

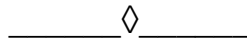
**Articles of Impeachment
of President Andrew Johnson
by the House of Representatives.**

**Answer
of the President.**

**Replication of the
House of Representatives
to the President's Answer.**

&

**Album of Drawings and Photographs
of Important Participants
in the Impeachment Trial.**



Article I, Section 3:

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.

Article II, Section 4:

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.

**Articles of Impeachment
of President Andrew Johnson
by the House of Representatives,
March 2-3, 1868**

On Monday March 2, the first 9 Articles of Impeachment were agreed upon by the House of Representatives, and on the Tuesday, March 3, Articles 10 and 11 were adopted.

From the *Journal of the House*, March 2-3, 1868:

ARTICLE I.

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

March 2, 1867, said Edwin M. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice, and said Edwin Stanton, by reason of the premises, on said 21st day of February, being lawfully entitled to hold said office of Secretary for the Department of War, which said order for the removal of said Edwin M. Stanton is, in substance, as follows, that is to say:

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

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

Respectfully yours, ANDREW JOHNSON.
Hon. E. M. Stanton, Secretary of War

Which order was unlawfully issued, and with intent then are there to violate the act entitled "An act regulating the tenure of certain civil office," passed March 2, 1867; and, with the further intent contrary to the provisions of said act, and in violation thereof, and contrary to the provisions of the Constitution of the United States, and without the advice and consent of the Senate of the United States, the said Senate then and there being in session, to remove said Edwin M. Stanton from the office of Secretary for the Department of War, the said Edwin M. Stanton being then and there Secretary of War, and being then and there in the due and lawful execution of the duties of said office, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office.¹

¹ Journal of the House of Representatives, 40th Congress, Second Session, Monday, March 2, 1868, at 439-40. The vote on Article I was Yeas 127; Nays 42; Not voting 20.

ARTICLE II.

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

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

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

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

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

then and there being no vacancy in said office of Secretary for the Department of War: whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office.²

ARTICLE III.

That said Andrew Johnson, President of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington in the District of Columbia, did commit, and was guilty of a high

² Id. at 441-442. The vote on Article II was Yeas 124; Nays 41; Not voting 24.

misdemeanor in office, in this, that, without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War, *ad interim*, without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time, and which said appointment so made by Andrew Johnson, of said Lorenzo Thomas is in substance as follows, that is to say:

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

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

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

Respectfully yours, ANDREW JOHNSON

To Brevet Major-General Lorenzo Thomas, *Adjutant General United States Army, Washington, D. C.*³

ARTICLE IV.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, in violation of the Constitution and laws of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent by intimidation and threats unlawfully to hinder and prevent Edwin M. Stanton, then and there, the Secretary for the Department of War, duly appointed under the laws of the United

³ Id. at 442-44. The vote on Article III was Yeas 124; Nays 40; Not voting 25.

States, from holding said office of Secretary for the Department of War, contrary to and in violation of the Constitution of the United States, and of the provisions of an act entitled "An act to define and punish certain conspiracies," approved July 31, 1861, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of high crime in office.⁴

ARTICLE V.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st of February, in the year of our Lord 1868, and on divers others days and time in said year before the 2d day of March, A.D. 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons in the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil office," passed March 2, 1867, and in pursuance of said conspiracy, did attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of high misdemeanor in office.⁵

ARTICLE VI.

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

⁴ Id. at 444-45. The vote on Article IV was Yeas 117; Nays 40; Not voting 32.

⁵ Id. at 445-46. The vote on Article V was Yeas 127; Nays 42; Not voting 20.

whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.⁶

ARTICLE VII.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas with intent unlawfully to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary of said Department, with intent to violate and disregard the act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, whereby said Andrew Johnson, President of the United States, did then and there commit a high misdemeanor in office.⁷

ARTICLE VIII.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in the office of Secretary for the Department of War, with intent to violate and disregard the act aforesaid, then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing, in substance as follows, that is to say:

EXECUTIVE MANSION,

⁶ Id. at 446-47. The vote on Article VI was Yeas 127; Nays 42; Not voting 20.

⁷ Id. at 447-48. The vote on Article VII was Yeas 127; Nays 42; Not voting 20.

WASHINGTON, D.C., *February* 21, 1868

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

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

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

Whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.⁸

ARTICLE IX

That said Andrew Johnson, President of the United States, on the 22nd day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, in disregard of the Constitution and the laws of the United States, duly enacted, as Commander-in-Chief of the Army of the United States, did bring before himself, then and there William H. Emory, a Major-General by brevet in the Army of the United States, actually in command of the department of Washington, and the military forces thereof, and did and there, as such Commander-in-Chief, declare to, and instruct said Emory, that part of a law of the United States, passed March 2, 1867, entitled "An act for making appropriations for the support of the army for the year ending June 30, 1868, and for other purposes," especially the second section thereof, which provides, among other things, that "all orders and instructions relating to military operations issued by the President or Secretary of War, shall be issued through the General of the Army, and, in case of his inability, through the next in rank," was unconstitutional, and in contravention of the commission of said Emory, and which said provision of law had been theretofore duly

⁸ Id. at 448-49. The vote on Article VIII was Yeas 127; Nays 42; Not voting 20.

and legally promulgated by general order for the government and direction of the Army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory, in his official capacity as Commander of the department of Washington, to violate the provisions of said act, and to take and receive, act upon and obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the Army of the United States, according to the provisions of said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office.⁹

ARTICLE X.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the Government of the United States, designing and intending to set aside the rightful authorities and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt and reproach the Congress of the United States, and the several branches thereof, to impair and destroy the regard and respect of all the good people of the United States for the Congress and legislative power thereof, (which all officers of the government ought inviolably to preserve and maintain,) and to excite the odium and resentment of all good people of the United States against Congress and the laws by it duly and constitutionally enacted; and in pursuance of his said design and intent, openly and publicly and before divers assemblages of citizens of the United States, convened in divers parts thereof, to meet and receive said Andrew Johnson as the Chief Magistrate of the United States, did, on the 18th day of August, in the year of our Lord 1866, and on divers other days and

⁹ Id. at 449-50. The vote on Article IX was Yeas 108; Nays 41; Not voting 40.

times, as well before as afterward, make and declare, with a loud voice certain intemperate, inflammatory, and scandalous harangues, and therein utter loud threats and bitter menaces, as well against Congress as the laws of the United States duly enacted thereby, amid the cries, jeers and laughter of the multitudes then assembled in hearing, which are set forth in the several specifications hereinafter written, in substance and effect, that it to say:

Specification First. In this, that at Washington, in the District of Columbia, in the Executive Mansion, to a committee of citizens who called upon the President of the United States, speaking of and concerning the Congress of the United States, heretofore, to wit: On the 18th day of August, in the year of our Lord, 1866, in a loud voice, declare in substance and effect, among other things, that is to say:

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

"We have witnessed in one department of the government every endeavor to prevent the restoration of peace, harmony and union. We have seen hanging upon the verge of the government, as it were, a body called or which assumes to be the Congress of the United States, while in fact it is a Congress of only part of the States. We have seen this Congress pretend to be for the Union,

when its every step and act tended to perpetuate disunion and make a disruption of States inevitable.

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

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

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

* * * * *

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

Specification Third. In this case, that at St. Louis, in the State of Missouri, heretofore to wit: On the 8th day of September, in the year of our Lord 1866, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of acts concerning the Congress of the

United States, did, in a loud voice, declare in substance and effect, among other things, that is to say:

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

was commenced, having its origin in the Radical Congress.

* * * * *

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

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

stay and arrest their diabolical and nefarious policy is to be denounced as a Judas."

* * * * *

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

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

Which said utterances, declarations, threats and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof the said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of a high misdemeanor in office.¹⁰

ARTICLE XI.

That the said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit: On the 18th day of August, 1866, at the city of Washington, and in the District of Columbia, by public speech, declare and affirm in substance, that the Thirty-Ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same;

¹⁰ Journal of the House of Representatives, Tuesday, March 3, 1868, at 461-64. The vote on Article X was Yeas 88, Nays 44, Not voting 57.

but, on the contrary, was a Congress of only part of the States, thereby denying and intending to deny, that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, and also thereby denying the power of the said Thirty-Ninth Congress to propose amendments to the Constitution of the United States. And in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterwards, to wit: On the 21st day of February, 1868, at the city of Washington, D.C., did, unlawfully and in disregard of the requirements of the Constitution that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil office," passed March 2, 1867, by unlawfully devising and contriving and attempting to devise and contrive means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension therefore made by the said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and also by further unlawfully devising and contriving, and attempting to devise and contrive, means then and there to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867. And also to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867. Whereby the said Andrew Johnson, President of the United States, did then, to wit: on the 21st day of February, 1868, at the city of Washington, commit and was guilty of a high misdemeanor in office.¹¹



¹¹ Id. at 464-65. The vote on Article XI was Yeas 109, Nays 32, Not voting 48.

ANSWER OF PRESIDENT JOHNSON

The President's Answer to the Articles of Impeachment was read to the Senate on the afternoon of Monday, March 23, 1868, the first day of his impeachment trial. Three lengthy Exhibits were attached to the Answer.

From the *Senate Journal*, March 23, 1868:¹²

The Chief Justice then asked the counsel of the President if they were ready to file answer to the articles of impeachment exhibited against him by the House of Representatives, as required by the order of the Senate of the 13th of March instant.

The counsel of the President replied that they were now ready to make answer.

Thereupon

The answer of the respondent to the articles of impeachment exhibited against him by the House of Representatives was read by his counsel in the following words, to wit:

Senate of the United States, sitting as a court of impeachment for the trial of Andrew Johnson, President of the United States.

The answer of the said Andrew Johnson, President of the United States, to the articles of impeachment exhibited against him by the House of Representatives of the United States.

¹² Journal of the Senate, 40th Congress, Second Session, Monday, March 23, 1868, at 829-860. The transcript has been reformatted to make it easier to read. Original spelling remains. Several documents and dispatches, quoted by the President's lawyers, are indented to assist the reader.

Answer to Article I.

For answer to the first article he says: That Edwin M. Stanton was appointed Secretary for the Department of War on the 15th day of January, A. D. 1862, by Abraham Lincoln, then President of the United States, during the first term of his presidency, and was commissioned, according to the Constitution and laws of the United States, to hold the said office during the pleasure of the President; that the office of Secretary for the Department of War was created by an act of the 1st Congress in its 1st session, passed on the 7th day of August, A. D. 1789, and in and by that act it was provided and enacted that the said Secretary for the Department of War shall perform and execute such duties as shall, from time to time, be enjoined on and intrusted to him by the President of the United States, agreeably to the Constitution, relative to the subjects within the scope of the said department; and furthermore, that the said Secretary shall conduct the business of the said department in such a manner as the President of the United States shall, from time to time, order and instruct.

And this respondent, farther answering, says, that by force of the act aforesaid and by reason of his appointment aforesaid the said Stanton became the principal officer in one of the executive departments of the government within the true intent and meaning of the second section of the second article of the Constitution of the United States, and according to the true intent and meaning of that provision of the Constitution of the United States; and, in accordance with the settled and uniform practice of each and every President of the United States, the said Stanton then became, and so long as he should continue to hold the said office of Secretary for the Department of War must continue to be, one of the advisers of the President of the United States, as well as the person intrusted to act for and represent the President in matters enjoined upon him or intrusted to him by the President touching the department aforesaid, and for whose conduct in such capacity, subordinate to the Presi-

dent, the President is by the Constitution and laws of the United States made responsible. And this respondent, further answering, says, he succeeded to the office of President of the United States upon, and by reason of, the death of Abraham Lincoln, then President of the United States, on the 15th day of April, 1865, and the said Stanton was then holding the said office of Secretary for the Department of War under, and by reason of, the appointment and commission aforesaid; and, not having been removed from the said office by this respondent, the said Stanton continued to hold the same under the appointment and commission aforesaid, at the pleasure of the President, until the time hereinafter particularly mentioned; and at no time received any appointment or commission save as above detailed.

And this respondent, further answering, says, that on and prior to the 5th day of August, A. D. 1867, this respondent, the President of the United States, responsible for the conduct of the Secretary for the Department of War, and having the constitutional right to resort to and rely upon the person holding that office for advice concerning the great and difficult public duties enjoined on the President by the Constitution and laws of the United States, became satisfied that he could not allow the said Stanton to continue to hold the office of Secretary for the Department of War without hazard of the public interest; that the relations between the said Stanton and the President no longer permitted the President to resort to him for advice, or to be, in the judgment of the President, safely responsible for his conduct of the affairs of the Department of War, as by law required, in accordance with the orders and instructions of the President; and thereupon, by force of the Constitution and laws of the United States, which devolve on the President the power and the duty to control the conduct of the business of that executive department of the government, and by reason of the constitutional duty of the President to take care that the laws be faithfully executed, this respondent did necessarily consider and did determine that the said Stanton ought no longer to hold the said office of Secretary for the

Department of War. And this respondent, by virtue of the power and authority vested in him as President of the United States, by the Constitution and laws of the United States, to give effect to such his decision and determination, did, on the 5th day of August, A. D. 1867, address to the said Stanton a note, of which the following is a true copy:

Sir: Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted.

To which note the said Stanton made the following reply:

War Department,
Washington, August 5, 1867.

Sir: Your note of this day has been received, stating that "public considerations of a high character constrain" you "to say that" my "resignation as Secretary of War will be accepted."

In reply I have the honor to say that public considerations of a high character, which alone have induced me to continue at the head of this department, constrain me not to resign the office of Secretary of War before the next meeting of Congress.

Very respectfully, yours,

EDWIN M. STANTON.

This respondent, as President of the United States, was thereon of opinion that, having regard to the necessary official relations and duties of the Secretary for the Department of War to the President of the United States, according to the Constitution and laws of the United States, and having regard to the responsibility of the President for the conduct of the said Secretary, and having regard to the permanent executive authority of the office which the respondent

holds under the Constitution and laws of the United States, it was impossible, consistently with the public interests, to allow the said Stanton to continue to hold the said office of Secretary for the Department of War; and it then became the official duty of the respondent, as President of the United States, to consider and decide what act or acts should and might lawfully be done by him, as President of the United States, to cause the said Stanton to surrender the said office.

This respondent was informed and verily believed that it was practically settled by the 1st Congress of the United States, and had been so considered, and uniformly and in great numbers of instances, acted on by each Congress and President of the United States, in succession, from President Washington to, and including, President Lincoln, and from the 1st Congress to the 39th Congress, that the Constitution of the United States conferred on the President, as part of the executive power and as one of the necessary means and instruments of performing the executive duty expressly imposed on him by the Constitution of taking care that the laws be faithfully executed, the power at any and all times of removing from office all executive officers for cause to be judged of by the President alone. This respondent had, in pursuance of the Constitution, required the opinion of each principal officer of the executive departments upon this question of constitutional executive power and duty, and had been advised by each of them, including the said Stanton, Secretary for the Department of War, that under the Constitution of the United States this power was lodged by the Constitution in the President of the United States, and that, consequently, it could be lawfully exercised by him and the Congress could not deprive him thereof; and this respondent, in his capacity of President of the United States, and because in that capacity he was both enabled and bound to use his best judgment upon this question, did, in good faith and with an earnest desire to arrive at the truth, come to the conclusion and opinion, and did make the same known to the honorable the Senate of the United States by a message dated on the 2d day of

March, 1867, (a true copy whereof is hereunto annexed and marked A,) that the power last mentioned was conferred and the duty of exercising it, in fit cases, was imposed on the President by the Constitution of the United States, and that the President could not be deprived of this power or relieved of this duty, nor could the same be vested by law in the President and the Senate jointly, either in part or whole; and this has ever since remained and was the opinion of this respondent at the time when he was forced as aforesaid to consider and decide what act or acts should and might lawfully be done by this respondent, as President of the United States, to cause the said Stanton to surrender the said office.

This respondent was also then aware that by the first section of "an act regulating the tenure of certain civil offices," passed March 2, 1867, by a constitutional majority of both houses of Congress, it was enacted as follows:

That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided: Provided, That the Secretaries of State, of the Treasury, of War, of the Navy and of the Interior, the Postmaster General and the Attorney General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and one month thereafter, subject to removal by and with the advice and consent of the Senate.

This respondent was also aware that this act was understood and intended to be an expression of the opinion of the Congress by which that act was passed, that the power to remove executive officers for cause might, by law, be taken from the President and vested in him

and the Senate jointly; and although this respondent had arrived at and still retained the opinion above expressed and verily believed, as he still believes, that the said first section of the last-mentioned act was and is wholly inoperative and void by reason of its conflict with the Constitution of the United States, yet, inasmuch as the same had been enacted by the constitutional majority in each of the two houses of that Congress, this respondent considered it to be proper to examine and decide whether the particular case of the said Stanton, on which it was this respondent's duty to act, was within or without the terms of that first section of the act; or, if within it, whether the President had not the power, according to the terms of the act, to remove the said Stanton from the office of Secretary for the Department of War, and having, in his capacity of President of the United States, so examined and considered, did form the opinion that the case of the said Stanton and his tenure office were not affected by the first section of the last-named act.

And this respondent further answering, says, that although a case thus existed which, in his judgment as President of the United States, called for the exercise of the executive power to remove the said Stanton from the office of Secretary for the Department of War, and although this respondent was of opinion, as is above shown, that under the Constitution of the United States the power to remove the said Stanton from the said office was vested in the President of the United States; and although this respondent was also of the opinion, as is above shown, that the case of the said Stanton was not affected by the first section of the last-named act; and although each of the said opinions had been formed by this respondent upon an actual case, requiring him, in his capacity of President of the United States, to come to some judgment and determination thereon, yet this respondent, as President of the United States, desired and determined to avoid, if possible, any question of the construction and effect of the said first section of the last-named act, and also the broader question of the executive power conferred upon the President of the United States, by the Constitution of the United

States, to remove one of the principal officers of one of the executive departments for cause seeming to him sufficient; and this respondent also desired and determined that, if from causes over which he could exert no control, it should become absolutely necessary to raise and have, in some way, determined either or both of the said last-named questions, it was in accordance with the Constitution of the United States and was required of the President thereby, that questions of so much gravity and importance, upon which the legislative and executive departments of the government had disagreed, which involved powers considered by all branches of the government, during its entire history down to the year 1867, to have been confided by the Constitution of the United States to the President, and to be necessary for the complete and proper execution of his constitutional duties, should be in some proper way submitted to that judicial department of the government, intrusted by the Constitution with the power, and subjected by it to the duty, not only of determining finally the construction and effect of all acts of Congress, but of comparing them with the Constitution of the United States and pronouncing them inoperative when found in conflict with that fundamental law which the people have enacted for the government of all their servants. And to these ends, first, that through the action of the Senate of the United States, the absolute duty of the President to substitute some fit person in place of Mr. Stanton as one of his advisers, and as a principal subordinate officer whose official conduct he was responsible for and had lawful right to control, might, if possible, be accomplished without the necessity of raising any one of the questions aforesaid; and, second, if this duty could not be so performed, then that these questions, or such of them as might necessarily arise, should be judicially determined in manner aforesaid, and for no other end or purpose this respondent, as President of the United States, on the 12th day of August, 1867, seven days after the reception of the letter of the said Stanton of the 5th of August, hereinbefore stated, did issue to the said Stanton the order following, namely:

Executive Mansion, Washington, August 12, 1867.

Sir: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same.

You will at once transfer to General Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in your custody and charge.

The Hon. Edwin M. Stanton, Secretary of War.

To which said order the said Stanton made the following reply:

War Department, Washington City, August 12, 1867.

Sir: Your note of this date has been received, informing me that by virtue of the powers vested in you, as President, by the Constitution and laws of the United States, I am suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same; and also directing me at once to transfer to General Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in my custody and charge. Under a sense of public duty, I am compelled to deny your right, under the Constitution and laws of the United States, without the advice and consent of the Senate, and without legal cause, to suspend me from office as Secretary of War, or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and

public property in my custody as Secretary. But inasmuch as the General commanding the armies of the United States has been appointed ad interim, and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force.

To the President.

And this respondent, further answering, says, that it is provided in and by the second section of "An act to regulate the tenure of certain civil offices," that the President may suspend an officer from the performance of the duties of the office held by him, for certain causes therein designated, until the next meeting of the Senate and until the case shall be acted on by the Senate; that this respondent, as President of the United States, was advised, and he verily believed and still believes, that the executive power of removal from office confided to him by the Constitution as aforesaid, includes the power of suspension from office at the pleasure of the President, and this respondent, by the order aforesaid, did suspend the said Stanton from office, not until the next meeting of the Senate, or until the Senate should have acted upon the case, but by force of the power and authority vested in him by the Constitution and laws of the United States, indefinitely and at the pleasure of the President, and the order, in form aforesaid, was made known to the Senate of the United States on the 12th day of December, A. D. 1867, as will be more fully hereinafter stated.

And this respondent, further answering, says, that in and by the act of February 13, 1795, it was, among other things, provided and enacted that, in case of vacancy in the office of Secretary for the Department of War, it shall be lawful for the President, in case he shall think it necessary, to authorize any person to perform the duties of that office until a successor be appointed or such vacancy filled, but not exceeding the term of six months; and this respondent, being advised and believing that such law was in full force and not repealed, by an order dated August 12, 1867, did authorize and

empower Ulysses S. Grant, General of the armies of the United States, to act as Secretary for the Department of War ad interim, in the form in which similar authority had theretofore been given, not until the next meeting of the Senate and until the Senate should act on the case, but at the pleasure of the President, subject only to the limitation of six months in the said last-mentioned act contained; and a copy of the last-named order was made known to the Senate of the United States on the 12th day of December, A. D. 1867, as will be hereinafter more fully stated; and in pursuance of the design and intention aforesaid, if it should become necessary, to submit the said questions to a judicial determination, this respondent, at or near the date of the last-mentioned order, did make known such his purpose to obtain a judicial decision of the said questions, or such of them as might be necessary.

And this respondent, further answering, says, that in further pursuance of his intention and design, if possible to perform what he judged to be his imperative duty, to prevent the said Stanton from longer holding the office of Secretary for the Department of War, and at the same time avoiding, if possible, any question respecting the extent of the power of removal from executive office confided to the President by the Constitution of the United States, and any question respecting the construction and effect of the first section of the said "act-regulating the tenure of certain civil offices," while he should not, by any act of his, abandon and relinquish either a power which he believed the Constitution had conferred on the President of the United States, to enable him to perform the duties of his office, or a power designedly left to him by the first section of the act of Congress last aforesaid, this respondent did, on the 12th day of December, 1867, transmit to the Senate of the United States a message, a copy whereof is hereunto annexed and marked B, wherein he made known the orders aforesaid and the reasons which had induced the same, so far as this respondent then considered it material and necessary that the same should be set forth, and reiterated his views concerning the constitutional power of removal

vested in the President, and also expressed his views concerning the construction of the said first section of the last mentioned act, as respected the power of the President to remove the said Stanton from the said office of Secretary for the Department of War, well hoping that this respondent could thus perform what he then believed, and still believes, to be his imperative duty in reference to the said Stanton, without derogating from the powers which this respondent believed were confided to the President by the Constitution and laws, and without the necessity of raising, judicially, any questions respecting the same.

And this respondent, further answering, says, that this hope not having been realized, the President was compelled either to allow the said Stanton to resume the said office and remain therein contrary to the settled convictions of the President, formed as aforesaid, respecting the powers confided to him and the duties required of him by the Constitution of the United States, and contrary to the opinion formed as aforesaid, that the first section of the last mentioned act did not affect the case of the said Stanton, and contrary to the fixed belief of the President that he could no longer advise with or trust or be responsible for the said Stanton, in the said office of Secretary for the Department of War, or else he was compelled to take such steps as might, in the judgment of the President, be lawful and necessary to raise, for a judicial decision, the questions affecting the lawful right of the said Stanton to resume the said office, or the power of the said Stanton to persist in refusing to quit the said office if he should persist in actually refusing to quit the same; and to this end, and to this end only, this respondent did, on the 21st day of February, 1868, issue the order for the removal of the said Stanton, in the said first article mentioned and set forth, and the order authorizing the said Lorenzo Thomas to act as Secretary of War ad interim, in the said second article set forth.

And this respondent, proceeding to answer specifically each substantial allegation in the said first article, says: He denies that the

said Stanton, on the 21st day of February, 1868, was lawfully in possession of the said office of Secretary for the Department of War. He denies that the said Stanton, on the day last mentioned, was lawfully entitled to hold the said office against the will of the President of the United States. He denies that the said order for the removal of the said Stanton was unlawfully issued. He denies that the said order was issued with intent to violate the act entitled "An act to regulate the tenure of certain civil offices." He denies that the said order was a violation of the last mentioned act. He denies that the said order was a violation of the Constitution of the United States, or of any law thereof, or of his oath of office. He denies that the said order was issued with an intent to violate the Constitution of the United States or any law thereof, or this respondent's oath of office; and he respectfully, but earnestly, insists that not only was it issued by him in the performance of what he believed to be an imperative official duty, but in the performance of what this honorable court will consider was, in point of fact, an imperative official duty. And he denies that any and all substantive matters in the said first article contained, in manner and form as the same are therein stated and set forth, do, by law, constitute a high misdemeanor in office, within the true intent and meaning of the Constitution of the United States.

Answer to Article II.

And for answer to the second article this respondent says that he admits he did issue and deliver to said Lorenzo Thomas the said writing set forth in said second article, bearing date at Washington, District of Columbia, February 21, 1868, addressed to Brevet Major General Lorenzo Thomas, Adjutant General United States army, Washington, District of Columbia and he further admits that the same was so issued without the advice and consent of the Senate of the United States, then in session, but he denies that he thereby violated the Constitution of the United States, or any law thereof, or that he did thereby intend to violate the Constitution of the United States, or

the provisions of any act of Congress; and this respondent refers to his answer to said first article for a full statement of the purposes and intentions with which said order was issued, and adopts the same as part of his answer to this article; and he further denies that there was then and there no vacancy in the said office of Secretary for the Department of War, or that he did then and there commit, or was guilty of, a high misdemeanor in office, and this respondent maintains and will insist:

1. That at the date and delivery of said writing there was a vacancy existing in the office of Secretary for the Department of War.
2. That, notwithstanding the Senate of the United States was then in session, it was lawful and according to long and well established usage to empower and authorize the said Thomas to act as Secretary of War ad interim.
3. That if the said act regulating the tenure of civil offices be held to be a valid law, no provision of the same was violated by the issuing of said order, or by the designation of said Thomas to act as Secretary of War ad interim.

Answer to Article III.

And for answer to said third article this respondent says that he abides by his answer to said first and second articles, in so far as the same are responsive to the allegations contained in the said third article, and, without here again repeating the same answer, prays the same be taken as an answer to this third article as fully as if here again set out at length; and as to the new allegation contained in said third article, that this respondent did appoint the said Thomas to be Secretary for the Department of War ad interim, this respondent denies that he gave any other authority to said Thomas than such as appears in said written authority set out in said article, by which he

authorized and empowered said Thomas to act as Secretary for the Department of War ad interim; and he denies that the same amounts to an appointment, and insists that it is only a designation of an officer of that department to act temporarily as Secretary for the Department of War ad interim until an appointment should be made. But, whether the said written authority amounts to an appointment or to a temporary authority or designation, this respondent denies that in any sense he did thereby intend to violate the Constitution of the United States, or that he thereby intended to give the said order the character or effect of an appointment in the constitutional or legal sense of that term. He further denies that there was no vacancy in said office of Secretary for the Department of War existing at the date of said written authority.

Answer to Article IV.

And for answer to said fourth article this respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time or place, he did unlawfully conspire with the said Lorenzo Thomas, or with the said Thomas and any other person or persons, with intent by intimidations and threats unlawfully to hinder and prevent the said Stanton from holding said office of Secretary for the Department of War in violation of the Constitution of the United States, or of the provisions of the said act of Congress in said article mentioned, or that he did then and there commit, or was guilty of, a high crime in office. On the contrary thereof, protesting that the said Stanton was not then and there lawfully the Secretary for the Department of War, this respondent states that his sole purpose in authorizing the said Thomas to act as Secretary for the Department of War ad interim was, as is fully stated in his answer to the said first article, to bring the question of the right of the said Stanton to hold said office, notwithstanding his said suspension and notwithstanding the said order of removal and notwithstanding the said authority of the said Thomas to act as Secretary of War ad interim, to the test of a

final decision by the Supreme Court of the United States in the earliest practicable mode by which the question could be brought before that tribunal.

This respondent did not conspire or agree with the said Thomas or any other person or persons to use intimidation or threats to hinder or prevent the said Stanton from holding the said office of Secretary for the Department of War, nor did this respondent at any time command or advise the said Thomas or any other person or persons to resort to or use either threats or intimidation for that purpose. The only means in the contemplation or purpose of respondent to be used are set forth fully in the said orders of February 21, the first addressed to Mr. Stanton and the second to the said Thomas. By the first order the respondent notified Mr. Stanton that he was removed from the said office, and that his functions as Secretary for the Department of War were to terminate upon the receipt of that order, and he also thereby notified the said Stanton that the said Thomas had been authorized to act as Secretary for the Department of War ad interim, and ordered the said Stanton to transfer to him all the records, books, papers, and other public property in his custody and charge; and by the second order this respondent notified the said Thomas of the removal from office of the said Stanton, and authorized him to act as Secretary for the Department of War ad interim, and directed him to immediately enter upon the discharge of the duties pertaining to that office, and to receive the transfer of all the records, books, papers, and other public property from Mr. Stanton then in his custody and charge.

Respondent gave no instructions to the said Thomas to use intimidation or threats to enforce obedience to these orders. He gave him no authority to call in the aid of the military or any other force to enable him to obtain possession of the office or of the books, papers, records, or property thereof. The only agency resorted to or intended to be resorted to was by means of the said executive orders requiring obedience. But the Secretary for the Department of War

refused to obey these orders, and still holds undisturbed possession and custody of that department, and of the records, books, papers, and other public property therein. Respondent further states that, in execution of the orders so by this respondent given to the said Thomas, he, the said Thomas, proceeded in a peaceful manner to demand of the said Stanton a surrender to him of the public property in the said department, and to vacate the possession of the same, and to allow him, the said Thomas, peaceably to exercise the duties devolved upon him by authority of the President. That, as this respondent has been informed and believes, the said Stanton peremptorily refused obedience to the orders so issued. Upon such refusal no force or threat of force was used by the said Thomas, by authority of the President or otherwise, to enforce obedience, ether then or at any subsequent time.

This respondent doth here except to the sufficiency of the allegations contained in said fourth article, and states for ground of exception that it is not stated that there was any agreement between this respondent and the said Thomas, or any other person or persons, to use intimidation and threats, nor is there any allegation as to the nature of said intimidation and threats, or that there was any agreement to carry them into execution, or that any step was taken, or agreed to be taken, to carry them into execution, and that the allegation in said article that the intent of said conspiracy was to use intimidation and threats is wholly insufficient, inasmuch as it is not alleged that the said intent formed the basis or became part of any agreement between the said alleged conspirators, and, furthermore, that there is no allegation of any conspiracy or agreement to use intimidation or threats.

Answer to Article V.

And for answer to the said fifth article this respondent denies that on the said 21st day of February, 1868, or at any other time or times in

the same year before the said 2d day of March, 1868, or at any prior or subsequent time, at Washington aforesaid, or at any other place, this respondent did unlawfully conspire with the said Thomas, or with any other person or persons, to prevent or hinder the execution of the said act entitled "An act regulating the tenure of certain civil offices," or that, in pursuance of said alleged conspiracy, he did unlawfully attempt to prevent the said Edwin M. Stanton from holding the said office of Secretary for the Department of War, or that he did thereby commit, or that he was thereby guilty of, a high misdemeanor in office. Respondent, protesting that said Stanton was not then and there Secretary for the Department of War, begs leave to refer to his answer given to the fourth article and to his answer to the first article as to his intent and purpose in issuing the orders for the removal of Mr. Stanton and the authority given to the said Thomas, and prays equal benefit therefrom as if the same were here again repeated and fully set forth.

And this respondent excepts to the sufficiency of the said fifth article, and states his ground for such exception, that it is not alleged by what means or by what agreement the said alleged conspiracy was formed or agreed to be carried out, or in what way the same was attempted to be carried out or what were the acts done in pursuance thereof.

Answer to Article VI.

And for answer to the said sixth article this respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time or place, he did unlawfully conspire with the said Thomas by force to seize, take, or possess the property of the United States in the Department of War, contrary to the provisions of the said acts referred to in the said article, or either of them, or with intent to violate either of them. Respondent, protesting that said Stanton was not then and there Secretary for the Department of War,

not only denies the said conspiracy as charged, but also denies any unlawful intent in reference to the custody and charge of the property of the United States in the said Department of War, and again refers to his former answers for a full statement of his intent and purpose in the premises.

Answer to Article VII.

And for answer to the said seventh article respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time and place, he did unlawfully conspire with the said Thomas with intent unlawfully to seize, take, or possess the property of the United States in the Department of War with intent to violate or disregard the said act in the said seventh article referred to, or that he did then and there commit a high misdemeanor in office. Respondent, protesting that the said Stanton was not then and there Secretary for the Department of War, again refers to his former answers, in so far as they are applicable, to show the intent with which he proceeded in the premises, and prays equal benefit therefrom as if the same were here again fully repeated. Respondent further takes exception to the sufficiency of the allegations of this article as to the conspiracy alleged upon the same grounds as stated in the exception set forth in his answer to said article fourth.

Answer to Article VIII.

And for answer to the said eighth article this respondent denies that on the 21st day of February, 1868, at Washington aforesaid, or at any other time and place, he did issue and deliver to the said Thomas the said letter of authority set forth in the said eighth article, with the intent unlawfully to control the disbursements of the money appropriated for the military service and for the Department of War. This respondent, protesting that there was a vacancy in the office of

Secretary of War, admits that he did issue the said letter of authority, and he denies that the same was with unlawful intent whatever, either to violate the Constitution of the United States or any act of Congress. On the contrary, this respondent again affirms that his sole intent was to vindicate his authority as President of the United States, and by peaceful means to bring the question of the right of the said Stanton to continue to hold the said office of Secretary of War to a final decision before the Supreme Court of the United States, as has been hereinbefore set forth; and he prays the same benefit from his answer in the premises as if the same were here again repeated at length.

Answer to Article IX.

And for answer to the said ninth article the respondent states that on the said 22d day of February, 1868, the following note was addressed to the said Emory by the private secretary of the respondent:

Executive Mansion, Washington, D. C., February 22, 1868.

General: The President directs me to say that he will be pleased to have you call upon him as early as practicable.

Respectfully and truly yours,

WILLIAM G. MOORE,
United States Army.

General Emory called at the Executive Mansion according to this request. The object of respondent was to be advised by General Emory, as commander of the department of Washington, what changes had been made in the military affairs of the department. Respondent had been informed that various changes had been made, which in nowise had been brought to his notice or reported to him from the Department of War or from any other quarter, and

desired to ascertain the facts. After the said Emory had explained in detail the changes which had taken place, said Emory called the attention of respondent to a general order which he referred to and which this respondent then sent for, when it was produced. It is as follows:

[General Orders No. 17.]

War Department,
Adjutant General's Office, Washington, March 14, 1867.

The following acts of Congress are published for the information and government of all concerned:

II.--Public--No. 85.

AN ACT making appropriations for the support of the army for the year ending June 20, 1868, and for other purposes.

Sec. 2. And be it further enacted, That the headquarters of the General of the army of the United States shall be at the city of Washington, and all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the army, and in case of his inability through the next in rank. The General of the army shall not be removed, suspended, or relieved from command or assigned to duty elsewhere than at said headquarters, except at his own request, without the previous approval of the Senate; and any orders or instructions relating to military operations issued contrary to the requirements of this section shall be null and void; and any officer who shall issue orders or instructions contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office; and any officer of the army who shall transmit, convey, or obey any orders or instructions so issued contrary to the provisions

of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction.

Approved March 2, 1867.

By order of the Secretary of War.

E. D. TOWNSEND,
Assistant Adjutant General.

Official:

--, Assistant Adjutant General.

General Emory not only called the attention of respondent to this order, but to the fact that it was in conformity with a section contained in an appropriation act passed by Congress. Respondent, after reading the order, observed: "This is not in accordance with the Constitution of the United States, which makes me commander-in-chief of the army and navy, or of the language of the commission which you hold." General Emory then stated that this order had met the respondent's approval. Respondent then said in reply, in substance: "Am I to understand that the President of the United States cannot give an order but through the general-in-chief, or General Grant?" General Emory again reiterated the statement that it had met respondent's approval, and that it was the opinion of some of the leading lawyers of the country that this order was constitutional. With some farther conversation, respondent then inquired the names of the lawyers who had given the opinion, and he mentioned the names of two. Respondent then said that the object of the law was very evident, referring to the clause in the appropriation act upon which the order purported to be based. This, according to

respondent's recollection, was the substance of the conversation had with General Emory.

Respondent denies that any allegations in the said article of any instructions or declarations given to the said Emory then or at any other time contrary to or in addition to what is hereinbefore set forth are true. Respondent denies that in said conversation with said Emory, he had any other intent than to express the opinion then given to the said Emory, nor did he then or at any time request or order the said Emory to disobey any law or any order issued in conformity with any law, or intend to offer any inducement to the said Emory to violate any law. What this respondent then said to General Emory was simply the expression of an opinion which he then fully believed to be sound and which he yet believes to be so, and that is, that by the express provisions of the Constitution this respondent, as President, is made the commander-in-chief of the armies of the United States, and as such he is to be respected, and that his orders, whether issued through the War Department or through the general-in-chief, or by any other channel of communication, are entitled to respect and obedience, and that such constitutional power cannot be taken from him by virtue of any act of Congress. Respondent doth therefore deny that by the expression of such opinion he did commit or was guilty of a high misdemeanor in office; and the respondent doth further say that the said article nine lays no foundation whatever for the conclusion stated in the said article, that the respondent, by reason of the allegations therein contained, was guilty of a high misdemeanor in office.

In reference to the statement made by General Emory that this respondent had approved of said act of Congress containing the section referred to, the respondent admits that his formal approval was given to said act, but accompanied the same by the following message, addressed and sent with the act to the House of Representatives, in which House the said act originated, and from which it came to respondent:

To the House of Representatives:

The act entitled "An act making appropriations for the support of the army for the year ending June 30, 1868, and for other purposes," contains provisions to which I must call attention. These provisions are contained in the second section, which, in certain cases, virtually deprives the President of his constitutional functions as commander-in-chief of the army, and in the sixth section, which denies to ten States of the Union their constitutional right to protect themselves, in any emergency, by means of their own militia. These provisions are out of place in an appropriation act, but I am compelled to defeat these necessary appropriations if I withhold my signature from the act. Pressed by these considerations, I feel constrained to return the bill with my signature, but to accompany it with my earnest protest against the sections which I have indicated.

Washington, D. C., March 2, 1867.

Respondent, therefore, did no more than to express to said Emory the same opinion which he had so expressed to the House of Representatives.

Answer to Article X.

And in answer to the tenth article and specifications thereof the respondent says that on the 14th and 15th days of August, in the year 1866, a political convention of delegates from all or most of the States and Territories of the Union was held in the city of Philadelphia, under the name and style of the National Union Convention, for the purpose of maintaining and advancing certain political views and opinions before the people of the United States, and for their support and adoption in the exercise of the

constitutional suffrage, in the elections of representatives and delegates in Congress, which were soon to occur in many of the States and Territories of the Union; which said convention, in the course of its proceedings, and in furtherance of the objects of the same, adopted a "declaration of principles," and "an address to the people of the United States." and appointed a committee of two of its members from each State and of one from each Territory and one from the District of Columbia to wait upon the President of the United States and present to him a copy of the proceedings of the convention; that on the 18th day of said month of August this committee waited upon the President of the United States at the Executive Mansion, and was received by him in one of the rooms thereof, and by their chairman, Hon. Reverdy Johnson, then and now a senator of the United States, acting and speaking in their behalf, presented a copy of the proceedings of the convention, and addressed the President of the United States in a speech, of which a copy (according to a published report of the same, and, as the respondent believes, substantially a correct report) is hereto annexed as a part of this answer, and marked exhibit C.

That thereupon, and in reply to the address of said committee by their chairman, this respondent addressed the said committee so waiting upon him in one of the rooms of the Executive Mansion; and this respondent believes that this his address to said committee is the occasion referred to in the first specification of the tenth article; but this respondent does not admit that the passages therein set forth, as if extracts from a speech or address of this respondent upon said occasion, correctly or justly present his speech or address upon said occasion, but, on the contrary, this respondent demands and insists that if this honorable court shall deem the said article and the said first specification thereof to contain allegation of matter cognizable by this honorable court as a high misdemeanor in office, within the intent and meaning of the Constitution of the United States, and shall receive or allow proof in support of the same, that proof shall be required to be made of the actual speech and address

of this respondent on said occasion, which this respondent denies that said article and specification contain or correctly or justly represent.

And this respondent, further answering the tenth article and the specifications thereof, says that at Cleveland, in the State of Ohio, and on the 3d day of September, in the year 1866, he was attended by a large assemblage of his fellow-citizens, and in deference and obedience to their call and demand he addressed them upon matters of public and political consideration; and this respondent believes that said occasion and address are referred to in the second specification of the tenth article; but this respondent does not admit that the passages therein set forth, as if extracts from a speech of this respondent on said occasion, correctly or justly present his speech or address upon said occasion; but, on the contrary, this respondent demands and insists that if this honorable court shall deem the said article and the said second specification thereof to contain allegation of matter cognizable by this honorable court as a high misdemeanor in office, within the intent and meaning of the Constitution of the United States, and shall receive or allow proof in support of the same, that proof shall be required to be made of the actual speech and address of this respondent on said occasion, which this respondent denies that said article and specification contain or correctly or justly represent.

And this respondent, further answering the tenth article and the specifications thereof, says that at St. Louis, in the State of Missouri, and on the 8th day of September, in the year 1866, he was attended by a numerous assemblage of his fellow-citizens, and in deference and obedience to their call and demand he addressed them upon matters of public and political consideration; and this respondent believes that said occasion and address are referred to in the third specification of the tenth article; but this respondent does not admit that the passages therein set forth, as if extracts from a speech of this respondent on said occasion, correctly or justly present his

speech or address upon said occasion; but, on the contrary, this respondent demands and insists that if this honorable court shall deem the said article and the said third specification thereof to contain allegation of matter cognizable by this honorable court as a high misdemeanor in office, within the intent and meaning of the Constitution of the United States, and shall receive or allow proof in support of the same, that proof shall be required to be made of the actual speech and address of this respondent on said occasion, which this respondent denies that the said article and specification contain or correctly or justly represent.

And this respondent, further answering the tenth article, protesting that he has not been unmindful of the high duties of his office, or of the harmony or courtesies which ought to exist and be maintained between the executive and legislative branches of the government of the United States, denies that he has ever intended or designed to set aside the rightful authority or powers of Congress, or attempted to bring into disgrace, ridicule, hatred, contempt, or reproach the Congress of the United States or either branch thereof, or to impair or destroy the regard or respect of all or any of the good people of the United States for the Congress or the rightful legislative power thereof, or to excite the odium or resentment of all or any of the good people of the United States against Congress and the laws by it duly and constitutionally enacted. This respondent further says that at all times he has, in his official acts as President, recognized the authority of the several Congresses of the United States as constituted and organized during his administration of the office of President of the United States.

And this respondent, further answering, says that he has, from time to time, under his constitutional right and duty as President of the United States, communicated to Congress his views and opinions in regard to such acts or resolutions thereof as, being submitted to him as President of the United States in pursuance of the Constitution, seemed to this respondent to require such communications; and he

has, from time to time, in the exercise of that freedom of speech which belongs to him as a citizen of the United States, and, in his political relations as President of the United States to the people of the United States, is upon fit occasions a duty of the highest obligation, expressed to his fellow-citizens his views and opinions respecting the measures and proceedings of Congress; and that in such addresses to his fellow-citizens and in such his communications to Congress he has expressed his views, opinions, and judgment of and concerning the actual constitution of the two houses of Congress without representation therein of certain States of the Union, and of the effect that in wisdom and justice, in the opinion and judgment of this respondent, Congress, in its legislation and proceedings, should give to this political circumstance; and whatsoever he has thus communicated to Congress or addressed to his fellow-citizens or any assemblage thereof, this respondent says was and is within and according to his right and privilege as an American citizen and his right and duty as President of the United States.

And this respondent, not waiving or at all disparaging his right of freedom of opinion, and of freedom of speech, as hereinbefore or hereinafter more particularly set forth, but claiming and insisting upon the same, further answering the said tenth article, says that the views and opinions expressed by this respondent in his said addresses to the assemblages of his fellow-citizens, as in said articles or in this answer thereto mentioned, are not and were not intended to be other or different from those expressed by him in his communications to Congress--that the eleven States lately in insurrection never had ceased to be States of the Union, and that they were then entitled to representation in Congress by loyal representatives and senators as fully as the other States of the Union, and that, consequently, the Congress, as then constituted, was not, in fact, a Congress of all the States, but a Congress of only a part of the States. This respondent, always protesting against the unauthorized exclusion therefrom of the said eleven States,

nevertheless gave his assent to all laws passed by said Congress which did not, in his opinion and judgment, violate the Constitution, exercising his constitutional authority of returning bills to said Congress with his objections when they appeared to him to be unconstitutional or inexpedient.

And, further, this respondent has also expressed the opinion, both in his communications to Congress and in his addresses to the people, that the policy adopted by Congress in reference to the States lately in insurrection did not tend to peace, harmony, and union, but, on the contrary, did tend to disunion and the permanent disruption of the States, and that, in following its said policy, laws had been passed by Congress in violation of the fundamental principles of the government, and which tended to consolidation and despotism; and, such being his deliberate opinions, he would have felt himself unmindful of the high duties of his office if he had failed to express them in his communications to Congress or in his addresses to the people when called upon by them to express his opinions on matters of public and political consideration.

And this respondent, further answering the tenth article, says that he has always claimed and insisted, and now claims and insists, that both in the personal and private capacity of a citizen of the United States, and in the political relations of the President of the United States to the people of the United States, whose servant, under the duties and responsibilities of the Constitution of the United States, the President of the United States is and should always remain, this respondent had and has the full right, and in his office of President of the United States is held to the high duty, of forming, and on fit occasions expressing opinions of and concerning the legislation of Congress, proposed or completed, in respect of its wisdom, expediency, justice, worthiness, objects, purposes, and public and political motives and tendencies; and within, and as a part of such right and duty to form, and on fit occasions to express opinions of and concerning the public character and conduct, views, purposes,

objects, motives, and tendencies of all men engaged in the public service, as well in Congress as otherwise, and under no other rules or limits upon this right of freedom of opinion and of freedom of speech, or of responsibility and amenability for the actual exercise of such freedom of opinion and freedom of speech, than attend upon such rights and their exercise on the part of all other citizens of the United States, and on the part of all their public servants.

And this respondent, further answering said tenth article, says that the several occasions on which, as is alleged in the several specifications of said article, this respondent addressed his fellow-citizens on subjects of public and political considerations, were not, nor was any one of them, sought or planned by this respondent; but, on the contrary, each of said occasions arose upon the exercise of a lawful and accustomed right of the people of the United States to call upon their public servants and express to them their opinions, wishes, and feelings upon matters of public and political consideration, and to invite from such, their public servants, an expression of their opinions, views, and feelings on matters of public and political consideration; and this respondent claims and insists before this honorable court, and before all the people of the United States, that of or concerning this his right of freedom of opinion and of freedom of speech, and this his exercise of such rights on all matters of public and political consideration, and in respect of all public servants or persons whatsoever engaged in or connected therewith, this respondent, as a citizen or as President of the United States, is not subject to question, inquisition, impeachment, or inculpation in any form or manner whatsoever.

And this respondent says that neither the said tenth article nor any specification thereof nor any allegation therein contained touches or relates to any official act or doing of this respondent in the office of President of the United States or in the discharge of any of its constitutional or legal duties or responsibilities; but said article and the specifications and allegations thereof, wholly and in every part

thereof, question only the discretion or propriety of freedom of opinion or freedom of speech, as exercised by this respondent as a citizen of the United States in his personal right and capacity, and without allegation or imputation against this respondent of the violation of any law of the United States touching or relating to freedom of speech or its exercise by the citizens of the United States, or by this respondent as one of the said citizens or otherwise; and he denies that by reason of any matter in said article or its specifications alleged he has said or done anything indecent or unbecoming in the Chief Magistrate of the United States, or that he has brought the high office of President of the United States into contempt, ridicule, or disgrace, or that he has committed or has been guilty of a high misdemeanor in office.

Answer to Article XI.

And in answer to the eleventh article this respondent denies that on the 18th day of August, in the year 1866, at the city of Washington, in the District of Columbia, he did, by public speech or otherwise, declare or affirm, in substance or at all, that the thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, or that he did then and there declare or affirm that the said thirty-ninth Congress was a Congress of only part of the States in any sense or meaning other than that ten States of the Union were denied representation therein; or that he made any or either of the declarations or affirmations in this behalf, in the said article alleged, as denying or intending to deny that the legislation of said thirty-ninth Congress was valid or obligatory upon this respondent, except so far as this respondent saw fit to approve the same; and as to the allegation in said article, that he did thereby intend or mean to be understood that the said Congress had not power to propose amendments to the Constitution, this respondent says that in said address he said nothing in reference to the subject

of amendments of the Constitution, nor was the question of the competency of the said Congress to propose such amendments, without the participation of said excluded States, at the time of said address, in any way mentioned or considered or referred to by this respondent, nor in what he did say had he any intent regarding the same, and he denies the allegation so made to the contrary thereof. But this respondent, in further answer to, and in respect of, the said allegations of the said eleventh article hereinbefore traversed and denied, claims and insists upon his personal and official right of freedom of opinion and freedom of speech, and his duty in his political relations as President of the United States to the people of the United States in the exercise of such freedom of opinion and freedom of speech, in the same manner, form, and effect as he has in this behalf stated the same in his answer to the said tenth article, and with the same effect as if he here repeated the same; and he further claims and insists, as in said answer to said tenth article he has claimed and insisted, that he is not subject to question, inquisition, impeachment or inculpation, in any form or manner, of or concerning such rights of freedom of opinion or freedom of speech or his said alleged exercise thereof.

And this respondent further denies that, on the 21st day of February, in the year 1868, or at any other time, at the city of Washington, in the District of Columbia, in pursuance of any such declaration as in that behalf in said eleventh article alleged, or otherwise, he did unlawfully, and in disregard of the requirement of the Constitution that he should take care that the laws should be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, by unlawfully devising or contriving, or attempting to devise or contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of Secretary for the Department of War; or by unlawfully devising or contriving, or attempting to devise or contrive, means to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending

June 30, 1868, and for other purposes," approved March 2, 1867, or to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867.

And this respondent, further answering the said eleventh article, says that he has, in his answer to the first article, set forth in detail the acts, steps, and proceedings done and taken by this respondent to and toward or in the matter of the suspension or removal of the said Edwin M. Stanton in or from the office of Secretary for the Department of War, with the times, modes, circumstances, intents, views, purposes, and opinions of official obligations and duty under and with which such acts, steps, and proceedings were done and taken; and he makes answer to this eleventh article of the matters in his answer to the first article, pertaining to the suspension or removal of said Edwin M. Stanton, to the same intent and effect as if they were here repeated and set forth.

And this respondent, further answering the said eleventh article, denies that by means or reason of anything in said article alleged this respondent, as President of the United States, did, on the 21st day of February, 1868, or at any other day or time, commit, or that he was guilty of a high misdemeanor in office.

And this respondent, further answering the said eleventh article, says that the same and the matters therein contained do not charge or allege the commission of any act whatever by this respondent, in his office of President of the United States, nor the omission by this respondent of any act of official obligation or duty in his office of President of the United States; nor does the said article nor the matters therein contained name, designate, describe, or define any act or mode or form of attempt, device, contrivance, or means, or of attempt at device, contrivance, or means, whereby this respondent can know or understand what act or mode or form of attempt, device, contrivance, or means, or of attempt at device, contrivance, or means, are imputed to or charged against this respondent, in his

office of President of the United States, or intended so to be, or whereby tiffs respondent can more fully or definitely make answer unto the said article than he hereby does.

And this respondent, in submitting to this honorable court this his answer to the articles of impeachment exhibited against him, respectfully reserves leave to amend and add to the same from time to time, as may become necessary or proper, and when and as such necessity and propriety shall appear.

ANDREW JOHNSON.

**HENRY STANBERY,
B. R. CURTIS,
THOMAS A. R. NELSON,
WILLIAM M. EVARTS,
W. S. GROESBECK,**

Of Counsel.

Exhibit A.

Message to the Senate, March 2, 1867.

To the Senate of the United States:

I have carefully examined the bill to regulate the tenure of certain civil offices. The material portion of the bill is contained in the first section, and is of the effect following, namely:

That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been appointed by the President, with the advice and consent of the Senate,

and duly qualified; and that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate.

These provisions are qualified by a reservation in the fourth section, "that nothing contained in the bill shall be construed to extend the term of any office the duration of which is limited by law." In effect the bill provides that the President shall not remove from their places any of the civil officers whose terms of service are not limited by law without the advice and consent of the Senate of the United States. The bill, in this respect, conflicts, in my judgment, with the Constitution of the United States. The question, as Congress is well aware, is by no means a new one. That the power of removal is constitutionally vested in the President of the United States is a principle which has been not more distinctly declared by judicial authority and judicial commentators than it has been uniformly practiced upon by the legislative and executive departments of the government. The question arose in the House of Representatives so early as the 16th day of June, 1789, on the bill for establishing an executive department, denominated "The Department of Foreign Affairs." The first clause of the bill, after recapitulating the functions of that officer and defining his duties, had these words: "To be removable from office by the President of the United States." It was moved to strike out these words, and the motion was sustained with great ability and vigor. It was insisted that the President could not constitutionally exercise the power of removal exclusive of the Senate; that the Federalist so interpreted the Constitution when

arguing for its adoption by the several States; that the Constitution had nowhere given the President power of removal, either expressly or by strong implication; but, on the contrary, had distinctly provided for removals from office by impeachment only. A construction which denied the power of removal by the President was further maintained by arguments drawn from the danger of the abuse of the power; from the supposed tendency of an exposure of public officers to capricious removal, to impair the efficiency of the civil service; from the alleged injustice and hardship of displacing incumbents, dependent upon their official stations, without sufficient consideration; from a supposed want of responsibility on the part of the President, and from an imagined defect of the guarantees against a vicious President, who might incline to abuse the power.

On the other hand, an exclusive power of removal by the President was defended as a true exposition of the text of the Constitution. It was maintained that there are certain causes for which persons ought to be removed from office without being guilty of treason, bribery, or malfeasance, and that the nature of things demands that it should be so. "Suppose," it was said, "a man becomes insane by the visitation of God, and is likely to ruin our affairs; are the hands of government to be confined from warding off the evil? Suppose a person in office not possessing the talents he was judged to have at the time of the appointment; is the error not to be corrected? Suppose he acquire vicious habits and incurable indolence, or totally neglect the duties of his office, which shall work mischief to the public welfare; is there no way to arrest the threatened danger? Suppose he become odious and unpopular by reason of the measures he pursues--and this he may do without committing any positive offences

against the law--must he preserve his office in despite of the popular will? Suppose him grasping for his own aggrandizement and the elevation of his connections by every means short of the treason defined by the Constitution, hurrying your affairs to the precipice of destruction, endangering your domestic tranquillity, plundering you of the means of defence, alienating the affections of your allies, and promoting the spirit of discord; must the tardy, tedious, desultory road, by way of impeachment, be travelled to overtake the man who, barely confining himself within the letter of the law, is employed in "drawing off the vital principle of the government?" The nature of things, the great objects of society, the express objects of the Constitution itself require that this thing should be otherwise. To unite the Senate with the President "in the exercise of the power," it was said, "would involve us" in the most serious difficulty. "Suppose a discovery of any of these events should take place when the Senate is not in session, how is the remedy to be applied? The evil could be avoided in no other way than by the Senate sitting always." In regard to the danger of the power being abused if exercised by one man, it was said "that the danger is as great with respect to the Senate who are assembled from various parts of the continent, with different impressions and opinions;" that such a body is more likely to misuse the power of removal than the man whom the united voice of America calls to the presidential chair. As the nature of government requires the power of removal, it was maintained "that it should be exercised in this way by the hand capable of exerting itself with effect, and the power must be conferred on the President by the Constitution as the executive officer of the government." Mr. Madison, whose adverse opinion in the Federalist had been relied upon by

those who denied the exclusive power, now participated in the debate. He declared that he had reviewed his former opinions, and he summed up the whole case as follows:

The Constitution affirms that the executive power is vested in the President. Are there exceptions to this proposition? Yes, there are. The Constitution says that in appointing to office the Senate shall be associated with the President, unless in the case of inferior officers, when the law shall otherwise direct. Have we (that is, Congress) a right to extend this exception? I believe not. If the Constitution has invested all executive power in the President, I return to assert that the legislature has no right to diminish or modify his executive authority. The question now resolves itself into this: Is there power of displacing an executive power? I conceive that if any power whatever is in the Executive it is in the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office by associating the Senate with him in that business, would it not be clear that he would have the right by virtue of his executive power to make such appointment? Should we be authorized, in defiance of that clause in the Constitution--"the executive power shall be vested in the President"--to unite the Senate with the President in the appointment to office? I conceive not. It is admitted that we should not be authorized to do this. I think it may be

disputed whether we have a right to associate them in removing persons from office, the one power being as much of an executive nature as the other; and the first is authorized by being excepted out of the general rule established by the Constitution in these words: "The executive power shall be vested in the President."

The question thus ably and exhaustively argued was decided by the House of Representatives, by a vote of 34 to 20, in favor of the principle that the executive power of removal is vested by the Constitution in the Executive, and in the Senate by the casting vote of the Vice-President. The question has often been raised in subsequent times of high excitement, and the practice of the government has nevertheless conformed in all cases to the decision thus early made.

The question was revived during the administration of President Jackson, who made, as is well recollected, a very large number of removals, which were made an occasion of close and rigorous scrutiny and remonstrance. The subject was long and earnestly debated in the Senate, and the early construction of the Constitution was nevertheless freely accepted as binding and conclusive upon Congress.

The question came before the Supreme Court of the United States in January, 1839, *ex parte Herren*. It was declared by the court on that occasion that the power of removal from office was a subject much disputed, and upon which a great diversity of opinion was entertained in the early history of the government. This related, however, to the power of the President to remove officers appointed with the concurrence of the Senate, and the great question was whether the removal was to be by

the President alone or with the concurrence of the Senate, both constituting the appointing power. No one denied the power of the President and Senate jointly to remove where the tenure of the office was not fixed by the Constitution, which was a full recognition of the principle that the power of removal was incident to the power of appointment; but it was very early adopted as a practical construction of the Constitution that this power was vested in the President alone, and such would appear to have been the legislative construction of the Constitution, for in the organization of the three great departments of State, War, and Treasury, in 1789, provision was made for the appointment of a subordinate officer by the head of the department, who should have charge of the records, books, and papers appertaining to the office when the head of the department should be removed from office by the President of the United States. When the Navy Department was established, in the year 1798, provision was made for the charge and custody of the books, records, and documents of the department in case of vacancy in the office of Secretary, by removal or otherwise. It is not here said "by removal of the President," as it is done with respect to the heads of the other departments; yet there can be no doubt that he holds his office with the same tenure as the other Secretaries, and is removable by the President. The change of phraseology arose probably from its having become the settled and well-understood construction of the Constitution that the power of removal was vested in the President alone in such cases, although the appointment of the officer is by the President and Senate. (13 Peters, p. 139.)

Our most distinguished and accepted commentators upon the Constitution concur in the construction thus early

given by Congress, and thus sanctioned by the Supreme Court. After a full analysis of the congressional debate to which I have referred, Mr. Justice Story comes to this conclusion:

After a most animated discussion, the vote finally taken in the House of Representatives was affirmative of the power of removal in the President without any co-operation of the Senate by the vote of 34 members against 20. In the Senate the clause in the bill affirming the power was carried by the casting vote of the Vice President. That the final decision of this question so made was greatly influenced by the exalted character of the President then in office was asserted at the time, and has always been believed; yet the doctrine was opposed as well as supported by the highest talent and patriotism of the country. The public have acquiesced in this decision, and it constitutes perhaps the most extraordinary case in the history of the government of a power conferred by implication on the Executive by the assent of a bare majority of Congress which has not been questioned on many other occasions.

The commentator adds:

Nor is this general acquiescence and silence without a satisfactory explanation.

Chancellor Kent's remarks on the subject are as follows: "On the first organization of the government it was made a question whether the power of removal in case of officers appointed to hold at pleasure resided nowhere but in the body which appointed," and, of course, whether the

consent of the Senate was not requisite to remove. This was the construction given to the Constitution while it was pending for ratification before the State conventions by the author of the Federalist. But the construction which was given to the Constitution by Congress after great consideration and discussion was different. The words of the act (establishing the Treasury Department) are, "and whenever the same shall be removed from office by the President of the United States, or in any case of vacancy in the office, the assistant shall act." This amounted to a legislative construction of the Constitution, and it has ever since been acquiesced in and acted upon as a decisive authority in the case.

It applies equally to every other officer of the government appointed by the President whose term of duration is not specially declared. It is supported by the weighty reason that the subordinate officers in the executive department ought to hold at the pleasure of the head of the department, because he is invested generally with the executive authority, and the participation in that authority by the Senate was an exception to a general principle, and ought to be taken strictly. The President is the great responsible officer for the execution of the law, and the power of removal was incidental to that duty, and might often be requisite to fulfil it. Thus has the important question presented by this bill been settled, in the language of the late Daniel Webster, (who, while dissenting from it, admitted that it was settled,) by construction, settled by the practice of the government, and settled by statute. The events of the last war furnished a practical confirmation of the wisdom of the Constitution as it has hitherto been maintained in many of its parts, including that which is now the subject of consideration. When the war broke out rebel enemies,

traitors, abettors, and sympathizers were found in every department of the government, as well in the civil service as in the land and naval military service. They were found in Congress and among the keepers of the Capitol, in foreign missions, in each and all of the executive departments, in the judicial service, in the post office, and among the agents for conducting Indian affairs, and upon probable suspicion they were promptly displaced by my predecessor, so far as they held their offices under executive authority, and their duties were confided to new and loyal successors. No complaints against that power or doubts of its wisdom were entertained in any quarter. I sincerely trust and believe that no such civil war is likely to occur again. I cannot doubt, however, that in whatever form and on whatever occasion sedition can rise, an effort to hinder or embarrass or defeat the legitimate action of this government, whether by preventing the collection of revenue or disturbing the public peace, or separating the States, or betraying the country to a foreign enemy, the power of removal from office by the Executive, as it has heretofore existed and been practiced, will be found indispensable Under these circumstances, as a depository of the executive authority of the nation, I do not feel at liberty to unite with Congress in reversing it by giving my approval of the bill.

At the early day when the question was settled, and, indeed, at the several periods when it has subsequently been agitated, the success of the Constitution of the United States as a new and peculiar system of free representative government was held doubtful in other countries, and was even a subject of patriotic apprehension among the American people themselves. A trial of nearly eighty years, through the vicissitudes of foreign conflicts and of civil war, is confidently regarded as

having extinguished all such doubts and apprehensions for the future. During that eighty years the people of the United States have enjoyed a measure of security, peace, prosperity, and happiness never surpassed by any nation, it cannot be doubted that the triumphant success of the Constitution is due to the wonderful wisdom with which the functions of government were distributed between the three principal departments--the legislative, the executive, and the judicial--and to the fidelity with which each has confined itself or been confined by the general voice of the nation within its peculiar and proper sphere.

While a just, proper, and watchful jealousy of executive power constantly prevails, as it ought ever to prevail, yet it is equally true that an efficient Executive, capable, in the language of the oath prescribed to the President, of executing the laws within the sphere of executive action, of preserving, protecting, and defending the Constitution of the United States, is an indispensable security for tranquillity at home, and peace, honor, and safety abroad. Governments have been erected in many countries upon our model. If one or many of them have thus far failed in fully securing to their people the benefits which we have derived from our system, it may be confidently asserted that their misfortune has resulted from their unfortunate failure to maintain the integrity of each of the three great departments while preserving harmony among them all.

Having at an early period accepted the Constitution in regard to the executive office in the sense to which it was interpreted with the concurrence of its founders, I have found no sufficient grounds in the arguments now opposed to that construction or in any assumed necessity of the times for changing those opinions. For these reasons I return the bill to the Senate, in which house it

originated, for the further consideration of Congress, which the Constitution prescribes. Insomuch as the several parts of the bill which I have not considered are matters chiefly of detail, and are based altogether upon the theory of the Constitution from which I am obliged to dissent, I have not thought it necessary to examine them with a view to make them an occasion of distinct and special objections. Experience, I think, has shown that it is the easiest, as it is also the most attractive of studies, to frame constitutions for the self-government of free States and nations. But I think experience has equally shown that it is the most difficult of all political labors to preserve and maintain such free constitutions of self-government when once happily established, I know no other way in which they can be preserved and maintained except by a constant adherence to them through the various vicissitudes of national existence, with such adaptations as may become necessary, always to be effected, however, through the agencies and in the forms prescribed in the original constitutions themselves. Whenever administration fails or seems to fail in securing any of the great ends for which republican government is established, the proper course seems to be to renew the original spirit and forms of the Constitution itself.

ANDREW JOHNSON.
Washington, March 2, 1867.

EXHIBIT B.

Message to the Senate, December 12, 1867.

To the Senate of the United States:

On the 12th of August last I suspended Mr. Stanton from the exercise of the office of Secretary of War, and on the

same day designated General Grant to act as Secretary of War ad interim.

The following are copies of the executive orders:

Executive Mansion, Washington, August 12, 1867.

Sir: By virtue of the power and authority vested in me as President, by the Constitution and the laws of the United States, you are hereby suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same.

You will at once transfer to General Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in your custody and charge.

Hon. Edwin M. Stanton, Secretary of War.

Executive Mansion, Washington, D. C., August 12, 1867.

Sir: Hon Edwin M. Stanton having been this day suspended as Secretary of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will at once enter upon the discharge of the duties of the office.

The Secretary of War has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

General Ulysses S. Grant, Washington, D. C.

The following communication was received from Mr. Stanton:

War Department, Washington City, August 12, 1867.

Sir: Your note of this date has been received informing me that by virtue of the powers and authority vested in you as President, by the Constitution and laws of the United States, I am suspended from office as Secretary of War, and will cease to exercise any and all functions pertaining to the same; and also directing me at once to transfer to General Ulysses S. Grant, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in my custody and charge.

Under a sense of public duty I am compelled to deny your right, under the Constitution and laws of the United States without the advice and consent of the Senate, and without legal cause, to suspend me from office of Secretary of War, or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and public property in my custody as Secretary.

But, inasmuch as the General commanding the armies of the United States has been appointed ad interim, and has notified me that he has

accepted the appointment, I have no alternative but to submit, under protest, to superior force.

To the President.

The suspension has not been revoked, and the business of the War Department is conducted by the Secretary ad interim. Prior to the date of this suspension I had come to the conclusion that the time had arrived when it was proper Mr. Stanton should retire from my Cabinet. The mutual confidence and general accord which should exist in such a relation had ceased. I supposed that Mr. Stanton was well advised that his continuance in the Cabinet was contrary to my wishes, for I had repeatedly given him so to understand by every mode short of an express request that he should resign. Having waited full time for the voluntary action of Mr. Stanton, and seeing no manifestation on his part of an intention to resign, I addressed him the following note on the 5th of August:

Sir: Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted.

To this note I received the following reply:

War Department, Washington, August 5, 1867.

Sir: Your note of this day has been received, stating that public considerations of a high character constrain you to say that my resignation as Secretary of War will be accepted.

In reply, I have the honor to say that public considerations of a high character, which alone have induced me to continue at the head of this department, constrain me not to resign the

office of Secretary of War before the next meeting of Congress.

EDWIN M. STANTON, Secretary of War.

This reply of Mr. Stanton was not merely a declination of compliance with the request for his resignation; it was a defiance, and something more. Mr. Stanton does not content himself with assuming that public considerations bearing upon his continuance in office form as fully a rule of action for himself as for the President, and that upon so delicate a question as the fitness of an officer for continuance in his office, the officer is as competent and as impartial to decide as his superior who is responsible for his conduct; but he goes further and plainly intimates what he means by "public considerations of a high character;" and this is nothing less than his loss of confidence in his superior. He says that these public considerations have "alone induced me to continue at the head of this department," and that they "constrain me not to resign the office of Secretary of War before the next meeting of Congress."

This language is very significant. Mr. Stanton holds the position unwillingly. He continues in office only under a sense of high public duty. He is ready to leave when it is safe to leave, and as the danger he apprehends from his removal then will not exist when Congress is here, he is constrained to remain during the interim. What, then, is that danger which can only be averted by the presence of Mr. Stanton or of Congress? Mr. Stanton does not say that "public considerations of a high character" constrain him to hold on to the office indefinitely. He does not say that no one other than himself can at any time be found to take his place and perform its duties. On the contrary, he

expresses a desire to leave the office at the earliest moment consistent with these high public considerations. He says in effect that while Congress is away he must remain, but that when Congress is here he can go. In other words, he has lost confidence in the President. He is unwilling to leave the War Department in his hands, or in the hands of any one the President may appoint or designate to perform its duties. If he resigns, the President may appoint a Secretary of War that Mr. Stanton does not approve, therefore he will not resign. But when Congress is in session the President cannot appoint a Secretary of War which the Senate does not approve. Consequently, when Congress meets Mr. Stanton is ready to resign.

Whatever cogency these "considerations" may have had upon Mr. Stanton, whatever right he may have had to entertain such considerations, whatever propriety there might be in the expression of them to others, one thing is certain, it was official misconduct, to say the least of it, to parade them before his superior officer. Upon the receipt of this extraordinary note I only delayed the order of suspension long enough to make the necessary arrangements to fill the office. If this were the only cause for his suspension it would be ample. Necessarily it must end our most important official relations, for I cannot imagine a degree of effrontery which would embolden the head of a department to take his seat at the council table in the Executive Mansion after such an act. Nor can I imagine a President so forgetful of the proper respect and dignity which belong to his office as to submit to such intrusion. I will not do Mr. Stanton the wrong to suppose that he entertained any idea of offering to act as one of my constitutional advisers after that note was written. There was an interval of a week between that date and the order

of suspension, during which two Cabinet meetings were held. Mr. Stanton did not present himself at either, nor was he expected. On the 12th of August Mr. Stanton was notified of his suspension, and that General Grant had been authorized to take charge of the department. In his answer to this notification, of the same date, Mr. Stanton expresses himself as follows:

Under a sense of public duty I am compelled to deny your right, under the Constitution and laws of the United States, without the advice and consent of the Senate, to suspend me from office as Secretary of War or the exercise of any or all functions pertaining to the same, or without such advice and consent to compel me to transfer to any person the records, books, papers, and public property in my custody as Secretary. But inasmuch as the General commanding the armies of the United States has been appointed ad interim, and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force.

It will not escape attention that in his note of August 5 Mr. Stanton stated that he had been constrained to continue in the office, even before he was requested to resign, by considerations of a high public character. In this note of August 12 a new and different sense of public duty compels him to deny the President's right to suspend him from office without the consent of the Senate. This last is the public duty of resisting an act contrary to law, and he charges the President with violation of the law in ordering his suspension.

Mr. Stanton refers generally to the "Constitution and laws of the United States," and says that a sense of public duty "under" these compels him to deny the right of the President to suspend him from office. As to his sense of

duty under the Constitution, that will be considered in the sequel. As to his sense of duty under "the laws of the United States," he certainly cannot refer to the law which creates the War Department, for that expressly confers upon the President the unlimited right to remove the head of the department. The only other law bearing upon the question is the tenure-of-office act, passed by Congress over the presidential veto, March 2, 1867. This is the law which, under a sense of public duty, Mr. Stanton volunteers to defend. There is no provision in this law which compels any officer coming within its provisions to remain in office. It forbids removals, but not resignations. Mr. Stanton was perfectly free to resign at any moment, either upon his own motion, or in compliance with a request or an order. It was a matter of choice or of taste. There was nothing compulsory in the nature of legal obligation. Nor does he put his action upon that imperative ground. He says he acts under a "sense of public duty," not of legal obligation, compelling him to hold on, and leaving him no choice. The public duty which is upon him arises from the respect which he owes to the Constitution and the laws, violated in his own case. He is, therefore, compelled by this sense of public duty to vindicate violated law and to stand as its champion.

This was not the first occasion in which Mr. Stanton, in discharge of a public duty, was called upon to consider the provisions of that law. That tenure-of-office law did not pass without notice. Like other acts it was sent to the President for approval. As is my custom, I submitted its consideration to my Cabinet, for their advice upon the question, whether I should approve it or not. It was a grave question of constitutional law, in which I would of course rely most upon the opinion of the Attorney General and of Mr. Stanton, who had once been Attorney General.

Every member of my Cabinet advised me that the proposed law was unconstitutional. All spoke without doubt or reservation, but Mr. Stanton's condemnation of the law was the most elaborate and emphatic. He referred to the constitutional provisions, the debates in Congress--especially to the speech of Mr. Buchanan, when a senator--to the decisions of the Supreme Court, and to the usage from the beginning of the government through every successive administration, all concurring to establish the right of removal, as vested by the Constitution in the President. To all these he added the weight of his own deliberate judgment, and advised me that it was my duty to defend the power of the President from usurpation and to veto the law.

I do not know when a sense of public duty is more imperative upon a head of department than upon such an occasion as this. He acts then under the gravest obligations of law; for when he is called upon by the President for advice it is the Constitution which speaks to him. All his other duties are left by the Constitution to be regulated by statute; but this duty was deemed so momentous that it is imposed by the Constitution itself. After all this I was, not prepared for the ground taken by Mr. Stanton in his note of August 12. I was not prepared to find him compelled, by a new and indefinite sense of public duty under "the Constitution." to assume the vindication of a law which, under the solemn obligations of public duty, imposed by the Constitution itself, he advised me was a violation of that Constitution. I make great allowance for a change of opinion, but such a change as this hardly falls within the limits of greatest indulgence. Where our opinions take the shape of advice and influence the action of others, the utmost stretch of

charity will scarcely justify us in repudiating them when they come to be applied to ourselves.

But to proceed with the narrative I was so much struck with the full mastery of the question manifested by Mr. Stanton, and was at the time so fully occupied with the preparation of another veto upon the pending reconstruction act, that I requested him to prepare the veto upon this tenure-of-office bill. This he declined on the ground of physical disability to undergo, at the time, the labor of writing, but stated his readiness to furnish what aid might be required in the preparation of materials for the paper. At the time this subject was before the Cabinet it seemed to be taken for granted that as to those members of the Cabinet who had been appointed by Mr. Lincoln their tenure of office was not fixed by the provisions of the act. I do not remember that the point was distinctly decided; but I well recollect that it was suggested by one member of the Cabinet who was appointed by Mr. Lincoln, and that no dissent was expressed.

Whether the point was well taken or not did not seem to me of any consequence, for the unanimous expression of opinion against the constitutionality and policy of the act was so decided that I felt no concern, so far as the act had reference to the gentlemen then present, that I would be embarrassed in the future. The bill had not then become a law. The limitation upon the power of removal was not yet imposed, and there was yet time to make any changes. If any one of these gentlemen had then said to me that he would avail himself of the provisions of that bill in case it became a law, I should not have hesitated a moment as to his removal. So pledge was then expressly given or required. But there are circumstances when to give an

express pledge is not necessary, and when to require it is an imputation of possible bad faith. I felt that if these gentlemen came within the purview of the bill it was, as to them, a dead letter, and that none of them would ever take refuge under its provisions. I now pass to another subject.

When, on the 15th of April, 1865, the duties of the presidential office devolved upon me, I found a full Cabinet of seven members, all of them selected by Mr. Lincoln. I made no change. On the contrary, I shortly afterward ratified a change determined upon by Mr. Lincoln, but not perfected at his death, and admitted his appointee, Mr. Harlan, in the place of Mr. Usher, who was in office at the time. The great duty of the time was to re-establish government, law, and order in the insurrectionary States. Congress was then in recess, and the sudden overthrow of the rebellion required speedy action. This grave subject had engaged the attention of Mr. Lincoln in the last days of his life, and the plan according to which it was to be managed had been prepared and was ready for adoption. A leading feature of that plan was that it should be carried out by the executive authority, for, so far as I have been informed, neither Mr. Lincoln nor any member of his cabinet doubted his authority to act or proposed to call an extra session of Congress to do the work. The first business transacted in Cabinet after I became President was this unfinished business of my predecessor. A plan or scheme of reconstruction was produced which had been prepared for Mr. Lincoln by Mr. Stanton, his Secretary of War. It was approved, and, at the earliest moment practicable, was applied in the form of a proclamation to the State of North Carolina, and afterward became the basis of action in turn for the other States.

Upon the examination of Mr. Stanton before the impeachment committee he was asked the following question:

Did any one of the cabinet express a doubt of the power of the executive branch of the government to reorganize State governments which had been in rebellion without the aid of Congress?

He answered:

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.

There is, perhaps, no act of my administration for which I have been more denounced than this. It was not originated by me, but I shrank from no responsibility on that account, for the plan approved itself to my own judgment and I did not hesitate to carry it into execution. Thus far, and upon this vital policy, there was perfect accord between the Cabinet and myself, and I saw no necessity for a change. As time passed on there was developed an unfortunate difference of opinion and of policy between Congress and the President upon this same subject and upon the ultimate basis upon which the reconstruction of these States should proceed, especially upon the question of negro suffrage. Upon this point three members of the Cabinet found themselves to be in sympathy with Congress. They remained only long enough to see that the difference of policy could not be

reconciled. They felt that they should remain no longer, and a high sense of duty and propriety constrained them to resign their positions. We parted with mutual respect for the sincerity of each other in opposite opinions, and mutual regret that the difference was on points so vital as to require a severance of official relations. This was in the summer of 1866. The subsequent sessions of Congress developed new complications when the suffrage bill for the District of Columbia and the reconstruction acts of March 2 and March 23, 1867, all passed over the veto. It was in Cabinet consultations upon these bills that a difference of opinion upon the most vital points was developed. Upon these questions there was perfect accord between all the members of the Cabinet and myself, except Mr. Stanton. He stood alone, and the difference of opinion could not be reconciled. That unity of opinion which upon great questions of public policy or administration is so essential to the Executive was gone.

I do not claim that the head of a department should have no other opinions than those of the President. He has the same right, in the conscientious discharge of duty, to entertain and express his own opinions as has the President. What I do claim is that the President is the responsible head of the administration, and when the opinions of a head of department are irreconcilably opposed to those of the President in grave matters of policy and administration, there is but one result which can solve the difficulty, and that is a severance of the official relation. This, in the past history of the government, has always been the rule, and it is a wise one, for such differences of opinion among its members must impair the efficiency of any administration.

I have now referred to the general grounds upon which the withdrawal of Mr. Stanton from my administration seemed to me to be proper and necessary; but I cannot omit to state a special ground which, if it stood alone, would vindicate my action.

The sanguinary riot which occurred in the city of New Orleans on the 30th of August, 1866, justly aroused public indignation and public inquiry, not only as to those who were engaged in it, but as to those who, more or less remotely, might be held to responsibility for its occurrence. I need not remind the Senate of the effort made to fix that responsibility on the President. The charge was openly made, and again and again reiterated through all the land, that the President was warned in time but refused to interfere.

By telegrams from the lieutenant governor and attorney general of Louisiana, dated the 27th and 28th of August, I was advised that a body of delegates, claiming to be a constitutional convention, were about to assemble in New Orleans; that the matter was before the grand jury, but that it would be impossible to execute civil process without a riot, and this question was asked: "Is the military to interfere to prevent process of court?" This question was asked at a time when the civil courts were in the full exercise of their authority, and the answer sent by telegraph, on the same 28th of August, was this:

The military will be expected to sustain, and not to interfere with, the proceedings of the courts.

On the same 28th of August the following telegram was sent to Mr. Stanton by Major General Baird, then (owing to the absence of General Sheridan) in command of the military at New Orleans:

Hon. Edwin M. Stanton, Secretary of War:

A convention has been called with the sanction of Governor Wells, to meet here on Monday. The lieutenant governor and city authorities think it unlawful, and propose to break it up by arresting the delegates. I have given no orders on the subject, but have warned the parties that I could not countenance or permit such action without instructions to that effect from the President. Please instruct me at once by telegraph.

The 28th of August was on Saturday. The next morning, the 29th, this despatch was received by Mr. Stanton at his residence in this city. He took no action upon it, and neither sent instructions to General Baird himself nor presented it to me for such instructions. On the next day (Monday) the riot occurred. I never saw this despatch from General Baird until some ten days or two weeks after the riot, when, upon my call for all the despatches, with a view to their publication, Mr. Stanton sent it to me. These facts all appear in the testimony of Mr. Stanton before the Judiciary Committee in the impeachment investigation. On the 30th, the day of the riot, and after it was suppressed, General Baird wrote to Mr. Stanton a long letter from which I make the following extracts:

Sir: I have the honor to inform you that a very serious riot occurred here to-day. I had not been applied to by the convention for protection, but the lieutenant governor and the mayor had freely consulted with me, and I was so fully convinced that it was so strongly the intent of the city authorities to preserve the peace, in order to prevent military inter-

ferences that I did not regard an outbreak as a thing to be apprehended. The lieutenant governor had assured me that even if a writ of arrest was issued by the court the sheriff would not attempt to serve it without my permission, and for to-day they designed to suspend it. I enclose herewith copies of my correspondence with the mayor and of a despatch which the lieutenant governor claims to have received from the President. I regret that no reply to my despatch to you of Saturday has yet reached me. General Sheridan is still absent in Texas.

The despatch of General Baird of the 28th asks for immediate instructions, and his letter of the 30th, after detailing the terrible riot which had just happened, ends with the expression of regret that the instructions which he asked for were not sent. It is not the fault or the error or the emission of the President that this military commander was left without instructions; but for all omissions, for all errors, for all failures to instruct, when instruction might have averted this calamity, the President was openly and persistently the responsible. Instantly, without waiting for proof, the delinquency of then President was heralded in every form of utterance. Mr. Stanton knew then that the President was not responsible for this delinquency. The exculpation was in his power, but it was not given by him to the public, and only to the President in obedience to a requisition for all the despatches.

No one regrets more than myself that General Baird's request was not brought to my notice. It is clear, from his despatch and letter, that if the Secretary of War had given him proper instructions the riot which arose on the

assembling of the convention would have been averted. There may be those ready to say that I would have given no instructions even if the despatch had reached me in time, but all must admit that I ought to have had the opportunity.

The following is the testimony given by Mr. Stanton before the impeachment investigation committee as to the despatch:

Question. Referring to the despatch of the 28th of July by General Baird, I ask you whether that despatch, on its receipt, was communicated?

Answer. I received that despatch on Sunday forenoon; I examined it carefully and considered the question presented; I did not see that I could give any instructions different from the line of action which General Baird proposed, and made no answer to the despatch.

Q. I see it stated that this was received at 10 o'clock and 20 minutes p. m. Was that the hour at which it was received by you?

A. That is the date of its reception in the telegraph office Saturday night. I received it on Sunday forenoon, at my residence; a copy of the despatch was furnished to the President several days afterward, along with all the other despatches and communications on that subject, but it was not furnished by me before that time; I suppose it may have been ten or fifteen days afterward.

Q. The President himself being in correspondence with those parties upon the same subject, would it not have been proper to have advised him of the reception of that despatch?

A. I know nothing about his correspondence, and know nothing about any correspondence except this one despatch. We had intelligence of the riot on Thursday morning. The riot had taken place on Monday.

It is a difficult matter to define all the relations which exist between the heads of department and the President. The legal relations are well enough defined. The Constitution places these officers in the relation of his advisers when he calls upon them for advice. The acts of Congress go further. Take, for example, the act of 1789, creating the War Department. It provides that--

There shall be a principal officer therein, to be called the Secretary for the Department of War, who shall perform and execute such duties as shall from time to time be enjoined on or intrusted to him by the President of the United States:" and furthermore, "the said principal officer shall conduct the business of the said department in such manner as the President of the United States shall from time to time order and instruct.

Provision is also made for the appointment of an inferior officer by the head of the department, to be called the chief clerk, "who, whenever said principal officer shall be removed from office by the President of the United

States," shall have the charge and custody of the books, records, and papers of the department.

The legal relation is analogous to that of principal and agent. It is the President upon whom the Constitution devolves, as head of the executive department, the duty to see that the laws are faithfully executed; but as he cannot execute them in person he is allowed to select his agents, and is made responsible for their acts within just limits. So complete is this presumed delegation of authority in the relation of a head of department, to the President that the Supreme Court of the United States have decided that an order made by a head of department is presumed to be made by the President himself.

The principal, upon whom such responsibility is placed for the acts of a subordinate, ought to be left as free as possible in the matter of selection and of dismissal. To hold him to responsibility for an officer beyond his control; to leave the question of the fitness of such an agent to be decided for him and not by him; to allow [such] a subordinate, when the President, moved by "public considerations of a high character," requests his resignation to assume for himself an equal right to act upon his own views of "public considerations," and to make his own conclusions paramount to those of the President--to allow all this is to reverse the just order of administration, and to place the subordinate above the superior.

There are, however, other relations between the President and a head of department beyond these defined legal relations which necessarily attend them, though not expressed. Chief among these is mutual confidence. This relation is so delicate that it is sometimes hard to say when or how it ceases. A single flagrant act may aid it at

once, and then there is no difficulty. But confidence may be just as effectually destroyed by a series of causes too subtle for demonstration. As it is a plant of slow growth, so, too, it may be slow in decay. Such has been the process here. I will not pretend to say what acts or omissions have broken up this relation. They are hardly susceptible of statement, and still less of formal proof. Nevertheless no one can read the correspondence of the 5th of August without being convinced that this relation was effectually gone on both sides, and that, while the President was unwilling to allow Mr. Stanton to remain in his administration, Mr. Stanton was equally unwilling to allow the President to carry on his administration without his presence. In the great debate which took place in the House of Representatives in 1789, on the first organization of the principal departments, Mr. Madison spoke as follows:

It is evidently the intention of the Constitution that the First Magistrate should be responsible for the executive department. So far, therefore, as we do not make the officers who come to aid him in the duties of that department responsible to him, he is not responsible to the country. Again, is there no danger that an officer, when he is appointed by the concurrence of the Senate, and his friends in that body, may choose rather to risk his establishment on the favor of that branch than rest it upon the discharge of his duties to the satisfaction of the executive branch, which is constitutionally authorized to inspect and control his conduct? And if it should happen that the officers connect themselves with the Senate, they may mutually support each other,

and for want of efficacy, reduce the power of the President to a mere vapor, in which case his responsibility would be annihilated, and the expectation of it is unjust. The high executive officers joined in cabal with the Senate would lay the foundation of discord, and end in an assumption of the executive power, only to be removed by a revolution of the government.

Mr. Sedgwick, in the same debate, referring to the proposition that a head of department should only be removed or suspended by the concurrence of the Senate, uses this language:

But if proof be necessary, what is then the consequence? Why, in nine cases out of ten, where the case is very clear to the mind of the President that the man ought to be removed, the effect cannot be produced, because it is absolutely impossible to produce the necessary evidence. Are the Senate to proceed without evidence? Some gentlemen contend not. Then the object will be lost. Shall a man, under these circumstances, be saddled upon the President, who has been appointed for no other purpose but to aid the President in performing certain duties? Shall he be continued, I ask again, against the will of the President? If he is, where is the responsibility? Are you to look for it in the President, who has no control over the officer, no power to remove him if he acts unfeelingly or unfaithfully? Without you make him responsible, you weaken and destroy the strength and beauty of your

system. What is to be done in cases which can only be known from a long acquaintance with the conduct of an officer?

I had indulged the hope that upon the assembling of Congress Mr. Stanton would have ended this unpleasant complication according to the intimation given in his note of August 12. The duty which I have felt myself called upon to perform was by no means agreeable; but I feel that I am not responsible for the controversy, or for the consequences.

Unpleasant as this necessary change in my Cabinet has been to me, upon personal considerations, I have the consolation to be assured that, so far as the public interests are involved, there is no cause for regret. Salutory reforms have been introduced by the Secretary ad interim, and great reductions of expenses have been effected under his administration of its War Department, to the saving of millions to the treasury.

ANDREW JOHNSON.
Washington, December 12, 1867.

EXHIBIT C.

Address to the President by Hon. Reverdy Johnson, August 18, 1866.

Mr. President: We are before you as a committee of the National Union Convention, which met in Philadelphia, on Tuesday the 14th instant, charged with the duty of presenting you with an authentic copy of its proceedings. Before placing it in your hands, you will permit us to congratulate you that in the object for which the convention was called, in the enthusiasm with which in every State and Territory the call was responded to, in the

unbroken harmony of its deliberations, in the unanimity with which the principles it has declared were adopted, and more especially in the patriotic and constitutional character of the principles themselves, we are confident that you and the country will find gratifying and cheering evidence that there exists among the people a public sentiment which renders an early and complete restoration of the Union as established by the Constitution certain and inevitable. Party faction, seeking the continuance of its misrule, may momentarily delay it, but the principles of political liberty, for which our fathers successfully contended, and to secure which they adopted the Constitution, are so glaringly inconsistent with the condition in which the country has been placed by such misrule, that it will not be permitted a much longer duration.

We wish, Mr. President, you could have witnessed the spirit of concord and brotherly affection which animated every member of the convention. Great as your confidence has ever been in the intelligence and patriotism of your fellow-citizens, in their deep devotion to the Union, and their present determination to reinstate and maintain it, that confidence would have become a positive conviction could you have seen and heard all that was done and said upon the occasion. Every heart was evidently full of joy, every eye beamed with patriotic animation; despondency gave place to the assurance that, our late dreadful civil strife ended, the blissful reign of peace, under the protection not of arms, but of the Constitution and laws, would have sway, and be in every part of our land cheerfully acknowledged and in perfect good faith obeyed. You would not have doubted that the recurrence of dangerous domestic insurrections in the future is not to be apprehended.

If you could have seen the men of Massachusetts and South Carolina coming into the convention on the first day of its meeting hand in hand, amid the rapturous applause

of the whole body, awakened by heart-felt gratification at the event, filling the eyes of thousands with tears of joy, which they neither could nor desired to repress, you would have felt as every person present felt, that the time had arrived when all sectional or other perilous dissensions had ceased, and that nothing should be heard in the future but the voice of harmony proclaiming devotion to a common country, of pride in being bound together by a common Union, existing and protected by forms of government proved by experience to be eminently fitted for the exigencies of either war or peace.

In the principles announced by the convention and in the feeling there manifested, we have every assurance that harmony throughout our entire land will soon prevail. We know that, as in former days, as was eloquently declared by Webster, the nation's most gifted statesman, Massachusetts and South Carolina went "shoulder to shoulder through the Revolution," and stood hand in hand "around the administration of Washington, and felt his own great arm lean on them for support," so will they again, with like magnanimity, devotion, and power stand round your Administration, and cause you to feel that you may also lean on them for support.

In the proceedings, Mr. President, which we are to place in your hands, you will find that the convention performed the grateful duty imposed upon them by their knowledge of your "devotion to the Constitution and laws and interests of your country," as illustrated by your entire presidential career, of declaring that in you they "recognize a Chief Magistrate worthy of the nation and equal to the great crisis upon which your lot is cast;" and in this declaration it gives us marked pleasure to add, we are confident that the convention has but spoken the intelligent and patriotic sentiment of the country. Ever inaccessible to the low influences which often control the mere partisan, governed alone by an honest opinion of constitutional obligations and rights, and of the duty of

looking solely to the true interests, safety, and honor of the nation, such a class is incapable of resorting to any bait for popularity at the expense of the public good.

In the measures which you have adopted for the restoration of the Union the convention saw only a continuance of the policy which for the same purpose was inaugurated by your immediate predecessor. In his reelection by the people, after that policy had been fully indicated and had been made one of the issues of the contest, those of his political friends who are now assailing you for sternly pursuing it are forgetful or regardless of the opinions which their support of his reelection necessarily involved. Being upon the same ticket with that much-lamented public servant, whose foul assassination touched the heart of the civilized world with grief and horror, you would have been false to obvious duty if you had not endeavored to carry out the same policy; and, judging now by the opposite one which Congress has pursued, its wisdom and patriotism are indicated by the fact that that of Congress has but continued a broken Union by keeping ten of the States, in which at one time the insurrection existed (as far as they could accomplish it,) in the condition of subjugated provinces, denying to them the right to be represented, while subjecting their people to every species of legislation, including that of taxation. That such a state of things is at war with the very genius of our government, inconsistent with every idea of political freedom, and most perilous to the peace and safety of the country, no reflecting man can fail to believe.

We hope, sir, that the proceedings of the convention will cause you to adhere, if possible, with even greater firmness to the course which you are pursuing, by satisfying you that the people are with you, and that the wish which lies nearest to their heart is that a perfect restoration of our Union at the earliest moment be attained, and a conviction that, the result can only be

accomplished by the measures which you are pursuing. And in the discharge of the duties which these impose upon you we, as did every member of the convention, again for ourselves individually tender to you our profound respect and assurance of our cordial and sincere support.

With a reunited Union, with no foot but that of a freeman treading or permitted to tread our soil, with a nation's faith pledged forever to a strict observance of all its obligations, with kindness and fraternal love everywhere prevailing, the desolations of war will soon be removed; its sacrifices of life, sad as they have been, will, with Christian resignation, be referred to a providential purpose of fixing our beloved country on a firm and enduring basis, which will forever place our liberty and happiness beyond the reach of human peril. Then, too, and forever, will our government challenge the admiration and receive the respect of the nations of the world, and be in no danger of any efforts to impeach our honor.

And permit me, sir, in conclusion, to add, that, great as your solicitude for the restoration of our domestic peace and your labors to that end, you have also a watchful eye to the rights of the nation, and that any attempt by an assumed or actual foreign power to enforce an illegal blockade against the government or citizens of the United States, to use your own mild but expressive words, "will be disallowed." In this determination I am sure you will receive the unanimous approval of your fellow-citizens.

. . .

The reading of the answer of the respondent having been concluded, The Chief Justice submitted the question to the Senate, Shall the answer of the respondent as read by his counsel be received and filed? and

It was determined in the affirmative.

_____◇_____

REPLICATION OF THE HOUSE OF REPRESENTATIVES TO THE ANSWER OF THE PRESIDENT

From the *Journal of the House*, Monday, March 23, 1868:

Mr. Boutwell, from the managers in the matter of the impeachment of the President, reported the following:

Replication by the House of Representatives of the United States to the answer of Andrew Johnson, President of the United States, to the articles of impeachment exhibited against him by the House of Representatives:

The House of Representatives of the United States have considered the several answers of Andrew Johnson, President of the United States, to the several articles of impeachment against him by them exhibited in the name of themselves and of all the people of the United States, and reserving to themselves all advantage of exception to the insufficiency of his answer to each and all of the several articles of impeachment exhibited against said Andrew Johnson, President of the United States, do deny each and every averment in said several answers, or either of them, which denies or traverses the acts, intents, crimes or misdemeanors charged against said Andrew Johnson in the said articles of impeachment, or either of them; and for replication to the said answer do say, that said Andrew Johnson, President of the United States, is guilty of the high crimes and misdemeanors mentioned in said articles, and that the House of Representatives are ready to prove the same.¹³



¹³ The "Replication" was read to the House on Monday, March 23, 1868, but it adjourned before voting. *Journal of the House of Representatives*, March 23, 1868, at 564.

It was approved the next day by this vote: Yeas 116, Nays 36, Not voting 37. *House Journal*, March 24, 1868, at 564-66.

**An album of photographs and prints of characters in the
Impeachment Trial**



**President Andrew Johnson.
Date Unknown.
Source: Library of Congress.**

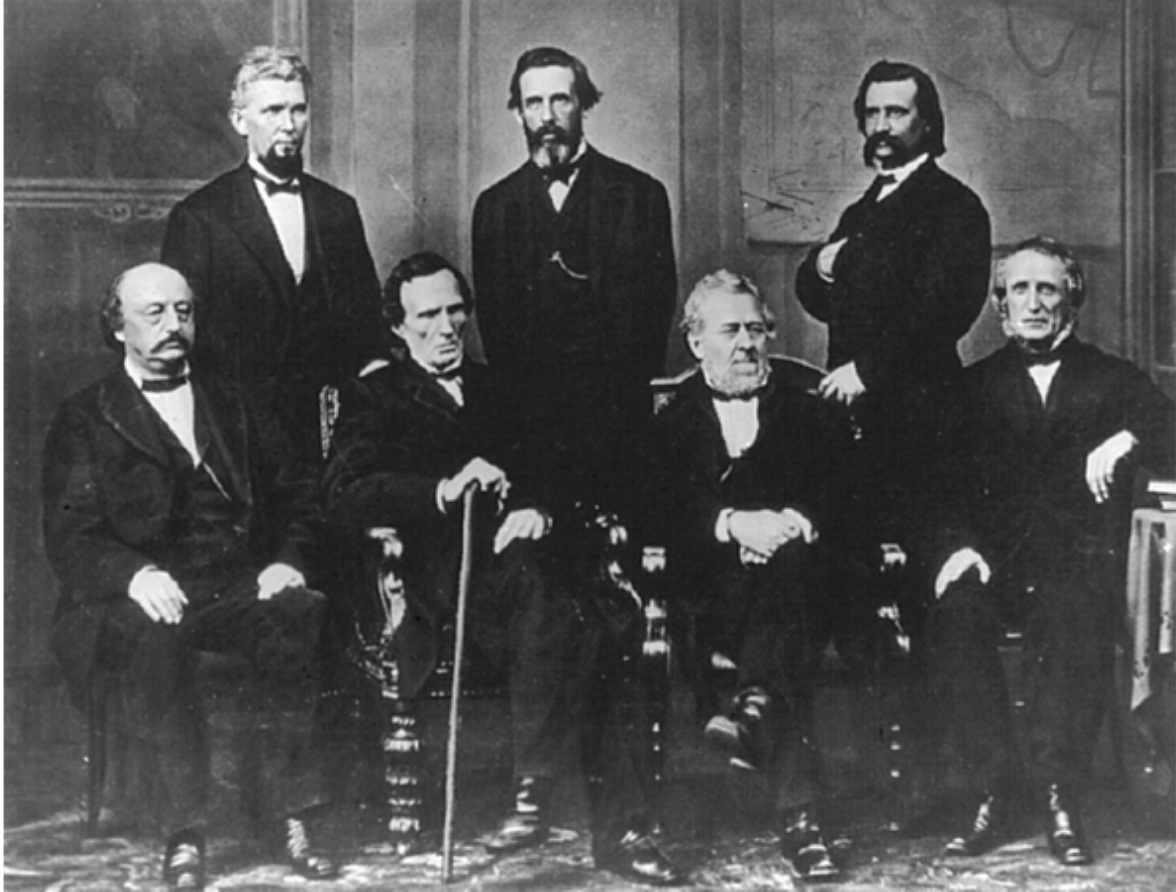


OFFICE OF THE SECRETARY OF THE SENATE, WASHINGTON, D. C.—PREPARING THE SUMMONS FOR PRESIDENT JOHNSON TO APPEAR BEFORE THE COURT OF IMPEACHMENT.—FROM A SKETCH BY JAS. E. TAYLOR.

Office of the Secretary of the Senate preparing summons for President Johnson to appear before the Court of Impeachment.

Wood engraving. Frank Leslie's Illustrated Newspaper, March 28, 1861.

Source: Library of Congress.



**Managers of the House of Representatives in the
impeachment trial of President Johnson.**

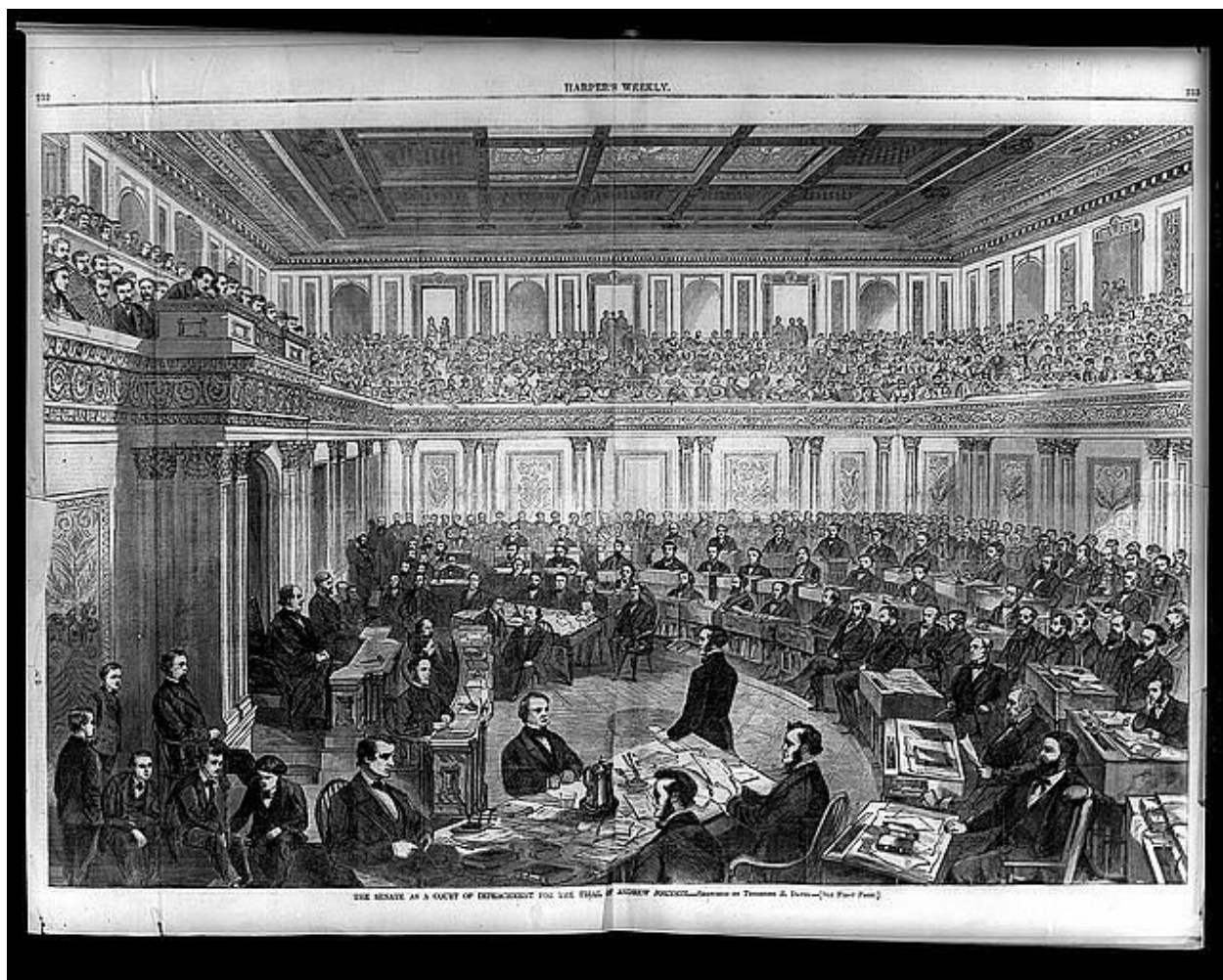
**Seated left to right: Benjamin F. Butler, Mass.; Thaddeus Stevens, Penn.;
Thomas Williams, Penn.; & John A. Bingham, Ohio.**

**Standing left to right: James F. Wilson, Iowa; George S. Boutwell, Mass.; &
John A. Logan, Illinois.**

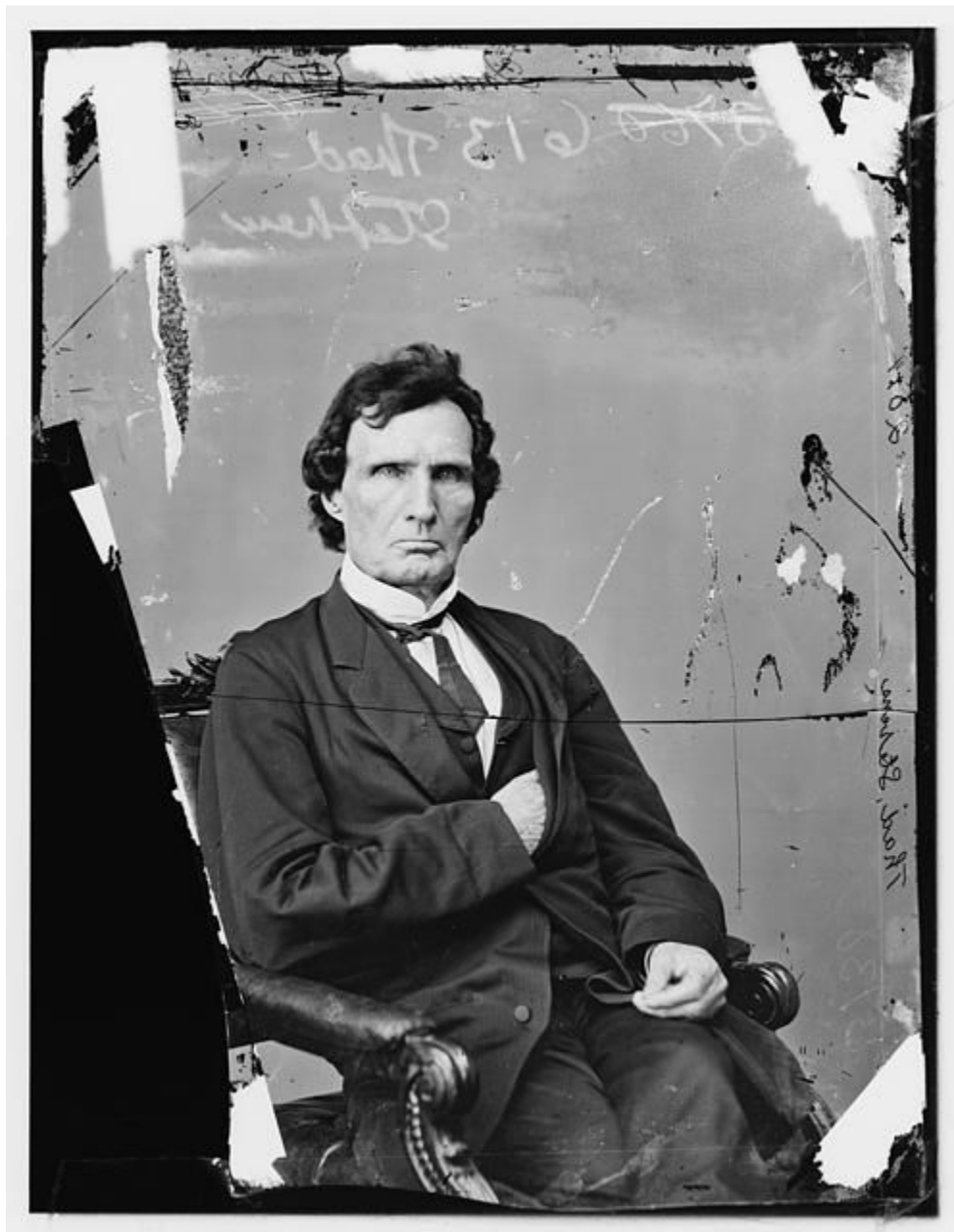
Photographer: Brady & Co.

Date: 1868

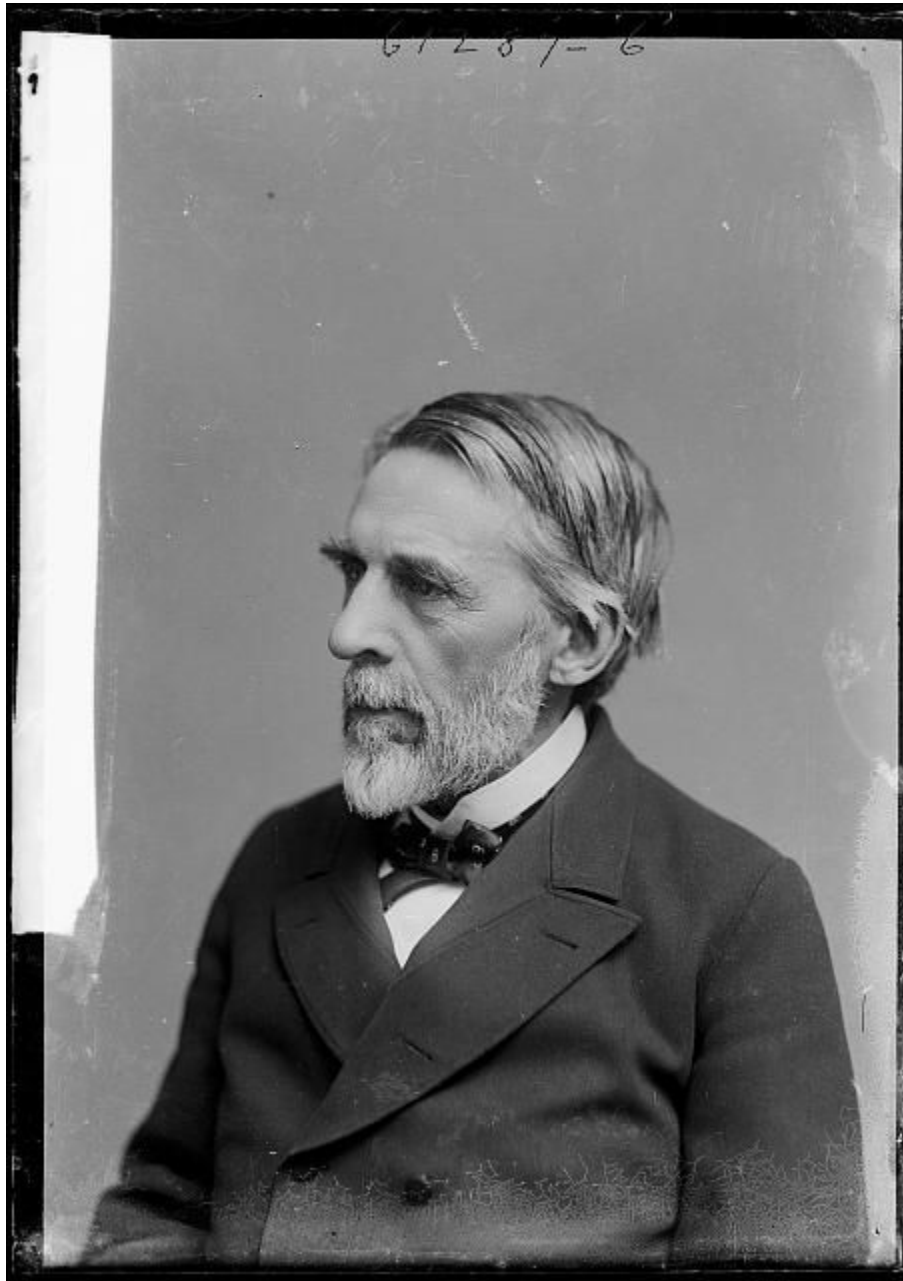
Source: Library of Congress.



U. S. Senate acting as Court of Impeachment in trial of Andrew Johnson.
Wood engraving by Theodore R. Davis, artist, Harper's Weekly, April 11, 1868.
Source: Library of Congress.



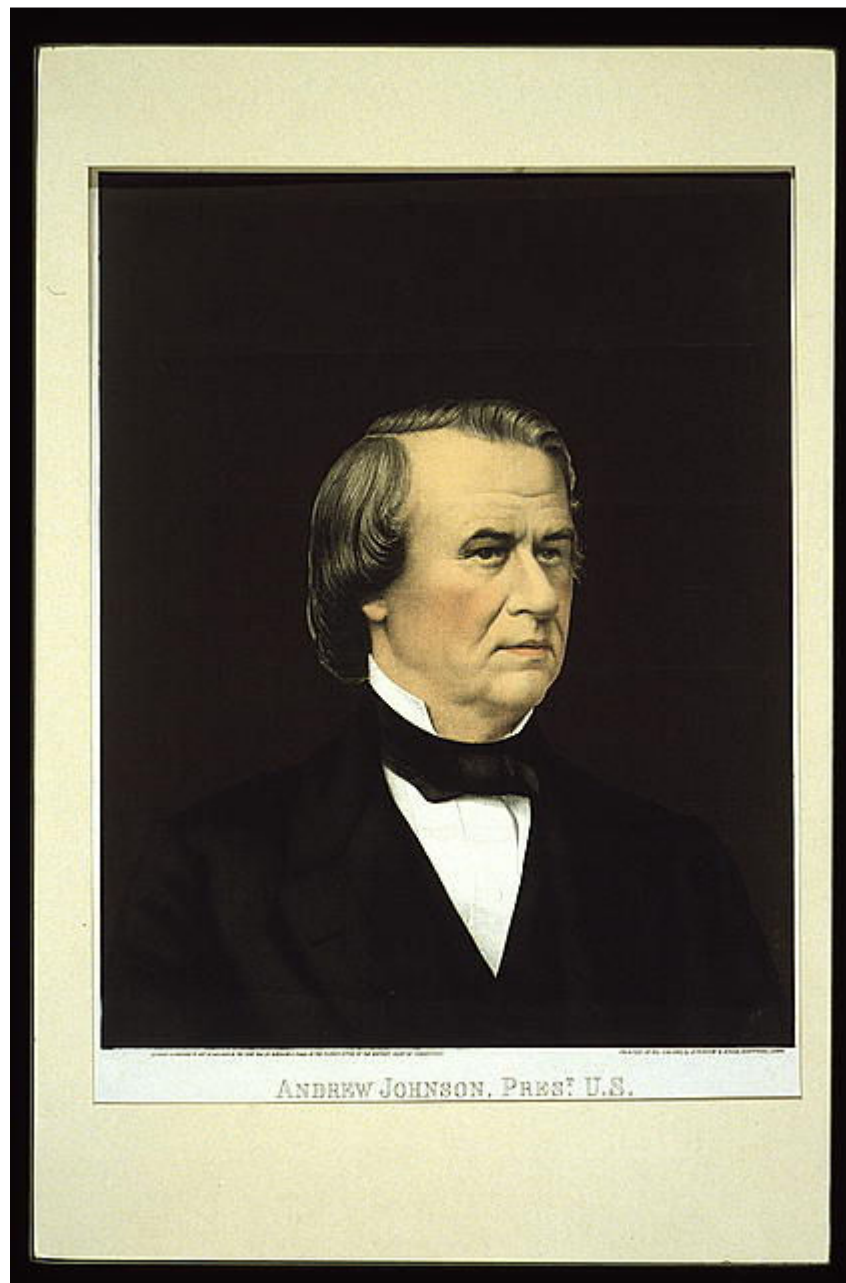
**Representative Thaddeus Stevens (1792-1868) of Pennsylvania,
Chairman of the Managers appointed by the House of Representatives in 1868 to
conduct the impeachment proceedings against President Andrew Johnson.
Date: 1860-1875.
Source: Library of Congress.**



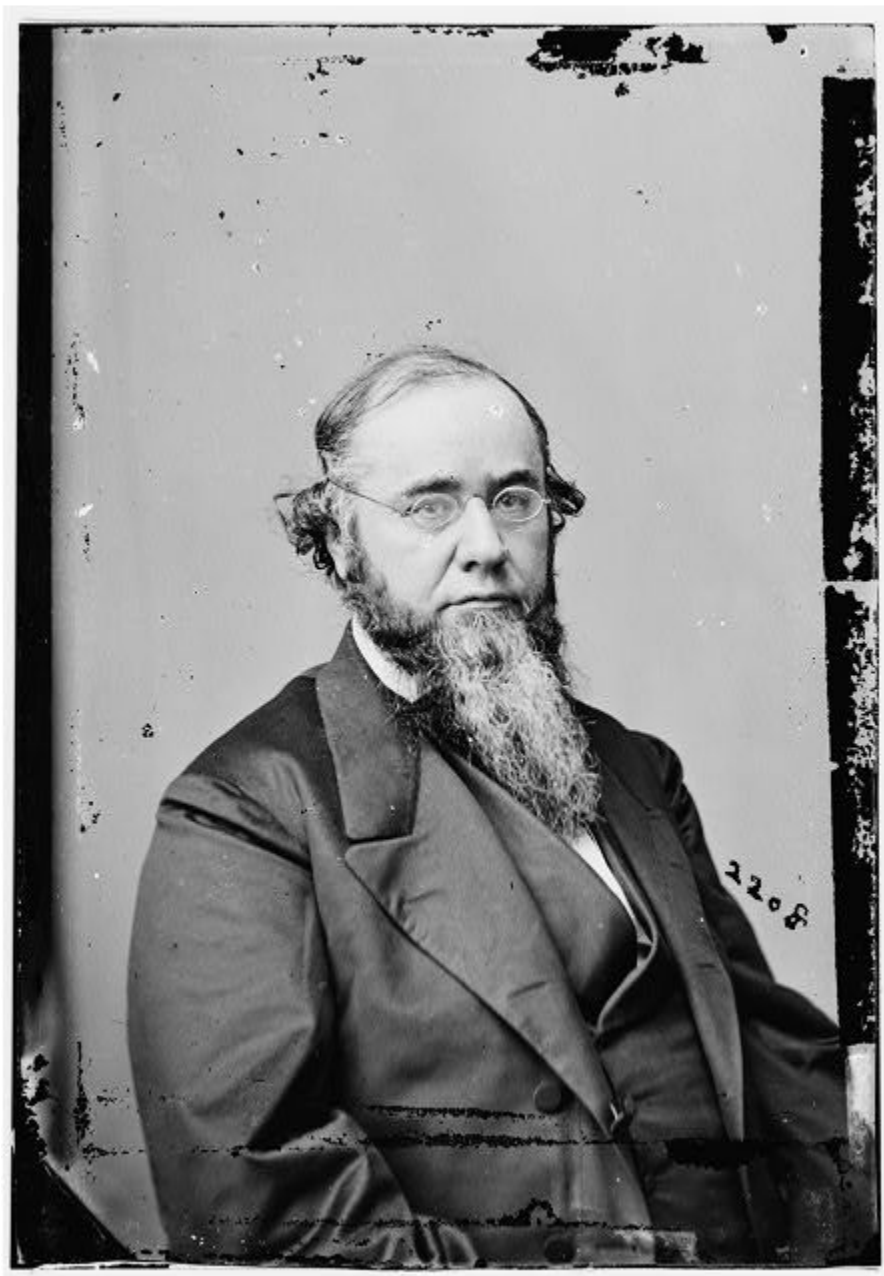
**George Sewall Boutwell (1818-1905), Representative from Massachusetts, helped draft the articles of impeachment and was one of the Managers conducting the impeachment trial.
Source: Library of Congress.**



Full-length portrait taken in 1866 by Alexander Gardner shows President Andrew Johnson seated, facing front. Includes facsimile signature, "Yours Truly, Andrew Johnson." Source: Library of Congress.



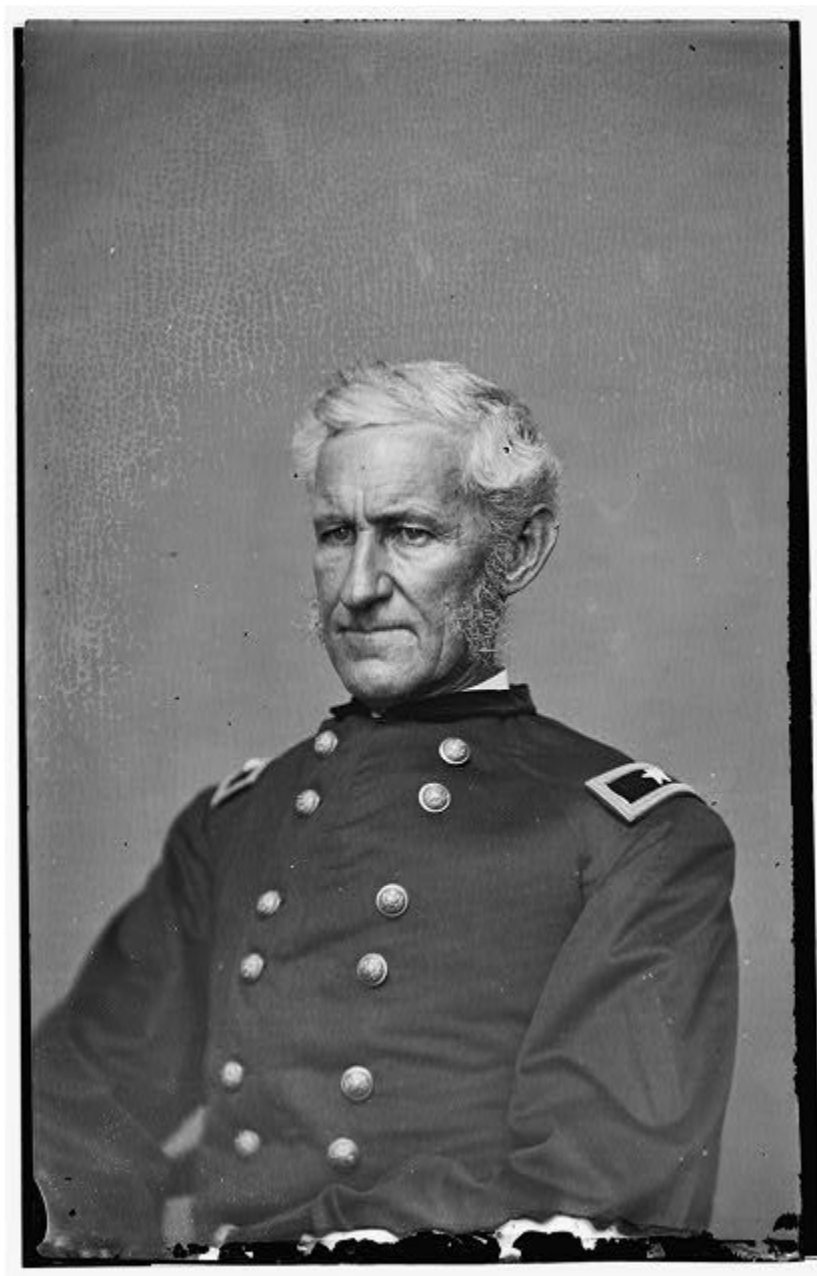
Color lithograph of President Johnson by Bingham & Dodd, Hartford.
ca 1868.
Source: Library of Congress



Secretary of War Edwin Stanton (1837-1873).

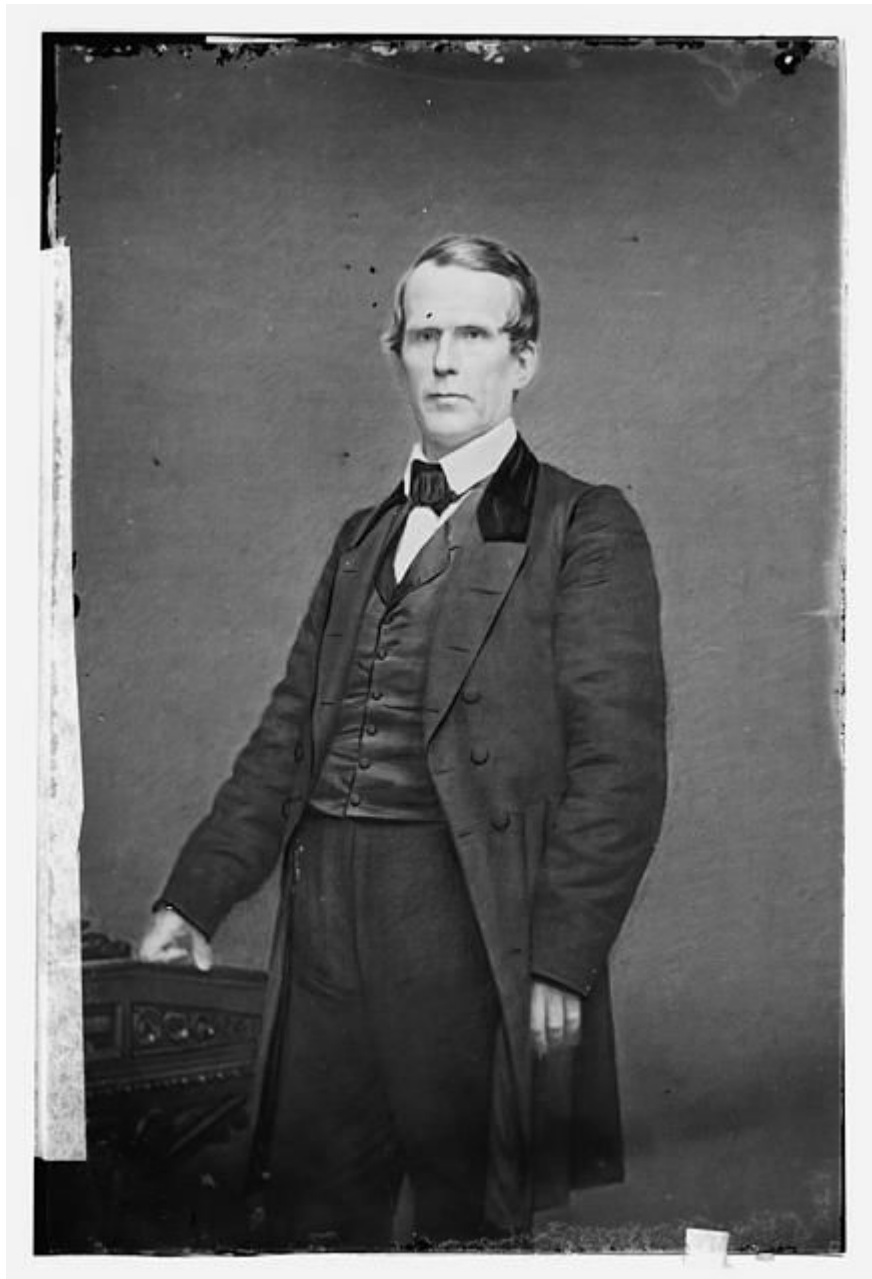
Date: 1860-1870.

Source: Library of Congress.



General Lorenzo Thomas (1804-1875).

On February 21, 1868, President Johnson attempted to replace Edwin Stanton by appointing Thomas Secretary of War ad interim. He is named in Impeachment Articles 1-8, and throughout the President's Answer. Date of photograph: ca. 1860-1870. Source: Library of Congress.



Thomas A. R. Nelson (1812-1873), a Tennessee Congressman and lawyer who was one of the attorneys defending the President.

Date of photograph: ca. 1855-1865

Source: Library of Congress



William S. Groesbeck (1814-1897). Ohio Congressman and one of the team of lawyers who defended the President.
Date of portrait: unknown.
Source: Wikipedia.

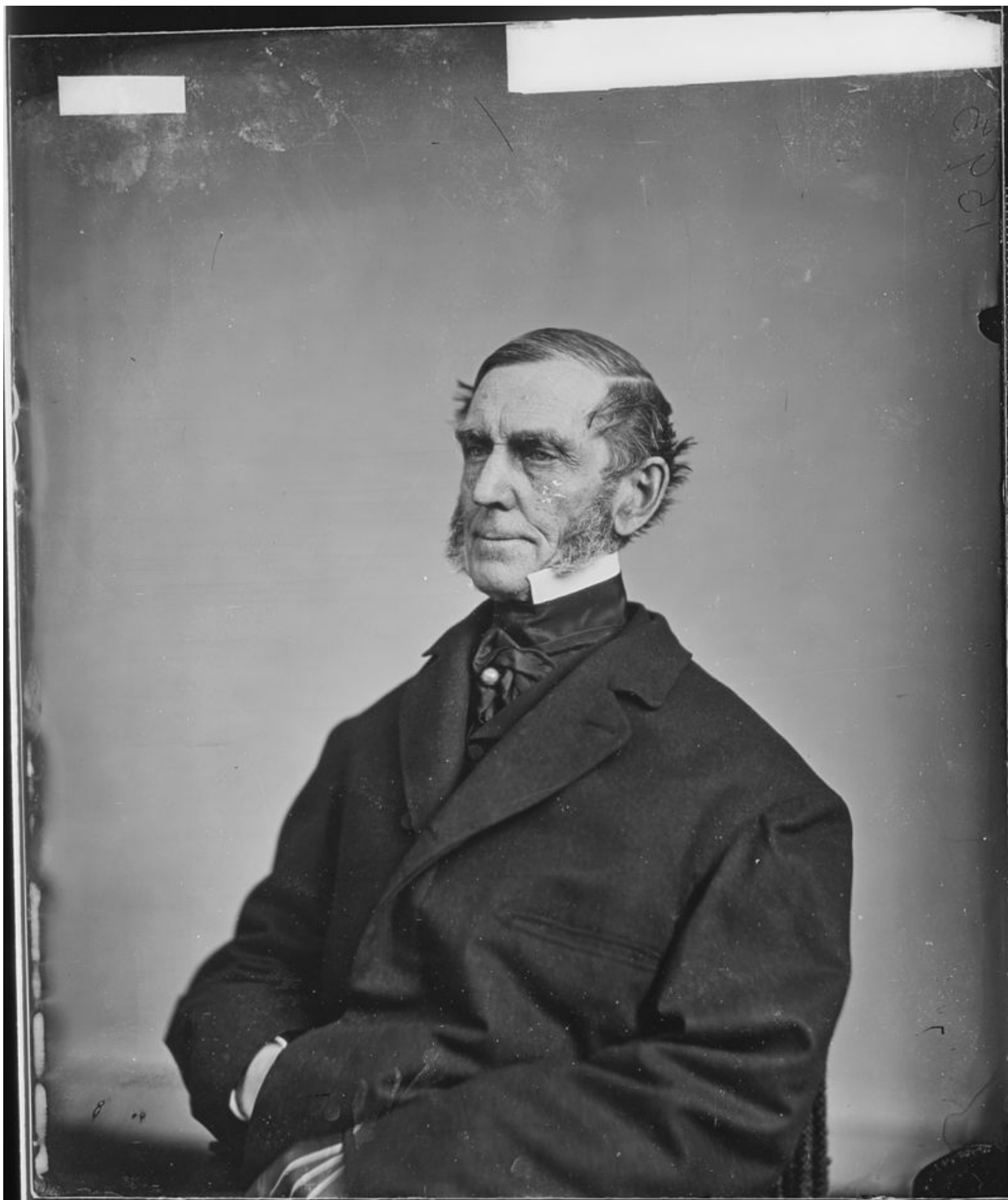


William Maxwell Evarts (1818-1901). New York lawyer who defended the President. Was appointed Attorney General by President Johnson in July 1868 and served to March 4, 1869. Later was U. S. Senator and Secretary of State.

Photograph by Matthew Brady.

Date: ca. 1865-1880.

Source: Library of Congress.



Henry Stanberg (1803-1881), a Ohio lawyer appointed Attorney General by President Johnson in 1866. He resigned on March 12, 1868, to defend the President in the impeachment trial.

Photograph by Matthew Brady.

Date: ca. 1860-1865.

Source: Library of Congress.



Benjamin Robbins Curtis (1809-1874).
Chief counsel for the President in the impeachment trial.
Served as Associate Justice of the U. S. Supreme Court, 1851-1857.
Date of etching: 1868.
Source: Library of Congress.



Chief Justice Salmon P. Chase (1808-1873).
Presided over impeachment trial of President Johnson.
Date of photograph: unknown.
Source: Library of Congress.



Death of the Hon. Andrew Johnson (1808-1875),
 U.S. Senator from Tennessee and Ex-President of the United States.
 Currier & Ives (1875).
 Source: Library of Congress.



Posted MLHP: May 17, 2017.