only, *until the civil authorities shall be restored, with the approval of Congress.* Meanwhile military authority cannot be withdrawn.

WILLIAM H. SEWARD.

In still more emphatic terms the Secretary of State addressed a letter to the provisional governor of Florida, as follows, viz :

DEPARTMENT OF STATE,  
*Washington, September 12, 1865.*

SIR: Your excellency's letter of the 29th ultimo, with the accompanying proclamation, has been received and submitted to the President. The steps to which it refers, towards reorganizing the government of Florida, seem to be in the main judicious, and good results from them may be hoped for. The presumption to which the proclamation refers, however, in favor of insurgents who may wish to vote, and who may have applied for, but not received, their pardons, is not entirely approved. All applications for pardons will be duly considered, and will be disposed of as soon as may be practicable. It must, however, be distinctly understood that the restoration to which your proclamation refers will be subject to the decision of Congress.

I have the honor to be, your excellency's obedient servant,

WILLIAM H. SEWARD.

His Excellency WILLIAM MARVIN,  
*Provisional Governor of the State of Florida.*

These several proofs show pretty conclusively that General Grant was not mistaken when he testified: "I do not suppose that there were any persons engaged in that consultation [with reference to reconstruction] who thought of what was being done at that time as being lasting, any longer than until Congress would meet and either ratify that or establish some other form of government." The testimony before the committee unquestionably proves that it was the original purpose of the President to act in conjunction with Congress with reference to the reconstruction of the rebel States; and had this purpose continued, there would have been no serious conflict between the executive and legislative departments of the government over the restoration of those States to their proper positions in the Union. In that case the assumption by the President of a challenged power would not have been asserted a crime by those who now arraign him as a criminal. The executive department of the government was called upon to deal with a new question, under circumstances of great embarrassment, and in the midst of most troublous times. The nation was just emerging from a most terrible, and, on the part of the rebels, a most unjustifiable war, during which it had given but little attention to modes of reconstruction, and that little had been marked by a confusion of ideas and theories most discordant. No well-rounded issue had been made up between the two departments of the government, nor would such a result have been arrived at had not a seeming change of purpose on the part of the President crystallized an issue and brought on a conflict.

The first official notice which Congress received of the President's change of purpose was contained in his first annual message, delivered to the two houses December 4, 1865. In that document, after stating what he had done in the matter of reorganizing civil governments in the rebel States, he proceeded to

say: "The amendment to the Constitution being adopted, it would remain for the States whose powers have been so long in abeyance to resume their places in the two branches of the national legislature, and thereby complete the work of restoration. Here it is for you, fellow-citizens of the Senate, and for you, fellow-citizens of the House of Representatives, to judge, each of you for yourselves, of the elections, returns, and qualifications of your own members."

This, with other official and unofficial indications of the President's purpose, led to the creation of the Joint Committee on Reconstruction, which was effected by the concurrent resolution of December 13, 1865, by the terms of which the committee was directed to "inquire into the condition of the States which formed the so-called Confederate States of America, and to report whether they or any of them are entitled to be represented in either house of Congress." Everything relative to those States coming before either house was turned over to this committee; and weeks and months were devoted to a most searching inquiry into their condition, and what had been done toward their reconstruction by the President. During this time the breach became wider, and the conflict waxed warmer between the executive and legislative departments of the government. On the 19th day of February, 1866, the President returned to the Senate with his objections the "bill to amend an act to establish a bureau for the relief of freedmen and refugees, and for other purposes." In the message assigning his reasons for the return of the bill, the President said: "The bill under consideration refers to certain of the States as though they had not been fully restored in all their constitutional relations to the United States'. If they have not, let us at once act together to secure that desirable end at the earliest possible moment. It is hardly necessary for me to inform Congress that, in my own judgment, most of those States, so far, at least, as depends on their own action, have already been fully restored, and are to be deemed as entitled to enjoy their constitutional rights as members of the Union."

On the 20th day of February, the House of Representatives responded to this part of the message by passing, by a vote of yeas 109, nays 40, the following resolution:

*Resolved by the House of Representatives, (the Senate concurring,) That, in order to close agitation upon a subject which seems likely to disturb the action of the government, as well as to quiet the uncertainty which is agitating the minds of the people of the eleven States which have been declared to be in insurrection, no senator or representative shall be admitted into either branch of Congress from any of said States until Congress shall have declared such State entitled to such representation.*

Following quickly upon this came the President's celebrated and notorious speech of the 22d of February, which rendered irreparable the breach between him and Congress—if such had not before been its character—and ten days thereafter (March 2) the Senate passed the foregoing resolution of the House of Representatives by a vote of yeas 29, nays 18.

The next prominent act of the President which added fuel to the flames that divided the two departments of the government was his veto of the "bill to protect all persons in the United States in their civil rights, and to furnish the means of their vindication," popularly known as the "civil rights bill." This occurred on the 27th of March, 1866. If anything was needed to render complete the rupture between the two departments of the government, the message which announced this veto supplied it.

During the time covered by these several acts the Joint Committee on Reconstruction was diligently occupied in the discharge of its duties. It passed carefully over the entire field committed to its charge. The condition of every rebel State was examined. The devious ways of the "President's policy" were explored—nothing escaped its vigilance and scrutiny. On the 18th day of June, 1866, the committee presented its report to the two houses of Congress. The report was signed by W. P. Fessenden, James W. Grimes, Ira Harris, J.

M. Howard, George H. Williams, Thaddeus Stevens, Ellihu B. Washburn, Justin S. Morrill, John A. Bingham, Roscoe Conkling, George S. Boutwell, Henry T. Blow, twelve able, careful, earnest men. This report summed up the whole case involved in the President's efforts at reconstruction, and the consequent conflict between him and Congress. It did not charge him with criminal conduct, nor fail to consider the "peculiar circumstances" under which he acted. On the contrary, in speaking of the authority of the people to "frame a form of government," the report said: "Ordinarily this authority emanates from Congress; but, under the peculiar circumstances, your committee is not disposed to criticise the President's action in assuming the power exercised by him in this regard." And near the close of the report this passage may be found: "While your committee do not for a moment impute to the President any such design," [to destroy the constitutional form of government, and absorb its powers in the Executive,] "but cheerfully concede to him the most patriotic motives, they cannot but look with alarm upon a precedent so fraught with danger to the republic."

The remedy proposed by that committee was not an impeachment of the President, but an amendment to the Constitution of the United States, as follows, to wit:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both houses concurring,) That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:*

#### ARTICLE XIV.

**SECTION 1.** All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**SEC. 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, or representatives in Congress, the executive and judicial offices of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such males citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**SEC. 3.** No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same or given aid or comfort to the enemies thereof. But the Congress may, by a vote of two-thirds of each house, remove such disability.

**SEC. 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned; but neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

**SEC. 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

This amendment, as passed, was a modification of the one originally reported by the committee and embraced the provisions of the one first reported, and adjusted more satisfactorily to the views of its friends the disqualifications contained in "a bill declaring certain persons ineligible to office under the government of the United States," which was reported by the committee as a part of the plan of reconstruction.

The amendment passed the Senate on the 8th day of June, 1866, by yeas 33, nays 11; and was adopted by the House on the 13th of June, yeas 138, nays 36.

To make the plan complete, the committee also reported "a bill to provide for restoring the States lately in insurrection to their full political rights," in these words, namely :

Whereas it is expedient that the States lately in insurrection should, at the earliest day consistent with the future peace and safety of the Union, be restored to full participation in all political rights ; and whereas the Congress did, by joint resolution, propose for ratification to the legislatures of the several States, as an amendment to the Constitution of the United States, an article in the following words, to wit :

[The article is above quoted.]

Now, therefore, *Be it enacted, &c.*, That whenever the above recited amendment shall have become part of the Constitution of the United States, and any State lately in insurrection shall have ratified the same, and shall have modified its constitution and laws in conformity therewith, the senators and representatives from such State, if found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress as such.

*SEC. 2. And be it further enacted*, That when any State lately in insurrection shall have ratified the foregoing amendment to the Constitution, any part of the direct tax under the act of August 5, 1861, which may remain due and unpaid in such State, may be assumed and paid by such State; and the payment thereof, upon proper assurances from such State to be given to the Secretary of the Treasury of the United States, may be postponed for a period not exceeding ten years from and after the passage of this act.

This bill was never finally acted on, but it is well known that a compliance, in good faith, on the part of the insurrectionary States with this plan of reconstruction would have assured their restoration to the Union. There would have been objections from some members in each house of Congress, but the general feeling was as stated.

In view of the grave character of the case with which the committee has been charged, it seems important that one feature of this plan should not be overlooked, namely, that it proposed to use the identical governments which were organized in the insurrectionary States, in pursuance of the President's "policy," as a means to insure its own success. Nor has Congress, down to the present time, destroyed or set aside such governments. The act of March 2, 1867, "to provide for the more efficient government of the rebel States," contains the following section :

*SEC. 6. And be it further enacted*. That, until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote under the fifth section of this act; and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third section of said constitutional amendment " (*Statutes 39th Congress, 429.*)

The affairs of those States are now administered through the machinery of the provisional governments, under the supervision of the military authorities of the United States; and here it may be well to consider, however wrong or unlawful the acts of the President in the creation of those governments may be regarded, whether, without regard to the questions of law hereinbefore discussed, he can be held criminally responsible in the presence of their permissive existence by Congress, and the use to which it has put the results of his improper and illegal acts.

Looking over the entire field of presidential and congressional action affecting the reconstruction branch of this case, and in consideration of the peculiar circumstances which have surrounded it; the multitude of opinions which obstructed the formation of a definite legislative judgment; the necessities of the recent past which impelled public officers to some action, and the present condition of

the country, it seems to us that the issues involved are more properly triable before the grand tribunal of the people at the ballot-box, where they have so long been pending, than in the presence of the high court of impeachment.

The reconstruction policy of the President cannot succeed except through an approval by Congress. Such an approval would destroy every element of crime involved in it, for it would then be the act of the government of the United States. If it do not receive the sanction of Congress it cannot present a perfected crime. The present Congress will continue until the close of the President's term of office. It will not approve his plan. Success in his alleged crime is thus rendered impossible.

We do not deem it necessary to enter upon an examination of the details involved in the President's action relative to the subject of reconstruction. These are but, severally, parts of a general system, and are as well understood by the House and the country as by us. Each part was necessary to constitute the whole. If the greater be not a crime, the less cannot rise to that importance.

The second charge is, that the President has "corruptly used the appointing power."

Relative to this charge, a large amount of testimony has been taken by your committee; and it discloses pretty conclusively that, for a time at least, the President and some members of his cabinet used this power with considerable vigor in behalf of those applicants for office who favored the policy of the administration; and it cannot be doubted, from the disclosures of the testimony, that this power was used for the purpose of strengthening the administration in its contest with Congress.

Executive Document No. 96, communicated to the House of Representatives February 20, 1867, discloses the fact that there were sixteen hundred and forty-four postmasters removed "between the 28th day of July, 1866, and the 6th day of December, 1866;" and that "of this number, one thousand two hundred and eighty-three were removed for *political reasons*." The Postmaster General (Hon. A. W. Randall) was examined with reference to these removals, and gave the following testimony, viz:

Q. In your answer to the House resolution calling for information in regard to the appointments to office, you designated as causes in a great many cases, thirteen or fourteen hundred in all, "political reasons." The term is a very vague one, and I will be obliged to you to state more distinctly what you mean by it?

A. There were above twelve or fourteen hundred in all, and part of them were for political reasons.

Q. Referring to your printed answer, I find that you state the whole number of removals to be 1,604, and that of these 1,283 were for "political reasons;" and you state afterwards that eight were for "political reasons and neglect of duty," thereby implying, I suppose, something more than mere neglect of duty?

A. In those cases there were charges against the individuals as well as political reasons; perhaps inattention to duty. I do not remember the particulars in these cases. I suppose the statement which you have read is a correct statement. I will answer that "political reasons" embrace a good many things. Removals for that cause have been frequent in almost every administration. When we began, we turned men out because they did not vote for Lincoln; that was a political reason, and it was so stated. If men voted the democratic ticket or were opposed to the policy of Mr. Lincoln, they were removed for that cause; it was designated "political reasons."

Q. I am speaking now of the removals made by the President in office, and the removals to which you refer in this answer.

A. I was proceeding to state that opposition to the policy of the present administration, which is understood to be the policy of Mr. Lincoln, was a cause for which many of these men were removed. It was opposition to Lincoln's policy, which Mr. Johnson was trying to carry out, and the general term "political reasons" was used; that is, the general term used to cover a great variety of circumstances. A man may have been very abusive of Mr. Johnson, denouncing him on the street as a traitor; he would be turned out of office, and it would be stated for "political reasons." If he was abusive of the Postmaster General, denouncing him in the same way, we would turn him out, and assign the reason for it as "political."

Q. I wish you would state, in the cases referred to in this answer, whether "political

reasons" were not difference of opinion with the Executive in regard to his policy in the reconstruction of the southern States?

Not altogether; these questions entered into it. It went both ways; for instance, republican members of Congress would come into the department and complain of a man as having been opposed to the war, as denouncing Lincoln and Johnson, and wanted me to turn him out. I would turn him out, and assign as cause "political reasons." On the other hand, complaint would come that a man was abusing Mr. Johnson, calling him a traitor for carrying out his policy in opposition to Congress. He would be turned out and the cause assigned "political reasons." Without my attention being called to particular cases, I can only state the meaning of the term in this general way; and I have simply intended to give you a general idea.

Q. I wish you would state whether, in a majority of cases, these removals were not made simply from the fact that the persons harmonized in sentiment with Congress in the matter of reconstruction?

A. In a great many cases it was so, but I cannot say in a majority. I could not, from memory, undertake to say with accuracy what proportion. (Pages 333, 334.)

This is substantially an avowal that opposition to the policy of the administration was deemed a sufficient cause for the removal of a public officer. The testimony of James M. Scovel (pages 619 to 633) shows that this was the case, and that no person who refused to support such policy would be appointed to office, and that he received this information, at least in an inferential way, from both the President and his private secretary, Mr. Edward Cooper.

In view of all the testimony taken with reference to this branch of the case, we can but conclude that it was the purpose of the President to use the appointing power in such manner as to favor those who approved of the policy of the administration, and would accord to it their support, and that this purpose related to all of the executive departments, in which many removals and appointments were made in pursuance of it. Was this purpose and its consequent use of the appointing power a change from the practice and action of former administrations? An affirmative answer to this question would go far towards establishing the charge of corruption in the exercise of this power. What has been the practice of former administrations? Does any one doubt that whigs were formerly turned out of office by democratic presidents because they were whigs, and for no other reason? and that in the mutations of parties democrats shared the same fate for a like reason? Did not the republican party continue the practice? and is it now first discovered to be a crime? We will not affirm that this practice is not wrong, nor can we say that there is a member of either branch of Congress who has not, at some time, asked for its application. If "honest, faithful, and capable" officers could continue to discharge their public duties regardless of the successes and defeats of parties, the government and the people, doubtless, would profit thereby. But it is a well-established historical fact that for half a century each succeeding administration has practiced, to a greater or less extent, the doctrine that "to the victors belong the spoils." The appointing power was left without regulation or restraint by law, until the 2d day of March, 1867, when Congress passed "an act regulating the tenure of certain civil offices." (Acts 39th Congress, 430.) We are not apprised of any infraction of this statute by any testimony before us.

Since 1836, in all cases where deputy postmasters have been appointed and confirmed by the Senate, a commission in the following form has been issued:

PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all who shall see these presents, greeting:*

Know ye that, reposing special trust and confidence in the integrity, ability, and punctuality of \_\_\_\_\_, I have nominated, and by and with the advice and consent of the Senate do appoint, \_\_\_\_\_ deputy postmaster \_\_\_\_\_, and do authorize and empower him to execute and fulfil the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said \_\_\_\_\_, for the term of \_\_\_\_\_, unless the President of the United States for the time being should be pleased sooner to revoke and determine this commission.

In testimony whereof I have caused these letters to be made patent, and the seal of the [L. S.] United States to be hereunto affixed.

Given under my hand, at the city of Washington, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and of the independence of the United States of America the \_\_\_\_\_.

By the President:

(Page 767.)

\_\_\_\_\_,  
*Secretary of State.*

This form reserves and asserts the right and power of the President to revoke and determine the commission at any time, and at his pleasure to create a vacancy by a removal.

In all cases since 1837, "when such officers have been appointed during a recess of the Senate," the following form of commission has been used, viz :

PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all who shall see these presents, greeting :*

Know ye that, reposing special trust and confidence in the integrity, ability, and punctuality of \_\_\_\_\_, I do appoint \_\_\_\_\_ deputy postmaster \_\_\_\_\_, and do authorize and empower him to execute and fulfil the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said \_\_\_\_\_, during the pleasure of the President of the United States for the time being, and until the end of the next session of the Senate of the United States, and no longer.

In testimony whereof I have caused these letters to be made patent, and the seal of the [L. S.] United States to be hereunto affixed.

Given under my hand, at the city of Washington, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and of the independence of the United States of America the \_\_\_\_\_.

By the President:

(Page 767.)

\_\_\_\_\_,  
*Secretary of State.*

These forms represent the practice of the executive department of the government for very many years. They disclose a usage of the government, and it is an established principle of law, affirmed by the Supreme Court, that "usages have been established in every department of the government which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits, and no change of such usages can have a retrospective effect, but must be limited to the future. Usage cannot alter the law, but it is evidence of construction given to it, and must be considered binding on past transactions." (7 Peters, 14.)

The act of March 2, 1867, pronounced against this usage, and declared a rule by which the appointing power should be guided. The executive department of the government has conformed its action to that rule, and has changed the forms of its commissions accordingly. Since the passage of that act, in all cases of suspension from office, commissions in the following form have been issued, to wit :

PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all who shall see these presents, greeting :*

Know ye that, reposing special trust and confidence in the integrity and ability of \_\_\_\_\_, I do designate him to perform the duties of the office of deputy postmaster at \_\_\_\_\_, in the State of \_\_\_\_\_; and do authorize and empower him to execute and fulfil the duties of that office according to law, and to have and to hold all the powers, privileges, and emoluments to the same of right appertaining unto him, the said \_\_\_\_\_, until the next meeting of the Senate of the United States, and until the case of \_\_\_\_\_, who has been suspended by the President from the performance of the duties of said office, shall be acted upon by the Senate, and no longer, unless the commission shall be sooner revoked, subject to the conditions prescribed by law.

In testimony whereof I have caused these letters to be made patent and the seal of the [L. S.] United States to be hereunto affixed.

Given under my hand, at the city of Washington, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and of the independence of the United States of America the \_\_\_\_\_.

By the President:

\_\_\_\_\_,  
Secretary of State.

(Page 762.)

In all "cases of vacancies by death or resignation," the following forms of commissions have been used, namely:

PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all who shall see these presents, greeting:*

Know ye that, reposing special trust and confidence in the integrity, ability, and punctuality of \_\_\_\_\_, I do appoint him deputy postmaster at \_\_\_\_\_, in the State of \_\_\_\_\_, and do authorize and empower him to execute and fulfil the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said \_\_\_\_\_, until the end of the next session of the Senate of the United States, and no longer, subject to the conditions prescribed by law.

In testimony whereof I have caused these letters to be made patent and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and of the independence of the United States of America the \_\_\_\_\_.

By the President:

\_\_\_\_\_,  
Secretary of State.

(Page 763)

When officers have been confirmed by the Senate, upon the nomination of the President, commissions have been issued in form as follows, namely:

PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all who shall see these presents, greeting:*

Know ye that, reposing special trust and confidence in the integrity, ability, and punctuality of \_\_\_\_\_, I have nominated, and by and with the advice and consent of the Senate do appoint \_\_\_\_\_ deputy postmaster \_\_\_\_\_, and do authorize and empower him to execute and fulfil the duties of that office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said \_\_\_\_\_, for the term of \_\_\_\_\_, subject to the conditions prescribed by law.

In testimony whereof I have caused these letters to be made patent and the seal of the [L. S.] United States to be hereunto affixed.

Given under my hand, at the city of Washington, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and of the independence of the United States of America the \_\_\_\_\_.

By the President:

\_\_\_\_\_,  
Secretary of State.

(Page 767.)

If any departure from this system has transpired, the testimony before us does not disclose it.

Complaint has been made that the President, for the purpose of more effectively using the appointing power to the advancement of his own ends, has corruptly endeavored to evade the provisions of the Constitution defining and regulating the appointing power, by neglecting or refusing to send to the Senate, in a number of cases, nominations to fill vacancies which happened "during the recess of the Senate." The evidence does not support this charge. The testimony of Hon. Hugh McCulloch, (71 to 78 inclusive,) of George Parnell, J. L. W. Huntington and C. E. Creecy, (79 to 84 inclusive,) of Hon. A. W. Randall, (333 to 345,) of W. E. Chandler, esq., (472 to 480,) Robert Johnson, (495,) and of W. G. Moore, (542, 543,) explains the circumstances involved in this com-

plaint, and rebuts the presumption sought to be raised of a corrupt or criminal intent on the part of the President relative to the absence of nominations to fill said vacancies.

The appointment to office of persons who could not take the oath of office prescribed by the act of July 2, 1862, may be properly considered under this charge. Some sixty appointments of this character were made, and the state of facts disclosed by the testimony concerning them will be briefly stated. The following extracts are made from the testimony of Hon. Hugh McCulloch, viz :

Q. Have any persons been appointed to office in the southern States since the close of the rebellion, and been allowed to enter on the duties of their office without taking what is commonly called the test oath ?

A. A number of persons have been appointed to office in the southern States who were unable to take the test oath of 1862.

Q. State to the committee, without further interrogation, the circumstances of their appointment, &c

A. In reply to a resolution of the Senate, dated December 13, 1865, calling for information on the subject, I addressed to the Senate a reply, which is to be found in Executive Document No. 3, 39th Congress, 1st session. As I stated the facts as they occurred concisely at the time, I would like to make that reply a part of my testimony in this case. (Page 604.)

In the document referred to a statement is given explanatory of these appointments, and from it we quote as follows :

Upon the surrender of the confederate armies, it was regarded by the President and his cabinet as a matter of great importance that revenue offices should be established in the southern States, in order that commerce and trade might be resumed, and the authority of the government in one of its most important branches should be again recognized in all parts of the Union with as little delay as practicable. It was also regarded as a matter of scarcely less importance that citizens of the respective States in which offices were located, and not strangers, should be appointed revenue officers. In carrying into effect these views it became necessary to call into requisition the services of some southern men who had participated in the rebellion. None, however, have been appointed to office, or permitted to hold office under the law for the collection of the revenues, who are known to have instigated the rebellion, or who could properly be considered as justly responsible for it. It has been my purpose to recommend the appointment, and to sanction the appointment, of such only as could take the oath literally; and failing to be able to find such persons, to confine the appointment to those who gave no aid to the rebellion until the government of the United States had failed to give them the protection to which they were entitled, and there was no government but rebel government (State and confederate) to which they could look for safety or support in the perilous circumstances in which, without any previous action of their own, they had been forced. It is believed that very few persons not belonging to one or the other of these classes are holding positions under this department. (Page 605.)

Q. Were those appointments made by the President ?

A. The principal appointments are presidential appointments. They were made by the President on the recommendation of the Secretary of the Treasury. I desire to state that this was considered a matter of so grave importance that, before any action was taken upon the subject of filling revenue offices at the south, it was a matter of cabinet consultation; and, after a full and careful deliberation, it was agreed—as I recollect, unanimously—that, as it was important for the government that we should establish our revenue offices without delay, the Secretary of the Treasury would be justifiable in doing the best he could in regard to appointments, under the peculiar circumstances of the country. (Page 607.)

Q. When was this cabinet meeting held to which you refer ?

A. I cannot name the time. It was the subject of conference at one or two meetings. It was pretty soon after the collapse of the rebellion—early in 1865.

Q. What efforts were made by your department, previous to that decision to which you refer, to ascertain whether men who could take the test oath could be found at the south ?

A. We made no other efforts than to inquire of the men whom we met from the south in reference to the best persons in their neighborhoods to hold the respective offices, and to request that in all cases they would name persons, if they could do so, who were competent and could take the oath. That was about the only means we had of ascertaining.

Q. Can you give any reason why Congress was not informed of that action until the Senate called for information by resolution ?

A. I have no other reason to give than this, that the action of the Treasury Department and of the Post Office Department in reference to appointments to southern offices was, as we understood, known to Congress without any formal communication. I had myself frequent conversations with leading men on the subject. No communication was made to Con-

gress, because I thought it was generally understood that such appointments had been made, and it was expected that Congress would take some action in the matter without a formal communication.

Q. State in this connection to what member of Congress you ever made any such communication.

A. I cannot recollect definitely with whom I conferred. I think I did speak once or twice to Mr. Fessenden on the subject; and without being able to give names, my impression is that I spoke to perhaps a dozen others, explaining fully the course which had been taken by the Secretary of the Treasury. I wish to say that, after Congress had failed to take any action on the report which I made in December, after waiting for some action, and none being had, in March I addressed a communication to the President on the subject, and that communication was referred to Congress. As soon as I understood that Congress was hardening, as I deemed it, toward the South, and that there would be no modification of the oath, I took the most prompt measures in my power to have all the occupants who had not taken the oath dismissed from or to resign office, and others appointed in their places.

Q. Have all those men who did not take the oath been paid their salaries?

A. Not a dollar to my knowledge, with the single exception referred to. Some have been applicants to Congress for relief.

Q. Did not collectors retain their salaries out of money which came into their hands?

A. Under present regulations, and I think under regulations which were then in existence, a collector of internal revenue does not retain his compensation, but is compelled to deposit the entire amount of his receipts, he receiving at the proper time a draft for his commissions, &c. (Pages 613, 614.)

The testimony of ex-Attorney General Speed casts some light upon the subject of these appointments, as the following extracts will show, viz :

Q. During your period of office, did you at any time consider the question of the power of the President or of the heads of departments to appoint men to office who could not take and subscribe the oath of office prescribed by the statute of 1862, known as the test oath?

A. Yes, sir. I do not recollect having given any official opinion on the subject. I have had the records examined, and could find no trace of an official opinion there. I recollect, however, that the subject was discussed as early as and before the 30th of May, 1865. Immediately after the collapse of the rebellion the administration desired very earnestly to establish the various departments of the government in the seceded States. The judiciary department was under my control. I was very anxious to send judges, marshals, and the appropriate officers of that department to the south. I find that on the 30th of May, 1865, Mr. Mason was commissioned as district attorney, and Mr. Dick was commissioned as district judge of North Carolina. On or prior to the day that those commissions were made out, the subject of taking the test oath had been discussed in the cabinet. There was very little discussion of it. Some of us were of the opinion that probably persons could be inducted into office and made *de facto* officers without taking the test oath. Under that opinion, not well considered, those commissions were issued. After they were issued, I and other members of the cabinet (Mr. Stanton more particularly) examined carefully the question, and came to the conclusion that no persons could be inducted into office down there without taking the test oath. Mr. Dick and Mr. Mason had gone home. I wrote to them to that effect, and they returned their commissions, not being able to take the test oath. From that time no persons were commissioned in that department who could not take the test oath.

Q. Have you any specific recollection whether the fact of that decision was made known to the President?

A. I have no specific recollection of the occasion. My recollection is very distinct to this effect—that when the matter was first brought before the cabinet Mr. Stanton, who is a bright lawyer, aided me in looking into the matter, and we concurred in the notion that possibly persons might be inducted into office without taking the test oath. The matter was laid over, and we afterwards considered it more carefully, and both of us came to the conclusion most decidedly that it could not be done. Whether Mr. Stanton was at the second meeting of the cabinet when the decided opinion was given I cannot say; but at that second meeting of the cabinet, a very decided opinion was given by me. My impression is that I did not write out any opinion, but that I talked from minutes which I held in my hand in relation to the matter. (Pages 791, 792.)

This second discussion of the question occurred some time in August, 1865, the precise day Mr. Speed could not state.

A number of persons were appointed after this date to revenue offices who could not take the "test oath," but the testimony does not show that the President in any case knew that the appointees could not qualify in manner and form required by law.

Appointments of this character were confined almost exclusively to the Treasury Department, as it appears from the testimony that a distinction was made between officers deemed peculiarly advantageous to the government, and those regarded as more intimately connected with the interests and convenience of the people of the insurgent States; hence, while revenue officers who did not qualify in accordance with the act of July 2, 1862, were appointed, no such cases seem to have occurred in the appointment of postmasters. These appointments were regarded as relating more to the advantage and convenience of the people of the insurgent States than to the government. They were not made unless the appointees could qualify under the said act. Why was this exception made if the design was merely to subserve the purposes of the administration? Why was not the same system carried out in all of the executive departments, if its designed end was predetermined to work out the success of the plan of the President regardless of the law of the land or the will of Congress?

The third charge is: that the President has "corruptly used the pardoning power."

This power is vested in the President by section 2 of article 2 of the Constitution, in these words: "He shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." The exercise or non-exercise of the power rests in the discretion of the President. If he does not use it corruptly, he commits no crime. He must be guided by his judgment in the use of this as in all other instances of discretionary power, and "when an officer is called to exercise a judgment of his own, he is not punishable for a mere error therein, or for a mistake of the law. Here the act, to be cognizable criminally, or even civilly, must be wilful and corrupt." (Bishop on Criminal Law, 913.)

That the President has used the pardoning power in a vast number of cases, is a fact of public notoriety, and is abundantly established by the testimony. But this fact proves but one thing, namely, that a great many persons in the United States had committed crimes. It raises no presumption of corruption. The legal presumption is that the President used this power properly in each and every instance. This presumption may be overcome by proof; but this result has not been arrived at in any case examined by the committee. It is not contended that the power may not have been unwisely used, nor that many mistakes may not have been made in its exercise. It is simply affirmed that in such cases as have been examined in detail, the element of corruption in granting the pardon does not appear.

The pardon of Solomon Kohnstam created considerable excitement in the country when it was announced. The statements concerning it, made in the press, seemed to establish conclusively that a wanton, reckless, and corrupt use of the pardoning power had been discovered. Kohnstam had deliberately, and by most wicked and criminal practices, defrauded the government out of a large sum of money when it was straining every resource to the utmost tension to destroy a rebellion which threatened its life. The President pardoned him, and the committee examined the supports underlying the action of the Executive. The result may be found on pages 417, 418, and if they are turned to, few will assert that that case presents evidence of a corrupt use of the pardoning power.

Other cases were examined in detail, such as that of George W. Gayle, who proposed for \$1,000,000 to "cause the lives of Abraham Lincoln, William H. Seward, and Andrew Johnson, to be taken," (564 to 570,) and the case of Joseph R. Anderson, one of the proprietors of the Tredegar iron works, of Richmond, Virginia, (417,) with no graver results.

It has been asserted that the case of the "West Virginia soldiers" establishes an instance of a corrupt use of this power, because two hundred and ninety-one persons were included in one order, without an examination into the merits

of each individual's case. What are the facts? The following letter was presented to the President:

WASHINGTON CITY, D. C., October 22, 1866.

SIR: The soldiers whose names will be found in the accompanying list were nearly all marked absent without leave in the year 1864, during that terrible campaign to Lynchburg, under command of Major General Hunter. In the cavalry those so marked had their horses killed, and were obliged, like the disabled infantry, to make their way back within our lines, or hide in the mountains until the command returned. If a soldier is absent at three roll-calls, and the officers do not know where he is, he is marked a deserter; when that record is made, a trial by court-martial is necessary to remove the charge; this opportunity these men never had. They rejoined their respective commands and served nobly to the end of the war, when, mustered out of service, they were unable to draw the pay due them.

You will perceive there has been a selection made of the deserving men from each regiment; the small number taken from each is proof of that fact. I do not consider these men deserters; they certainly never intended or thought of deserting, and justice requires that the charge should be removed, and thus restore them to all the rights and privileges of soldiers and citizens. These men are registered and want to vote, but will be debarred unless the disability is removed.

I have the honor to be, most respectfully, yours,

M. McEWEN, M. D.,

*Late Surgeon-in-Chief 2d Cav. Div., and Brevet Col. U. S. A.*

His Excellency ANDREW JOHNSON,  
*President of the United States.*

(Page 283.)

On this appeared the following indorsements:

Referred to the honorable the Secretary of War. All pains and penalties attaching to these men on account of the charge of desertion are remitted, and the charge will be removed from the rolls.

ANDREW JOHNSON.

OCTOBER 23, 1866

Referred to the Adjutant General to issue order in conformity with above by the President.  
E. M. STANTON, *Secretary of War.*

Concerning these papers the Hon. E. M. Stanton testified as follows:

Q. As far as the files of the department show, was there any paper transmitted to your department from the President, at the same time the one last referred to was received?

A. There was none at that time that I have any knowledge of. The letter of Surgeon McEwen, with the indorsement of the President, was brought to me by some one: I cannot now recollect whether by Mr. McEwen, or whether it was transmitted in the ordinary course by the President. I read the order of the President and immediately indorsed my order below, and sent it down to the Adjutant General. The letter of Surgeon McEwen I did not then read, and have never read it since.

Q. Was there any investigation made into the nature of the offences committed, or said to have been committed, by these men, for the purpose of ascertaining whether they were real deserters or nominal deserters?

A. No investigation was made by me. Shortly after the order was sent to the Adjutant General, probably the same day, he reported to me that he thought the President had been deceived in reference to that application, for he found that one or more of the persons ordered to be relieved had deserted to the enemy. I immediately went to the President and asked him whether he was aware of that fact, and whether he desired to have such persons released. He said he was not aware of the fact and certainly did not mean to order their release, and directed me to have an investigation made as to how many of them belonged to that class. I returned instantly to the War Department and gave directions to the Adjutant General to examine how many of them belonged to that class, and not to embrace them in the order. I understood that on examination it was found that only one belonged to that class, and he was not embraced in the order. What investigation was made in reference to the others I am unable to say. I acted upon the order that was indorsed upon the letter. (Pages 276, 277.)

The result is evidenced by the following order:

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,  
*Washington, November 21, 1866.*

All pains and penalties attaching to the following named men, on account of the charge of desertion against them, are hereby removed, and the charges will be removed from the rolls: [Here were inserted the names of the soldiers.]

By order of the Secretary of War:

E. D. TOWNSEND,  
*Assistant Adjutant General.*

(Page 278.)

But it is said that the President acted upon the promptings of a corrupt motive—that the real reason which governed him was a desire to contrl the election in the Martinsburg district, West Virginia, and that this is proved by a letter alleged to have been written by Edward W. Andrews, who was at the time the democratic candidate for Congress in that district. The letter referred to is in words as follows :

His Excellency ANDREW JOHNSON, *President of the United States* :

SIR : The accompanying list embraces the names of nearly two hundred soldiers, who are disfranchised by the charge of desertion. The great majority of these men reside in my congressional district. It would be doing me a great service to have the charge removed, and thus enable them to vote at the approaching election. The contest will, without doubt, be a very close one, and I feel well assured the restoration of these men will result in my election, provided it can be done immediately. (Page 317.)

Matthew McEwen testifies (page 57) that he received this letter from Mr. Andrews. Andrews testifies (page 317) that he never wrote the letter—that it is a forgery. His son, Samuel J. Andrews, swears (page 361) that he wrote the letter without his father's knowledge, and says that "Dr. McEwen sat down and wrote off in pencil a letter which I copied and then signed my father's name to it and gave it to him," (McEwen.) An effort is made to trace this letter to the hands of the President, but taking the testimony of McEwen, (page 56,) of Thomas B. Florence, (page 273,) of Robert Johnson, (page 493,) and of William G. Moore, (page 540,) together, it does not appear that the letter reached the President or that he had any knowledge of it.

Supplemental testimony has been taken tending to show that the Andrews letter did reach the President, and that an answer to it was written by Colonel W. G. Moore, one of the President's private secretaries. We affirm that under no rule of law does the testimony carry a knowledge of that letter, or of its contents, to the President. But suppose it did reach him, and that he acted on its improper appeal ; what then ? The act of pardon was right. The soldiers affected by it ought to have been restored to the rolls, and have received an honorable discharge. They had served their country well, and their alleged desertion was the result of the technicality of military law, and not of their own intention. There is no reasonable doubt of this. A technicality disfranchised them ; nothing more did the deed. Suppose the motive of the President was bad ; the deed itself was right. For what, then, is he to be impeached—the bad motive or the good deed ? If the President is to be impeached for this, let those who choose stand and demand from these soldiers of the republic a surrender of the elective franchise ; we will not do it.

The policy pursued relative to the pardon of persons applying therefor under the amnesty proclamation, and the reasons on which it was based, are thus disclosed in the testimony of ex-Attorney General Speed :

Q. What principle governed you in recommending men to pardon ?

A. The general principle of clemency. If I saw the party, or if a gentleman in whom I had great confidence gave me a description of the party, which I relied upon, I recommended a pardon. I regarded it as best to relieve those persons of apprehension, and let them go to work. We operated on these exceptions in the office in this way : The persons coming under the \$20,000 clause and the more minor officers were all thrown together, and there was very little question asked about them. Our object was to fling pardons broadcast. And so that there would be no question in the future about slavery, we put a condition in the pardon that the person pardoned should accept the situation of the country in reference to the abolition of slavery. There was a condition in the pardon that he should never thereafter hold a slave, or make use of slave labor ; and if we only gave pardons to a few it would be ridiculous to make that condition, whereas giving pardons to a great many persons of the influential classes would give force and effect to that idea. That induced us to be very liberal with pardons.

Q. Is that the principle on which you account for the pardoning of such a large number of leading men in the south who came under the exception ?

A. I do not know whether that is the principle. The principle on which we acted in the office was, not to investigate closely the cases coming under the \$20,000 clause, and the

clause in relation to minor officers. Unless there was something against the party the pardon went as a matter of course. In the cases of higher officers the applications had to come direct to the Attorney General or the President; and we made exceptions in particular cases. (Pages 303-304.)

If the general policy of granting pardons, or its individual application, has been corrupt or criminal, the testimony before us does not disclose it. We do not assert that the use made by the President of the pardoning power has not been unwise, impolitic, dangerous; but we do affirm that the testimony does not disclose a crime or misdemeanor known to the law, in its exercise.

The fourth charge is: "That the President has corruptly used the veto power."

The testimony taken by the committee under this charge relates mainly to the veto of the bill for the admission of the proposed State of Colorado. The following extract from the testimony of Hon. John Evans, one of the senators elect of the proposed State, will serve as a condensation of this branch of the committee's inquiry, viz.:

Q. State as much as possible in detail the conversation that occurred between you and Mr. Cooper, and between you and the President.

A. Previous to our interview with the President, we were invited into a private room by Mr. Cooper, who said he desired to talk with us in regard to the Colorado question. After a resumé of the present political situation, he said it was of vital importance for us to be friends of the President and his plan of restoration; said there would be no trouble about our bill if we would give our adherence to the President's policy; that believing, as the President did, that the future welfare and harmony of the country depended upon sustaining him as against Congress, it would not be expedient in him (the President) to admit us to fix a ruling power over him in the Senate; that there was no constitutional reason or precedent upon which to veto—it was merely a question of expediency, and added: "It is for you, gentlemen, to decide." He said a great deal else of this import, to all of which we answered, and stated that we had no personal hostility to the President; would be glad to see harmony, and hoped a more perfect understanding between the President and Congress would yet harmonize them, and that some plan would yet be agreed upon that would restore the union of all the States, so that loyalty could be encouraged and protected in the late rebel States; that one of us (Mr. Chaffee) had voted for him (the President) in the Baltimore convention, and that we should sustain him so far as we could, in justice to our views upon the great national question of reconstruction. He then asked us to go in and see the President, which we did. The President met us very cordially; went over his whole plan in detail, since his inauguration; said that our bill placed him in a rather awkward position; that he felt the necessity of carrying out his policy as the only one to restore the Union; that the radicals in Congress, if allowed to succeed, would disrupt and destroy the government. He characterized the leading men as actuated only by a desire to prolong themselves in power, and said he did not deem it expedient, or in consonance with the future welfare of the Union, to admit two more into the Senate to carry out their schemes; that he felt friendly to the West, and desired to do right, &c., &c.; to all of which we answered that we thought him mistaken about the animus and object of the majority in Congress; that we believed they, as well as himself, were actuated by patriotic motives; that we felt it to be our duty to be free to act as we thought best in our judgment, after taking the oath to support the Constitution of the United States; that we could have no object in this exigency but to act in a way that would restore the country upon a just basis, so that the rights of all would be guaranteed; that we should have sustained the civil rights bill if we could have voted upon it; that we very much desired the admission of Colorado, and hoped he would approve the measure, &c. I further stated to him that I had been a republican since the organization of that party. After we left him Mr. Cooper held another private interview with us, in which he requested us to put our views in writing for him, not to be used, as nearly and as favorably as we could, consistently, with the President's policy; to think of it over night, and to see him again at nine o'clock in the morning. During this interview he left us and went in to see the President, and after returning he made this request for us to put our views in writing. We called in the morning, separately, and without consultation with each other, and declined, stating that we had said and done all that we could, and would have to submit to what the President saw fit to do in the premises. (Pages 19-20.)

Hon. Jerome B. Chaffee, the other senator elect, confirmed this statement of his colleague, and, in addition thereto and in answer to the following question, gave this reply:

Have you any doubt, from what transpired between you and Mr. Cooper and the President, that if you had agreed to their proposition the President would have signed the Colorado bill?

I have not a doubt, in the world. I judge so from the conversation of the President—from

his remark to us that it put him in an awkward position-- that he had always been the friend of the west--that he hated to veto the bill; but he deemed the restoration of these States of paramount importance to everything else--and that he did not deem it expedient to admit two more senators to override him. (Page 22.)

Of course, this opinion of Mr. Chaffee cannot be received as evidence, but the facts he testified to go far towards supporting it.

Mr. Cooper was examined with reference to these interviews, and the following extracts are taken from his testimony :

I was extremely anxious that Colorado should be admitted as a State. That was my position. I was urging upon the President of the United States its admission, and for that purpose I desired to learn what were the views of Mr. Evans and Mr. Chaffee, in regard to the political questions then agitating the country.

Q. Please state what occurred at that interview.

A. I cannot pretend to detail the conversation. The substance of it was to ascertain, if I could from them, what position they assumed in regard to the questions then dividing Congress and the President as to declaring the States lately in insurrection and rebellion territories. I received from Mr. Chaffee a written statement of his views, and a verbal statement from Mr. Evans.

Q. Can you produce the written statement made by Mr. Chaffee?

A. It is on file in the Executive Mansion, and if it has not been destroyed, can be produced.

Q. Please state your recollection of the conversation that occurred on that occasion.

A. The substance of the conversation that I recollect was, that I inquired of them what their views were in regard to the restoration of the States lately in insurrection--whether they held with the majority in Congress, that they were dead States, incapable of representation, or whether they believed loyal representatives elected from the States should be received by Congress to their seats. I understood both of these gentlemen to say that while they were republicans, they were unhesitatingly in favor of the admission of loyal representatives elected from any of the States lately in rebellion who could take the test oath. When I ascertained that to be their view, I urged it as an argument to the Executive why the Colorado bill should be sent back approved.

Q. At whose instance did you have this interview?

A. At my own.

Q. Had the President any knowledge whatever of your intention to bring about this interview?

A. Not the slightest.

Q. It was, then, solely on your own responsibility?

A. It was.

Q. Did you inform the President of it?

A. Yes, sir. I took the gentlemen into the President's room myself.

Q. That conversation commenced before you took them in to see the President, and was on the same evening of their interview with the President?

A. Yes, sir.

Q. Did you go in to see the President before they were introduced?

A. It is very probable I did, though I do not remember it. If I did, it was only to see if he was disengaged and was willing to give them a hearing.

Q. Were you present at the interview between them and the President?

A. I was not. As soon as they were admitted I retired.

Q. Did you see them after the interview between them and the President?

A. I think not. If I did, it was only casually. (Pages 24 and 25.)

Q. Did you suggest to Mr. Evans or Mr. Chaffee, or to either of them, that the approval of the Colorado bill by the President might depend upon their position relative to the questions you discussed with them?

A. No, sir; I only desired to know them for the purpose of using them as an argument. The President had at no time predicated his action upon the political position that the senators would assume or that they held. His objections were of an entirely different character.

Q. Do you know at what time the message was written?

A. It was not completed until the day it was sent in.

Q. Do you know whether it had been commenced the day before?

A. I do not. I am satisfied the views and positions assumed in the message had been determined upon by the President days before.

Q. Do you remember anything being said during the interview between Mr. Evans and Mr. Chaffee and yourself about it being in their power to determine what would be the fate of the bill?

A. I have no idea I told them that. I had no authority to say it was. If I did say it, it was upon my own responsibility. They certainly misunderstood me, if they so stated, for I had no authority in the world to do so in the slightest. One of my reasons for favoring the Colorado bill was, that in its constitution it used the word "white" in regard to electors. It

was changing its condition from a territorial state by the decree of its citizens, as I thought, and I believed that Governor Cummings was doing them injustice.

Q. Did you express your own opinion to either Mr. Chaffee or Mr. Evans, as to the probability of the President's signing the bill in case their statements were satisfactory?

A. No, sir. I had no authority to do so—not the slightest. I only stated that I desired to use it as an argument, and would be glad to have an opportunity of doing so to sustain my own views. My support of the Colorado bill was entirely independent of Mr. Chaffee's or Mr. Evans's views in regard to any question. (Page 26.)

The only paper signed by Messrs. Evans and Chaffee is here given :

WASHINGTON, D. C., *May 12, 1866.*

DEAR SIR: We have seen and heard reports to the effect that "the Colorado senators have sold out to the radicals for the sake of getting the bill passed through Congress for the admission of Colorado into the Union." We desire to say to you, and all others, that this statement is entirely untrue; that we have not agreed or pledged ourselves to support any man or measures; that we are wholly free to vote and act as our judgment directs, and shall do so to the best of our knowledge and ability, and in accordance with the Constitution which we swear to support. We would not consider ourselves worthy of a seat in the United States Senate under any such imputation, if true.

Very respectfully, your obedient servants,

J. B. CHAFFEE.  
JNO. EVANS.

Hon. EDWARD COOPER.  
(Page 27.)

The Colorado bill was vetoed May 15, 1866. The veto message was not acted on in the Senate. This is substantially the entire case before the committee relating to a corrupt use of the veto power. If it discloses an impeachable crime we are unable to detect it. The testimony undoubtedly shows that the President had determined to veto the Colorado bill. Suppose he did offer to change his position, and to approve it in consideration of a promise by the senators elect to support his administration—to change his position and approve the bill—what then? He was required by the Constitution to approve or disapprove the bill. He had resolved upon the former. Did he change his resolution? No. An offer to change for a consideration, if he proposed it, was very improper; but was it a crime? Put it in its worst light, and we are still confronted by the fact that the offer was not accepted, and the act was not done. Has Congress, even, declared that this was wrong? Colorado is not yet a State. Why? Congress did not overrule the veto of the President. Is not this, under the Constitution, an approval of his official act? Let this form the basis of impeachment, who will assume the responsibility of giving it effect?

The fifth charge is, that the President has "corruptly disposed of the public property of the United States."

Under this charge considerable attention was devoted to the disposition of railway property in the rebel States. For a complete statement of this branch of the case reference is here made to the testimony of honorable E. M. Stanton, and its accompanying exhibits, commencing on page 186 and closing on page 264.

It does not appear from the testimony that the President gave his personal attention to this subject to any considerable extent, except so far as relates to the railroads in the State of Tennessee. The Secretary of War and the Quartermaster General seem to have been the principal actors in regard to the disposal of that class of property, so far as the inauguration of a system is concerned. The following statement may be found in Mr. Stanton's testimony, viz :

Shortly after the surrender of the rebel armies, the attention of the War Department was directed to the proper disposition to be made of the railroads and railroad stock throughout the rebel States which came into our possession, either by capture or construction. It was the subject of a good deal of consultation and conference between the Secretary of War and the Quartermaster General. It was the opinion of the Secretary of War that it was wholly impracticable for the government to operate these railroads under any system, and that it would tend greatly to the advantage of the country to make such disposition as would allow them as speedily as possible to become what they were designed—channels of commerce and trade between the States; and that any terms on which that could be done, would be advan-

tageous. This was especially the case in regard to the western and southwestern railroads, where it was said there were large amounts of cotton that would be available to remove north in exchange for supplies to go south, of which it was said they were greatly in want. The first case, I think, in which the matter came up for practical action, was in reference to the Orange and Alexandria railroad. In the case of this road an arrangement was made by which it was turned over to the company, the details of which I am not now able to state. An officer in the quartermasters' department is engaged in getting the papers together, and they will be furnished. The attention of the department, some time prior to the 27th of June, was called to the railroads in Tennessee by a correspondence between the Quartermaster General and General Donaldson, chief quartermaster of the department of the Cumberland, copies of which I hereby present. I have the originals here, which the committee may examine if they desire. On the 7th of July the Quartermaster General submitted to the Secretary of War a report upon the subject, relating to a communication from M. Burns, president of the Nashville and Northwestern railroad, which is annexed with the other papers. These views of the Quartermaster General were concurred in by the Secretary of War generally, and so indorsed on the report on the 11th of July, 1865. At the time of my approval of the report, I did not advert to the observations which had been made by the Quartermaster General in the close of his report in regard to the act of Congress of the 31st of January, 1865. My construction of the law differs from that which seemed to be entertained by the Quartermaster General in regard to that subject. I have not regarded that act as having anything to do with roads in Tennessee, or in any of the other States where they were captured by our armies or were enemy's property acquired by military occupation.

Q. In case of the construction of a railroad by the government, the government furnishing the material and the labor, what has been the custom of the department in surrendering such roads to companies claiming them?

A. In all instances, I think, such roads have been surrendered in the same manner as if they had been originally constructed by the companies. That subject was talked of, and was the subject of a good deal of conference between myself and the Quartermaster General. My own view was that the great object on the part of the government was to get these roads operated, and that to go into an inquiry as to the cost of construction would be impracticable, either as to the actual cost of construction or as to any certain rule of compensation, because many of them were constructed at a much larger expense than companies would construct them. They were constructed under the pressure of war, and for temporary purposes. The object of arriving at the actual cash or money value or equivalent for the roads was not only impracticable, but really of but very little practical interest in comparison with the great end of having the channels of commerce in the rebel States opened and carried on with a view of getting out their produce, furnishing supplies, and getting commerce into its regular channels. In my own view that appeared to be the most certain and most speedy system of reconstruction we could adopt, and that it would tend more to establish harmony than any other thing that could be done by the government. In view of all this, and after the most deliberate consideration we could give to it, it was the opinion of the Quartermaster General and myself—certainly my own—that it would be impracticable to make any distinction. And, so far as I know, no distinction was made in any part of the country in reference to roads built by the government and roads that had been constructed by companies before the war commenced.

Q. Suppose the government, at its own expense, had constructed seventy miles of railroad in one of the rebel States, and that at the close of the war a company should apply to the executive department of the government for a transfer of the road so constructed by it, by what authority or provision of law would the executive department be authorized to transfer the road so constructed to the company making the application?

A. I do not know of any act of Congress that directly or in terms would authorize any such transfer; but regarding the construction of the road in time of war simply as a means or instrument of carrying on war, when the war was over I would conceive it to be strictly proper and within the scope of the powers of the General commanding, or especially of the President of the United States, as the commander-in-chief of the army, to render that instrument as available for peace purposes as possible. And inasmuch as the road would be entirely useless unless it was operated, and it would be for the benefit and interest of the public to have it operated as speedily as possible, I should think it would be in the exercise of a wise discretion, and exercising proper authority, to turn over that road to any company or individual who would operate it, for in that way he would be applying the war material to the only available use to which it could be applied. (Page 183 to 186.)

These ideas were reduced to a system, and a plan was finally adopted involving the following propositions, viz :

1. Every railroad in charge of the quartermasters' department to be turned over as soon as no longer required to the applicants seeming to have the best claim to it, and being able to operate it the most efficiently for the transportation of stores and troops.
2. No charge to be made against the railroad for expense of material or operation.
3. All material for permanent way used in the repair and construction of the road, and all

damaged material of this class left along its route, to be considered part of the railroad given up with it.

4. No payment or credit to be given the road for occupation or use during the military necessity which compelled the United States to take possession of it; the return of the road with repairs being a full equivalent for its use.

5. All movable property and rolling stock belonging to the United States to be sold at auction, after ample notice, to the highest bidder.

6. All rolling stock and material which belonged to the road before the war or before possession by United States forces, to be given up to the proper agents of the road as soon as no longer required.

7. When there are State boards of public works able and willing to take roads, the roads to be given up to such boards, leaving to the State authorities and judicial tribunals the determination of rival claims.

8. Railroads not operated by the quartermasters' department not to be interfered with unless under military necessity, but to be left with present possessors, subject only to removal of every official and operative who had not taken the oath of allegiance.

9. The eighth condition not being enforced, a receiver, accountable for receipts to the board of directors, to be appointed.

10. In Virginia, no obstacles to be interposed to possession by the board of public works of all the roads not in use by the United States military forces, and those thus used to be turned over to the board when no longer required. In States holding bonds of the roads, but not having boards of public works, roads to be turned over to the State authorities, or to receiver appointed by the Treasury Department at the instance of the War Department, to take possession of them as abandoned property. (Pages 189, 190.)

This general plan was defaced by order of the President of August 8, 1865, which related to the "relinquishment of government control over roads in Tennessee," directing that the roads in said State be surrendered upon the following principles, to wit:

1. Every company to reorganize and elect a board of directors, whose loyalty should be established to General Thomas's satisfaction.

2. A complete inventory of rolling stock, tools, and other material and property on each road to be made out in triplicate.

3. Separate inventories of rolling stock and other property originally belonging to each road, and that furnished by and belonging to the government.

4. Bonds satisfactory to the government for payment, within twelve months from transfer or such other reasonable time as should be agreed upon, of a fair valuation of government property, turned over upon an adequate appraisement—the United States reserving government dues for carrying mails and other services by each company until payment of obligations by the companies, and the balance of unliquidated indebtedness remaining at the maturity of the debt to be paid by the companies in money.

5. Tabular statements to be made of all expenditures by the government for repairs to each road, with full statements of receipts from private freights, passage, and other sources, and of the number of persons and amount of freight transported, and the distance in each case. All of said reports or tabular statements to be made in triplicate, one each for the Secretary of War, the military headquarters of the department, and the railroad company.

6. All railroads in Tennessee to be required to pay arrearages of interest due on bonds issued by that State, prior to the date of its pretended secession, to aid in construction of the roads, before declaration or payment of dividends to stockholders.

7. Buildings erected for government purposes on the line of railroads, and not valuable or useful for business of the companies, not to be a charge against the companies, and charge not to be made for rebuilding houses, bridges, or other structures which were destroyed by the federal army.

8. Authority given General Thomas to give to quartermasters within his division any orders necessary for the carrying out of this plan. (Page 190.)

"After a conference between the Secretary of War and the Quartermaster General, on the 14th of October, 1865," the benefits of the foregoing plan were extended to all roads within General Thomas's command; and subsequently, "upon the recommendation of the Quartermaster General," the same privileges were extended to other roads.

Many million dollars' worth of property passed into the hands of railway corporations under these orders. Was it property the title to which was vested in the United States? So far as the road beds and other real estate belonging thereto are concerned, this question must be answered in the negative. None of these roads had become the property of the government, either by seizure, condemnation, and sale of the roads themselves, or of the shares held by the stock-

holders. The title was in the companies. The government was in possession for military purposes; when these purposes had been served, the government relinquished its possession, and surrendered the roads. Such is the case which the testimony discloses. Whether this action was wise, prudent, just, are not questions for us to determine. We are dealing with crimes and misdemeanors, and if these do not appear, the case fails, no matter what amount of folly and censurable conduct may be disclosed.

Here it may be well to call attention to the action of the Attorney General, (Mr. Speed,) relative to the property of corporations. A letter of instruction was directed by him to the United States district attorney for Alabama, in these words, to wit:

ATTORNEY GENERAL'S OFFICE,  
Washington, D. C., October 18, 1865.

STR: A corporation cannot be guilty of treason, or of any of the acts denounced in the confiscation law of July 17, 1862.

You will not, therefore, seize the property of corporations: and release any that may have been seized.

Very respectfully, &c.,

JAMES SPEED,  
*Attorney General.*

JAMES Q. SMITH, Esq.,  
*United States Attorney, Montgomery, Alabama.*

(Page 432.)

This was a terse and emphatic approval of the position assumed by the Assistant Attorney General, in a communication addressed to the same district attorney, on the 22d September, 1865, in which he said:

This office has heretofore been and is now of the opinion that a proceeding will not be and cannot be sustained in law under that statute to enforce the confiscation of the property of a corporation for any acts done by the directors or agents of the corporation in contravention of the statute. Such acts can only render the directors or agents personally responsible to the law. They cannot render the corporation liable to the penalties of the confiscation act. The directors, being but attorneys, could do no act, unless within the scope of their authority, to bind their principals. Were the rule different, the loyal stockholders and creditors of the corporation, including those who may never have been in the rebellious States, would lose their property without having been in any way in fault. If the law were otherwise, the property of every town and city whose officers may have applied any part of the corporation funds in aid of the rebellion, would be liable to confiscation: and thus loyal citizens as well as rebels might be punished for acts in which they had no personal share or sympathy. (Page 431.)

We are not prepared to challenge the correctness of the doctrine here advanced.

It may be claimed that, so far as regards movable property, a different rule applies. What then? In most instances a different one was applied. In many cases the rule was violated to the advantage of the government; for it was applied even in the cases of corporations. Property of this description was appraised and sold to the companies. Absolute property rights were asserted by the government, and sales were made. In such cases wherein payments were not made at the time of sale, bonds securing the amounts bid were required and executed. There was no law for this, and every such sale was illegal. But every unlawful act is not a crime. Were these things done with intent to violate law and injure the government? Even under the broad doctrine that a civil officer may be impeached for a common law crime, these things must appear. They do not appear in this case.

An effort is made to fix on the President a criminal intent and corrupt motive by proving the following state of facts. A communication in these words was addressed to the President in the interest of the Nashville and Chattanooga Railroad Company, viz:

WASHINGTON, April 20, 1865.

SIR: M. Burns, President of the Nashville and Chattanooga railroad, at Nashville, Tennessee, requested me to say to your Excellency that he is sorely pressed by the officers of the government to pay in part for the material he purchased for the use of this road from the

quartermasters' department. He says that he was induced to believe that the government would not urge the payment of those claims until time could be had to make a settlement for the use of the road, upon a basis proposed by him (Burns) to Quartermaster General Meigs, in the presence of Mr. Lincoln.

Acting upon this belief, he advertised that he was ready to pay the interest on the bonds of the company in New York on a certain day, and made all his preparations for it, but in the mean time the above demand was made, accompanied by threats that they would again seize the road.

Now, what he most urgently desires of you is, that the payment of these claims be ordered to be suspended until the settlement can be had, or to give him time to make the road earn the money. The road is doing well, and all that the company want is time. The amount now on deposit to meet interest on bonds would pay the amount now due the government.

You see how ruinous it would be to him, to the credit of the company and the credit of the State, if he is forced to comply with this demand.

Very respectfully,

JNO. McCLELLAN,  
For M. BURNS.

His Excellency the PRESIDENT.

This appeal was successful, and an extension was granted in pursuance of an order indorsed on the communication, and which is here copied:

Respectfully referred to the honorable Secretary of the Treasury, with directions that collection be suspended until further orders.

(Page 240.)

EDMUND COOPER,  
*Acting Private Secretary.*

The President held nineteen bonds of the Nashville and Chattanooga Railroad Company of one thousand dollars each. These bonds were guaranteed by the State of Tennessee. In the testimony of Colonel Robert Morrow the history of these bonds, as well as some others, is given, and the following quotation is made therefrom, to wit:

I have seen these bonds again and can give about this description of them: There are nineteen mortgage bonds of the Nashville and Chattanooga Railroad Company issued under a special act of the legislature, and the payment of which is guaranteed by the State of Tennessee. Six of these have the following indorsement on the back, written in ink: "From Bank of Tennessee to Governor Johnson. C. J." I know the handwriting of the initials to be that of Cave Johnson, who was President of the Bank of Tennessee from 1853 until about the beginning of the war. The bonds were issued in 1854, or at least bear that date. The other thirteen of the nineteen correspond with the six I have described in every particular, except the indorsement of Cave Johnson. They are made payable to bearer, and may be transferred without any formal assignment. There are also ten bonds of the State of Tennessee, issued for the general purposes of the revenue of the State, bearing date 1859, for \$1,000 each, five of them bearing the same indorsement, signed "C. J." as the six Nashville and Chattanooga railroad bonds I have referred to. Four of the other Tennessee State six per cent. bonds, of \$1,000 each, have the following indorsement:

"Maxwell, Saulpaw & Co. sold this bond to A. Johnson, September 24, 1860.

"A. L. MAXWELL & Co."

These bonds were also issued by the State of Tennessee for general State purposes. One of the ten Tennessee State bonds bears no indorsement. There is also one bond of the East Tennessee and Virginia railroad for \$1,000, bearing the following indorsement:

"Sold by me to Andrew Johnson on 15th October, 1858.

"WM. M. LOWEY."

Making in all thirty bonds of \$1,000 each. Then, in addition to these are four new bonds, into which the overdue interest on the Tennessee State bonds was funded. I cut the coupons from the thirty bonds for interest, which had accumulated since the first or middle of 1861; and, through the First National Bank of Washington, transmitted those cut from the Nashville and Chattanooga railroad bonds to New York, where they were paid in currency, and the ten Tennessee State bonds and one East Tennessee and Virginia railroad bond to Nashville to be funded, and for which the four new bonds were received, the difference, whatever it was, being paid." (Page 644.)

It is claimed by the committee that this state of facts shows that the President acted corruptly in granting an extension of time to the Nashville and Chattanooga Railroad Company for the payment of the amount due the government, because the State of Tennessee was not prepared to pay the interest due on

these bonds, and that the only way to get his interest was for him to postpone the payment of the debt due to the United States, so that the company could use its funds in taking up the coupons due on the bonds—that in this the President prostituted the powers of his office to advance his private interests. If this extension stood alone amid all the pressing needs of southern railroad companies and their applications for relief, some force might be accorded to the argument based on it. But what are the facts? In Mr. Stanton's testimony it appears that—

The first extensions of time for the payment of indebtedness to the government were given by order of Major General Thomas on the 29th of March, 1866, when, upon representations of the inability of the East Tennessee and Virginia and the East Tennessee and Georgia Railroad Companies to commence regular monthly payments, and in consideration of the same inability and a disposition to meet its liabilities to the government on the part of the Mississippi and Tennessee, he directed extension to be granted to these three companies. By direction of General Thomas extensions were also allowed: on April 5 to the McMinnville and Manchester Railroad Company, upon representation that such extension would be the best arrangement for payment that the company could make; on April 10 to the New Orleans and Ohio, upon the application of the company; on April 12 to the Nashville and Northwestern, upon application of the company; on April 17 to the Nashville and Chattanooga, because the money which should have been applied to liquidation of indebtedness to the government had been paid out; on April 26 to the Mobile and Great Northern, and the Mississippi, Gainesville, and Tuscaloosa, on the application of the companies and the recommendation of the quartermaster charged with the management of the affairs of military railroads and the collection of indebtedness; on May 7 to the Mississippi Central and the Nashville and Decatur Line, upon the solicitation and representations of the companies.

Extensions were granted by order of the Secretary of War: on May 11 to the Memphis, Clarksville, and Louisville railroad, upon the recommendation of Major General Thomas and the Quartermaster General, based upon the representation of the embarrassment of the stockholders, and the outlay required for repairs to the road; on July 20 to the Alabama and Tennessee River railroad, on the recommendation of Major General Thomas and the Quartermaster General, based on the inability of the company to pay, and the defeat of the purpose of the transfer which would result from attempt at enforcement of immediate payment; on August 3 to the Alabama and Florida, on the recommendation of Major General Thomas and the Quartermaster General; on August 28 to the Atlantic and Western, on the application of the governor of Georgia, and to obtain further security by enactment of the Georgia legislature for the payment of the indebtedness; on November 21 to the Nashville and Decatur line, on the recommendation of Major General Thomas, based upon the disposition of the company to act in good faith, the greater security for payment, the advantage to the government in having the road resume operation, and the disadvantage of selling the property at public sale; on December 5 to the Selma and Meridian, on the recommendation of Major General Thomas and the Quartermaster General; on December 6 to the Mobile and Ohio, on the recommendation of Major General Thomas and the Quartermaster General. (Page 191.)

As to the restoration of property which had been seized and held by agents of the government under the act of July 17, 1862, commonly known as the confiscation act; the acts of July 2, 1864, and March 3, 1865, relating to the Bureau of Freedmen and Refugees, and the act of July 2, 1864, which provided "for the collection of captured and abandoned property," many pages of testimony have been taken. Pages 84 to 159, inclusive, embrace the testimony of General O. O. Howard, General J. S. Fullerton, General Rufus Saxton, Daniel R. Goodloe, and D. H. Starbuck; pages 364 to 368, that of General E. R. S. Canby; pages 512 to 525, additional by General Fullerton; pages 550 to 554, that of Attorney General Stanbery; pages 614 to 618, that of the Secretary of the Treasury; pages 761 to 766, additional by General Howard, with exhibits and statement of property restored, on pages 773 to 777; pages 806 to 813, that of ex-Attorney General Speed, with exhibits; pages 816 to 824, that of honorable Francis E. Spinner; pages 860 to 863, additional by the Secretary of the Treasury, with exhibits on pages 870 to 878. This testimony discloses the policy and practice of the Executive department in the administration of said several acts, and shows the kinds and amounts of property restored to claimants and former owners.

Section 5 of the act of July 17, 1862, provides :

That to insure the speedy termination of the rebellion, it shall be the duty of the President of the United States to cause the seizure of all the estate and property, money, stocks, credits, and effects of the persons hereinafter named in this section, and to apply and use the same and the proceeds thereof for the support of the army of the United States, &c.

Section 7 declares :

That to secure the condemnation and sale of any such property, after the same shall have been seized, so that it may be made available for the purpose aforesaid, proceedings *in rem* shall be instituted in the name of the United States in any district court thereof, or in any territorial court, or in the United States district court for the District of Columbia, within which the property above described or any part thereof may be found, or into which the same, if movable, may be brought, which proceedings shall conform as nearly as may be to proceedings in admiralty or revenue cases, and if said property, whether real or personal, shall be found to have belonged to a person engaged in rebellion, or who has given aid or comfort thereto, the same shall be condemned as enemy's property, and become the property of the United States, and may be disposed of as the court shall decree, and the proceeds thereof paid into the treasury of the United States for the purposes aforesaid.

The testimony shows that a large amount of property had been seized under the fifth section of the aforesaid act, and proceedings were pending in a number of districts looking to the condemnation and sale of the same.

Section 13 of the act is in these words, to wit :

That the President is hereby authorized, at any time hereafter, by proclamation, to extend to persons who may have participated in the existing rebellion in any State or part thereof, pardon and amnesty, with such exceptions and at such time and on such conditions as he may deem expedient for the public welfare.

Acting in harmony with the spirit of this section of the act referred to, President Lincoln issued his amnesty proclamation of December 8, 1863, portions of which are here quoted, as follows :

Whereas, in and by the Constitution of the United States it is provided that the President shall have power to grant reprieves and pardons for offences against the United States ; and

Whereas a rebellion now exists whereby the loyal State governments of several States have for a long time been subverted, and many persons have committed, and are now guilty of treason against the United States ; and

Whereas with reference to said rebellion and treason, laws have been enacted by Congress, declaring forfeitures and confiscation of property and liberation of slaves, all upon terms and conditions therein stated, and also declaring that the President was thereby authorized at any time thereafter, by proclamation, to extend to persons who may have participated in the existing rebellion, in any State or part thereof, pardon and amnesty, with such exceptions and at such times and such conditions as he may deem expedient for the public welfare ; and

Whereas the congressional declaration for limited and conditional pardon accords with well established judicial exposition of the pardoning power :

Therefore I, Abraham Lincoln, President of the United States, do proclaim, declare, and make known to all persons who have, directly or by implication, participated in the existing rebellion, except as hereinafter excepted, that a full pardon is hereby granted to them and each of them, *with restoration of all rights of property*, except as to slaves and in property cases where rights of third parties shall have intervened, and upon condition that every such person shall take and subscribe an oath, and thenceforward keep and maintain said oath inviolate ; and which said oath shall be registered for permanent preservation, and shall be of the tenor and effect following, to wit :

I, \_\_\_\_\_, do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the Union of the States thereunder ; and that I will, in like manner, abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress, or by decision of the Supreme Court ; and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court ; so help me God.

This proclamation specified the classes of persons excepted from its benefits, and also contained President Lincoln's one-tenth plan of reconstruction.

The act of July 17, 1862, and the proclamation referred to, established a policy relative to persons who engaged in the rebellion, their rights and property.

After the war ceased and Mr. Johnson had succeeded to the presidency, it

became necessary to consider what should be done, in view of the policy thus established, with rebels and their property.

The act creating the office of Attorney General provides that one of his duties shall be "to give his advice and opinion upon questions of law when required by the President of the United States," &c. (Brightley's Digest, 92) It is fair to presume that, when the President receives an opinion from the Attorney General, he is justifiable in following it. If this be not true, the statute is not only a meaningless contrivance, but a dangerous trap.

Mr. Speed testifies that, as Attorney General, he more than once gave to the President opinions that the act of July 17, 1862, was a war measure, and that, the war being over, it was not proper to continue to enforce it. (Page 807.) The present Attorney General (Mr. Stanbery) approved this position of his predecessor, and testified that "the recital of the act of 1862 is, 'that for the purpose of suppressing insurrection, confiscation is ordered to be carried on.' After the insurrection was put down, it did not seem proper to go on and order confiscation." (Page 552.) This view of the law has been acted on by the President. But this did not complete the policy which he has pursued upon this subject.

He next inquired of the Attorney General (Mr. Speed) whether a cessation of hostilities rendered it necessary or proper that another proclamation of amnesty and pardon should be issued. This inquiry was made on the 21st of April, 1865. On the 1st day of May following the Attorney General submitted to the President, at length, his opinion, and advised "that another and new offer of amnesty, adapted to the existing condition of things, should be proclaimed." (Pages 1083 to 1086.)

In pursuance of this opinion the President issued his amnesty proclamation of May 29, 1865, as follows, to wit:

Whereas the President of the United States, on the 8th day of December, A. D. eighteen hundred and sixty-three, and on the 26th day of March, A. D. eighteen hundred and sixty-four, did, with the object to suppress the existing rebellion, to induce all persons to return to their loyalty, and to restore the authority of the United States, issue proclamations offering amnesty and pardon to certain persons who had, directly or by implication, participated in the said rebellion; and whereas many persons who had so engaged in said rebellion have, since the issuance of said proclamations, failed or neglected to take the benefits offered thereby; and whereas many persons who have been justly deprived of all claim to amnesty and pardon thereunder by reason of their participation, directly or by implication, in said rebellion and continued hostility to the government of the United States since the date of said proclamations, now desire to apply for and obtain amnesty and pardon:

To the end, therefore, that the authority of the government of the United States may be restored, and that peace, order, and freedom may be established, I, Andrew Johnson, President of the United States, do proclaim and declare that I hereby grant to all persons who have, directly or indirectly, participated in the existing rebellion, except as hereinafter excepted, amnesty and pardon, with restoration of all rights of property, except as to slaves, and except in cases where legal proceedings, under the laws of the United States providing for the confiscation of property of persons engaged in rebellion, have been instituted; but upon the condition, nevertheless, that every such person shall take and subscribe the following oath, (or affirmation,) and thenceforward keep and maintain said oath inviolate; and which oath shall be registered for permanent preservation, and shall be of the tenor and effect following, to wit:

"I ~~do~~, do solemnly swear, (or affirm,) in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the union of the States thereunder; and that I will, in like manner, abide by and faithfully support all laws and proclamations which have been made during the existing rebellion with reference to the emancipation of slaves: so help me God."

(Here follows an enumeration of the excepted classes.)

*Provided*, That special application may be made to the President for pardon by any person belonging to the excepted classes, and such clemency will be liberally extended as may be consistent with the facts of the case and the peace and dignity of the United States.

This proclamation did not differ materially from the one issued by President Lincoln, except in an enlargement of the excepted classes, and a modification of

the oath so far as to exclude all conditions concerning a support of all laws and proclamations having "reference to the emancipation of slaves."

In all cases of seizure of the property of persons who come within the amnesty declared, and of those to whom special pardons have been granted, it has been restored, and in some instances restoration has been made after condemnation—in a few, after sale. The circumstances governing the latter class of cases do not appear in the testimony:

This was done upon the broad ground that "when the pardon is full it releases the punishment, and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence;" and that "if granted before conviction it prevents any of the penalties and disabilities consequent upon conviction from attaching, as was subsequently held by the Supreme Court of the United States, in *ex parte* Garland, (4 Wallace, 380.)

Whether the policy thus established be right or wrong, wise or unwise, the principles involved in it seem to have guided the President in the surrenders of property made by him, in all cases of seizures under the several acts of Congress above mentioned, except such surrenders as may have been made in accordance with the principles of the acts themselves.

Let it here be noted that every act of Congress determining a penalty or forfeiture must be based upon some crime, and that every crime lies within the limits of the pardoning power. This principle extends to every seizure of property under the several acts of Congress above mentioned. This resolves this entire branch of the case, as well as that which affirms a corrupt use of the pardoning power, into a determination of the question whether, in each act of pardon, the element of corruption entered. We have not been able to discover the instance in which this element appears. However much we may question the wisdom, prudence, or sagacity which have marked the exercise of this power, we must still ask for the evidence of its corrupt use, under any view of the law governing the case. The testimony fails to present a satisfactory answer.

The sixth charge is, that the President has "corruptly interfered in elections, and committed acts, and conspired with others to commit acts, which, in contemplation of the Constitution, are high crimes and misdemeanors."

Both branches of this charge relate mainly to subjects which have already been considered under other charges, and it is unnecessary to recapitulate what has gone before.

A great deal of the matter contained in the volume of testimony reported to the House is of no value whatever. Much of it is mere hearsay, opinions of witnesses, and no little amount of it utterly irrelevant to the case. Comparatively a small amount of it could be used on a trial of this case before the Senate. All of the testimony relating to the failure to try, and admission to bail of, Jefferson Davis, the assassination of President Lincoln, the diary of J. Wilkes Booth, his place of burial, the practice of pardon brokerage, the alleged correspondence of the President with Jefferson Davis, may be interesting to a reader, but is not of the slightest importance so far as a determination of this case is concerned. Still, much of this irrelevant matter has been interwoven into the report of the majority, and has served to heighten its color and to deepen its tone. Strike out the stage effect of this irrelevant matter and the prominence given to the Tudors, the Stuarts, and Michael Burns, and much of the play will disappear. Settle down upon the real evidence in the case, that which will establish, in view of the attending circumstances, a substantial crime, by making plain the elements which constitute it, and the case, in many respects, dwarfs into a political contest.

In approaching a conclusion, we do not fail to recognize two stand-points from which this case can be viewed—the legal and the political. Viewing it from the former, the case upon the law and the testimony fails. Viewing it from the latter, the case is a success. The President has disappointed the hopes and ex-

pectations of those who placed him in power. He has betrayed their confidence, and joined hands with their enemies. He has proved false to the express and implied conditions which underlie his elevation to power, and, as we view the case, deserves the censure and condemnation of every well-disposed citizen of the republic. While we acquit him of impeachable crimes, we pronounce him guilty of many wrongs. His contest with Congress has delayed reconstruction, and inflicted vast injury upon the people of the rebel States. He has been blind to the necessities of the times and to the demands of a progressive civilization. He remains enveloped in the darkness of the past, and seems not to have detected the dawning brightness of the future. Incapable of appreciating the grand changes which the past six years have wrought, he seeks to measure the great events which surround him by the narrow rules which adjusted public affairs before the rebellion and its legitimate consequences had destroyed them and established others. Judge him politically, we must condemn him. But the day of political impeachments would be a sad one for this country. Political unfitness and incapacity must be tried at the ballot-box, not in the high court of impeachment. A contrary rule might leave to Congress but little time for other business than the trial of impeachments. But we are not now dealing with political offences; crimes and misdemeanors are now demanding our attention. Do these, within the meaning of the Constitution, appear? Rest the case upon political offences, and we are prepared to pronounce against the President, for such offences are numerous and grave. If Mexican experience is desired, we need have no difficulty, for there almost every election is productive of a revolution. If the people of this republic desire such a result, we have not yet been able to discover it; nor would we favor it if its presence were manifest. While we condemn and censure the political conduct of the President, judge him unwise in the use of his discretionary powers, and appeal to the people of the republic to sustain us, we still affirm that the conclusion at which we have arrived is correct.

We therefore declare that the case before us, presented by the testimony and measured by the law, does not disclose such high crimes and misdemeanors, within the meaning of the Constitution, as require "the interposition of the constitutional power of this House," and recommend the adoption of the following resolution:

*Resolved*, That the Committee on the Judiciary be discharged from the further consideration of the proposed impeachment of the President of the United States, and that the subject be laid upon the table.

JAMES F. WILSON.

FREDERICK E. WOODBRIDGE.

Mr. MARSHALL submitted the following as the views of a minority:

The undersigned, agreeing with our associates of the minority of the committee in their views of the law and in the conclusion that the evidence before the committee presents no case for the impeachment of the President, might, if they had stopped there, been content simply to have joined in the report which they have submitted.

But as they, as well as the majority, have felt it their duty to go further and express their censure and condemnation of the President, we feel that it is due to ourselves and to the position we occupy to present as briefly as possible a few additional remarks for the consideration of the House and of the country. Having determined that the evidence does not show that the President has been guilty of any act or crime for which under our Constitution and laws he can or ought to be impeached, this conclusion, as it seems to us, is the determination of the whole question submitted by the House to the committee. It is the commission by the President of an impeachable offence only that can subject him to our official jurisdiction, or justify us as a committee of the House of Repre-

sentatives, or even the House itself, as such, in challenging his official acts. As the report of the majority does not charge the President with any act recognized by any statute or law of the land as a crime or misdemeanor, we can but regard the charges preferred as a political or partisan demonstration, tending and intended to bring him into odium and contempt among the people; as an unjustifiable attempt to excite their suspicions, "*spargere voces in vulgum ambiguas*" We utterly deny the right of the committee, or any member thereof as such, to do this.

As citizens, as politicians, we may criticize, find fault with, and condemn the policy, the political acts, or even the entire administration of the President, but as a committee of this house considering the charges referred to it, as members of Congress acting officially, we have no such right, power, or jurisdiction.

The executive is one of the co-ordinate departments of this government, invested with certain defined constitutional powers and prerogatives, over which the legislative has no control, and with the constitutional exercise of which the legislative department has no right to interfere. The original source of all executive and legislative power is the same, the *people*—the warrant and measure of those powers the same, the *Constitution*. In his constitutional and legitimate sphere, in the exercise and conduct of his department, the President is as free to act and as independent as the Congress, while acting within the bounds prescribed for it by the Constitution. He is no more accountable or responsible to Congress than Congress is to him. Congress has no more authority to censure and condemn him than he has to censure and condemn Congress. His discretion, exercised within the bounds of the Constitution, is no more subject to the animadversion or reproof of Congress than are the constitutional and discretionary acts of Congress to his. Neither Congress nor the President has any powers or authority not derived from and found in the Constitution.

The only question with reference to which the committee were authorized to inquire was whether the charges against the President were true and constituted an offence or offences subjecting him to impeachment. Certainly if this is not the only question referred to the committee, it is the only one which the committee as such has investigated. The political propriety of the acts of the President has not for one moment engaged the attention of the committee.

We most certainly, having no other motive or interest than to serve our country and do our duty in the matter referred to us, have never once in the taking of testimony or the examination of witnesses supposed that any question other than the impeachment was properly before us. The impeachment of the President, the chief officer of this great republic, the bare inquiry with a view to ascertain whether he had committed any offence for which he ought to or might be put upon trial before the most august tribunal of the world, impressed us from the beginning with most solemn awe. We endeavored in the investigation to exclude from our mind every question of mere politics, and as far as possible to be uninfluenced by party bias.

We were admonished that in some sense the nation, the people, in the person of their executive head, were on trial before the world, and that personal animosity and party politics should be inflexibly and scrupulously forgotten or ignored. For any cause to have shrunk from a full and careful investigation of the great question of impeachment was cowardice; to have pursued it in the spirit of party, to have degraded it into a mere investigation of political policy with reference to partisan success, would have been meanness, and disgraced the nation itself by scandalizing the nation's constitutional head. We repeat, therefore, that the investigation of the committee was, so far as we took part in it, with the sole view to ascertain whether the President, under the charge preferred against him, was guilty of any impeachable offence; not only so, but with the belief that it was the only question we were authorized or expected to inquire into. Not a witness was called or examined with any view to proving a case

for merely censuring or condemning the political action of the President. No suggestion was made or intimation given by the majority of the committee, till the resolution of censure was offered, that there was any purpose of considering, as a committee, any but the question of impeachment. Nor was there then, as we understood it, any purpose of reporting such resolution to the House for its official action. We think, therefore, that we are warranted in saying that, although much testimony irrelevant, illegal, and experimental was taken—much that had no bearing upon the question of impeachment, and much more that was not testimony in any case or for any purpose, that none was taken with any view except the impeachment. Hence we insist that if the committee had the right and jurisdiction (which we deny) to inquire into the political and discretionary acts of the President with a view to his condemnation, it has not in any legitimate and proper manner investigated or attempted to consider that subject.

We do not impugn the personal motives of any member of the committee who differs with us. Our intercourse upon the committee has been pleasant, and the courtesy with which we have been treated uniform and uninterrupted. We entertain none but the most kindly personal feelings towards every member; but candor and a sense of duty compel us to declare that we can find no warrant or excuse for this travelling outside or beyond the subject with which the committee was charged, to censure and condemn the President, except in the prejudice and zeal of overheated partyism. The President needs and can ask no defence from us upon party grounds, or upon any other than those which spring from official obligations and duty. He was not the President of our choice, and was not elected by our votes; nor is it necessary that we should agree with him, or justify or approve all he has done. Neither do we feel called upon to review all the great mass of testimony taken by the committee to show that his censure and condemnation are not warranted by it, in fact, though taken as it has been and unchallenged as it was in that regard. We do not, however, believe the unbiased, the unprejudiced mind will be able in the testimony to discover any just or reasonable cause for condemning or impugning the motives by which he was actuated. Indeed, differing with him in opinion, as we have, as to the policy and propriety of many things he has done and many more that he has left undone, we feel compelled to declare that the proofs before us will not warrant a charge that he was in any instance controlled by motives other than those pure and patriotic.

His greatest offence, we apprehend, will be found to be that he has not been able or willing to follow those who elected him to his office in their mad assaults upon and departure from the constitutional government of the fathers of the republic; and that, standing where most of his party professed to stand when they elevated him to his present exalted position, he has dared to differ from a majority of Congress upon great and vital questions. He has believed in the continuing and binding obligations of the Constitution; that the suppression of the rebellion against the Union was the preservation of the Union and the States comprising it; and that when the rebellion was put down the States were all and equally entitled to representation in the Congress of the United States. Planting himself firmly and immovably upon this position, he has incurred the fierce and malignant hatred and opposition of all those who claim, by virtue of the alleged conquest of the territory and the subjugation of the people of the lately rebellious States, the power and right to dictate to them the constitution and laws they shall live under and the liberties they shall be permitted to enjoy. In this difference between Congress and the President, and the desire of each for the adoption by the country of their respective views, is, we suspect, to be found not only the cause for the movement to impeach the President, but of his censure and condemnation. Out of it have grown the embittered feelings and violent hatred of the President by his former friends. The majority of Congress and of the committee have entertained and been prepared to declare at all times, in

Congress and out of it, even more strongly than is expressed in their report, the same censure and condemnation. This opinion was not formed upon any testimony taken before the committee or upon any facts elicited by its investigations. It was a political opinion growing out of difference of views upon political questions. It was the opinion with which the majority of the committee entered upon the investigation. It was that which inspired and stimulated all its inquiries and examinations. But, notwithstanding these pre-existing opinions and prejudices, the minority of the committee have been compelled to find, after the fullest consideration and the most protracted deliberation, that the President has committed no offence for which, under our laws, he can or ought to be impeached, and hence none, as we insist, subjecting him to the official jurisdiction of the committee or the House. The censure and condemnation of the President, either by the majority or minority, is without our jurisdiction, not justified by the facts, unbecoming one department of the government towards the other, and calculated to bring reproach upon the committee, the House, and the nation.

We cannot ignore the fact that time has been spent and testimony taken by the committee in endeavoring to ascertain if the President, in his official capacity, has spoken censoriously or condemnatory of Congress with a view to his impeachment therefor. Can it be more becoming in a committee of this house or in the House itself, to go beyond its jurisdiction and censure and condemn the President, than for him to censure and condemn Congress? Is not the impropriety of the one as apparent as the other? If one is impeachable, is not the other wrong? What would be thought of the Supreme Court if, after having been compelled in a case properly pending before it, to decide an act of Congress constitutional, it should, because it did not agree to the propriety or policy of the enactment, declare its severe censure and condemnation of the Congress for having passed it? Who would hesitate to pronounce this an unjustifiable and unwarrantable interference with the rights and duties of Congress by the Supreme Court, calculated to disturb the harmony of our governmental system, and to bring into unhappy, if not fatal collision, the co-ordinate departments? Like this attempt to reprove or censure the President for acts or wrongs not amounting to offences subjecting him to the legal jurisdiction of the House of Representatives, such an act would, it seems to us, be sheer impertinence on the part of the court, justly meriting, obloquy and reproach.

Such interference by one department of the government with the others, without authority of law, must and will most assuredly break off that comity which should at all times characterize their relations and intercourse.

The end cannot but be foreseen: the antagonism will ultimately produce enmity and open hostility and aggressions, which must result in the destruction of one or more of the departments, and, as a consequence, destroy our system of government altogether.

With all due respect to the majority of the committee, we cannot regard the charges made against the President as a serious attempt to procure his impeachment. Without dwelling upon their utter failure to point to the commission of a single act that is recognized by the laws of our country as a high crime or misdemeanor, the inconsistency of the majority cannot fail to challenge the attention of the country. Acts for which Mr. Lincoln was clamorously applauded, are deemed high crimes in Mr. Johnson. For every act so gravely condemned the President had the sanction and approval of his cabinet, and yet, while he is arraigned before the world as a criminal of the deepest dye, they are not only not impeached, but are recognized as special favorites of the party for impeachment. The latter have even gone so far as to unite in the passage of an extraordinary and unprecedented law to prevent the President from removing these officers from the places which they hold. Mr. Stanton, the late Secretary of War, gave his emphatic approval of the acts for which the President is arraigned,

and yet the ex-Secretary is a favorite and popular martyr, and the whole country is vexed with clamors for his restoration to power and place. The President is held criminally responsible for the acts of subordinates, of which he did not even have the slightest notice or knowledge. And yet those bringing him to trial enact a statute depriving him of all control over these same subordinates, and they are deemed worthy of the especial protection of Congress. The President has used every means within his power to bring the great state prisoner, Jefferson Davis, to a speedy trial, and yet he has been denounced throughout the land for procrastinating and preventing the trial, while the judges and prosecuting officers having entire control of the matter have been deemed worthy of the most honeyed plaudits. Were ever inconsistencies more glaring and inexplicable than these? And can we possibly be mistaken when we assert that however honest may be the majority of the committee, the verdict of the country and of posterity will be that the crime of the President consists not in violations of, but in refusals to violate the law?—in being unable to keep pace with the “party of progress” in their rapidly advancing movements, or to step “outside of and above” the Constitution in the administration of the government?—in preferring the Constitution of his country to the dictation of an unscrupulous partisan cabal, in bravely daring to meet the maledictions of those who have aimed at the accomplishment of a most wicked and dangerous revolution, rather than to encounter the reproaches of his own conscience and the curses of posterity through all time?

If the subject were not too grave and serious a one for mirth, some of the grounds of impeachment presented by the majority would certainly be sufficiently amusing. The President is gravely arraigned for arraying himself against the loyal people of the country in vetoing the mis-called reconstruction acts of Congress, when (without dwelling upon the constitutional right and duty of the President in the premises) Congress itself has, for these same acts, just received the most withering and indignant condemnation and rebuke of the entire people from Maine to California. The impeachers, forgetting that they have been themselves impeached, and that the verdict of the tribunal of last resort has already been rendered against them, still persist in trifling with the peace, safety and prosperity of the country by precipitating upon it this dangerous question at a time so critical as this. It is wicked thus to trifle with the most vital interests of the nation, and to disregard the voice of a great people when spoken, as in this case, so emphatically in favor of the preservation of our constitutional form of government and the rights and liberties established by our revolutionary fathers.

We will not attempt to add anything to the able, and, as we believe, unanswerable argument just presented by the chairman of our committee upon the law of impeachment. Had not experience taught us the wonderful diversity in human judgments and conclusions, we should find it difficult to believe that there could, upon the questions submitted to us, possibly be two opinions among candid and intelligent men. Blind bigotry and unbridled partisan rage, it is true, can see crime in the most meritorious actions, and men governed by these unhallowed passions do not hesitate to drag to the stake or the tortures of the inquisition all who will not conform to their wretched creeds and miserable dogmas. They substitute their own crude and often crazy theories for truth and justice, and under pain of severest penalties demand of all men to bow down and worship the idol they have erected. That their own judgment may be fallible, or that other men differing from them may be equally wise and honest with themselves, never occurs to their minds, and they will, without hesitation, question the justice even of the Almighty if the ways of Providence do not conform to their own crude theories. This class of men has constituted a considerable portion of mankind in all ages, and in none have they been more numerous than in our own. They have furnished the bigots and persecutors of all times, and their pathway through the long line of history,

from its earliest dawn to the present time, has been marked with carnage and desolation. With such men no argument based upon the Constitution and established laws can have any validity. They live and breathe in a purer and higher atmosphere "outside of the Constitution" and above the laws. They are too pure and immaculate to be fettered by the restraints of constitutions or written laws. They are a law unto themselves, and both men and gods must conform to their views and theories or receive their bitterest maledictions. But our people will never submit to have their Chief Magistrate arraigned for trial for offences unknown to the laws and which exists only in the excited brains of his political enemies. It would be a precedent disastrous in its consequences and subversive of our political institutions.

We cannot doubt that the evidence herewith this day submitted will be received with one universal burst of indignation by the American people. If they retain any just pride in their country and its institutions, they will blush to find that the chief officer of their government has for ten months been subjected to the scrutiny of a secret star chamber inquisition unparalleled in its character in the annals of civilization. A drag-net has been put out to catch every malicious whisper throughout the land, and all the vile vermin who had gossip or slander to retail, hearsay or otherwise, have been permitted to appear and place it upon record for the delectation of mankind. Spies have been sent all over the land to find something that might blacken the name and character of the Chief Magistrate of our country. Unwhipped knaves have given information of fabulous letters and documents that, like the *ignis fatuus*, eternally eluded the grasp of their pursuers, and the chase ever resulted only in aiding in the depletion of the public treasury. That most notorious character, General L. C. Baker, chief of the detective police, even had the effrontery to insult the American people by placing his spies within the very walls of the executive mansion; the privacy of the President's home, his private life and habits and most secret thoughts, have not been deemed sacred or exempt from invasion; and the members of his household have been examined; and the chief prosecutor has not hesitated to dive into loathsome dungeons and consort with convicted felons, for the purpose of accomplishing his object of arraigning the President on a charge of infamous crimes.

When we consider all these facts, and that the investigation has been a secret *ex parte* one; that it has been so persistent and untiring, and carried on at a time of most unparalleled party excitement; when the masses of the dominant party were lashed into a wild frenzy, and led to believe that the President was guilty of treason; when thousands all over the land really thought that it would be a righteous act to get him out of the way by any means, fair or foul; and when he has been hunted down by partisan malice as no man was ever hunted and hounded down before, it is really wonderful that so little has been elicited that tends in the slightest degree to tarnish the fair fame of the President. The American people ought to congratulate themselves, for the sake of the reputation of their country, that this failure has been so emphatic and so complete.

In what we have said of the character of evidence taken before us, and the means used to procure it, we must not be understood as reflecting upon the action of the committee or any member thereof. Such an interpretation of our remarks would do great injustice to us and to them. Whether such latitude should have been given in the examination of witnesses, we will not now inquire. In an investigation before a committee it would be difficult, and, perhaps impossible, to confine the evidence to such as would be deemed admissible before a court of justice. Indeed it may be questioned whether it would be proper so to restrict it, and it is perhaps better, even for the President, that those who were managing the prosecution from the outside were permitted to present anything that they might call or consider evidence, as the world can

thus the better comprehend how utterly destitute of foundation is all this clamor that has been raised against him.

The first witness examined was General Lafayette C. Baker, late chief of the detective police, and although examined on oath, time and again, and on various occasions, it is doubtful whether he has in any one thing told the truth, even by accident. In every important statement he is contradicted by witnesses of unquestioned credibility. And there can be no doubt that to his many previous outrages, entitling him to an unenviable immortality, he has added that of wilful and deliberate perjury; and we are glad to know that no one member of the committee deems any statement made by him as worthy of the slightest credit. What a blush of shame will tinge the cheek of the American student in future ages, when he reads that this miserable wretch for years held, as it were, in the hollow of his hand, the liberties of the American people. That, clothed with power by a reckless administration, and with his hordes of unprincipled tools and spies permeating the land everywhere, with uncounted thousands of the people's money placed in his hands for his vile purposes, this creature not only had the power to arrest without crime or writ, and imprison without limit, any citizen of the republic, but that he actually did so arrest thousands all over the land, and filled the prisons of the country with the victims of his malice, or that of his masters.

This whole system—such an outrage upon the Constitution and every principle of free government; so anti-American and anti-republican—has, with its originators and supporters, already, thank God, been damned to eternal infamy; and it is pleasant to reflect that not only the system, but its unscrupulous agents, will go down to posterity loaded with infamy and followed by the curses of millions. It sometimes happens that the administration of the most dangerous usurpations is placed in the hands of men so respectable for character and talents as to disarm suspicion and conciliate even those whose liberties are endangered. We have reason to be thankful to an ever kind and merciful Providence that this worst feature of the worst of despotisms, when the attempt was made in an unhappy hour to transplant it to our free American soil, was placed for its administration in the hands of a class of men so destitute of manhood and character as to arouse the undying scorn and indignation of the entire people. And as these infamous outrages were not sanctioned by any precedent in our own country, it is hoped and believed that they will never, throughout all time, be deemed worthy of imitation.

It is not our purpose now to attempt an analysis or discussion of the evidence taken before us, or to point out the gross absurdities and inconsistencies of a very large portion of it. It will be read and considered by the American people, and we cannot doubt what their verdict will be. When those who have been attempting to load with disgrace and infamy the Chief Magistrate of our country shall stand pilloried in the undying scorn and indignation of a great people, he, after passing through this fiery ordeal, we have no hesitation in predicting, will have and retain all over the land, even to a greater extent than ever heretofore, the respect and confidence of his countrymen.

S. S. MARSHALL.  
CHAS. A. ELDRIDGE.