The Pittsburgh Gazette.

IMPEACHMENT.

Extracts from the Speech of Hon. Thomas Williams, one of the Managers for the House. Delivered Before the Senate, April 27th and 28th, 1868.

MR. PRESIDENT AND SENATORS OF THE UNITED STATES: Not unused to the conflicts of the forum I appear in your presence to-day in obedience to the command of the Representatives of the American people, under a sense of responsibility which I have never felt before. This august tribunal whose judges are the elect of mighty provinces—the presence at your bar of the Representatives of a domain that rivals in extent the dominion of the Cæsars, and of a civilization that transcends any the world has ever seen, to demand judgment upon the high delinquent whom they have arraigned in the name of the American people for high crimes and misdemeanors against the State, the dignity of the delinquent himself, a king in everything but the name and paraphernalia and inheritance of royalty, these crowded galleries, and, more than all, the greater world outside which stands on tiptoe as it strains its ears to catch from the electric messenger the first tidings of a verdict which is either to send a thrill of joy through an afflicted land, or to rack it anew with the throes of anarchy and the convulsions of despair, all remind me of the collossal proportions of the isssue you are assembled to try. I cannot but remember, too, that the scene before me is without example or parallel in human history. Kings, it is true, have been uncrowned, and royal heads have fallen upon the scaffold; but in two single instances only, as I think, have the formalities of law been ostensibly invoked to give a coloring of order and of justice to the bloody tragedy. It is only in this free land that a constitutional tribunal has been charged for the first time with the sublime task of vindicating an outraged law against the highest of its ministers, and passing judgment upon the question whether the ruler of a nation shall be stripped, under the law and without shock or violence, of the power which he has abused. * * * *

The man who supposes that this is but a question of the removal of an obnoxious officer, a mere private quarrel between two belligerents at the other end of the avenue, wherein it is of no great national consequence which of the opposing parties shall prevail, has no adequate apprehension of the gravity of the case, and greatly disparages the position and the motives of the high accusers. The House of Representatives espouses no man's quarrel, however considerable he may be. It has but singled out from many others of equal weight the facts now charged, as facts for the most part of recent occurrence, of great notoriety, and of easy proof, by way of testing a much greater question without loss of time. The issue here is between two mightier antagonists, one the Chief Executive Magistrate of this nation and the other the people of the United States, for whom the Secretary of War now holds almost the only strong position of which they have not been dispossessed. It is but a renewal on American soil of the old battle between the royal prerogative and the privileges of the Commons, which was closed in England with the reigns of the Stuarts—a struggle for the mastery between a temporary Executive and the legislative power of a free State over the most momentous question that has ever challenged the attention of a people.

* * * * *

The master-key to the whole history of his administration, which has involved not a mere harmless difference of opinion, as one of his counsel seems to think, on a question where gentlemen might afford to disagree without a quarrel, but one long and unseemly struggle by the Executive against the legislative power, is to be found in the fact of an early and persistent purpose of forcing the rebel States into the Union by means of his executive authority, in the interests of the men who had lifted their parricidal hands against it, on terms dictated by himself, and in defiance of the will of the loyal people of the United States as declared through their Representatives. To accomplish this object, how much has he not done and how much has a long-suffering people not passed over without punishment and almost without rebuke? Let history, let public records, which are the only authentic materials of history, answer, and they will say that—

For this, instead of convening the Congress in the most momentous crisis of the State, he had issued his royal proclamations for the assembling of conventions and the erection of State governments, prescribing the qualification of the voters, and settling the conditions of their admission into the Union.

For this he had created offices unknown to the law, and filled them with men notoriously disqualified by law, at salaries fixed by his own mere will.

For this he had paid those officers in contemptuous disregard of law, and paid them, too, out of the contingent fund of one of the Departments of the Government.

For this he had supplied the expenses of his new government by turning over to them the spoils of the dead confederacy, and authorizing his satraps to levy taxes from the conquered people.

For this he had passed away unnumbered millions of the public property to rebel railroad companies without consideration, or sold it them in clear violation of law, on long credits, at a valuation of his own and without any security whatever.

For this he had stripped the Bureau of Freedmen and Refugees of its munificent endowment, by tearing from it the lands appropriated by Congress to the loyal wards of the Republic, and restoring to the rebels their justly forfeited estates after the same had been vested by law in the Government of the United States.

For this he had invaded with a ruthless hand the very penetralia of the Treasury and plundered its contents for the benefit of favored rebels by ordering the restoration of the proceeds of sales of captured and abandoned property which had been placed in its custody by law.

For this he had grossly abused the pardoning power conferred on him by the Constitution in releasing the most active and formidable of the leaders of the rebellion with a view to their service in the furtherance of his policy, and even delegated that power for the same objects to men who were indebted to its exercise for their own escape from punishment.

For this he had obstructed the course of public justice not only by refusing to enforce the laws enacted for the suppression of the rebellion and the punishment of treason, but by going into the courts and turning the greatest of the public malefactors loose, and surrendering all control over them by the restoration of their estates.

For this he had abused the appointing power by the removal, on system, of meritorious public officers for no other reason than because they would not assist him in his attempt to overthrow the Constitution and usurp the legislative power of the Government.

For this he had invaded the rightful privileges of the Senate by refusing to send in nominations of officers appointed by him during the recess of that body, and after their adjournment reappointing others who had been rejected by them as unfit for the places for which they had been appointed.

For this he had broken the privileges of, and insulted the Congress of the United States by instructing them that the work of reconstruction belonged to him only, and that they had no legislative right or duty in the premises, but only to register his will by throwing open their doors to such claimants as might come there with commissions from his pretended governments, that were substantially his own.

For this, on their refusal to obey his imperial rescript, he had arraigned them publicly as a revolutionary assembly, and not a Congress, without the power to legislate for the States excluded, and as "traitors at the other end of the line," in actual rebellion against the people they had subdued.

For this he had grossly abused the veto power, by disapproving every important measure of legislation that concerned the rebel States, in accordance with his public declaration that he would veto all the measures of the law-making power whenever they came to him.

For this he had deliberately and confessedly exercised a dispensing power over the test oath law, by appointing notorious rebels to important places in the revenue service, on the avowed ground that the policy of Congress, in that regard, was not in accordance with his opinions.

For this he had obstructed the settlement of the nation, by exerting all his influence to prevent the people of the rebel States from accepting the constitutional amendment or organizing under the laws of Congress, and impressing them with the opinion that Congress was blood-thirsty and implacable, and that their only refuge was with him.

For this he had brought the patronage of his office into conflict with the freedom of elections, by allowing and encouraging his official retainers to travel over the country, attending political conventions and addressing the people in support of his policy.

For this, if he did not enact the part of a Cromwell, by striding into the Halls of the Representatives of the people and saying to one man, "You are a hypocrite;" to another, "You are a whoremonger;" to a third, "You are an adulterer;" and to the whole, "You are no lenger a Parliament;" he had rehearsed the same part substantially outside, by traveling over the country, and, in indecent harangues, assailing the conduct and impeaching the motives of its Congress, inculcating disobedience to its authority by endeavoring to bring it into disrepute, declaring publicly of one of its members that he was a traitor, of another, that he was an assassin, and of the whole that they were no longer a Congress.

For this, in addition to the oppression and bloodshed that everywhere resulted from his known partiality for traitors, he had winked at, if not encouraged, the murder of loyal citizens in New Orleans by a confederate mob, by holding correspondence with its leaders, denouncing the exercise of the right of a political convention to assemble peacefully in that city as an act of treason proper to be suppressed by violence, and commanding the military to assist, instead of preventing, the execution of the avowed purpose of dispersing them.

For this, it is not too much to say, in view of the wrong and outrage and the cry of suffering that have come up to us upon every southern breeze, that he had in effect reopened the war, inaugurated anarchy, turned loose once more the incarnate devil of baffled treason and unappeasable hate, whom, as we fondly thought, our victories had overthrown and bound in chains, ordained rapine and murder from the Potomac to the Gulf, and deluged the streets of Memphis as well as of New Orleans, and the green fields of the South, already dotted with so many patriot graves, with the blood of martyred citizens. * * *

But all these things were not enough. It wanted one drop more to make the cup of forbearance overflow—one other act that should reach the sensorium of the nation, and make even those who might be slow to comprehend a principle, to understand that further forbearance was ruin to us all; and that act was done in the attempt to seize by force or stratagem on that Department of the Government through which its armies were controlled. It was but a logical sequence of what had gone before—the last of a series of usurpations, all looking to the same great object. It did not rise, perhaps, beyond the height of many of the crimes by which it was ushered in. But its meaning could not be mistaken. * * * *

And now as to the immediate issue, which I propose to discuss only in its constitutional and legal aspects.

The great crime of Andrew Johnson, as already remarked, running through all his administration, is that he has violated his oath of office and his constitutional duties by the obstruction and infraction of the Constitution and the laws, and an endeavor to set up his own will against that of the law-making power, with a view to a settled and persistent purpose of forcing the rebel States into Congress on his own terms, in the interests of the traitors, and in defiance of the will of the loyal people of the United States.

The specific offenses charged here, which are but the culminating facts, and only the last of a long series of usurpations, are an unlawful attempt to remove the rightful Secretary of War and to substitute in his place a creature of his own, without the advice and consent of the Senate, although then in session; a conspiracy to hinder and prevent him from resuming or holding the said office after the refusal of the Senate to concur in his suspension, and seize, take, and possess the property of the United States in said Department; an attempt to debauch an officer of the Army from his allegiance by inculcating insubordination to the law in furtherance of the same object; the attempt to set aside the rightful authority of Congress and to bring it into public odium and contempt, and to encourage resistance to its laws by the open and public delivery of indecent harangues, impeaching its acts and purposes and full of threats and menaces against it and laws enacted by it, to the great scandal and degradation of his own high office as President; and the devising and contriving unlawful means to prevent the execution of the tenure-of-office, Army appropriation, and reconstruction acts of March 2, 1867.

To all of these which relate to the attempted removal of the Secretary of War the answer is:

1. That the case of Mr. Stanton is not within the meaning of the first section of the tenure-of-office act.

Second. That if it be, the act is unconstitutional and void so far as it undertakes to abridge the power claimed, by him of "removing at any and at all times all executive officers for causes to be judged of by himself alone," as well as of suspending them indefinitely at his sovereign will and pleasure; and,

Third. That whether the act be constitutional or otherwise, it was his right, as he claims it to have been his purpose, to disobey and violate it with a view to the settlement of the question of its validity by the judiciary of the United States.

And first, as to the question whether the present Secretary of War was intended to be comprehended within the first section of the act referred to.

The defendant insists that he was not, for the reason that he derived his commission from Mr. Lincoln, and not being removed on his accession, continued by reason thereof to hold the office and administer its duties at his pleasure only, without having at any time received any appointment from himself; assuming, as I understand, either that under the proviso to the first section of this act the case was not provided for, or that by force of its express language, his office was determined by the expiration of the first term of the President who appointed him.

The body, or enacting clause of this section, provides that *every* person then holding any civil office who had been appointed thereto by and with the advice and consent of the Senate, or who should be thereafter appointed to any such office, should be entitled to hold until a successor is appointed in the like manner.

It is clear, therefore, that its general object was to provide for all cases, either then existing or to happen in the future.

It is objected, however, that so much of this clause as refers to the heads of Departments is substantially repealed by the saving clause, which is in the following words:

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

This proviso was the result of a conference on the disagreeing votes on the amendment of the House striking out the exception in favor of the heads of Departments, and was suggested—if he may be excused the egotism—by the individual who now addresses you, and to whom, as the mover and advocate of the amendment, was very naturally assigned the duty of conducting the negotiation on the part of the House, for the purpose of obviating the objection taken in debate on this floor by one of the Senate managers, that the effect of the amendment would be to impose on an incoming President a Cabinet that was not of his own selection. I may be excused for speaking of its actual history, because that has been made the subject of comment by the learned counsel who opened the case on behalf of the President. If it was intended or expected that it should so operate as to create exceptions in favor of an officer whose notorious abuse of power was the proximate cause, if not the impelling motive for the enactment of the law, I did not know it. It will be judged, however, by itself, without reference either to the particular intent of him who may have penned it, or to any hasty opinion that may have been expressed in either House as to the construction of which it might be possibly susceptible.

The argument of the defendent rests upon the meaning of the word "appointed." That word has both a technical and a popular one. In the former, which involves the idea of a nomination and confirmation in the constitutional way, there was no appointment certainly by Mr. Johnson. In the latter, which is the sense in which the people will read it, there unquestionably was. What, then, was meant by the employment of this word?

It is a sound and well accepted rule in all the courts, in exploring the meaning of the law-giver, especially in cases of remedial statutes, as I think this is, if it is not rather to be considered as only a declaratory one in this particular, to look to the old law, the mischief and the remedy, and to give a liberal construction to the language *in favorem libertatis*, in order to repress the mischief and advance the remedy; taking the words used in their ordinary and familiar sense, and varying the meaning as the intent, which is always the polar star, may require. Testing the case by this rule what is to be the construction here?

The old law was—not the Constitution—but a vicious practice that had grown out of a precedent involving an early and erroneous construction of that instrument, if it was intended so to operate. The mischief was that this practice had rendered the officers of the Government, and among them the heads of Departments, the most powerful and dangerous of them all, from their assumed position of advisers of the President, by the very dependency of their tenure, the mere ministers of his pleasure, and the slaves of his imperial will, that could at any moment, and as the reward of an honest and independent opinion, strip them of their employments, and send them back into the ranks of the people. The remedy was to change them from minions and flatterers into *men*, by making them free, and to secure their loyalty to the law by protecting them from the power that might constrain their assent to its violation. To accomplish this object it was necessary that the law should cover all of them, high and low, present and prospective. That it could have been intended to except the most important and formidable of these functionaries, either with a view to favor the present Executive, or for the purpose of subjecting the only head of a Department who had the confidence of Congress to his arbitrary will, is as unreasonable and improbable as it is at variance with the truth of the fact and with the obvious general purposes of the act.

For the President of the United States to say, however, now, after having voluntarily retained Mr. Stanton for more than two years of his administration, that he was there only by sufferance, or as a mere *movable*, or heir-loom, or incumbrance that had passed to him with the estate, and not by virtue of his own special appointment, if not "paltering with the people in a double sense," has very much the appearance of a not very respectable quibble. The unlearned man who reads the proviso—as they for whose perusal it is intended will read it—and who is not accustomed to handle the metaphysical scissors of the professional casuists who are able "to divide a hair 'twixt west and northwest side," while he admits the ingenuity of the advocate, will stand amazed, if he does not scorn the officer who would stoop to the use of such a subterfuge. * * * * * *

Assuming again, however, that, as is claimed by the defense, the case of Mr. Stanton does not fall within the proviso, what, then, is the result? Is it the predicament of a *casus omissus* altogether? Is he to be hung up, like Mahomet's coffin, between the body of the act and the proviso, the latter nullifying the former on the pretext of an exception, and then repudiating the exception itself as to the particular case, or is the obvious and indisputable purpose of providing for all cases whatever, to be carried out by falling back on the general enacting clause which would make him immovable by the President alone, and leaving him outside of the provision as to *tenure*, which was the sole object of the exception? There is nothing in the saving clause which is at all inconsistent with what goes before. The provision that takes every officer out of the power of the President is not departed from in that clause. All it enacts is that the tenure shall be a determinate one in cases that fall within it. If Mr. Stanton was appointed by President Johnson within the meaning of the proviso, he holds, of course, until the expiration of his term. If not, he holds subject to removal like other officers under the enacting clause. It has been so often asserted publicly as to have become a generally accredited truth, that the special purpose of the act was to protect him. I do not affirm this, and do not consider it necessary that I should, or important to the case whether he favored the passage of the law or not. It will be hardly pretended, however, by anybody, that he was intended to be excluded entirely from its operation.

Nor is the case helped by the reference to the fourth section of the act, which provides that nothing therein contained shall be construed to extend the term of any officer the duration of which is limited by law. The office in question was one of those of which the tenure was indefinite. The construction insisted on by me does not extend it. The only effect is to take away the power of removal from the President alone and restore it to the parties by whom the Constitution intended that it should be exercised.

Assuming, then, that the case of Mr. Stanton is within the law, the next question is as to the validity of the law itself. And here we are met, for the first time in our history as a nation, by the assertion on the part of the President, of the illimitable and uncontrollable power under the Constitution, in accordance, as he insists, with the judicial opinion, the professional sentiment, and the settled practice under the Government of removing at any and all times all executive officers whatever, without responsibility to anybody, and as included therein the equally uncontrollable power of suspending them indefinitely and supplying their places from time to time by appointments made by himself *ad interim*. If there be any case where the claim has heretofore extended, even in theory, beyond the mere power to create a vacancy by removal during the recess of the Senate, I do not know it. If there be any wherein the power to suspend indefinitely, which goes even beyond this has been asserted, it is equally new to me. This truly regal pretension has been fitly reserved for the first President who have ever claimed the imperial prerogative of founding governments by proclamation, of taxing without a Congress, of disposing of the public property by millions at his own will, and of exercising a dispensing power over the laws. It is but a logical sequence of what he has been already permitted to do with absolute impunity and almost without complaint. If he could be tolerated thus far, why not consumate the work which was to render him supreme, and crown his victory over the legislative power by setting this body aside as an advisory council, and claiming himself to be the rightful interpreter of the laws? The defense made here is a defiance, a challenge to the Senate and the nation, that must be met and answered just now in such a way as shall determine which, if any, is to be the master. If the claim asserted is to be maintained by your decision, all that will remain for you will be only the formal abdication of your high trust as part of the appointing power, because there will be then absolutely nothing left of it that is worth possessing.

But let us see what there is in the Constitution to warrant these extravagant pretensions, or to prevent the passage of a law to restore the practice of this Government to the theory of that instrument.

I do not propose to weary you with a protracted examination of this question. I could not add to what I have already said on the same subject in the discussion in the House of the bill relating to removals from office in December, 1866, to which I would have ventured to invite your attention, if the same point had not been so fully elaborated here. You have already passed upon it in the enactment of the present law by a vote so decisive and overwhelming, and there is so little objection on the part of the counsel for the President to the validity of that law, that I may content myself with condensing the arguments on both sides into a few general propositions which will comprehend their capital features.

The first great fact to be observed is, that while the Constitution enumerates sundry offices, and provides the manner of appointment in those cases, as well as in "all others to be created by law," it prescribes no tenure except that of good behavior in the cases of the judges, and is entirely silent on the subject of removal by any other process than that of impeachment.

From the inferences are:

1. That the tenure of good behavior, being substantially equivalent to that for life, the office must in all other cases be determinable at the will of some department of the Government, unless limited by law; which is, however, but another name for the will of the law-maker himself. And this is settled by authority.

2. That the power of removal at will, being an implied one only, is to be confined to those cases where the tenure is not ascertained by law; the right of removal in any other form than by the process of impeachment depending entirely on the hypothesis of a will of which the essential condition always is that it is free to act without reason and without responsibility.

3. That the power of removal, being implied as a necessity of state to secure the dependence of the officer on the Government, is not to be extended by construction so as to take him out of the control of the Legislature, and make him dependent on the will of the Executive.

The next point is that the President is by the terms of the Constitution to "nominate, and by and with the advice and consent of the Senate appoint," to all offices, and that without this concurrence he appoints to none except when authorized by Congress. And this may be described as the *rule* of the Constitution.

The exceptions are:

1. That in the cases of inferior offices the Congress may lodge this power with the President alone or with the courts or the heads of Departments; and

2. That in cases of vacancy happening during the recess of the Senate he may—not *appoint*—but *fill them up* by granting commissions to expire at the end of the next session of that body.

From which it appears—

1. That the President cannot, as already stated, in any case, appoint alone without the express authority of Congress, and then only in the case of inferior offices.

2. That the power to supply even an accidental vacancy was only to continue until the Senate was in a condition to be consulted and to advise and not act upon the case; and

3. As a corollary from these two propositions, that if the power to remove in cases where the tenure is indefinite be, as it is solemnly conceded by the Supreme Court of the United States *in re* Heenan (13 Peters) an incident to the power to appoint, it belongs to the President and Senate, and not to the President alone, as it was held in that case to be in the judge who made the appointment.

The argument upon which this implied and merely inferential power, not of "filling up," but of *making* a vacancy during the recess—which is now claimed to extend to the making of a vacancy at any time—has been defended, is,

First. The possible necessity for the exercise of such a power during the recess of the Senate, or, in other words, the argument *ab inconvenienti*.

Second. That the power of removal is a purely executive function, which, passed by the general grant in the first section of the second article of the Constitution, would have carried the power to appoint, if unprovided for, and it is to be considered in him in all cases wherein it has not been expressly denied, or lodged in other hands; while the association of the Senate, the same not being an executive body, is an exception to

(Continued on Seventh Page.)

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M. [illegible] GILMORE.
[illegible] Pittsburgh.