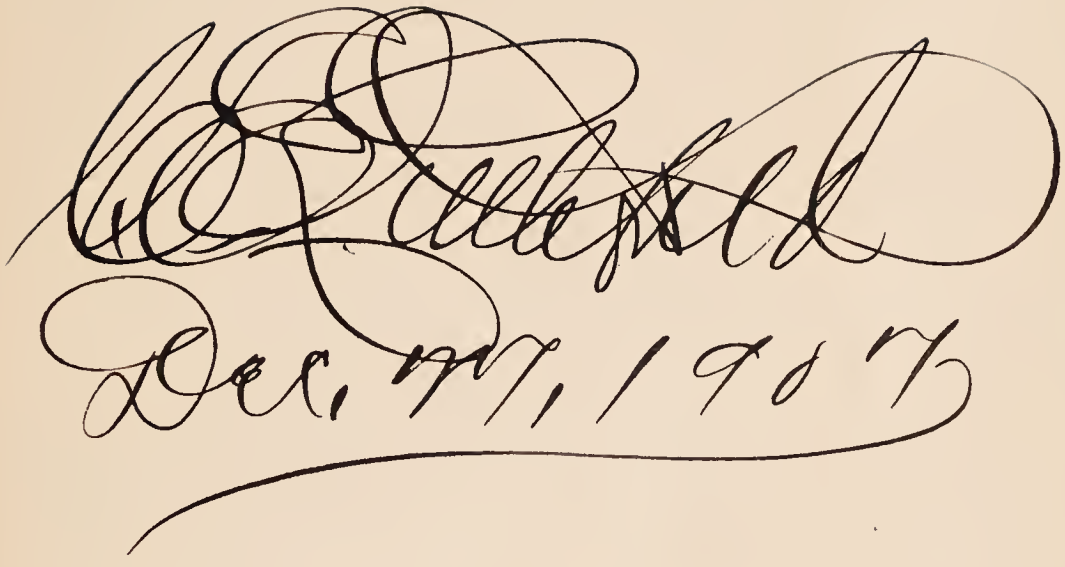

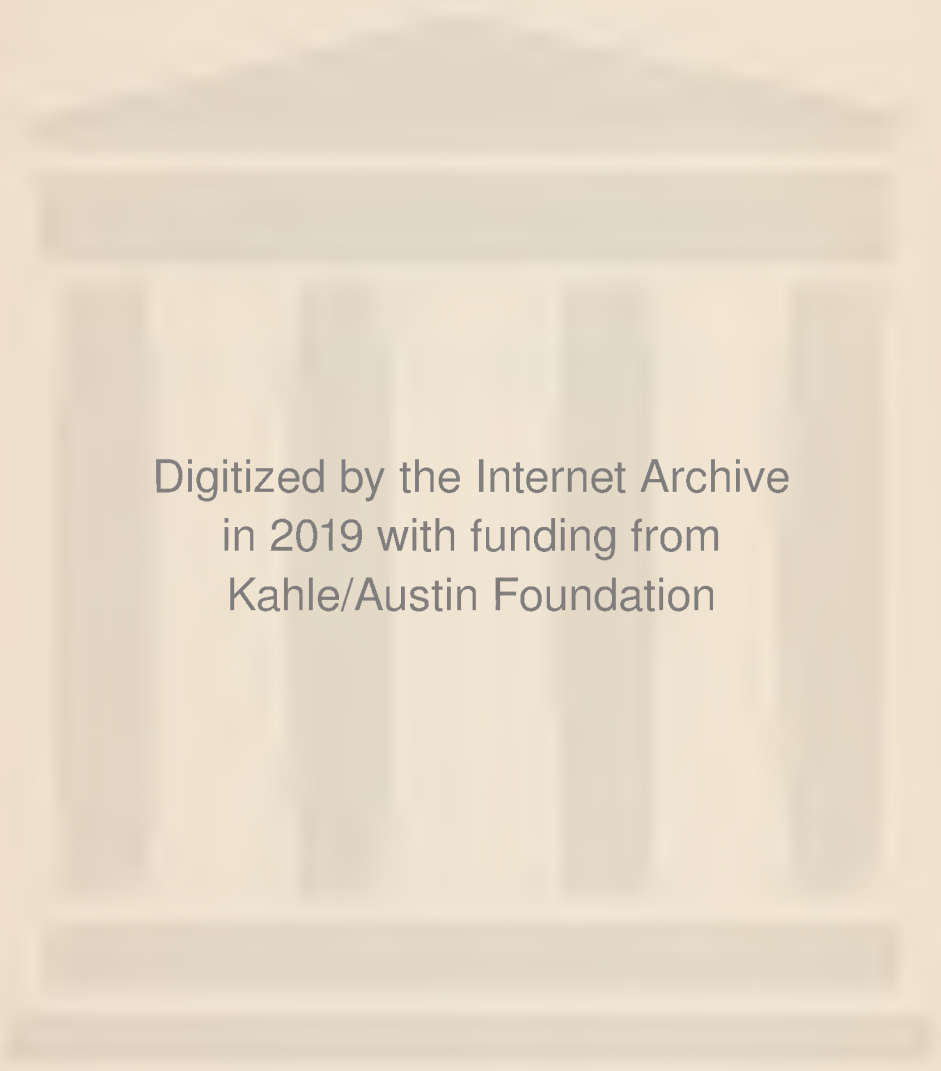

LIFE AND PUBLIC SERVICES
OF
WILLIAM PITT FESSENDEN

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CHAPTER VII

RECONSTRUCTION

1865–1866

When Mr. Fessenden was appointed to the Treasury, his second term in the Senate was drawing to a close. He was to be a candidate for reëlection before the next legislature. No contest was expected and no other candidate was mentioned at this time, but the Republican Convention nominated Andrew Johnson for Vice-President instead of renominating Hannibal Hamlin of Maine.

At the time of those nominations, Mr. Fessenden had no idea of ever being the Secretary of the Treasury. It was some time before Mr. Chase's resignation. But as soon as Mr. Fessenden had been appointed secretary, the friends of Mr. Hamlin began to talk of him as Mr. Fessenden's successor in the Senate. Mr. Hamlin was extremely popular in the State, a splendid public man of the finest abilities and character. He had many devoted admirers, and they ardently desired to keep him in public life. They argued that the country needed Mr. Fessenden at the head of the Treasury, and that Mr. Hamlin should be restored to the Senate, and thus both gentlemen could be retained in the public service. Mr. Fessenden, however, desired to return to the Senate, and had accepted the office of Secretary of the Treasury upon the understanding with the President that he would give up

the office as soon as the safety of the public finances would justify it. Mr. Hamlin, not being informed as to Mr. Fessenden's intentions and wishes, became a candidate for the senatorial vacancy which would exist if Mr. Fessenden should remain in the Cabinet, and his canvass was begun supposing Mr. Fessenden not to be a candidate for another term. The stories circulated about his intentions were so numerous and so varied that he at last wrote to his old friend Mr. Tenney of Maine for publication: —

"I felt honored when a legislature, Democratic in both branches, conferred upon me, an open and decided Whig, a position so eminent as that of a senator from my State without asking of me a pledge or declaration of opinion upon any subject. The office satisfied my highest ambition, and I have never desired any other. To the discharge of my duties as senator, and to winning a reputation creditable both to the State and myself, all my efforts have been given. How far I have succeeded it is for others to say, but it is certain that I have shrunk from no labor and lost no opportunity to benefit my country and my State. My reëlection without opposition was most gratifying as a proof of public confidence, and increased my obligation to a generous constituency.

"The period during which I have been in the public service has been a remarkable one in the history of the country. In all the great events of that period I have had some share, to the extent at least that a senator could have a part in them. I commenced with the Kansas bill, and have gone regularly through. Through my children I have had something to do with the war. One son has fallen upon the field. Another has given a limb to his country. A third has exposed his life in many battles, but has thus far been able to save both life and limb. On the whole, therefore, I am pretty well involved with the military as well as the civil events of the time.

"For the last three years I have held the most important and responsible position in the Senate, that of chairman of the committee on finance. It required continuous and exhausting labor, and at the close of each session I found my strength so impaired that rest seemed to me a necessity."

Mr. Fessenden then recounted the circumstances how the Treasury was forced upon him, his efforts to decline it, his acceptance of it to avert a financial panic, and his notification to the President that he would retire as soon as the situation of public affairs warranted it. Proceeding, he said, "These, my dear sir, were the circumstances which induced my change of position. I believe the country is pretty well satisfied with the result of my administration of the finances thus far, though my views as expressed in my report have not met with the wishes nor served the purposes of certain people who write financial articles for the New York papers. I am, however, sustained by financial men whose opinions are of much value, and Congress, I am confident, will indorse my views.

"Pardon this long digression and let us return to the point of departure. It is, you will agree, not unnatural, that, having been so intimately connected with this great struggle from its beginning, I should desire to see it through. The state of things which called me to a position which is distasteful to me no longer exists. Another can easily be found to fill my place here without public injury. I shall feel on retiring that no one will have the right to say that I have failed in my duty or left any public or private obligation undischarged.

"All I have written has been merely the expression of my own wishes and feelings. These, however, after all, have not very much to do with the question. It is one of public interest and should be looked at solely in that

light. If the legislature should be of the opinion that another could render the country and the State more service and do the State more honor in the Senate, I should endeavor to solace myself with the hope that the country has been the gainer, contenting myself with the reflection that I am rejected only because the State could not so well dispense with the services of a better man."

The legislature assembled early in January. Mr. Fessenden's intention to leave the Cabinet and his desire for reëlection to the Senate were now definitely known, and by general consent Mr. Fessenden was unanimously nominated.

Upon receiving the official notification of his election, Mr. Fessenden acknowledged it by the following letter:

To the Legislature of Maine.

Gentlemen, — I have received from the governor a certificate of my election as a senator of the United States for six years commencing on the fourth day of March, next. This renewed proof of confidence on the part of the people of Maine through their representatives has afforded me the highest gratification. No man is fit to occupy an eminent public position who is not content to find his best reward in the approbation of those whose servant he is and of his own conscience. I am grateful, gentlemen, for the honor conferred, and more for the evidence it affords that the State I have been proud to represent in the legislative councils of the nation is well satisfied with my endeavors in executing the trust committed to my care to protect its interests and uphold its dignity.

I left the Senate before the close of my second term in obedience to what seemed to be a necessity. I shall return to it with the consciousness that, however imper-

fectly, my best efforts have been given to the discharge of onerous and responsible duties. In again confiding to me the honor of our noble State, as one of its representatives, you have shown that my efforts to serve our beloved country in the place to which I was thus called have been satisfactory to the people you represent. I will venture to express the hope that hereafter, as heretofore, no act of mine will tarnish the lustre which their patriotism and devotion to the Union and to freedom have won for the people we are so proud to serve.

The term of President Lincoln's administration now about closing has been marked by extraordinary events. It will form a remarkable epoch in history. According as men have played their parts in it — as they have arrayed themselves in the struggle which has enchained the attention of the world, and the result of which must seriously affect the welfare of ages to come — will be the judgment passed upon them either in masses or as individuals. Let it be our boast that from the beginning Maine was found true to the cause of civil liberty, that at no moment did her people falter or faint — that no sacrifice could shake her purpose or weaken her faith — and may the future prove as the past has proved, that, in her estimation a cause holy enough to fight for is never to be abandoned until won.

With great respect, your obedient servant,

W. P. Fessenden.

The conditions upon which the insurgent States should be restored to their relations with the Union if the war should be successful had been much discussed, both in and out of Congress, for a considerable time before the war was over. Mr. Lincoln had proposed a plan for their reconstruction or restoration in December, 1863. This

plan permitted the people of a State to organize a state government provided the population should take an oath of loyalty to the Union and should be sufficiently numerous to cast a vote one tenth as large as that cast at the Presidential election in 1860. Under this proclamation a free state convention met in New Orleans in January, 1864, which accepted the Emancipation Proclamation. Subsequently an election was held by order of General Banks, a governor was chosen, and the President issued an order investing him with the powers previously exercised by the military governor. It must be remembered that Louisiana was then held by an army under General Banks, and that a Confederate army held the northwestern portion of the State. Similar action was taken in Arkansas, where senators and representatives were elected to Congress. Mr. Lincoln's plan was not generally liked in Congress, and when the Arkansas senators presented themselves for admission to the Senate, that body adopted a resolution that the Rebellion was not so far suppressed in Arkansas as to entitle that State to representation in Congress. In the last week of the session, in July, 1864, Congress had passed a bill which directed the President to appoint a provisional governor for each State in rebellion, who, as soon as military resistance had ceased, was to make an enrollment of the white male citizens, submitting to each an oath to support the Constitution. If the majority took the oath, then the governor was to order an election of delegates to a constitutional convention.

This convention was to incorporate into their state constitution three fundamental provisions. The first excluded from office and from voting, certain persons who had participated in the Rebellion. The second abolished slavery. The third provided that no debt, state or Confederate, in aid of the Rebellion should ever be paid.

When these had been adopted and certified to the President, then the President, *after obtaining the assent of Congress*, should recognize the state government as the legitimate and constitutional government. This bill the President permitted to die for want of approval, and as Congress meanwhile had adjourned it could not be passed by a two thirds vote.

After Congress had adjourned, Mr. Lincoln issued a proclamation in which he laid the plan of the bill before the people for their consideration, saying that he had already propounded one plan and was unprepared by a formal approval of the bill to commit himself to any single plan of restoration. Yet he was perfectly willing that the loyal people of any State should follow the plan embodied in the bill, and that he would sustain them in so doing.

Mr. Lincoln's course was disapproved by a majority of the members of Congress, and thereby arose the issue which afterwards divided President Johnson and the Republicans. The President assumed as commander-in chief to bring the States back into the Union. On the other hand, Congress claimed the right to say when, and to fix the conditions under which, the States should come back and participate in the government. If one may judge from President Lincoln's declaration, in his Life by Hay and Nicolay, he was, as late as February 3, 1865, of the opinion that the rebel States were entitled to be admitted to representation in Congress if they ceased their resistance to the government. And at the same time he was willing to pay them four hundred millions of dollars as compensation for their slaves.

Among Senator Fessenden's papers is found the following: —

1st. A summons to a Cabinet meeting on the engraved form used for that purpose: —

Department of State,
Washington, Feb. 5, 1865.

Sir, — The President desires a meeting of the Heads of Departments at the Executive Mansion at 7 o'clock this evening.

F. W. Seward, *Asst. Sec'y.*

To the Honorable Secretary of the Treasury.

Senator Fessenden returned from the meeting and indorsed upon the invitation: —

"A proposition to offer the Confederate and other slave States 400 millions of dollars, to be divided among them according to the census of 1860, and a general amnesty, provided they disbanded and submitted before April 1, $200 millions to be paid then and the other 200 by July 1, if the constitutional amendment should have been then adopted.

"As this was to be submitted to Congress, it was thought not advisable, because there would probably be no chance of its being adopted before the adjournment; and it was evident by the unanimous opinion of the Cabinet that the only way to effectually end the war was by force of arms, and that until the war was thus ended no proposition to pay money would come from us. — W. P. F."

So strong was the feeling against the course of the President that Mr. Wade and Henry Winter Davis, who were the authors of the bill spoken of above, united in a protest against the President's action. They condemned his plan in such unsparing language that it caused a reaction. The nation was struggling for its existence, and men felt that the President must be sustained. But when Congress met in December, 1864, the subject was dropped by common consent until the Rebellion should be subdued. Then followed the assassination of President Lincoln, and Vice-President Johnson became president.

The power of Congress over the Confederate States was absolute, as the majority of Congress thought, from the law of nations as part of the law of the land. Senator Fessenden, among others, held that the insurgent States at the close of the war had no constitutional rights until Congress had fixed the terms of restoration and had readmitted the States; that the doctrine that rebellious States which had been conquered in war could wage war as long as they chose, and by surrendering regain at once all their previous constitutional rights, put a premium on rebellion, and was self-destructive to a government, and that the law of nations under which Congress had subdued the Rebellion was the law under which the consequences of the war were to be settled.

Mr. Fessenden stated this to be the law in his reply to Saulsbury, again in his reply to President Johnson, and at length in his report which he wrote for the committee on reconstruction. In his reply to Saulsbury he said, "Gentlemen must reflect that as part of the constitution written or unwritten, of all governments stands the law of nations, necessary from the relations which all communities bear to each other and from the contingencies to which they are exposed. That being the case, they must accept the consequences which follow from it. Were they to be told that their affairs as connected with that war were not to be closed up under the same law which governed this nation and which governs all nations while the war continued?"

And in his answer to President Johnson's attack on the committee on reconstruction he said, "The country had been in a state of war, and the question was, What were the consequences of a successful war when one nation conquered another? There was nothing better established than the principle that the conquerors had the

power to change the form of government, to punish, to exact security, and take entire charge of the conquered people."

The consequences of civil war were precisely the same as in an international war, and a civil war was no different to a people living under a written constitution, on account of that constitution, from a civil war in any other nation. To the argument that Congress had no authority to carry on a war against a State he replied that the Constitution never contemplated a civil war, but it provided the means to quell it by giving power to Congress to raise and support armies without stating for what objects those armies were to be used. It resulted as a necessary consequence, if the law of nations existed in the United States and they were bound by its provisions, that a State might be swept out of existence by a civil war. The government could say a State had forfeited its status. If necessary the government had perfect power to prevent a State from resuming its position. A State had no rights in the Union when by its own act it had ceased to connect itself with the government.

As Mr. Fessenden did not accept the Treasury until after the adjournment of Congress, he was still in the Senate when the bill which embodied the congressional plan of restoration was discussed, and also when the resolution declaring that the senators from Arkansas were not entitled to admission was reported from the judiciary committee. Though entirely engrossed in carrying through the important financial measures of the session, he spoke briefly on the subject and foreshadowed his opinions upon the powers of Congress over the rebellious States. It was evident that he thought the bill was premature, while he advocated the passage of the resolution excluding the senators from Arkansas. He said that the question was a

very important one and should be settled before adjournment. He had always been of the opinion that the question of reconstruction, the question of what is and what is not a State to be represented in Congress, should properly be settled by Congress and could not be settled by any other power than Congress. He was of the opinion that so far as the power to be represented in Congress was concerned, a State which had been in insurrection, which had been in the power of the enemy, and which had deliberately pretended to join another confederacy, was not entitled to be represented in Congress until she had returned to her allegiance. It was not enough that a portion of her people, sustained by the military power of the United States, declared themselves to be a State — Congress must first declare it by the admission of senators and representatives, and Congress should put an end, and at once, to all these questions which had been raised with reference to the pending presidential election, and he was of the opinion that before "we attempted business of reconstruction there should be something in our power to reconstruct. It would not be too late to act upon that when our action could be made efficient." He did not wish, however, to express any opinion as to the details of the bill (one of the early reconstruction measures). The other question he considered of great importance. It ought to be settled at once, and the wishes of the gentlemen who claimed the seats or the wishes of party friends ought not to be consulted, in view of the great importance of the question itself and the serious consequences which might follow if it were left unsettled. He hoped the resolution would be acted upon and disposed of.

During the recess of Congress from March to December, 1865, he watched with extreme solicitude the attempts of President Johnson to restore the insurgent

States to the Union. Acting upon the urgent suggestion of Mr. Stanton and his assurance of the President's absolute confidence in Mr. Fessenden, the latter endeavored to maintain a friendly intercourse with President Johnson in the hope that he might be able to avert a quarrel with Congress. He knew the President's peculiarities, but he believed him to be honest, especially at the beginning, and that he meant what he said when he declared that treason must be made odious, that traitors should take no part in the restoration of the States, and that negroes should vote in Tennessee. But he thought that the President had made a great mistake in the outset, and that, with a man of his temper and character, was fatal, for it would prevent him from perceiving his error. Mr. Fessenden considered the occasion was an extraordinary one, eminently such as the Constitution contemplated, which required the highest wisdom of all, and that it was the duty of the President to call Congress together. Unfortunately the President had conceived the idea that he could deal with the matter alone, and that he alone had the power to initiate *new* governments, for he expressly declared that *none* then existed. In his efforts at restoration President Johnson had issued two proclamations during the recess of Congress, one of amnesty, and one respecting a convention to restore North Carolina. The proceedings under these proclamations were regarded by Mr. Fessenden as sheer usurpation, and he so wrote a member of the Cabinet. "In these proclamations the President had jumbled his powers together." As President, said Mr. Fessenden, he had no power whatever, for as President he could only execute the laws and there were no laws to execute applicable to the matter of restoring or constituting governments. All he could do as President was to extend existing laws over the territory

lately in rebellion. If on the other hand he was proceeding under his military power as commander-in-chief, there was no authority here to appoint civil officers and initiate governments to be supported by armed force, as was indicated in his proclamation, force to be employed in the execution of his edicts to form governments, to exclude a large portion of the loyal people from civil rights, and to dictate what sort of a constitution should be formed. At this time he gave the President credit for good intentions, supposing that his proceedings were merely designed as an experiment, the results of which were to be submitted to Congress. His hopes were dispelled by the President's message in December, in which restoration was treated as an accomplished fact, and which called on Congress to admit senators and representatives without inquiry.

The course of Mr. Johnson aroused the gravest apprehension among Republicans. The two houses assembled with a consciousness that a difference might develop between Congress and the President. It was manifest, too, that he would have supporters of his policy among the Republicans. Mr. Fessenden, with other leading Republicans who held that the question of reconstruction should be settled by Congress, felt that while Congress should act with promptitude and firmness it must proceed with caution toward the President, with whom a quarrel might be fatal to the party and disastrous to the country. It was important to make the President understand that Congress would exercise the right to inquire into the condition of the seceded States and to fix the basis of reconstruction. It was also desirable to prevent hasty action by either house.

The determination of the Republicans in Congress to take entire control of all questions of restoring the seceded States without regard to the acts and policy of the

President was strengthened by the cruel and tyrannical laws against the colored people which had been enacted during the recess by the seceded States, and by the election to Congress of the most prominent rebels, who now appeared in Washington and demanded as a right immediate admission to their respective houses.

Congress assembled on the 4th of December, 1865. In the organization of the Senate Mr. Fessenden was again placed at the head of the committee on finance. The war was over and there were no longer vast sums to be raised to sustain the armies and navies of the republic, but the revenues were to be reduced. The long and intricate internal revenue and tariff laws were to be revised. These were familiar matters to Mr. Fessenden, and he anticipated a comparatively easy time, as the committee had been made up to suit him. All of the great financial measures of the war had passed his examination in committee, and had been afterwards debated by him in the Senate. He was now to be placed at the head of a still more important committee, the most important that had ever been appointed in the history of Congress, — the joint committee on reconstruction, — and this, besides involving great labor, would require the utmost discretion and good judgment.

Immediately after the organization of the House, Mr. Thaddeus Stevens offered a resolution providing for the appointment of a joint committee of fifteen, nine on the part of the House and six on the part of the Senate, to inquire into the condition of the so-called Confederate States and report whether they or any of them were entitled to be represented in either house of Congress, with leave to report by bill or otherwise, and until such report should have been received and acted upon, no member of said States should be received in either house,

and all papers relating to the representation of the said States should be referred to said committee, without debate. The rules of the House were suspended and the resolution was at once adopted.

This resolution was called up in the Senate on December 12, and inasmuch as a joint resolution required the signature of the President, it was first amended and made a concurrent resolution of the two houses, to avoid a possible disapproval by the President. It was then objected that neither house had the right to part with its control over the question of the qualifications of its own members. To obviate this difficulty, the last part of the resolution was omitted. As finally adopted it simply authorized the committee to inquire into the condition of the so-called Confederate States and report whether they or any of them were entitled to be represented in either house of Congress, with leave to report at any time by bill or otherwise.

As the rules of the Senate did not permit the majority to shut off debate, the resolution provoked discussion. It was opposed by the Democrats and by those Republicans who soon became recognized as the President's champions, Cowan, Dixon, and Doolittle.

Mr. Fessenden replied to them. He regretted the debate had sprung up, as he considered it out of place. It sometimes happened that things foreign to the question were said which ought not to be allowed to pass without comment. When the resolution first appeared he approved it because the question of the readmission of the so-called Confederate States required serious consideration. He felt that a committee of the two houses to consider the subject was an imperative duty. He did not pin his faith upon anybody, however prominent his position. Congress was a part of the administration and should not abandon its

duties in favor of anybody. Upon questions of such infinite importance Congress was bound to bestow the utmost care and act upon its own convictions. He favored the resolution because it looked to deliberate consideration before action. It was important that the subject should be investigated by a committee of both houses because there should be harmony of action between them. It was better to spend a little time now than to take a step which they might repent. He had felt the same objections to the resolution which were to be removed by the amendment. He did not approve of shutting off debate in the Senate. That might be necessary in the House for the transaction of business, but it had never been necessary in the Senate. Nor did he consider it necessary that all the credentials of members should be referred to that committee. That could be done at any time by vote in each house. No harm would be done by a discussion in the Senate; it would be soon settled and thus could be avoided the apparent constitutional difficulty. Hence he had thought it best to strike out that clause and simply appoint a committee, and then if the Senate or House separately chose to pass a rule to refer all papers or credentials even to that committee it could be done, and the great object of putting the question which lay at the bottom of the subject of the admission of members into the hands of a joint committee had been accomplished. The only thing settled by the amendment was that the question of the fitness of the States to come in now was deferred until the committee had thoroughly considered it and reported upon it.

He did not agree with the senator from Wisconsin that passing this resolution for a committee was infringing upon the rights of anybody or making an intimation about any policy the President may have adopted. He hoped there were no such things as "exclusive friends of the Presi-

dent." He respected the President and was ready to support him in good faith and kind feeling in all that was consistent with his own views of duty to the country. But he dissented entirely from the doctrine that because a line of policy had been adopted by one branch of the government it must therefore be tried even if it was against his judgment. No measure would receive his support until he had examined it and believed it would result in good to the country. That was his duty as a senator. He hoped the resolution would be acted on simply as a matter of business. Nobody had a right to complain if Congress raised a committee for certain purposes. It was not an imputation upon any one. It was a course of action adopted for the good of the whole. He wished to say a word with reference to one principle that would guide his action. The country had just gone through a war, when it had been necessary to do some things for which no strict warrant could be found. He had held that while the country was in peril the President was not fit for his place if he did not take the responsibility of doing what was necessary to save the country. He had upheld those things because they were necessary. Congress ought now to revert to its original position. If he acted now upon different principles in time of peace from those he had defended in time of war, he wished everybody to understand the reason of it. In time of peril questionable measures were inevitable. The country should now come back to a written constitution and forget dangerous precedents.

After some discussion, mainly between Mr. Trumbull and Mr. Hendricks, the resolution, as amended, was adopted.

The vote on the resolution for the joint committee was the first test in the Senate of the solidity of the Republicans against the policy of the President. When the

resolution came to a vote on December 12, only three Republicans — Cowan, Dixon, and Doolittle — voted against it. This defection still left more than two thirds of the Senate Republicans while the proportion of Republican members of the House was even larger. So long as the Republicans maintained this strength they could pass any measure over the veto of the President, nor did they fail to do this except in one instance.

Writing of the situation Mr. Fessenden said: "The committee on reconstruction has a severe and onerous duty to perform, which must for some weeks occupy a great share of my time and attention. It is a difficult subject to deal with, for it has become much complicated by the steps already taken. Yet I think I see the way through it if Congress stands firm, as I think it will. We are embarrassed by men of extreme opinions who think all ways but their own are necessarily bad ways, and by others who cannot wait till the proper time, through fear lest their own names may not be sufficiently known in connection with the work to be done. The committee has a large majority of thorough men who are resolved that ample security shall attend any restoration of the insurgent States, come what will, while they desire, if possible, to avoid a division between Congress and the Executive, which could only result in unmixed evil. My belief is still that the President is as anxious as we are on that point; and if meddlesome people will leave him in peace, I think he will try hard to establish matters on a firm and safe basis. He manifests no desire to interfere with the proper prerogatives of Congress, and appears willing to yield much to its opinions. I cannot say quite as much for ——. Time has not improved him so much as I could wish, and I shall be very unwilling to trust him with power. Mr. Stanton, however, is a great and true man and has my

entire confidence. In his hands the country, its institutions, and human rights are as safe as they could be with any one, and his influence is powerful for good."

Much solicitude was felt in Congress about the make-up of the joint committee, and there was a good deal of consultation among Republican senators, not only as to its members, but especially as to who should be chairman. The Republican senators with a few exceptions indicated their wish that Mr. Fessenden should be the chairman. The necessity of great circumspection and self-control, in view of a possible quarrel with the President and the importance of the work, pointed out Mr. Fessenden as best fitted for the position. On the 21st of December the presiding officer of the Senate announced Messrs. Fessenden, Grimes, Harris, Johnson, Howard, and Williams as members on the part of the Senate. The members on the part of the House were Messrs. Thad. Stevens, E. B. Washburne, J. S. Morrill, John A. Bingham, Roscoe Conkling, George S. Boutwell, Henry T. Blow, A. J. Rogers, and Henry Grider. The Democratic members of the committee were Reverdy Johnson of the Senate and A. J. Rogers and Henry Grider of the House. In his "Twenty Years of Congress" Mr. Blaine says that "it is not often that such solicitude is felt touching the membership of a committee as was now developed in both branches. It was foreseen that in an especial degree the fortunes of the Republican party would be in the keeping of the fifteen men who would be chosen. The contest predestined and already manifest between the President and Congress might, unless conducted with great wisdom, so seriously divide the party as to compass its ruin. Hence the imperious necessity that no rash or ill-considered step should be taken. Both in Congress and among the people the conviction was general that the

party was entitled to the services of its best men. There was no struggle among members for positions on the committee, and when the names were announced they gave universal satisfaction to the Republicans."

Concerning this honor Senator Fessenden wrote home, December 24, 1865: —

"I have now been away for one whole month. The time has *flown*, for it has been filled with occupation. I did hope that I should not have so much to do for this session, and might feel a little less anxious. The matters of the committee on finance I could get along with, for they have become familiar to me. Unfortunately, however, I am placed at the head of the committee on reconstruction, and this, besides its delicacy, will be a position involving very great labor and requiring great care and circumspection. I could not decline it any more than I could decline the Treasury. Mr. Sumner was very anxious for the place, but, standing as he does before the country, and committed to the most ultra views, even his friends declined to support him, and almost to a man fixed upon me. Luckily, I had marked out my line, and everybody understands where I am. I think I can see my way through, and if Sumner and Stevens and a few other such men do not embroil us with the President, matters can be satisfactorily arranged — satisfactorily, I mean, to the great bulk of Union men throughout the States."

Congress having adjourned over the holidays, the committee did not begin its labors until January 6, 1866. He writes at this time to his family (January 14, 1866):

"I unfortunately tumbled down a few days ago, and struck my chin, cutting it, and bruising it more — lucky I did n't break my jaw. Grimes says I found something harder than my face. I replied that had he fallen it would have been the ground that suffered.

"It is very unlucky for me that I have been forced to take hold of this reconstruction business. As I anticipated, the work of the finance committee will give me no trouble. This, however, engrosses me, and with all other matters makes the burden heavy. In addition to all other difficulties, the work of keeping the peace between the President and those who wish to quarrel with him, aided as they are by those who wish him to quarrel with us, is a most difficult undertaking. The fools are not all dead, you know. I hope we shall be able to put things upon a sound basis. That *must* be done, quarrel or no quarrel, but I hope to avoid the necessity."

At the first meeting of the committee, a sub-committee consisting of Messrs. Fessenden, Johnson, and Washburne was appointed to wait on the President and request him to defer all further executive action in regard to reconstruction until the joint committee had taken action on the subject. The committee then adjourned until January 9, when it reassembled to hear the report of the sub-committee. The report was to the effect that the sub-committee had waited upon the President and stated to him that it was desirable to avoid all possible collision or misconstruction between the Executive and Congress in regard to the relative positions of Congress and the President; that they thought it desirable that while this subject was under consideration by the joint committee, no further action in regard to reconstruction should be taken by the President unless it should become imperatively necessary; and they thought that mutual respect would seem to require mutual forbearance on the part of the Executive and of Congress. To which the President replied substantially that while he considered it desirable that the matter of reconstruction should be advanced as rapidly as might be consistent with the public interest,

still he desired to secure harmony of action between Congress and the Executive, and it was not his intention to do more than had been done for the present.

At this meeting of the committee Mr. Stevens submitted a proposed amendment to the Constitution providing that representation should be apportioned among the States of the Union according to the number of their respective legal voters. Mr. Fessenden offered a resolution that the insurgent States could not with safety to all the rights of the people be allowed to participate in the government until the basis of representation had been modified and the rights of all persons amply secured. Mr. Stevens's proposed amendment elicited so many propositions that finally they were all referred to a sub-committee consisting of Messrs. Fessenden, Stevens, Howard, Conkling, and Bingham, with instructions to report to the full committee a proposition for an amendment to the Constitution. This report was made on January 20, and consisted of two propositions in the alternative, one of which, with a third proposition, was to be recommended to Congress for adoption. The first proposition, which was Mr. Fessenden's, declared that representatives were to be apportioned according to the respective numbers of citizens in each State, and all provisions in the Constitution or laws of any State whereby any distinction was made in political or civil rights or privileges on account of race, creed, or color should be inoperative and void. The second proposition, which was favored by Mr. Stevens, declared that representatives were to be apportioned among the States according to their respective numbers, counting the whole number of citizens of the United States in each State, provided that whenever the elective franchise shall be denied or abridged in any State on account of race, creed, or color, all persons of such

race, creed, or color should be excluded from the basis of representation.

The committee voted to adopt the second proposition, which was prepared by Mr. Conkling, as the amendment to be reported to Congress. It was known as the Blaine amendment, he having offered one like it in the House, which was referred to the committee. Mr. Fessenden was of the opinion that the proposed amendment of the Constitution should be a clear avowal of a principle and should in distinct language declare void any distinctions in political or civil rights, rather than a measure which attained the object indirectly by reducing the basis of representation if such distinctions of political or civil rights were made in the state constitutions or laws. The majority of the committee, including several like Mr. Stevens, who were regarded as more radical than Mr. Fessenden, thought it would be very difficult to prevail upon the States to accept a constitutional amendment of so unequivocal a character. In his speech to the people of Portland in 1868, Mr. Fessenden said: "The first proposition was voted down in committee because it was thought that Congress and the people of the Western States would not accept it." Other Republican members of the committee did not differ from Mr. Fessenden as to the justice of the terms laid down in his proposition, but only in regard to the expediency of adopting it at that time. The Blaine proposition was received with more favor and was adopted. Mr. Fessenden said he thought it was better to offer a plain, simple proposition which covered the whole ground, and if the people did not accept it that year, he would wait until they did, until the mass of the community was educated up to it. The idea of many of the members of Congress was to hurry and get the Southern States back, but for himself he was in no hurry to have them come

back. They went out by their own motion; he would offer them a fair proposition, and if they did not choose to accept it they might remain outside the Union until they did. Though Mr. Fessenden was called a conservative, he was radical in his ideas of what the constitutional amendment should be. But as chairman of the joint committee he reported the proposition adopted by the majority of the committee, explained its features, and defended it against the adverse criticisms made upon it.

The feeling against the policy of the President was so intense that Congress did not wait for a recommendation or a report from the joint committee. The debate on reconstruction was opened on December 18, 1865, in the House, by Thaddeus Stevens. He laid down the proposition that under the law of nations the ties that bound the insurgent States to the Union were broken; that the seceded States were in the attitude of conquered provinces, and their future position depended upon the will of the conqueror. Mr. Stevens pointed out the effect to be produced by the manumission of the slaves in largely increasing the congressional representation of the Southern States. Henry J. Raymond of New York, a Republican supporter of the President's policy, replied to Mr. Stevens, arguing that as secession did not triumph, the States were still in the Union and therefore entitled to immediate admission. This was just before Christmas. A few days after New Year's, when Congress had reassembled, Raymond's speech was answered by Shellabarger of Ohio.

A few letters of Senator Fessenden's at this time indicate that he was depressed by overwork and ill health.

"My life this session is, I fear, to be more laborious than ever. This reconstruction business is very engrossing. I cannot pass over the finance committee to anybody, and the fact that I have been in the Treasury brings upon me

everybody, from everywhere, who can muster any excuse for asking my aid. Add to this the large number of letters I am obliged to read and answer, and you will have some idea of what I have to do. The old trouble in my head has come back again, and I find myself at times entirely exhausted and almost despairing. But there is nothing to do but to fight it out to the end. How soon that will come I am unable to foresee, of course, but I sometimes feel as if it could not be far off."

January 25, 1866.

I must write you to-day, as the President has sent for me to come up and see him to-morrow at eleven o'clock, and it is not easy to say how long I may be detained. I made some remarks a few days since in which I undertook to define his position with regard to Congress. It was a bow drawn at a venture and had two objects, — one to allay the fears of our friends, another to suggest what should be his position. I am inclined to believe that good has been done in both directions, but I shall know more about it to-morrow.

February 3, 1866.

I have been very unwell during the week, quite bilious, besides a cold, and obliged to take some of the pills. Looking at them would not answer the purpose. Of course I have been very cross, and unable to open my mouth to any purpose. I am much better to-day, however, and hope to be quite well by Monday. . . . You see I am in better spirits, and I need to be, for our constitutional amendment is coming up on Monday, and Mr. Sumner says he shall put his foot on it and crush it. Well, the amendment is the committee's and not mine. I shall make a half hour's speech on it, and be followed by Sumner with a printed oration which he says will take two

days. He is waiting for this opportunity to show the country the difference between a great orator and a mere talker. We shall see how it ends.

February 17, 1866.

It is Saturday, and the Senate is adjourned over until Monday. I, however, have just come from a four hours' session of the reconstruction committee, in which nothing was concluded, though progess was made. I think we shall conclude to admit Tennessee in some shape. I hope so as to make a valuable precedent. Whether the President will be easy there I cannot tell; but though I will do something to keep the peace, I will not vote away one inch of the safeguards necessary in this terrible condition of affairs.

The importance of keeping up friendly relations between President Johnson and the Republicans was constantly pressed upon Mr. Fessenden, as having the great matter of reconstruction in his charge. He deprecated the violent attacks upon the President, fearing they would only widen the breach and prevent action by Congress. It was not by any means sure in January that the Republicans would be able to control a two thirds vote in both houses, without which no constitutional amendment or bill could be passed over the President's veto. He did not give up the hope that the President would act with the party which elected him until the President's violent speech of February 22, when he assailed Congress and the joint committee. This furnished the occasion for Mr. Fessenden's speech of February 23, in which he replied to the President in good temper, and then stated the powers of Congress over reconstruction. Of the speech, he writes home: —

February 25, 1866.

I was too much used up yesterday even to write a

letter, and I am not much better to-day. That long speech on Friday, made when I could hardly stand, and with such a thundering in my head that I could not tell how my own voice was sounding, utterly exhausted my little remaining strength. It is over, however, and I am much relieved.

I must stay, come what will, until our course is defined. No excuse for leaving my post now would be satisfactory to the country. How heartily I wish myself a nobody.

I should like much to see you now, dear cousin, and all the rest of my dear friends, but I am so dispirited, so weak, and so cross, that it would give you little pleasure to see me.

It is doubtful if Mr. Fessenden would have spoken upon the political questions before Congress until some recommendation had been reported from the committee on reconstruction, but for the debates on the bill to enlarge the powers of the Freedmen's Bureau reported by Mr. Trumbull and the Civil Rights Bill introduced by Wilson. These measures led to exhaustive debates in January. The Freedmen's Bureau Bill particularly excited the ire of the Democrats. Saulsbury of Delaware denounced the Republicans as having come into power when the country was at peace and with having inaugurated a policy which disrupted the Union, which brought on the civil war and burdened the country with a debt of $4,000,000,000. He asserted that if the pending bill was passed, which he declared was a bill that would impose negro suffrage and which made the negro the superior of the white man, the effect of it would be to restore the Democratic party to power in Congress. Mr. Hendricks attacked the bill not only on constitutional grounds but

especially for the great expense it would impose upon the government. In his reply to these speeches, Mr. Fessenden had two objects, one to allay the fears of Republicans and the other to suggest what should be the President's position.

He began by alluding to the prophecy of the senators from Delaware that the Democrats would soon return to power if the Republicans proceeded in their system of measures, answering with good-humored sarcasm that he would not hesitate at doing what was right even if it was followed by such a calamity. The innumerable evils that would follow the return of the Democrats to power might well make one pause. Perhaps he might hesitate at a system of measures which would bring about such a consummation. But he could not think such a calamity was so near that the apprehension of it ought to influence their action on proper measures.

"We were at the close of a great war brought upon the country by the action of the Democratic party, the mass of which was in the South. There were many individual Democrats as good patriots as anybody, but he would say that but for the support which the Democratic party gave the South in its measures of aggression he did not believe the war would ever have occurred. If the war was brought on by the South, and as a consequence they are to be benefited even in money appropriations, it is not for them to complain. They cannot complain of Congress if it takes measures to set things right; and if the great Democratic party is in any degree responsible for it, it cannot complain of measures which are necessary at this time." He was happy to make a distinction between individual Democrats, the rank and file, and the acts of that party before the war. The great mass of Northern Democrats served their country bravely in the most manly and

patriotic way. They would not follow their leaders in the Democratic party. He made these observations in reply to the senator from Delaware.

A great many threats were heard of the coming overthrow of the Union party. Perhaps that great party would commit errors and the people would desire a change. That would be natural. The possession of power made men careless, and it was a good thing for a republic to change its rulers; but he hoped the Union party would remain in power long enough to set things right. The Republicans would do what they could for the welfare of the country, and would not be frightened by the idea that their reign was to be short.

The senator from Delaware had renewed his charges, so often heard, of violations of the Constitution. It had been the cry for five years. Could gentlemen flatter themselves that they had produced any effect upon the public mind or had frightened anybody? Were they any stronger for it? It did not appear so. It looked as if the people did not care much for what they said. The people heard it, but let it pass as a sort of necessity.

The bill met a necessary and inevitable result of the exhausting war carried on by the South. It was found necessary to emancipate the slaves, and slavery no longer existed. The millions of colored people were thrown without protection upon the charities of the world in hostile communities angered at the freedom of their slaves. They were so freed because the country was compelled to avail itself of their services, as well as to deprive their masters of the material aid they furnished them in the contest against the Union. Thus the slaves were found when arms had disappeared.

Now, could any one say that a great people having used these former slaves, having deprived the enemy of

their aid, would now throw them upon the world without protection, exposed to persecution because there was no provision in the Constitution by which Congress was authorized to feed and clothe anybody? We had a written constitution, and in spite of the senator from Delaware we tried to adhere to it. There might have been some necessary violations of it. That came from circumstances for which no previous provision had been made. But gentlemen must reflect that as a part of the constitution, written or unwritten, of all governments, stands the law of nations, necessary from the relations which all communities bear to each other and from the contingencies to which they are exposed. That being the case, they must accept the consequences which follow from it.

The country had been plunged into a war almost the greatest of modern times, involving vast results. Were they to be told that if it brought about a state of things not found in the written constitution those necessary results were to be shunned and not noticed in any way? that their affairs, as connected with that war, were not to be closed up under the same law which governed this nation and which governs all nations, while the war continued? If that was so, what a powerless people they were. The country could carry on a great war, but the moment the clash of arms had ceased it became powerless to provide for the necessary results of that war, because a case not foreseen was not provided for in the written constitution.

The moment they, as the Congress of the United States, found themselves in that condition as a necessary result of the contest, gentlemen who disagreed with them in political views told them that they were working against the Constitution, which gave no power to feed and clothe a man, woman, or child. He accepted no such doctrine.

The power must exist to provide for the results of the contest which had been waged. All the world would cry shame upon the country if it was not done.

Congress had put it upon the War Department to take care of these people who were part of the war. This duty was properly connected with the military department of the government. Though military operations in the field had ceased, the country was not thereby relieved from what remained to be done to carry out to the full what ought to be accomplished. They could not divest themselves of this responsibility even if they desired it.

It was now necessary to increase the power of the Freedmen's Bureau, and they were met by the outcry that they were taxing the white people to support the blacks. He could see little difference between money and lands when it was a question of public property. What was in the Treasury and what might come in were equally valuable. He would say to gentlemen of the South that they and their Northern sympathizers brought this trouble upon the country, and the Republicans were trying to do the best they could with the results of the wickedness of the South and its allies.

The real question was not one of expense, but whether this thing ought to be done. Was nothing to be done for these colored people thus thrown upon the world, and the refugees who had been driven from their homes? The idea of purchasing land had at first struck him unfavorably. But if they held that in an unexampled state of facts they could not go beyond the rules adopted for their action in time of profound peace, they would render the government powerless. They had learned that the government had much ampler powers than they had supposed. The argument of money and the argument of constitutionality did not reach him. If necessary he might

find the power under the amendment abolishing slavery. There was nothing in the bill which should trouble anybody. He was satisfied the constitutional power could be found when the necessity of the thing was apparent and it must be done by the government as a consequence of things that it was compelled to do and had a right to do. Otherwise it was a government without the necessary powers to effect its own objects.

He did not consider it proper to say anything upon reconstruction until the committee which had the subject in charge had made known the results of its deliberations. Some gentlemen seemed anxious to discuss the matter before they had the benefit of the facts and conclusions which the committee might find. That was a course which each senator must decide for himself. There was another thing upon which he desired to say a few words.

Able senators on both sides had talked a good deal about the policy of the President and the policy of Congress. It would be a point for gentlemen on the other side of the Senate to make the people believe there was likely to be a collision between the President and those who elected him. He begged gentlemen not to flatter themselves with such an idea. Even if there was a difference of opinion as to how a great work was to be accomplished, it did not follow that there was to be a collision. It was true that gentlemen hung about the President and insinuated that those who ought to be his best friends did not support him. They paid the President a poor compliment. Did they suppose the President was not a man of fixed opinions and did not know his own friends?

As commander-in-chief, the President had the power, and it was his duty, to control the rebellious States, to preserve order and prevent anarchy; and he could appoint provisional governors, and give those States aid

in forming constitutions and regulating their domestic affairs; and he could also say to them that when they were fit to be left to themselves *he would withdraw the army*. He, Fessenden, might have done differently, but perhaps not so wisely as the President. The President had the right to act as he did, and nobody could complain of it. The President might think those States were ready to send senators and representatives to Congress. He, Fessenden, thought they should come at the earliest moment they could with safety. The President and he might differ as to the proper time.

No man had a greater respect for the Constitution and the coördinate branches of the government than the President, and he would be the last man to complain of Congress for acting according to its judgment so long as all were agreed that the States should be restored at the earliest possible moment to their position in the Union.

The talk about the President's policy amounted to nothing. Any danger to the country would come from extremes. Congress was doing what was its right and duty to do, and that was, before taking a step which might affect the welfare of the country for all future time, to deliberate calmly and patiently upon what it was best to do. Congress would act as fast as it could with safety. But it would not be hurried beyond the dictates of its judgment.

It was not to be expected that the people of the late Confederate States would feel kindly towards the North. Time was necessary to overcome prejudices and to soften animosities. He hoped the time would soon come when all the States would be represented in the Senate. He was as much averse to putting a stigma upon any portion of the people as the senator from Kentucky.

Nobody should be frightened or hurried by talk about

policy or collision. There was magnanimity and patriotism at both ends of the avenue. Congress should go on and pass the series of measures they had decided upon and carry them into execution. Gentlemen would make an outcry about their unconstitutionality and threaten the growth of the Democratic party. The Republicans must be patient, meet that calamity when it came, and bear it with the best grace possible.

When this speech was delivered there was still a hope that the President would act in concert with Congress. It was not until a month later that he broke with the Republicans. Mr. Fessenden's object was to conciliate the President, to draw him towards the party, and to prevent the Republicans from attacking him. He had several confidential interviews with the President, who expressed himself in full accord with him as to the method of dealing with the insurgent States. Just at this time the President asked him to spend a Sunday forenoon in discussing the situation. Mr. Fessenden came away with the conviction that the President would act with Congress and there would be no rupture. The next morning Mr. Stanton told Mr. Fessenden that while at church the day before he became so anxious over the political situation that he left the church to find him and urge him to again confer with the President, adding there was no senator in whom the President put so much confidence. Mr. Fessenden then related his Sunday interview to Mr. Stanton, who expressed great relief at the prospect of harmonious action. This was on Monday morning. On that afternoon the President, in an interview with some of the supporters of his policy, expressed opinions utterly at war with his opinions expressed the day before to Mr. Fessenden. It appeared as if in the morning he felt the importance of acting with Congress, and recognized its

authority to impose conditions upon the insurgent States, while in the afternoon, under other influences, he became belligerent, obstinate, and egotistical, expressing opinions which delighted the Democrats and the South. Mr. Fessenden's speech must be judged from his purpose to incline the President to act with the Republicans. Still later, in his speech of February 23, in reply to the President's attack on Congress and the committee, while he expressed his views in plain language he treated the President with respect. It was impossible, however, to restrain the extremists of the party. They denounced the President with great bitterness and he retorted with equal violence. The possibility of keeping the President and the Republicans together soon disappeared in the increasing excitement and anger.

When Mr. Johnson was nominated for Vice-President, Mr. Cameron wrote to Mr. Fessenden that if Mr. Lincoln should die he would much prefer a Northern man to succeed him. The event Mr. Cameron had feared had now come to pass. The President, whom the Union party, largely Republicans, had chosen, now diverged in opinion and policy from the party which elected him, taking the ground that the eleven insurgent States should be at once restored to their relations with the Union, and that he alone could decide when the States could resume their relations with the government. He supported this claim on the theory that constitutionally they were still States in the Union. Against this, the Republicans in Congress demanded that before the rebel States should share in the government, such amendments to the Constitution and such laws should be adopted as would change the basis of representation according to the condition of the South consequent upon the abolition of slavery, would provide against compensating the slaveholders for the loss of

their slaves, would place the public debt and the public pensions beyond the power of repudiation by the South, and would forbid the payment of their debts incurred in and for the Rebellion.

No Congress was ever called upon to consider problems of greater magnitude and difficulty. These questions would have been momentous enough with a President and Cabinet aiding and sustaining Congress. But with a hostile President and a Cabinet in the main unfriendly to the congressional view, it looked as if all the good results from the overthrow of the Rebellion might be lost. Fortunately for the country the heroic and indomitable Secretary of War stood with Congress. It is to the honor of the Republican members of this Congress and Northern people that they remained firm in their determination to secure the results of the war and to place the rights of every citizen upon a sure foundation. Mr. Blaine declares that "no unmanly efforts to compromise, no weak shrinking from duty, sullied the fame of the great body of senators and representatives. Even the Whig party in 1841, with Mr. Clay for a leader, did not stand so solidly against John Tyler as the Republican party under the lead of Fessenden and Sumner in the Senate and of Thaddeus Stevens in the House now stood against the administration of President Johnson."

The question uppermost in every mind was the adjustment by constitutional amendment of the basis of representation of the South in Congress. Should the blacks be counted and thus the political power of the insurgent States be increased? Mr. Fessenden's idea was to declare by a constitutional amendment all civil and political distinctions on account of race or color to be inoperative and void, and then to hold the insurgent States under military rule until they should, by the voluntary action of the ma-

jority of the white race, accept this amendment and present themselves to Congress with proofs of their loyalty and with equal laws for the blacks.

On the 23d of January, 1866, the joint committee on reconstruction reported to the House the proposed amendment to the Constitution. It based representation on population and provided that if the elective franchise should be denied or abridged on account of race or color, the representation should be proportionately diminished. In closing the debate on this proposition in the House, Mr. Thaddeus Stevens said that the other proposition (the one proposed by Mr. Fessenden declaring all distinctions in political or civil rights on account of race or color to be inoperative and void) was dear to his heart, but he did not believe it could be carried in Congress or the States. It passed the House on the 29th of January, and came up in the Senate on the 31st. Mr. Sumner had already given notice that he should put his foot on it and crush it. Mr. Fessenden, as chairman of the committee, was entitled to open the debate, but he had not been well for some days, so he yielded the floor to Mr. Sumner, who delivered one of his most elaborate orations against the amendment. His speech consumed two days.

Mr. Blaine, in his "Twenty Years of Congress," says of Sumner's speech that "it may be regarded as an exhaustive and masterly essay unfolding and illustrating the doctrine of human rights. As such it remains a treatise of great value, but as a political argument, calculated to shape and determine legislation in Congress, it was singularly inapt. Mr. Fessenden replied to Mr. Sumner in an elaborate speech in justification of the amendment proposed by the committee. His argument was marked with all his peculiar ability, and the two speeches contain within themselves the fullest exposition of the difference

in mental quality of the two eminent New England statesmen who were so long rivals in the Senate of the United States. Mr. Fessenden was above all things practical. He was unwilling at any time to engage in legislation that was not effective and direct. He had no sympathy with mere declarations, was absolutely free from the vanity so often exhibited in legislative bodies of speaking when there was no question before the body for decision, or of submitting resolutions merely in response to popular sentiment without effecting any valuable result. In short, Congress was for him a law-making body. It met for that business, and, so far as he could direct its proceedings, Mr. Fessenden, as chairman at different times of leading committees, held it to its work. He was felicitous with his pen beyond the rhetorical power of Mr. Sumner, though not so widely read nor so broad in general scholarship and culture."

On the 7th of February Mr. Fessenden explained the amendment proposed by the committee and replied to the objections which had been made against it, saying, among other things: "There had been a great war, slavery had been overthrown. There were provisions in the Constitution having reference to slavery, establishing the basis and proportion of representation. These provisions had become inoperative and should be revived. It was said that the Constitution took care of itself, and the former slaves having become free, now all persons were alike and no change was necessary. But it must be remembered that slavery had just been abolished; that the mass of those who had been slaves were ignorant; that they had been made free against the will of the rest of the population in those States where slavery had existed. Men did not willingly give up that which was dear to them. It was fair to suppose that, if the Constitution was left

unchanged, the power in the States would be exercised to deny all political rights to those who were so lately considered unfit to exercise them. Such a feeling was contrary to the principles of republican government. The result would be that in a portion of the States all the people would be represented, but a part only would exercise political power. Then the question arose whether Congress ought not only to see that all free men had all their rights, but that the temptation should be removed of keeping up a system which would be injurious to the State and tend to an aristocracy.

The simple way of doing this was a proposition like that of the senator from Missouri (Henderson), doing away at once with all distinctions of race or color in all civil and political rights. That would go to the root of the matter. Could he legislate upon the subject he would prefer a distinct proposition in the Constitution that all provisions in the constitution or laws of any State, making any distinction in civil or political rights, should be unconstitutional, inoperative, and void. The committee did not recommend it, however, and he stood as the organ of the committee, approving its work, and not disposed to set up his judgment so exclusively as to denounce what better men had recommended.

There were but two propositions to be considered. One was to base representation on votes. The other was the amendment recommended by the committee. The senator from Massachusetts had, at the beginning of the session, offered an amendment basing representation on voters. Did not that leave the power to the States as it existed there now? The object of his proposition was the same as the amendment of the committee, to limit representation according to the extent of the suffrage, and in that way to hold out an inducement to the States to extend

the right in order to increase their political power. His proposition was in effect precisely the same as that of the committee. Yet he talked of the committee's proposition as a compromise of human rights. If that was a compromise so was the senator's, for it did not move an inch further towards accomplishing the purpose they all had so much at heart. The proposed amendment of the senator from Massachusetts was founded on the same idea as the one before the Senate, and his proposed bill provides no sanction, no penalty, no machinery, and merely reënacts the Constitution in language not half as forcible.

One objection to basing representation on voters was that it departed from the established principle of the Constitution which founds representation upon population. It would also be unequal, giving the new States more representation than the older States. It would also be an inducement to extend the ballot to an unreasonable extent for the sake of political power. Those States which, for good reasons, had disfranchised rebels would be tempted to restore the ballot to them. The committee saw so many objections that they came back to the principle of the Constitution basing representation upon population alone. The result was the proposition recommended by the committee, which provided that whenever the elective franchise should be denied on account of race or color, all persons of such race or color should be excluded from the basis of representation. This left the matter where the Constitution placed it, and it was equal in its operation. It accomplished indirectly what they had not the power to accomplish directly. It was better to govern men by their interests than by force. Even if the resolution which he preferred could be passed, he was not certain that all the good expected from it would follow. The Constitution, as it stood, said that all persons should be

counted to form the basis of representation. They proposed to alter that to avoid a great evil and accomplish a great good. The question was, How could they amend that in any way to make it acceptable and accomplish the results at which they aimed?

It was not his duty to legislate about abstractions, but to do what was best for the good of the whole. The proposed amendment said to all the people of the United States that they should be represented in Congress, but if they did injustice to any portion of the people they would be shorn of political power to that extent. He considered that a great principle, and worth something. Men loved political power. By the amendment they said to them their political power should be in exact proportion to their action in the right direction. In time they would see it was for their interest to educate the recent slaves, make them useful citizens, and increase their political power by giving them the ballot. Thus much would be gained; and if he could not get more, he would take this. He did not see that presenting this proposition to the States deprived Congress of any power of legislation upon the subject. There was no such thing as a renunciation of power by Congress. Whatever power it had over the subject it would continue to have. The resolution simply said to the States, You have the power over the subject of representation, but if you exercise it in an unjust way certain consequences shall follow. He was in favor of an additional resolution giving Congress the power to legislate upon the subject in full. The senator from Massachusetts would not agree with him because that senator held that the power existed now. He, Fessenden, wished the power did exist. The fathers did not consider that the obligation to guarantee to each State a republican form of government extended so far as to give Congress the

right to examine state legislatures. The guaranty clause of the Constitution secured by the power of the United States a republican form of government to every State in the Union. But did that give to the United States the power to examine every statute passed by a State which had a republican form of government to begin with and see whether it conformed to it, and if it did not, to order its marshals and its courts to interfere and set it right, and if the court was resisted to raise an army and see that its laws were in accordance with it? He did not think it went as far as this.

He understood the senator from Massachusetts to maintain that, under the guaranty clause to secure a republican form of government to each State, Congress had the power to legislate to see that no State whatever passed laws which deprived free men of certain inalienable rights. Suppose they took back the States with an act of Congress providing that everybody should have his rights under the Constitution? After the States had come in they might repeal the act, and then what would become of the guaranty clause? The senator had offered his proposition as a substitute for the amendment from the committee, which he said handed the colored people over to their late masters bound hand and foot. But if they provided a safeguard by inflicting a loss of political power upon the States if they abused the rights they now had, were they handing these people over to their masters as the senator had described?

Now the senator from Massachusetts had proposed a bill as a substitute for the committee's amendment which provided that in order to carry out the guaranty of a republican form of government and to enforce the prohibition of slavery, there should be no oligarchy, aristocracy, or monopoly, and no denial of civil rights on account of

color or race. He, Fessenden, could not see any good in providing by law that the provisions of the Constitution should be enforced without saying in what manner or by what machinery it should be done. The Constitution did not now authorize oligarchies or aristocracies. Why reënact the Constitution and put it in a bill? How was that a remedy? It was of no practical avail. Were they not as safe under the Constitution as under an act of Congress? There was no use in it. It was like the political travesty of a law argument by an eminent lawyer of the senator's own State, which ran in this way: —

> "Let my opponents do their worst,
> Still my first point is point the first,
> Which fully proves my case because
> All statute laws are statute laws."

Mr. Fessenden said he had examined the senator's (Sumner's) scheme because the senator had contended that the proposition of the committee was an outrage and an abandonment of moral principle. What force was there in his remedy? None whatever. It provided nothing. It was nothing but words which might be repealed to-morrow. It reënacted the Constitution. Then it was left to float upon the waters and take its chance with the adverse currents which might strike it.

As the senator had made a most violent attack upon the proposition from the committee, he had examined his remedy to see what there was in it, what rights it secured, what evils it prevented. It did absolutely nothing. It was of no consequence to human rights to put it on the statute book. It had no sanction and no penalty. It was a mere legislative declaration.

Mr. Sumner: "That is all I intended."

Mr. Fessenden: "That is all the senator intended! Then where is his protection of human rights? What

good had he done to him who was once a slave? The committee recommended something more than words, calculated to reach far into the future. The senator proposes to strike it out and substitute a mere legislative declaration."

In discussing the proposed amendment Mr. Fessenden had consumed more time than he had intended, and this, coupled with the fatigue of the long speech, caused him to omit a discussion of the power of Congress over the whole subject of the reconstruction of the insurgent States. Much regret was expressed at his decision, as many Republicans wished to hear him discuss the positions taken by Senators Johnson and Cowan.

In the debate of February 21 on the question of *considering* the resolution from the joint committee not to admit senators and representatives from the insurgent States until Congress should have first declared their States entitled to representation, Mr. Cowan led off against it. Mr. Fessenden replied to him.

The resolution was called up for consideration by Mr. Fessenden on February 23. Senator Sherman opposed its consideration, saying that it had just passed the House under the excitement of the President's veto message; that the Senate could not then act in the deliberate tone neccessary for the discussion of this grave question; that it was a mere declaration of political opinion; that it would be wiser to let it lie over for a few days; that all the business of the Senate ought not to be postponed for this resolution for the purpose of getting into a political wrangle with the President; and it would be wiser to go on with the consideration of the constitutional amendment.

Mr. Fessenden said that he had given notice two days before of his intention to call up the resolution that day. He would not have done so but for the great importance

of the question. The senator from Ohio had designated this as getting up a political wrangle with the President. "When the President tells Congress it is transcending its authority and that it has nothing to do in the way of judgment upon the great question of reconstruction, that was hardly a proper term to use."

There had been no effort to get up a political wrangle with anybody. He, Fessenden, respected the President. He was not influenced by any excitement. He had reflected upon the great questions at issue, and was ready to express his opinion. The sooner the judgment of Congress was expressed, the better it would be.

There was nothing more important than to settle the question whether the Senate.and the House of Representatives of the United States had or had not something to say in relation to the condition of the late Confederate States, or whether it was proper to admit senators and representatives from them. If the President was right in his assumption that Congress had nothing to say, the men who came there with proper credentials ought to be admitted at once, and not to be kept waiting outside the door. On the contrary, if they had something to say about it they should assert their power before the country and before they considered the constitutional amendment. *He* was laboring under no excitement about the matter, and he did not think other senators were.

After some discussion by Sherman, Howe, and Doolittle, the Senate voted to consider the resolution. Before proceeding with his remarks, Mr. Fessenden asked to have it read. Besides the feeling caused by the veto of the Freedmen's Bureau Bill, there was the excitement caused by the President's speech to his fellow citizens the night before, when he assailed the reconstruction committee and charged Congress with revolutionary proceedings.

This attack upon the reconstruction committee made Mr. Fessenden feel that it was necessary to vindicate its appointment and state the principles of public law which, in his opinion, gave Congress the power to impose such terms upon the insurgent States as would provide safeguards for the future and protection for all the people.

"Charges," he said, "had been made against the joint committee on reconstruction, and he felt like vindicating it and the action of Congress in reference to it, and he would ask the clerk to read from a newspaper a report of part of the speech made by the President on a recent occasion to his fellow citizens." The clerk then read the portion of the President's speech which charged the committee with being a central directory, and accused Congress of creating almost another revolution.

The President, said Mr. Fessenden, could hardly have considered with care the nature of the resolution under which the committee have been acting. He then gave a history of the resolution as it came from the House and how it was changed in the Senate. It was simply the appointment of a joint committee in the unexampled condition of the country, after a war of four years in which eleven States were engaged against the government, at the first meeting of Congress after hostilities had ceased, to inquire into the condition of those States and report whether they were entitled to representation. That was the duty of Congress. It lay at the foundation of the whole question of the admission of members, whether the condition of those States was such as to render the admission of those members safe. The President himself had said in his speech "that when those States had complied with the Constitution, when they had given sufficient evidence of their loyalty and that they could be trusted, then let peace and union be restored." Fessenden said,

he would say the same. There was no difference on that point. The President said when they had complied with these conditions they should be admitted. The President made that preliminary to the question of examining the credentials. It seemed, then, that somebody should inquire into their loyalty and obedience to the laws, and who should do this but the Congress of the United States? When Congress appointed this committee what did it do except to carry out precisely what the President had laid down in his speech as preliminary to the question of admission of senators and representatives. But the President called the committee a central directory. Was it anything more than the mere servant of Congress, like any joint committee? The reason of its appointment was that neither branch should without sufficient information take a course from which the other branch would differ and thus bring about a collision between the two bodies of Congress. Was it, then, quite fair to designate it as a central power sitting here to get up a government of a few against the government of the many? He never understood himself to be anything but the servant of Congress, and if the committee had not been able to report, it was only because the question was so important and involved so many considerations.

If the several points suggested by the Executive were preliminary to the admission of members from those States, the question arose, Who was to exercise that power of judgment? If a senator presented himself here, did it belong to the Senate to ascertain if those conditions had been complied with, or did it belong to the President? This brought him to consider the veto message. He was not much attached to the bill that was vetoed. In some particulars it did not meet his approval. He had yielded his objections and voted for the bill. If the President

had confined himself to his objections to the bill, he might have sustained his veto. But the President had given other reasons which, in his own judgment, made it impossible for any member of Congress, with due respect to himself and the rights of Congress, to vote otherwise than to sustain the bill. He did not mean to appear to indorse what the President had said, which was that in his judgment Congress as then organized had no right to pass any bill affecting the late Confederate States while they were not represented in Congress. The President asserted that Congress had no moral right to do it. If that was a correct position, Congress had no right to pass any law in relation to the States that had been in rebellion against the government for four years until their senators and representatives had been admitted to Congress. The President argued that they were bound to admit them on their say so, and after that they might legislate. He could not assent to such a proposition. This position made it impossible for him to sustain the veto, for it would prevent Congress from passing any bill in relation to the Southern States.

Mr. Fessenden then quoted from the message which vetoed the Freedmen's Bureau Bill and from the speech, to prove that the President took the ground that Congress could judge only of the election and qualifications of members. The President said substantially: "I have come to the conclusion that these States are in the Union to be represented in the councils of the nation. I admit they must show their loyalty, but I am to decide whether that has been done, and when I have decided that, then Congress may take up the question of the elections, qualifications, and returns of members who present themselves, and have nothing to do but to settle the question whether they come within the description of the Constitution."

If the President meant that, the issue was before Congress. He could not believe himself faithful to the great interests committed to his charge if he yielded a moment to the idea that anybody but Congress had the right to settle preliminarily the question whether the States were entitled to have senators and representatives or not.

"Sir," said Mr. Fessenden, "we should be yielding everything, we should have no power left, we should be less than children, we should hardly be entitled to call ourselves slaves, if, upon a question upon which the very existence of these bodies, the Senate and the House, may depend, the question of whether a State or a body of men or an organization is entitled to be represented here is not for us to settle, so far as those proposed members are concerned, without advice or dictation from anybody.

"Looking, therefore, at these arguments in the message as indicating that the President would approve of no legislation affecting these States while they were unrepresented, and that the Senate had only the power to see whether men coming to the Senate had proper credentials from somebody, leaving the question whether those States had a right to be represented to be settled at the other end of the avenue," he could not sustain that message without sacrificing all his self-respect, and all the rights and honors of the body of which he was a member. Influenced by these considerations, the committee proposed the resolution now upon the table. He thought it necessary that the resolution should pass; that Congress might assert its own rights and its own powers; that there might be no mistake in the minds of the people, or in the mind of the Executive, that upon this subject Congress would exercise the most full and plenary jurisdiction; that Congress, and not the President, will decide whether these States

obeyed the Constitution, whether they had fitting relations, whether they were loyal, as preliminary to their admission.

Situated as the country was, he deemed the present question as transcending in importance the pending constitutional amendment. When the States came back into Congress they would come as rulers, and if somebody else than Congress was to ascertain whether the States were in a condition to be represented, all Congress had to do when a State went out of the Union and made war upon it was to legislate, and when such State had been conquered and was ready to come back, all Congress then had to do was to inquire of somebody else if the State was in a condition to come in and take the men who came there with credentials.

Mr. Fessenden said he had been proud of his position as senator; he had supposed senators and representatives were sent to guard the interests of the people; that the protection of this government was to be found in Congress; that the essential powers of the government rested in the faithfulness of senators and representatives and in their power to judge of what was necessary to constitute their own bodies. But if they were confined to a mere question of credentials they were nobodies. They might be overwhelmed at any time and cease to be a check upon the Executive. He believed the President to be a patriotic citizen; that he would do nothing to injure the Constitution, but he had spoken unguardedly, and far beyond what he would find he could stand by. His message, however, must be treated as if it was intended. It was part of the record. He would treat him respectfully. But when he advanced opinions and laid down principles which struck at the existence of the body as a power in the government, he must enter his solemn dissent and call upon Congress to assert its own rights.

He wished to express his views briefly upon the great question of reconstruction. During the four years of war he had made no speeches upon this question, as there was nothing then to reconstruct. The proper time had now come to consider the question. The President began to consider it before Congress. He thought it would have been better had he left the insurgent States under his power as commander-in-chief, and waited until Congress had assembled. The President chose to do otherwise, and he would not complain of him. Up to a recent period it was declared by the President that what was done was only an experiment. He, Fessenden, had supposed that when Congress met the question of reconstruction would be in their hands. He held it was the right and duty of Congress to consider it, and he wished to lay down a few simple propositions with reference to the question.

The country had been in a state of war, and the question was, What were the consequences of successful war when one nation conquered another? There was nothing better established than the principle that the conqueror had the power to change the form of government, to punish, to exact security as he might think proper, and take entire control of the conquered people. Congress had passed a resolution that we did not wage a war of conquest, but if conquest must come in order to accomplish our purpose, it was not our fault. That resolution was a compact with our own people, and the insurgent States could have no benefit from it.

The consequences of a civil war were precisely the same, so far as the parties were concerned, as in the former case. If the war was carried on according to the principles of the law of nations, the same rights were obtained by the conquerors as in the case of an international war. Those propositions were beyond dispute. The question then

arose, Did our form of government change the inevitable legal consequences of a civil war? Was a civil war, living as we did under a written Constitution, different in its consequences, on account of that Constitution, from a civil war in any other nation? It was very manifest to him that it was not. This brought him to consider the argument of the senator from Maryland (Reverdy Johnson), when he said that Congress had no authority to carry on a war against a State; he would reply that the Constitution never contemplated a civil war, but it provided means to quell it by giving power to Congress to raise and support armies, without stating for what objects those armies were to be used. An insurrection is something far less than a civil war. The provision in the Constitution for calling out the militia to suppress insurrection had reference simply to the militia. It meant that Congress should have power to employ the militia in an emergency, but it did not limit the authority of Congress to suppressing insurrections and repelling invasions. Now, since a civil war under the Constitution was attended with all the consequences of other wars, it resulted that a State might be swept out of existence by a civil war. It was a necessary consequence, if the law of nations existed among us and we were bound by its provisions. The government could say a State had forfeited its status. It might impose punishment, and, if necessary for its security, it had a perfect power to prevent a State from resuming its position.

Men had been fond of saying "once a State, always a State." That was not true. States might live, and States might die, they might continue to be States, but not States in the Union. To be States in the Union they must have a Constitution and fitting relations to the government. A State must be able to perform its obligations to the United States. It must be acknowledged by the govern-

ment. Its own government must be acknowledged by Congress, and have the requisite provisions to connect it with the Union. If the ligature was broken, it ceased to connect itself with the government. The form of government which bound the Confederate States to the Union had been destroyed. Their people had been in rebellion. Before they could connect themselves with the government they must be recognized. They must have constitutions which connected themselves with the government. They must be in a position to discharge their duties, and they must be readmitted.

The question had been argued as if Congress had nothing to say about it, as if those people were back again simply because they had made state constitutions. How was that known? What proof was there of it? The Constitution they once had had been obliterated. It was gone. When they came here after having been disconnected with the Union they must satisfy Congress that they had done what was necessary to enable them to perform their duties. If those States had once been disconnected and had ceased to be States in the Union, they must apply to Congress and furnish the necessary proofs that they were in a condition to claim their rights in the Union. They should come to Congress by their legislatures or conventions, present their constitutions for examination, and ask that their representatives be admitted under them.

Mr. Fessenden then referred to the short time that had elapsed since the war closed. The rebels laid down their arms in April. Congress did not meet until December. There had been four years of bloody, exhausting war, a war distinguished by most savage hate on the part of the enemy. As soon as Congress met, certain men claiming to be representatives and senators presented themselves in Washington. It was not ninety days since Congress

met, and they were told that they were perpetrating gross injustice because these men were not already in their seats, and that legislation was good for nothing without them. It was a remarkable fact that during this very time the President had not withdrawn the suspension of the writ of habeas corpus, and was occupying those States with the army, because the generals said it was unsafe to withdraw it. Yet Congress was denounced because within ninety days it had not admitted those senators and representatives to govern themselves and govern the North. It was utterly unreasonable to suppose that questions of this kind could be settled in a hurry.

He admitted that it was best for the country to admit those States as soon as it could be done with safety. Congress was exercising a power not contemplated by the Constitution, and the exercise of such powers was dangerous. It was for their own good as well as that of the insurgent States that the present condition of things should be terminated as soon as possible. But while he admitted that, he wholly denied the doctrine that Congress ought not to deliberate on the subject in its own time, and while doing so it should not be denounced as creating a central power, and be held up to the country as perpetrating injustice.

Such complaints were without foundation. Time enough had not yet elapsed for any one to say that those States were kept out for party purposes. No one as yet knew what had been done, what evidence had been taken, or how far the investigation had proceeded. Their first duty was to provide for the safety of the people, and pass such constitutional amendments and such laws as they thought were necessary, and impose such conditions as they thought proper, before admitting those senators and representatives. That was no more than the President had

done. He had refused to recognize them unless they abolished slavery, repudiated the rebel debt, and did some other things. Had not Congress the same rights as the President? If he could impose conditions, could not Congress do so? But he, Fessenden, would not impose any condition which would degrade them, or which would not leave them on an equality with all the other States.

This speech was of great length, and the need for quickness of narrative makes it undesirable to quote it here any more fully. The debate continued for several days until it was closed by Mr. Fessenden in a long address, on the 2d of March, advocating the adoption of the resolution.

The resolution not to admit the representative from the insurgent State at present was adopted by a vote of 28 to 18, not a two thirds vote; but as this was a resolution of the two houses it did not require the approval of the President, nor a two thirds vote to pass it over his veto.

The Senate then resumed the debate on the proposed constitutional amendment. Mr. Sumner delivered against the proposed amendment a second speech, almost as long as his first. On March 29 Mr. Fessenden closed the debate. His comments upon the arguments of Hendricks and Buckalew caused considerable laughter, but they were rather introductory to a more lengthy criticism of some of Mr. Sumner's positions. At the conclusion of his speech Messrs. Hendricks and Buckalew came over to Mr. Fessenden's seat, and after a little good-natured raillery said they would forgive him what he had said about them in consideration of the reply he had made to Mr. Sumner.

He writes of this, March 10, 1866: —

"Another hard week's work is over, and spite of all, I find myself improving. Yesterday I made another two hours' speech, and had the pleasure of 'pitching in' to

several people. I think it did me good. Knowing that the constitutional amendment was to be lost, I was not troubled by prudential restraints. I believe everybody was gratified with the whipping I gave Sumner, for his speech was atrocious, and disgusted even those who voted with him, and particularly his colleagues. I regret exceedingly that the amendment was lost, for we can get nothing so good. If we carry any other through Congress it will not be adopted by the States, and the blacks are left without hope. This is owing to ——'s folly and wickedness. . . . So be it."

May 18, 1866.

I am yet very weak, and shall, I fear, continue so until I get a chance to rest. I shall pass over the reconstruction debate to somebody else, as I am utterly unable to undergo the fatigue.

May 26, 1866.

Don't be frightened at seeing that I was unable to undertake the constitutional amendment. I am not sick, but my physical strength is entirely unequal to any continued effort of mind or body. An hour's work or a half hour's will exhaust me, and as I have yet much to do, which nobody else can or will do, I am obliged to spare myself now. The truth is that I have not found a moment's rest since I got out — and the consequence is continued debility. I have no doubt a few weeks at home would restore me entirely; and if I could not work in my garden, the sight of it would do me a great deal of good.

I expect to have an interview with Mrs. Jeff Davis this morning, as at her request I appointed ten o'clock to see her. But as I see by the papers that she has accomplished her object, viz., to give Jeff the run of the Fortress, I presume she will not come, which will be a great relief to me, as I dreaded the interview.

Mrs. Jeff came in before I concluded the preceding sentence, and stayed an hour and a half. Since then I have been to see the President. He says Jeff will die if he stays in the Fortress, as he is exceedingly reduced, and a slight attack would carry him off. She wants him to go to the mountains in Virginia, on parole, and desired me to recommend it. Of course I could n't do that without consulting the President, and told her so. She is a terrible talker, and presents everything in the worst light, and will do much harm. I don't know but the best thing would be to let him out and shut her up in his place. It would be a bad thing to have him die on our hands. She would tell everybody that he was starved to death.

Pray take good care of the garden. I hope to get home before the roses are all gone.

Let us recur now to the debate.

Mr. Fessenden observed that some ground had been taken by senators which required a short reply. Since he had been in public life he had considered it proper statesmanship in aiming at a valuable object, if it proved to be unattainable, to get as much of it, and come as near to it, as he could. It was in this view that the committee had recommended the proposed amendment. It was not defective in principle, but it came short of what ought to be attained, etc.

The senator from Massachusetts had remarked that there were two kinds of parliamentary debate: one was a reply to a previous speaker with personality of criticism or manner; the other was a discussion of a principle, to which he said he should confine himself. Mr. Fessenden said he saw no impropriety in answering a previous speaker in debate. If you differed from him, answer him on the spot, have a discussion and see where

the truth lay. He did not know what was meant by personality of criticism or manner. It was legitimate to criticise the matter or the remedy. No one ought to criticise the individual in relation to other things. He did not conceive what was meant by personality of manner. If they did not have different manners they would be a very dull assembly. He should be sorry to be judged by his manner because it did not have all the suavity and elegance of the senator from Massachusetts.

Holding these opinions, he claimed the right, if a previous speaker attacked his proposition, to examine his arguments. Criticism did not imply unfriendliness, a speech in the Senate was fair game to any one opposed to its principles or assumptions.

There was another distinction to be drawn as to parliamentary debate. One kind was a long, labored, written oration prepared carefully beforehand, its thunderbolts forged, and then brought in and read to the Senate. Another kind was when a senator in unpremeditated language took up the subject and discussed it without that previous preparation. He would not undertake to say which was the best, but he had understood that in assemblies of France and England it was not permitted to read speeches. Perhaps the orationizing was the best for future reputation, but senators ought not to be blamed for preferring the other way. Sir James Mackintosh said that these written orations did not denote a capacity for affairs.

There was another distinction he would like to draw. There were two kinds of personality in debate. One was a personality aimed at an individual in the heat of debate, when men were speaking under the excitement of the moment. Another was a personality not aimed at an individual, but aimed at numbers, at masses, full of epithets and denunciations, which did not pick out an individual

who could reply to it on the spot, but was elaborated carefully in the closet, full of bitterness, but so expressed that no one individual had the right to take it to himself. He thought the latter, being deliberated upon, exhibited vastly more malice than hasty words which escaped one in the heat of argument.

The senator from Massachusetts, while saying he should consider principles, had undertaken to designate the character of the proposed amendment. "I have chosen," said Mr. Fessenden, "a few of his flowers of rhetoric from his speech. What does the senator call it? 'Compromise of human rights, dishonoring the name of the Republic,' 'bad mutton,' 'new muscipula abortion,' 'abomination, disgusting ordure, loathsome stench,' etc., etc. The application of these phrases to a proposition coming from his own political and personal friends, passed by two thirds of the House of Representatives, supported by a large majority of the Senate, including his own colleague, not applied in the heat of debate, but prepared carefully in the closet, printed, the proof corrected, and brought here to be retailed to the country, is a matter the propriety of which must be left to himself to judge."

The vote stood 25 for the proposed amendment and 22 against it, and as two thirds of the Senate did not vote in favor of it, it failed of a passage.

Of this debate, he writes home: —

"I have been quite out of sorts for the last two weeks, hardly able to hold my head up, and that head in a constant burr. It is hard to work all the time under such circumstances, and especially hard to make a speech when your own voice has an unnatural sound, and to keep the thread of your discourse. It reads, however, better than I expected, in spite of the reporter's blunders, which I was too much exhausted to correct. I believe that it is gener-

ally thought that Mr. Sumner's logic was pretty much used up — that part of it which had anything to do with the matter under discussion. But he threatens a terrible reply, I am told. Let it come."

A new proposition, it may be well to state here, prepared in place of the foregoing, finally became the Fourteenth Amendment.

The joint resolution, which had been defeated in the Senate by the union of Democrats, Johnson Republicans, and Mr. Sumner and his following, provided for but one of the measures of adjustment rendered necessary by the overthrow of the Rebellion. Besides fixing the basis of representation, there were numerous propositions before the Congress touching the rights of citizens, the exclusion of rebels from office, the security of the public debt, the pensions, and the prohibition of payment for the emancipated slaves. These had all been referred to the committee of fifteen. After the failure of the proposed amendment there was a cessation of debate upon the subject of reconstruction, and Congress waited until another measure should be reported from the committee. For the next six weeks all these questions relating to reconstruction were carefully considered in the committee, were referred to various sub-committees to be put in shape, and were finally embodied in a proposed amendment of five sections, which were the substance of the famous Fourteenth Amendment. The first prohibited any State from abridging the rights of citizens of the United States. The second provided that the representation of any State should be reduced in proportion to its denial of the right of suffrage to any of its male citizens twenty-one years old. The third excluded from the right to vote for members of Congress and President and Vice-President, until July 4, 1870, all persons who participated in the Rebellion.

The fourth forbade the assumption by the United States or any State of any debt incurred in aid of the Rebellion, or for the payment of slaves. The fifth gave to Congress the right to enforce these articles by legislation.

The amendment passed the House on the 10th of May by a vote of 128 to 37. It came to the Senate, where the articles were amended. The first article was strengthened by defining who were citizens of the United States, viz., all persons born or naturalized in the United States, and subject to its jurisdiction, were citizens of the United States and of the State where they resided. This was a great and beneficent provision, and put an end to possible conflicts between a State and the general government. The second section was amended by being made more definite. It provided that if the right to vote at any election of electors of President and Vice-President, representatives in Congress, the executive and judicial officers of a State, or the members of the state legislature, should be denied to any of the male inhabitants of a State, being twenty-one years old and citizens of the United States, the basis of representation should be reduced proportionately. The third section was changed to prohibit from holding any civil or military office those persons who participated in the Rebellion unless Congress by a two thirds vote first removed such disability, while the fourth received an additional provision to secure the public debt and debts incurred for pensions and bounties.

The amendment came up in the Senate on the 24th of May. It devolved upon Mr. Fessenden, as chairman of the committee of fifteen, to explain it to the Senate. But he was just recovering from an attack of varioloid, which had left him very weak, and he gave the amendment to the charge of Senator Howard. The most important changes were suggested by Mr. Howard on behalf of the

Senate members of the committee. Mr. Fessenden was in his seat and participated in the debate, explaining why some of the amendments were thought necessary.

The House accepted the various amendments adopted in the Senate, and the measure, having passed both houses by more than the requisite two thirds vote, became the famous Fourteenth Amendment.

Writing home, he says: —

"I agree, and Dr. Hall agrees, that the best thing I can do is to go home at once, and the Lord knows how delighted I should be to do so. But it is next to impossible. The truth is, I am afraid to leave New England interests in the hands of Mr. ——, whom I am getting to detest for his meanness and selfishness. The tax and tariff bills are of great importance, and there is nobody on my committee competent to take charge of them. Still, unless I gain some strength soon, I *must* go, for I shall be useless here, and may as well be away. I shouldn't like to be sick all summer, and if I am to break down entirely, should like a chance to settle up my affairs. The time I looked forward to, of 'Come, Daddy, supper's ready,' seems to be fast approaching. . . .

"Things are looking better, politically. Congress is asserting itself properly, and the President is, I think, beginning to see that he is not the government. Our new platform is a very strong one. I have been writing a report which will be made in a few days. I am afraid it will be a very stupid affair, for it has been composed in weary hours, when I could find time, in which I should have rested. . . .

"I am exceedingly relieved, too, by getting the reconstruction off my hands. Writing a report has been very troublesome, as it was extra work, to be done as I could pick up an hour, and I was sick all the time. It is done,

however, and the resolutions have passed. I hoped to have some strength by passing over the management of these to another, but it cost more than it came to, and everybody grumbled at me, besides."

On the day the vote was taken in the Senate, Mr. Fessenden stated that he had drawn a report which he had desired should be read in the Senate, but as it was late, and the Senate was waiting to vote, he would submit it without the reading. Afterwards in the discussion concerning the printing of the views of the minority, which occurred on July 7, Mr. Fessenden said that he had intended to present the report of the committee at the time he presented the joint resolution; but just as he had collected some papers for preparing it, he was seized with a disease which made him unfit for work until the last days of the session of the committee on the subject of the resolution. He was directed by the committee to prepare the report as soon as he could do so at some future day. Owing to his feeble health and the great accumulation of his business, he had found it very difficult to prepare a report, and such as it was it was written in his room at odd hours on such occasions as he could well get, an hour at a time, when he could look into the subject, so that he was unable to get it finished until three or four days before it was presented. He then called a meeting of the committee and read it to them. They approved it with one or two suggestions for alteration of phraseology.

The report has been called one of the greatest state papers in our political history. It was entirely satisfactory to the Republican party. It gave the Republicans the strongest grounds upon which to place their measures with regard to the Confederate States, and furnished the arguments upon which an appeal was made to the people in the elections of 1866. It demonstrated the weakness

of the President's course, and the entire want of sufficient information on his part to justify the steps he had taken. All members of the party felt that the report fully vindicated the power of Congress over reconstruction, and the necessity of securing by constitutional safeguards the measures embodied in the Fourteenth Amendment.

The conclusion of the minority was that insurrectionary States were still States in the Union and entitled to every right and privilege belonging to other States; that if some of their people could not take the oath of allegiance, it was a question irrespective of the right of the States to be represented.

The Fourteenth Amendment was passed by the requisite two thirds vote on the 13th of June, and on the 16th of July was certified to the States for their acceptance or rejection. But it was nearly two years before it was adopted. In the Northern States under Republican control it was accepted as soon as the legislatures assembled. In every Northern State under Democratic control and in every rebel State it was at once rejected. Not only every Democratic legislature, but every Democratic member, North as well as South, voted against these provisions. The opposition of President Johnson to the measures of Congress and the support of Northern Democrats of the claim of the rebel States to return at once into the Union encouraged them to reject the Fourteenth Amendment. They not only refused to adopt the amendment, but entered upon a course of defiance of Congress, of outrage of Union men, of oppression of the blacks, and of placing in power the most prominent leaders of the Confederacy.

After the adjournment of Congress, on July 28, the country entered at once upon one of the most exciting and important political campaigns of its history, the issue being the President's policy on the one hand, and the

Fourteenth Amendment and the measures of Congress on the other. During the campaign occurred the murder of hundreds of Union men in the South, the massacre of the Republican Convention in New Orleans, and the speech-making tour of President Johnson. At no time, even during the war, were the loyal masses of the North more deeply stirred with indignation. The result of the elections for the next Congress was the complete overthrow of the President and his policy. Congress was not only sustained, but a greater majority was returned to the new House of Representatives. The public discussions over the conduct of the rebel States in rejecting the Fourteenth Amendment, and upon the justice and necessity of giving political rights to the loyal blacks, had brought the public mind to the determination of forcing the Southern States to grant the suffrage to all of their citizens before they could be admitted to Congress. Mr. Fessenden's opinion was that the insurgent States should be held under military rule until they accepted the Fourteenth Amendment and applied for admission with constitutions that were satisfactory. He thought that it was a mistake to hurry them back into the Union.

Writing upon the proceedings in Congress, he said: "The questions at issue are infinitely important to the future of the country. I cannot shrink from the burden laid upon me. Could I feel safe in leaving it to others, I would gladly retire from my position. At times I am almost despairing of my strength to go through. Mr. ——, with his impracticable notions, his hatred of the President, coupled with his power over public opinion, is doing infinite harm. So are some others. All I can do is to try to evoke something like order and safety out of the dangers around us. But enough of this.

"As certainty is preferable to suspense, the President's

recent exhibition of folly and wickedness is also a relief. The long agony is over. He has broken his faith, betrayed his trust, and must sink from detestation into contempt. I see nothing ahead but a long, wearisome struggle for three years, and in the mean time great domestic convulsions and an entire cessation of the work of reform — perhaps a return to power of the country's worst enemies, Northern copperheads. I regret exceedingly that the amendment was lost, for we can get nothing so good. If you carry any other through Congress it will not be adopted by the States, and the blacks are left without hope. This is owing to Mr. ——. Probably by this time you have read my last reply to ——, and think that getting rid of so much bile must have been beneficial. Mr. Hall didn't get off a bad thing lately when he said that he could always tell the state of my health by my tongue without seeing it.

"I see nothing ahead but a standing quarrel between the President and Congress. The latter, however, is getting consolidated, and the hope is that we may have a reliable party. It is all-important that we should have two thirds in each branch. I will never consent to take in a man from one of the Confederate States until we have some security for the future. Nominally we have a majority of more than two thirds in both branches of Congress, and ought to pass such laws as we deem necessary, in spite of vetoes. In all such bodies, however, there are always found weak and unreliable if not corrupt men. Situated as matters are, it is doubtful whether anything effectual can be done during this session. In that case, the next fall elections must determine the question."

"April. The political skies are growing brighter. The passage of the Civil Rights Bill over the veto has strengthened our hands. The prospect is that we may

now rely on a consolidated two thirds vote when needed, and the people at home seem to sustain us. The committee will probably report before long."

It had been for some years the favorite wish of Mr. Fessenden to retire from public life to the quiet dignity of the judge of the United States District Court of Maine. At the time he was appointed Secretary of the Treasury he had expressed this desire to President Lincoln. Mr. Lincoln said he would gladly appoint him, but thought it was his duty to remain in public life. The learned and venerable Judge Ware, who held the office of district judge, had offered to resign whenever Mr. Fessenden would take the place. He had now become too feeble to perform his duties, and it was necessary to appoint his successor. But Mr. Fessenden felt that it would not be right to retreat to a safe place while so many great national interests were at stake, and reluctantly abandoned the idea of the judgeship. Upon his recommendation the Hon. Edward Fox was appointed.

REPORT OF THE JOINT COMMITTEE ON RECONSTRUCTION.

The joint committee of the two houses of Congress appointed under the concurrent resolution of December 13, 1865, with direction "to inquire into the condition of the States which formed the so-called Confederate States of America, and report whether they or any of them are entitled to be represented in either house of Congress, with leave to report by bill or otherwise," ask leave to report:—

That they have attended to the duty assigned them as assiduously as other duties would permit, and now submit to Congress, as the result of their deliberations, a resolution proposing amendments to the Constitution, and two bills, of which they recommend the adoption.

Before proceeding to set forth in detail their reasons for the conclusion to which, after great deliberation, your committee have arrived, they beg leave to advert, briefly, to the course of proceedings they found it necessary to adopt, and to explain the reasons therefor.

The resolution under which your committee was appointed directed them to inquire into the condition of the Confederate States, and report whether they were entitled to representation in Congress. It is obvious that such an investigation, covering so large an extent of territory and involving so many important considerations, must necessarily require no trifling labor, and consume a very considerable amount of time. It must embrace the condition in which those States were left at the close of the war; the measures which have been taken towards the reorganization of civil government, and the disposition of the people towards the United States; in a word, their fitness to take an active part in the administration of national affairs.

As to their condition at the close of the Rebellion, the evidence is open to all and admits of no dispute. They were in a state of utter exhaustion. Having protracted their struggle against federal authority until all hope of successful resistance had ceased, and laid down their arms only because there was no longer any power to use them, the people of those States were left bankrupt in their public finances, and shorn of the private wealth which had before given them power and influence. They were also necessarily in a state of complete anarchy, without governments and without the power to frame governments except by the permission of those who had been successful in the war. The President of the United States, in the proclamations under which he appointed provisional governors, and in his various communications to them, has in exact terms recognized the fact that the people

of those States were, when the rebellion was crushed, "deprived of all civil government," and must proceed to organize anew. In his conversation with Mr. Stearns of Massachusetts, certified by himself, President Johnson said, "The state institutions are prostrated, laid out on the ground, and they must be taken up and adapted to the progress of events." Finding the Southern States in this condition, and Congress having failed to provide for the contingency, his duty was obvious. As President of the United States, he had no power except to execute the laws of the land as chief magistrate. These laws gave him no authority over the subject of reorganization, but by the Constitution he was commander-in-chief of the army and navy of the United States. The Confederate States embraced a portion of the people of the Union who had been in a state of revolt, but who had been reduced to obedience by force of arms. They were in an abnormal condition, without civil government, without commercial connections, without national or international relations, and subject only to martial law. By withdrawing their representatives in Congress, by renouncing the privilege of representation, by organizing a separate government, and by levying war against the United States, they destroyed their state constitutions in respect to the vital principle which connected their respective States with the Union and secured their federal relations; and nothing of those constitutions was left of which the United States was bound to take notice. For four years they had a *de facto* government, but it was usurped and illegal. They chose the tribunal of arms wherein to decide whether or not it should be legalized, and they were defeated. At the close of the Rebellion, therefore, the people of the rebellious States were found, as the President expresses it, "deprived of all civil government."

Under this state of affairs it was plainly the duty of the President to enforce existing national laws, and to establish, as far as he could, such a system of government as might be provided for by existing national statutes. As commander-in-chief of a victorious army, it was his duty, under the law of nations and the army regulations, to restore order, to preserve property, and to protect the people against violence from any quarter until provision should be made by law for their government. He might, as President, assemble Congress and submit the whole matter to the law-making power; or he might continue military supervision and control until Congress should assemble on its regular appointed day. Selecting the latter alternative, he proceeded, by virtue of his power as commander-in-chief, to appoint provisional governors over the revolted States. These were regularly commissioned, and their compensation was paid, as the Secretary of War states, "from the appropriation for army contingencies, because the duties performed by the parties were regarded as of a temporary character, ancillary to the withdrawal of the military force, the disbandment of armies, and the reduction of military expenditure, by provisional organizations for the protection of civil rights, the preservation of peace, and to take the place of armed force in the respective States." It cannot, we think, be contended that these governors possessed, or could exercise, any but military authority. They had no power to organize civil governments, nor to exercise any authority except that which inhered in their own persons under their commissions. Neither had the President, as commander-in-chief, any other than military power. But he was in exclusive possession of the military authority. It was for him to decide how far he would exercise it, how far he would relax it, when and on what terms he would withdraw it.

He might properly permit the people to assemble, and to initiate local governments, and to execute such local laws as they might choose to frame not inconsistent with, nor in opposition to, the laws of the United States. And if satisfied that they might safely be left to themselves, he might withdraw the military forces altogether, and leave the people of any or all of these States to govern themselves without his interference. In the language of the Secretary of State, in his telegram to the provisional governor of Georgia dated October 28, 1865, he might "recognize the people of any State as having resumed the relations of loyalty to the Union," and act in his military capacity on this hypothesis. All this was within his own discretion, as military commander. But it was not for him to decide upon the nature or effect of any system of government which the people of these States might see fit to adopt. This power is lodged by the Constitution in the Congress of the United States, that branch of the government in which is vested the authority to fix the political relations of the States to the Union, whose duty it is to guarantee to each State a republican form of government, and to protect each and all of them from foreign or domestic violence, and against each other. We cannot, therefore, regard the various acts of the President in relation to the formation of local governments in the insurrectionary States, and the conditions imposed by him upon their action, in any other light than as intimations to the people that, as commander-in-chief of the army, he would consent to withdraw military rule just in proportion as they should, by their acts, manifest a disposition to preserve order among themselves, establish governments denoting loyalty to the Union, and exhibit a settled determination to return to their allegiance, leaving it to the law-making power to fix the terms of their

final restoration to all their rights and privileges as States of the Union. That this was the view of his power taken by the President is evidenced from expressions to that effect in the communications of the Secretary of State to the various provisional governors, and repeated declarations of the President himself. Any other supposition inconsistent with this would impute to the President designs of encroachment upon a coördinate branch of the government, which should not be lightly attributed to the chief magistrate of the nation.

When Congress assembled in December last the people of most of the States lately in rebellion had, under the advice of the President, organized local governments, and some of them had acceded to the terms proposed by him. In his annual message he stated in general terms what had been done, but he did not see fit to communicate the details for the information of Congress. While in this and in a subsequent message the President urged the speedy restoration of these States, and expressed the opinion that their condition was such as to justify their restoration, yet it is quite obvious that Congress must either have acted blindly on the opinion of the President or proceeded to obtain the information requisite for intelligent action on the subject. The impropriety of proceeding wholly on the judgment of any one man, however exalted his station, in a matter involving the welfare of the republic in all future time, or of adopting any plan, coming from any source, without fully understanding all its bearings and comprehending its full effect, was apparent. The first step, therefore, was to obtain the required information. A call was accordingly made on the President for the information in his possession as to what had been done, in order that Congress might judge for itself as to the grounds of the belief expressed by him in the

fitness of States recently in rebellion to participate fully in the conduct of national affairs. This information was not immediately communicated. When the response was finally made some six weeks after your committee had been in actual session, it was found that the evidence upon which the President seemed to have based his suggestions was incomplete and unsatisfactory. Authenticated copies of the new constitutions and ordinances adopted by the conventions in three of the States had been submitted, extracts from newspapers furnished scanty information as to the action of one other State, and nothing appears to have been communicated as to the remainder. There was no evidence of the loyalty of those who had participated in these conventions, and in one State alone was any proposition made to submit the action of the conventions to the final judgment of the people.

Failing to obtain the desired information, and left to grope for light wherever it might be found, your committee did not deem it either advisable or safe to adopt, without further examination, the suggestions of the President, more especially as he had not deemed it expedient to remove the military force, to suspend martial law, or to restore the writ of habeas corpus, but still thought it necessary to exercise over the people of the rebellious States his military power and jurisdiction. This conclusion derived still greater force from the fact, undisputed, that in all these States, except Tennessee and perhaps Arkansas, the elections which were held for state officers and members of Congress had resulted almost universally in the defeat of the candidates who had been true to the Union, and in the election of notorious and unpardoned rebels, men who could not take the prescribed oath of office, and who made no secret of their hostility to the government and the people of the United States. Under

these circumstances anything like hasty action would have been as dangerous as it was obviously unwise. It appeared to your committee that but one course remained, viz., to investigate carefully and thoroughly the state of feeling and opinion existing among the people of these States; to ascertain how far their pretended loyalty could be relied upon, and thence to infer whether it would be safe to admit them at once into full participation in the government they had fought for four years to destroy. It was an equally important inquiry whether their restoration to their former relations with the United States should be granted only upon certain conditions and guarantees which would effectually secure the nation against a recurrence of evils so disastrous as those from which it had escaped at so enormous a sacrifice.

To obtain the necessary information recourse could only be had to the examination of witnesses whose position had given them the best means of forming an accurate judgment, who could state facts from their own observation, and whose character and standing afforded the best evidence of their truthfulness and impartiality. A work like this, covering so large an extent of territory, and embracing such complicated and extensive inquiries, necessarily required much time and labor. To shorten the time as much as possible, the work was divided and placed in the hands of four sub-committees, who have been diligently employed in its accomplishment. The results of their labors have been heretofore submitted, and the country will judge how far they sustain the President's views, and how far they justify the conclusions to which your committee have finally arrived.

A claim for the immediate admission of senators and representatives from the so-called Confederate States has been urged, which seems to your committee not to be

founded either in reason or in law, and which cannot be passed without comment. Stated in a few words, it amounts to this: That inasmuch as the lately insurgent States had no legal right to separate themselves from the Union, they still retain their positions as States, and consequently the people thereof have a right to immediate representation in Congress without the imposition of any conditions whatever; and further, that until such admission Congress had no right to tax them for the support of the government. It has even been contended that until such admission all legislation affecting their interests is, if not unconstitutional, at least unjustifiable and oppressive.

It is believed by your committee that all these propositions are not only wholly untenable, but, if admitted, would tend to the destruction of the government.

It must not be forgotten that the people of these States, without justification or excuse, rose in insurrection against the United States. They deliberately abolished their state governments so far as the same connected them politically with the Union as members thereof under the Constitution. They deliberately renounced their allegiance to the federal government, and proceeded to establish an independent government for themselves. In the prosecution of this enterprise they seized the national forts, arsenals, dockyards, and other public property within their borders, drove out from among them those who remained true to the Union, and heaped every imaginable insult and injury upon the United States and its citizens. Finally they opened hostilities and levied war against the government. They continued this war for four years with the most determined and malignant spirit, killing in battle and otherwise large numbers of loyal people, destroying the property of loyal citizens on the

sea and on the land, and entailing on the government an enormous debt, incurred to sustain its rightful authority. Whether legally and constitutionally or not, they did, in fact, withdraw from the Union and made themselves subjects of another government of their own creation. And they only yielded when, after a long, bloody, and wasting war, they were compelled by utter exhaustion to lay down their arms; and this they did not willingly, but declaring that they yielded because they could no longer resist, affording no evidence whatever of repentance for their crime, and expressing no regret, except that they had no longer the power to continue the desperate struggle.

It cannot, we think, be denied by any one, having a tolerable acquaintance with public law, that the war thus waged was a civil war of the greatest magnitude. The people waging it were necessarily subject to all the rules which, by the law of nations, control a contest of that character, and to all the legitimate consequences following it. One of those consequences was that, within the limits prescribed by humanity, the conquered rebels were at the mercy of the conquerors. That a government thus outraged had a most perfect right to exact indemnity for the injuries done, and security against the recurrence of such outrages in the future, would seem too clear for dispute. What the nature of that security should be, what proof should be required of a return to allegiance, what time should elapse before a people thus demoralized should be restored in full to the enjoyment of political rights and privileges, are questions for the law-making power to decide, and that decision must depend on grave considerations of the public safety and general welfare.

It was moreover contended, with apparent gravity, that, from the peculiar nature and character of our government, no such right on the part of the conqueror can

exist; that from the moment rebellion lays down its arms and actual hostilities cease, all political rights of rebellious communities are at once restored; that, because the people of a State of the Union were once an organized community within the Union, they necessarily so remain, and their right to be represented in Congress at any and all times, and to participate in the government of the country under all circumstances, admits of neither question nor dispute. If this is indeed true, then is the government of the United States powerless for its own protection, and flagrant rebellion, carried to the extreme of civil war, is a pastime which any State may play at, not only certain that it can lose nothing in any event, but may even be the gainer by defeat. If rebellion succeeds, it accomplishes its purpose and destroys the government. If it fails, the war has been barren of results, and the battle may still be fought out in the legislative halls of the country. Treason, defeated in the field, has only to take possession of Congress and the Cabinet.

Your committee do not deem it either necessary or proper to discuss the question whether the late Confederate States are still States of the Union, or can ever be otherwise. Granting this profitless abstraction about which so many words have been wasted, it by no means follows that the people of those States may not place themselves in a position to abrogate the powers and privileges incident to a State of the Union, and deprive themselves of all pretense of right to exercise those powers and enjoy those privileges. A State within the Union has obligations to discharge as a member of the Union. It must submit to federal laws and uphold federal authority. It must have a government republican in form, under and by which it is connected with the general government, and through which it can discharge its obligations. It is

more than idle, it is a mockery, to contend that a people who have thrown off their allegiance, destroyed the local government which bound their States to the Union as members thereof, defied its authority, refused to execute its laws, and abrogated every provision which gave them political rights within the Union, still retain through all the perfect and entire right to resume, at their own will and pleasure, all their privileges within the Union, and especially to participate in its government, and to control the conduct of its affairs. To admit such a principle for one moment would be to declare that treason is always master and loyalty a blunder. Such a principle is void by its very nature and essence, because inconsistent with the theory of government, and fatal to its very existence.

On the contrary, we assert that no portion of the people of this country, whether in State or Territory, have the right, while remaining on its soil, to withdraw from or reject the authority of the United States. They must obey its laws as paramount, and acknowledge its jurisdiction. They have no right to secede; and while they can destroy their state governments, and place themselves beyond the pale of the Union, so far as the exercise of state privileges is concerned, they cannot escape the obligations imposed upon them by the Constitution and the laws, nor impair the exercise of national authority. The Constitution, it will be observed, does not act upon States as such, but upon the people; while, therefore, the people cannot escape its authority, the States may, through the act of their people, cease to exist in an organized form, and thus dissolve their political relations with the United States.

That taxation should be only with the consent of the taxed, through their own representatives, is a cardinal principle of all free governments; but it is not true that

taxation and representation must go together under all circumstances, and at every moment of time. The people of the District of Columbia and of the Territories are taxed, although not represented in Congress. If it is true that the people of the so-called Confederate States had no right to throw off the authority of the United States, it is equally true that they are bound at all times to share the burdens of government. They cannot, either legally or equitably, refuse to bear their just proportion of these burdens by voluntarily abdicating their rights and privileges as States of the Union, and refusing to be represented in the councils of the nation, much less by rebellion against national authority, and levying war. To hold that by so doing they could escape taxation would be to offer a premium for insurrection, to reward instead of punishing treason. To hold that as soon as government is restored to its full authority it can be allowed no time to secure itself against similar wrongs in the future, or else omit the ordinary exercise of its constitutional power to compel equal contribution from all, towards the expenses of government, would be unreasonable in itself, and unjust to the nation. It is sufficient to reply that the loss of representation by the people of the insurrectionary States was their own voluntary choice. They might abandon their privileges, but they could not escape their obligations; and surely they have no right to complain if, before resuming those privileges, and while the people of the United States are devising measures for the public safety, rendered necessary by the act of those who thus disfranchised themselves, they are compelled to contribute their just proportion of the general burden of taxation incurred by their wickedness and folly.

Equally absurd is the pretense that the legislative authority of the nation must be inoperative so far as they

are concerned, while they, by their own act, have lost the right to take part in it. Such a proposition carries its own refutation on its face.

While thus exposing fallacies which, as your committee believe, are resorted to for the purpose of misleading the people and distracting their attention from the question at issue, we freely admit that such a condition of things should be brought, if possible, to a speedy termination. It is most desirable that the union of all the States should become perfect at the earliest moment consistent with the peace and welfare of the nation; that all these States should become fully represented in the national councils and take their share in the legislation of the country. The possession and exercise of more than its just share of power by any section is injurious, as well to that section as to all others. Its tendency is distracting and demoralizing, and such a state of affairs is only to be tolerated on the ground of a necessary regard to the public safety. As soon as that safety is secured it should terminate.

Your committee came to the consideration of the subject referred to them with the most anxious desire to ascertain what was the condition of the people of the States recently in insurrection, and what, if anything, was necessary to be done before restoring them to the full enjoyment of all their original privileges. It was undeniable that the war into which they had plunged the country had materially changed their relations to the people of the loyal States. Slavery had been abolished by constitutional amendment. A large proportion of the population had become, instead of mere chattels, free men and citizens. Through all the past struggle these had remained true and loyal and had in large numbers fought on the side of the Union. It was impossible to abandon

them without securing them their rights as free men and citizens. The whole civilized world would have cried out against such base ingratitude, and the bare idea is offensive to all right-thinking men. Hence it became important to inquire what could be done to secure their rights, civil and political. It was evident to your committee that adequate security could only be found in appropriate constitutional provisions. By an original provision of the Constitution, representation is based on the whole number of free persons in each State, and three fifths of all other persons. When all become free, representation for all necessarily follows. As a consequence the inevitable effect of the Rebellion would be to increase the political power of the insurrectionary States whenever they should be allowed to resume their positions as States of the Union. As representation is by the Constitution based upon population, your committee did not think it advisable to recommend a change of that basis. The increase of representation necessarily resulting from the abolition of slavery was considered the most important element in the questions arising out of the changed condition of affairs, and the necessity for some fundamental action in this regard seemed imperative. It appeared to your committee that the rights of these persons by whom the basis of representation had been thus increased should be recognized by the general government. While slaves, they were not considered as having any rights, civil or political. It did not seem just or proper that all the political advantages derived from their becoming free should be confined to their former masters, who had fought against the Union, and withheld from themselves, who had always been loyal. Slavery, by building up a ruling and dominant class, had produced a spirit of oligarchy adverse to republican institutions, which finally inaugurated civil war. The tendency

of continuing the domination of such a class, by leaving it in the exclusive possession of political power, would be to encourage the same spirit, and lead to a similar result. Doubts were entertained whether Congress had power, even under the amended Constitution, to prescribe the qualifications of voters in a State, or could act directly on the subject. It was doubtful, in the opinion of your committee, whether the States would consent to surrender a power they had always exercised, and to which they were attached. As the best if not the only method of surmounting the difficulty, and as eminently just and proper in itself, your committee came to the conclusion that political power should be possessed in all the States exactly in proportion as the right of suffrage should be granted, without distinction of color or race. This it was thought would leave the whole question with the people of each State, holding out to all the advantage of increased political power as an inducement to allow all to participate in its exercise. Such a provision would be in its nature gentle and persuasive, and would lead, it was hoped, at no distant day, to an equal participation of all, without distinction, in all the rights and privileges of citizenship, thus affording a full and adequate protection to all classes of citizens, since all would have, through the ballot-box, the power of self-protection.

Holding these views, your committee prepared an amendment to the Constitution to carry out this idea and submitted the same to Congress. Unfortunately, as we think, it did not receive the necessary constitutional support in the Senate, and therefore could not be proposed for adoption by the States. The principle involved in that amendment is, however, believed to be sound, and your committee have again proposed it in another form, hoping that it may receive the approbation of Congress.

Your committee have been unable to find, in the evidence submitted to Congress by the President, under date of March 6, 1866, in compliance with the resolutions of January 6 and February 27, 1866, any satisfactory proof that either of the insurrectionary States, except, perhaps, the State of Tennessee, has placed itself in a condition to resume its political relations to the Union. The first step towards that end would necessarily be the establishment of a republican form of government by the people. It has been before remarked that the provisional governors, appointed by the President in the exercise of his military authority, could do nothing by virtue of the power thus conferred towards the establishment of a state government. They were acting under the War Department and paid out of its funds. They were simply bridging over the chasm between rebellion and restoration. And yet we find them calling conventions and convening legislatures. Not only this, but we find the conventions and legislatures thus convened acting under executive direction as to the provisions required to be adopted in their constitutions and ordinances as conditions precedent to their recognition by the President. The inducement held out by the President for compliance with conditions imposed was, directly in one instance, and presumably, therefore, in others, the immediate admission of senators and representatives to Congress. The character of the conventions and legislatures thus assembled was not such as to inspire confidence in the good faith of their members. Governor Perry of South Carolina dissolved the convention assembled in that State before the suggestion had reached Columbia from Washington that the rebel war debt should be repudiated, and gave as his reason that it was a "revolutionary body."

There is no evidence of the loyalty or disloyalty of the members of those conventions and legislatures except the fact of pardons being asked for on their account. Some of these States now claiming representation refused to adopt the conditions imposed. No reliable information is found in these papers as to the constitutional provisions of several of these States, while in not one of them is the slightest evidence to show that these "amended constitutions," as they are called, have ever been submitted to the people for their adoption. In North Carolina alone an ordinance was passed to that effect, but it does not appear to have been acted on. Not one of them, therefore, has been ratified. Whether, with President Johnson, we adopt the theory that the old constitutions were abrogated and destroyed, and the people "deprived of all civil government," or were revived by the suppression of the Rebellion, the new provisions must be considered as equally destitute of validity before adoption by the people. If the conventions were called for the sole purpose of putting the state government into operation, they had no power either to adopt a new constitution or to amend an old one without the consent of the people. Nor could either a convention or a legislature change the fundamental law without power previously conferred. In the view of your committee, it follows, therefore, that the people of a State where the Constitution has been thus amended might feel themselves justified in repudiating altogether all such unauthorized assumptions of power, and might be expected to do so at pleasure.

So far as the disposition of the people of the insurrectionary States is concerned, and the probability of their adopting measures conforming to the changed condition of affairs can be inferred from the papers submitted by the President as the basis of his action, the outlook is far

from encouraging. It appears quite clear that the anti-slavery amendments, both to the state and federal constitutions, were adopted with reluctance by the bodies which did adopt them, while in some States they have been either passed by in silence or rejected. The language of all the provisions and ordinances of these States on the subject amounts to nothing more than an unwilling admission of an unwelcome truth. As to the ordinance of secession, it is in some cases declared "null and void," and in others simply "repealed;" and in no instance is a refutation of this deadly heresy considered worthy of a place in the new Constitution.

If, as the President assumes, these insurrectionary States were, at the close of the war, wholly without state governments, it would seem that, before being admitted to participation in the direction of public affairs, such governments should be regularly organized. Long usage has established, and numerous statutes have pointed out, the mode in which this should be done. A convention to frame a form of government should be assembled under competent authority. Ordinarily, this authority emanates from Congress; but, under the peculiar circumstances, your committee is not disposed to criticise the President's action in assuming the power exercised by him in this regard. The convention, when assembled, should frame a constitution of government, which should be submitted to the people for adoption. If adopted, a legislature should be convened to pass the laws necessary to carry it into effect. When a State, thus organized, claims representation in Congress, the election of representatives should be provided for by law, in accordance with the laws of Congress regulating representation, and the proof that the action taken has been in conformity to law should be submitted to Congress.

In no case have these essential preliminary steps been taken. The conventions assembled seem to have assumed that the constitutions which had been repudiated and overthrown were still in existence, and operative to constitute the States members of the Union, and to have contented themselves with such amendments as they were informed were requisite in order to insure their return to an immediate participation in the government of the United States. Not waiting to ascertain whether the people they represented would adopt even the proposed amendments, they at once ordered elections of representatives to Congress, in nearly all instances before an executive had been chosen to issue writs of election under the State laws, and such elections as were held were ordered by the conventions. In one instance at least the writs of election were signed by the provisional governor. Glaring irregularities and unwarranted assumptions of power are manifest in several cases, particularly in South Carolina, where the convention, although disbanded by the provisional governor, on the ground that it was a revolutionary body, assumed to redistrict the State.

It is quite evident from all these facts, and indeed from the whole mass of testimony submitted by the President to the Senate, that in no instance was regard paid to any other consideration than obtaining immediate admission to Congress, under the barren form of an election in which no precautions were taken to secure regularity of proceedings or the assent of the people. No constitution has been legally adopted except, perhaps, in the State of Tennessee, and such elections as have been held were without authority of law. Your committee are accordingly forced to the conclusion that the States referred to have not placed themselves in a condition to claim representation in Congress, unless all the rules which have, since

the foundation of the government, been deemed essential in such cases, should be disregarded.

It would undoubtedly be competent for Congress to waive all formalities and to admit these Confederate States to representation at once, trusting that time and experience would set all things right. Whether it would be advisable to do so, however, must depend upon other considerations, of which it remains to treat. But it may well be observed that the inducements to such a step should be of the very highest character. It seems to your committee not unreasonable to require satisfactory evidence that the ordinances and constitutional provisions which the President deemed essential in the first instance will be permanently adhered to by the people of the States seeking restoration, after being admitted to full participation in the government, and will not be repudiated when that object shall have been accomplished. And here the burden of proof rests upon the late insurgents, who are seeking restoration to the rights and privileges which they willingly abandoned, and not upon the people of the United States, who have never undertaken, directly or indirectly, to deprive them thereof. It should appear affirmatively that they are prepared and disposed in good faith to accept the results of the war, to abandon their hostility to the government, and to live in peace and amity with the people of the loyal States, extending to all classes of citizens equal rights and privileges, and conforming to the republican idea of liberty and equality. They should exhibit in their acts something more than an unwilling submission to an unavoidable necessity — a feeling, if not cheerful, certainly not offensive and defiant. And they should evince an entire repudiation of all hostility to the general government, by an acceptance of such just and reasonable conditions as that government should think

the public safety demands. Has this been done? Let us look at the facts shown by the evidence taken by the committee.

Hardly is the war closed before the people of these insurrectionary States come forward and haughtily claim, as a right, the privilege of participating at once in that government which they had for four years been fighting to overthrow. Allowed and encouraged by the Executive to organize state governments, they at once place in power leading rebels, unrepentant and unpardoned, excluding with contempt those who had manifested an attachment to the Union, and preferring, in many instances, those who had rendered themselves the most obnoxious. In the face of the law requiring an oath which would necessarily exclude all such men from federal offices, they elect, with very few exceptions, as senators and representatives in Congress, men who had actively participated in the Rebellion, insultingly denouncing the law as unconstitutional. It is only necessary to instance the election to the Senate of the late vice-president of the Confederacy, a man who, against his own declared convictions, had lent all the weight of his acknowledged ability and of his influence as a most prominent public man to the cause of the Rebellion, and who, unpardoned rebel as he is, with that oath staring him in the face, had the assurance to lay his credentials on the table of the Senate. Other rebels of scarcely less note or notoriety were selected from other quarters. Professing no repentance, glorying apparently in the crime they had committed, avowing still, as the uncontradicted testimony of Mr. Stephens and many others proves, an adherence to the pernicious doctrine of secession, and declaring that they yielded only to necessity, they insist, with unanimous voice, upon their rights as States, and proclaim that they will submit to no conditions

whatever as preliminary to their resumption of power under that Constitution which they still claim the right to repudiate.

Examining the evidence taken by your committee still further, in connection with facts too notorious to be disputed, it appears that the Southern press, with few exceptions, and those mostly of newspapers recently established by Northern men, abounds with weekly and daily abuse of the institutions and people of the loyal States; defends the men who led, and the principles which incited, the Rebellion; denounces and reviles Southern men who adhered to the Union; and strives, constantly and unscrupulously, by every means in its power, to keep alive the fire of hate and discord between the sections, calling upon the President to violate his oath of office, overturn the government by force of arms, and drive the representatives of the people from their seats in Congress. The national banner is openly insulted, and the national airs scoffed at, not only by an ignorant populace, but at public meetings, and once, among other notable instances, at a dinner given in honor of a notorious rebel who had violated his oath and abandoned his flag. The same individual is elected to an important office in the leading city of his State, although an unpardoned rebel, and so offensive that the President refuses to allow him to enter upon his official duties. In another State the leading general of the rebel armies is openly nominated for governor by the speaker of the House of Delegates, and the nomination is hailed by the people with shouts of satisfaction, and openly indorsed by the press.

Looking still further at the evidence taken by your committee, it is found to be clearly shown by witnesses of the highest character, and having the best means of observation, that the Freedmen's Bureau, instituted for

the relief and protection of freedmen and refugees, is almost universally opposed by the mass of the population, and exists in an efficient condition only under military protection, while the Union men of the South are earnest in its defense, declaring with one voice that without its protection the colored people would not be permitted to labor at fair prices, and could hardly live in safety. They also testify that without the protection of the United States troops, Union men, whether of Northern or Southern origin, would be obliged to abandon their homes. The feeling in many portions of the country towards emancipated slaves, especially among the uneducated and ignorant, is one of vindictive and malicious hatred. This deep-seated prejudice against color is assiduously cultivated by the public journals, and leads to acts of cruelty, oppression, and murder, which the local authorities are at no pains to prevent or punish. There is no general disposition to place the colored race, constituting at least two fifths of the population, upon terms even of civil equality. While many instances may be found where large planters and men of the better class accept the situation, and honestly strive to bring about a better order of things, by employing the freedmen at fair wages and treating them kindly, the general feeling and disposition among all classes are yet totally averse to the toleration of any class of people friendly to the Union, be they white or black; and this aversion is not unfrequently manifested in an insulting and offensive manner.

The witnesses examined as to the willingness of the people of the South to contribute, under existing laws, to the payment of the national debt, prove that the taxes levied by the United States will be paid only on compulsion and with great reluctance, while there prevails, to a considerable extent, an expectation that compensation will be

made for slaves emancipated and property destroyed during the war. The testimony on this point comes from officers of the Union army, officers of the late rebel army, Union men of the Southern States, and avowed secessionists, almost all of whom state that, in their opinion, the people of the rebellious States would, if they should see a prospect of success, repudiate the national debt.

While there is scarcely any hope or desire among leading men to renew the attempt at secession at any future time, there is still, according to a large number of witnesses, including A. H. Stephens, who may be regarded as good authority on that point, a generally prevailing opinion which defends the legal right of secession, and upholds the doctrine that the first allegiance of the people is due to the States and not to the United States. This belief evidently prevails among leading and prominent men as well as among the masses everywhere, except in some of the northern counties of Alabama and the eastern counties of Tennessee.

The evidence of an intense hostility to the federal Union, and an equally intense love of the late Confederacy, nurtured by the war, is decisive. While it appears that nearly all are willing to submit, at least for the time being, to the federal authority, it is equally clear that the ruling motive is the desire to obtain the advantages which will be derived from a representation in Congress. Officers of the Union army on duty and Northern men who go South to engage in business are generally detested and proscribed. Southern men who adhered to the Union are bitterly hated and relentlesly persecuted. In some localities prosecutions have been instituted in state courts against Union officers for acts done in the line of official duty, and similar prosecutions are threatened elsewhere as soon as the United States troops are removed. All such

demonstrations show a state of feeling against which it is unmistakably necessary to guard.

The testimony is conclusive that after the collapse of the Confederacy the feeling of the people of the rebellious States was that of abject submission. Having appealed to the tribunal of arms, they had no hope except that, by the magnanimity of their conquerors, their lives, and possibly their property, might be preserved. Unfortunately, the general issue of pardons to the persons who had been prominent in the Rebellion, and the feeling of kindliness and conciliation manifested by the Executive, and very generally indicated through the Northern press, had the effect to render whole communities forgetful of the crime they had committed, defiant towards the federal government, and regardless of their duties as citizens. The conciliatory measures of the government do not seem to have been met even half way. The bitterness and defiance exhibited towards the United States under such circumstances is without a parallel in the history of the world.

In return for our leniency we receive only an insulting denial of our authority. In return for our kind desire for the resumption of fraternal relations we receive only an insolent assumption of rights and privileges long since forfeited. The crime we have punished is paraded as a virtue, and the principles of the republican government which we have vindicated at so terrible a cost are denounced as unjust and oppressive.

If we add to this evidence the fact that, although peace has been declared by the President, he has not, to this day, deemed it safe to restore the writ of habeas corpus, to relieve the insurrectionary States of martial law, nor to withdraw the troops from many localities, and that the commanding general deems an increase of the army

indispensable to the preservation of order and the protection of loyal and well-disposed people in the South, the proof of a condition of feeling hostile to the Union and dangerous to the government throughout the insurrectionary States would seem to be overwhelming.

With such evidence before them, it is the opinion of your committee —

1. That the States lately in rebellion were, at the close of the war, disorganized communities, without civil government and without constitutions or other forms, by virtue of which political relations could legally exist between them and the federal government.

2. That Congress cannot be expected to recognize as valid the election of representatives from disorganized communities, which, from the very nature of the case, were unable to present their claim to representation under those established and recognized rules, the observance of which has been hitherto required.

3. That Congress would not be justified in admitting such communities to a participation in the government of the country without first providing such constitutional or other guarantees as will tend to secure the civil rights of all citizens of the republic; a just equality of representation; protection against claims founded in rebellion and crime; a temporary restoration of the right of suffrage to those who have not actively participated in the efforts to destroy the Union and overthrow the government and the exclusion from positions of public trust of, at least, a portion of those whose crimes have proved them to be enemies to the Union and unworthy of public confidence.

Your committee, will perhaps hardly be deemed excusable for extending this report further; but inasmuch as immediate and unconditional representation of the

States lately in rebellion is demanded as a matter of right, and delay and even hesitation is denounced as grossly oppressive and unjust as well as unwise and impolitic, it may not be amiss again to call attention to a few undisputed and notorious facts, and the principles of public law applicable thereto, in order that the propriety of that claim may be fully considered and well understood.

The State of Tennessee occupies a position distinct from all the other insurrectionary States, and has been the subject of a separate report which your committee have not thought it expedient to disturb. Whether Congress shall see fit to make that State the subject of separate action, or to include it in the same category with all others, so far as concerns the imposition of preliminary conditions, it is not within the province of this committee either to determine or advise.

To ascertain whether any of the so-called Confederate States "are entitled to be represented in either house of Congress," the essential inquiry is, whether there is, in any one of them, a constituency qualified to be represented in Congress. The question how far persons claiming seats in either house possess the credentials necessary to enable them to represent a duly qualified constituency is one for the consideration of each house separately, after the preliminary questions shall have been finally determined.

We now propose to restate, as briefly as possible, the general facts and principles applicable to all the States recently in rebellion.

First. The seats of the senators and representatives from the so-called Confederate States became vacant in the year 1861, during the second session of the Thirty-sixth Congress, by the voluntary withdrawal of their incumbents, with the sanction and by the direction of the

legislatures or conventions of their respective States. This was done as a hostile act against the Constitution and government of the United States, with a declared intent to overthrow the same by forming a Southern confederation. This act of declared hostility was speedily followed by an organization of the same States into a confederacy, which levied and waged war by sea and land, against the United States. This war continued more than four years, within which period the rebel armies besieged the national capital, invaded the loyal States, burned their towns and cities, robbed their citizens, destroyed more than 250,000 loyal soldiers, and imposed an increased national burden of not less than $3,500,000,000, of which seven or eight hundred millions have already been met and paid. From the time these confederated States thus withdrew their representation in Congress and levied war against the United States, the great mass of their people became and were insurgents, rebels, traitors, and all of them assumed and occupied the political, legal, and practical relation of enemies of the United States. This position is established by acts of Congress and judicial decisions, and is recognized repeatedly by the President in public proclamations, documents, and speeches.

Second. The States thus confederated prosecuted their war against the United States to final arbitrament, and did not cease until all their armies were captured, their military power destroyed, their civil officers, state and Confederate, taken prisoners or put to flight, every vestige of state and Confederate government obliterated, their territory overrun and occupied by the federal armies, and their people reduced to the condition of enemies conquered in war, entitled only by public law to such rights, privileges, and conditions as might be vouchsafed by the conqueror. This position is also established by judicial

decisions, and is recognized by the President in public proclamations, documents, and speeches.

Third. Having voluntarily deprived themselves of representation in Congress for the criminal purpose of destroying the federal Union, and having reduced themselves, by the act of levying war, to the condition of public enemies, they have no right to complain of temporary exclusion from Congress; but, on the contrary, having voluntarily renounced the right to representation, and disqualified themselves by crime from participating in the government, the burden now rests upon them, before claiming to be reinstated in their former condition, to show that they are qualified to resume federal relations. In order to do this they must prove that they have established, with the consent of the people, republican forms of government in harmony with the Constitution and laws of the United States, that all hostile purposes have ceased, and should give adequate guarantees against future treason and rebellion — guarantees which shall prove satisfactory to the government against which they rebelled, and by whose arms they were subdued.

Fourth. Having, by this treasonable withdrawal from Congress, and by flagrant rebellion and war, forfeited all civil and political rights and privileges under the federal Constitution, they can only be restored thereto by the permission and authority of that constitutional power against which they rebelled and by which they were subdued.

Fifth. These rebellious enemies were conquered by the people of the United States, acting through all the coördinate branches of the government, and not by the executive department alone. The powers of conqueror are not so vested in the President that he can fix and regulate the terms of settlement and confer congressional representation on conquered rebels and traitors. Nor can

he in any way qualify enemies of the government to exercise its law-making power. The authority to restore rebels to political power in the federal government can be exercised only with the concurrence of all the departments in which political power is vested; and hence the several proclamations of the President to the people of the Confederate States cannot be considered as extending beyond the purposes declared, and can only be regarded as provisional permission by the commander-in-chief of the army to do certain acts, the effect and validity whereof is to be determined by the constitutional government, and not solely by the executive power.

Sixth. The question before Congress is, then, whether conquered enemies have the right, and shall be permitted at their own pleasure and on their own terms, to participate in making laws for their conquerors; whether conquered rebels may change their theatre of operations from the battlefield, where they were defeated and overthrown, to the halls of Congress, and through their representatives seize upon the government which they fought to destroy; whether the national treasury, the army of the nation, its navy, its forts and arsenals, its whole civil administration, its credit, its pensioners, the widows and orphans of those who perished in the war, the public honor, peace, and safety, shall all be turned over to the keeping of its recent enemies without delay, and without imposing such conditions as, in the opinion of Congress, the security of the country and its institutions may demand.

Seventh. The history of mankind exhibits no example of such madness and folly. The instinct of self-preservation protests against it. The surrender by Grant to Lee and by Sherman to Johnston would have been disasters of less magnitude, for new armies would have been raised, new battles fought, and the government saved. The anti-co-

ercive policy which, under pretext of avoiding bloodshed, allowed the Rebellion to take form and gather force, would be surpassed in infamy by the matchless wickedness that would now surrender the halls of Congress to those so recently in rebellion until proper precautions shall have been taken to secure the national faith and the national safety.

Eighth. As has been shown in this report, and in the evidence submitted, no proof has been afforded to Congress of a constituency in any one of the so-called Confederate States, unless we except the State of Tennessee, qualified to elect senators and representatives in Congress. No state constitution or amendment to a state constitution has had the sanction of the people. All the so-called legislation of state conventions and legislatures has been had under military dictation. If the President may, at his will and under his own authority, whether as military commander or chief executive, qualify persons to appoint senators and elect representatives, and empower others to appoint and elect them, he thereby practically controls the organization of the legislative department. The constitutional form of government is thereby practically destroyed, and its powers absorbed in the Executive. And while your committee do not for a moment impute to the President any such design, but cheerfully concede to him the most patriotic motives, they cannot but look with alarm upon a precedent so fraught with danger to the republic.

Ninth. The necessity of providing adequate safeguards for the future, before restoring the insurrectionary States to a participation in the direction of public affairs, is apparent from the bitter hostility to the government and people of the United States yet existing throughout the conquered territory, as proved incontestably by the testimony of many witnesses and by undisputed facts.

Tenth. The conclusion of your committee therefore is

that the so-called Confederate States are not, at present, entitled to representation in the Congress of the United States; that before allowing such representation, adequate security for future peace and safety should be required; that this can be found only in such changes of the organic law as shall determine the civil rights and privileges of all citizens in all parts of the republic, shall place representation on an equitable basis, shall fix a stigma upon treason, and protect the loyal people against future claims for the expenses incurred in support of rebellion and for manumitted slaves, together with an express grant of power in Congress to enforce those provisions. To this end they offer a joint resolution for amending the Constitution of the United States, and the two several bills designed to carry the same into effect, before referred to.

Before closing this report your committee beg leave to state that the specific recommendations submitted by them are the result of mutual concession, after a long and careful comparison of conflicting opinions. Upon a question of such magnitude, infinitely important as it is to the future of the republic, it was not to be expected that all should think alike. Sensible of the imperfections of the scheme, your committee submit it to Congress as the best they could agree upon, in the hope that its imperfections may be cured and its deficiencies supplied by legislative wisdom; and that, when finally adopted, it may tend to restore peace and harmony to the whole country and to place our republican institutions on a more stable foundation.

W. P. Fessenden.
James W. Grimes.
Ira Harris.
J. M. Howard.
George H. Williams.
Thaddeus Stevens.
Elihu B. Washburne.
Justin S. Morrill.
Jno. A. Bingham.
Roscoe Conkling.
George S. Boutwell.
Henry T. Blow.

CHAPTER VIII

RADICAL AND CONSERVATIVE SENATORS

1866–1868

The preceding chapter has been confined to Senator Fessenden's part in solving the question of reconstruction, but during the same period many duties of a miscellaneous nature were cast upon him. This year (1866) witnessed changes in the Senate which deeply affected Mr. Fessenden. He lost by death two of his firmest and most intimate friends, Senators Collamer and Foot of Vermont. Both were members of the Senate throughout the anti-slavery contests before the civil war and during the weary years of the Rebellion. Mr. Fessenden pronounced one of the obituary addresses upon Mr. Collamer. After speaking of his peculiarities of intellect and character, he said that "no one could better than himself bear testimony to his kindness of heart, his readiness to impart imformation, and give the advantage of his learning and wisdom to those about him whenever sought or needed. Seated by his side, session after session, for many years, he habitually asked his advice, and sought his aid, whenever embarrassed by doubt or difficulty. He venerated and loved the man as one regarded an older brother upon whose superior knowledge and wisdom and unselfish singleness of heart he feels that in all emergencies he may safely rely."

Mr. Foot was born in the same year as Mr. Fessenden. Their friendship had been, from the beginning, of the closest nature. Mr. Foot had returned to the Senate in

December in apparent health, to be suddenly struck down with a fatal disease. His death was almost dramatic, as he was in full possession of his faculties, conscious that he must die, and in this condition he took leave of his friends. The scene at his deathbed has been described by the clergyman in attendance. "When Mr. Fessenden approached him, he eagerly stretched out his hand, saying, 'My dear friend Fessenden, the man by whose side I have sat so long, whom I have regarded as the model of a statesman and parliamentary leader, on whom I have leaned, and to whom I have looked more than to any other living man for guidance and direction in public affairs, the strong tie which has so long bound us together must now be severed. But, my dear Fessenden, if there is a memory after death, that memory will be active, and I shall recall to mind the whole of our intercourse on earth.' Mr. Fessenden could not speak as he stooped over and kissed the brow of his dying friend, then turned away in silence."

In one of his letters he thus alludes to the death of Mr. Foot: "Perhaps the death of my friend Foot has somewhat affected my spirits. You have probably seen, or soon will see in the papers, Mr. Sunderland's account of his closing hours. No death scene could be more remarkable. No man has ever been so dear to me among all the men with whom I have been associated in public affairs. He attached himself to me from the first hour, and his friendship was constant and unwavering. No hasty word ever passed between us. His death came upon us all so unexpectedly that it has made a profound impression. I can say with truth, that gladly would I give all the little honors I have won to secure a deathbed like his."

Mr. Fessenden's eulogy on Senator Foot, delivered in

the Senate, was marked by unusual feeling. His description of him is here given: —

"A stranger, Mr. President, upon entering this chamber and casting his eyes around the Senate, could not but be struck with the imposing presence of our departed friend and associate, and attracted by the rare union of mildness and dignity in his expressive features. If he rose to speak, the commanding yet pleasing tones of his voice and the noble grace of his demeanor, the elegance of his language and his clear and forcible statement would deepen the first impression. If called to the chair, as he was more often than any other, that seemed to be the place he was made to fill. There was exhibited his remarkable love of order, his impartiality, his sense of senatorial propriety, his entire fitness to preside over and control the deliberations of what should be a grave, decorous, and dignified body of thoughtful men, charged with great trusts, and alive to their importance. Whatever was in the least degree unbecoming was offensive to his feelings and his taste; but however these might be offended, he never for a moment forgot what was due to the Senate and to himself, as its officer. Would that his precepts and his example in these particulars may not be forgotten. Often, sir, when we look upon the chair you occupy, however ably and faithfully it may be filled, must we think of him whose admonitions we will remember and to whose unshaken firmness and unwearied patience we were so often indebted for the preservation of that respect which we owe to ourselves."

There was one passage in the eulogy on Senator Foot which seemed almost prophetic in the light of the storm of abuse which fell upon Mr. Fessenden two years later on account of his vote of "not guilty" on the impeachment of President Johnson. It was as follows: "When,

Mr. President, a man however eminent in other pursuits, and whatever claims he may have to public confidence, becomes a member of this body, he has much to learn and much to endure. Little does he know of what he will have to encounter. He may be well read in public affairs, but he is unaware of the difficulties which must attend and embarrass every effort to render what he may know available and useful. He may be upright in purpose and strong in the belief in his own integrity, but he cannot even dream of the ordeal to which he cannot fail to be exposed; of how much courage he must possess to resist the temptations which daily beset him; of that sensitive shrinking from undeserved censure which he must learn to control; of the ever-recurring contest between a natural desire for public approbation and a sense of public duty; of the load of injustice he must be content to bear, even from those who should be his friends; the imputations of his motives; the sneers and sarcasms of ignorance and malice; all the manifold injuries which partisan or private malignity, disappointed of its objects, may shower upon his unprotected head. All this, if he would retain his integrity, he must learn to bear unmoved, and walk steadily onward in the path of duty, sustained only by the reflection that time may do him justice, or if not, that his individual hopes and aspirations, and even his name among men, should be of little account to him when weighed in the balance against the welfare of a people of whose destiny he is a constituted guardian and defender."

One of Mr. Fessenden's last acts as Secretary of the Treasury was to provide authority for his successor to rearrange and fund the public debt. On the first of January, 1866, the floating debt of the government, including the seven-thirties, amounted to over $1,600,000,000. Acting upon the recommendation of Secretary McCulloch,

the House passed a bill to extend the act of March 3, 1865, enacted at Mr. Fessenden's instance, and expressly authorized the secretary to reduce the amount of greenbacks by ten millions in the first six months, and afterwards at the rate of four millions each month. In the debate on this bill in the House, Mr. Conkling stated that all the power necessary for converting the bonds and currency already existed under the act of March 3, 1865, and a similar statement was made by the comptroller of the currency in a public letter. The bill passed the House by 83 ayes to 53 noes. Shortly afterwards Mr. Fessenden reported the bill from the committee on finance with its approval and called it up on April 9. Mr. Sherman opposed the measure. He thought there was no necessity for conferring such enormous and dangerous powers upon the secretary. It authorized the secretary to fund the whole debt and gave him power to contract the currency and produce a strain upon the people. He feared the secretary would carry out his policy of reducing the currency. Business men were alarmed, and would not go on with their business. He thought the bill did not carry out the purpose of the House of Representatives, which was to limit the power of the secretary over the legal tender currency.

Mr. Fessenden replied that if the House of Representatives did not understand the bill, it was because they had not given the rein to their imagination, like the senator from Ohio, and assumed that the Secretary of the Treasury had a purpose to accomplish against the wishes of Congress. The bill passed at the last session authorized the secretary to convert any of the interest-bearing obligations of the government into new bonds authorized by the act. After peace came it was the idea of all men acquainted with financial matters that the country should

return to specie payments as soon as it was safe to do so. The secretary took this view, and asked for power to convert the interest-bearing obligations into the new bonds, and the greenbacks also. The idea was received with universal favor, but men calling themselves business men, who wanted an expanded currency, got up an excitement that the secretary intended to devote himself exclusively to contraction, and push it beyond a beneficial extent, and they sought to prevent him from having the power. There was a contest over it in the House, and after being twice recommitted, the present bill was passed. He, Fessenden, would have preferred a stronger bill. It authorized the secretary to convert the interest-bearing obligations and Treasury notes, with the greenbacks, into certain descriptions of bonds, the interest of which was carefully limited, and, to prevent the secretary from abusing his power, limited him to retire not more than ten millions of the greenbacks during the first six months, and after that period, not more than four millions a month. The bill was of consequence, because it recognized the principle that as soon as it could be done, with safety to the country, a return would be made to specie payments. To say that the expanded currency was to be maintained was a calamitous idea, and should be rejected at once. Though everything appeared fair now, a revulsion in trade, which must be avoided, if possible, might occasion severe embarrassment. In this transition state a large discretion over the currency must be given to the secretary. The evils alluded to were imaginary and the result of an excited feeling occasioned by the talk about destroying the business of the country.

Senator Chandler agreed with Mr. Sherman in opposing the bill. Mr. Guthrie of Kentucky, a very able financier, agreed with Mr. Fessenden. The Senate passed the bill

by 32 to 7. The country might possibly have escaped the revulsion of 1873, if the policy of contraction had been adhered to, but Secretary McCulloch became so obnoxious to Republicans that all of his measures were opposed, and his efforts to reduce the volume of paper money caused an outcry from the business world for a continuance of all the currency. The provision for contracting the currency was repealed in 1868, by vote, in the Senate of 33 to 4. Mr. Fessenden opposed the repeal. The country soon entered upon a course of speculation, extravagance in business and railroad construction, which culminated in 1873 in what Mr. Fessenden had feared, financial disturbance.

At this session Senator Fessenden debated the Fortification Bill, and he defended the Treasury Department from an attack by several senators.

The work on the appropriation bills began on March 15, when he called up the Deficiency Bill, which was debated and passed that day. The next day the Naval Appropriation Bill was taken up and passed. On May 16 the Consular and Diplomatic Bill was considered, when an effort was made to raise the rank of the ministers to Belgium and Portugal. Mr. Fessenden opposed raising the rank of these missions to gratify the gentlemen who held them. "The next thing to follow would be an effort to raise their salaries to support the increased rank of their missions." The debate on the Civil Appropriation Bill began on July 19 and lasted a week. There were numerous amendments offered, and Mr. Fessenden was obliged to appeal to have the rules enforced. The bill had come from a committee of conference, and its report was opposed by Wade and Wilson because it did not include a bill for the equalization of bounties. This was the first bill to equalize bounties, and was the beginning

of the tremendous raids upon the Treasury under the guise of equalizing bounties and pensions. Mr. Fessenden opposed it and predicted that it would be followed by others. He said it was not usual for senators to oppose the report from a conference committee which was in accordance with the votes of the Senate. The committee had reported as the Senate wished. The passage of a bounty bill at this session would be a great error. It had not been considered, and was sprung upon an appropriation bill. No bill that could really equalize bounties had been devised. The proposed measure would take $350,000,000 from the Treasury, and would increase the national debt. When done it should be carefully done and not be a helter-skelter arrangement. It should not be done without a decided call from the people, and not from the demand of soldiers' and sailors' conventions. It was not the payment of a debt; it was strictly a gift, and nothing more. The money given to the soldiers would last but a short time. The taxation for it would endure for years and years.

The report was concurred in by the Senate, but the House refused to concur in it, and finally the Senate accepted the bounty amendment to save the passage of the whole bill by the House. Mr. Fessenden voted against it.

One of the longest and hardest labors of this session was the preparation and discussion of the amended tax bill to reduce taxation and amend the Internal Revenue Bill of 1864. The close of the war necessitated many changes and reductions. There were nearly four thousand lines and two hundred and fifty pages in the bill. The revision was done by the committee on finance, and had consumed four weeks of constant examination. The discussion in the Senate covered four days, Senator Fessenden being the spokesman for the committee. So much

knowledge was required to criticise the details of the bill, that, as a rule, it was accepted as it came from the committee. Senators who had prepared themselves on special points to oppose the recommendations of the committee had warm discussions, but they seldom succeeded in carrying an amendment. The bill was passed by the last of June. Early in July the new tariff bill was reported from the House. This involved even more labor than the tax bill. Mr. Fessenden moved it to be referred to the committee on finance and printed. He remarked that he had followed the discussion over it in the House and was free to say his mind was not convinced of the correctness of some of its conclusions. There were some provisions that were essential and ought to be passed at the present session in some shape. He was, within the limits of the Constitution, what was called a protective tariff man, and would probably adhere to those opinions. The bill was by no means got up for the interest of New England, though the New England vote had been solid for it. He mentioned this as proving "the loyalty of New England, and her disinterestedness, her loyalty to her belief, and to the system she had always advocated."

His care in legislation made him oppose a bill reported by Mr. Chandler authorizing the construction of a telegraph line between Florida and the West Indies. The bill gave an exclusive privilege for twenty-five years and tied the hands of Congress, though Congress reserved the right to amend it. But Mr. Fessenden pointed out that when once the privileges were granted, interference was seldom successful. He thought the bill created a monopoly and tied the hands of Congress; that it made a bad precedent in remitting the duties on materials used in the construction of the line, as Congress had invariably refused to break into the revenue system in favor of

anybody. He suggested several amendments which Mr. Chandler hotly resisted. The Senate passed the bill, giving the exclusive privileges for fourteen years.

Mr. Fessenden thought the experience of the war had induced a looseness in legislation by Congress, which should be corrected by a return to the stricter methods of earlier times. He was cautious and conservative by instinct, and more disposed to restrain the power of Congress than to extend it. There were a number of measures introduced at this session which he regarded as stretches of constitutional power. He said of the bill to incorporate the Niagara Ship Canal Company, that he should oppose it in its then attitude, though he was not inevitably opposed to constructing the canal at a proper time. He had not voted for the Pacific Railroad Bill. He said he was not opposed to the construction of a Pacific railroad, but he had been opposed, even for the purpose of obtaining a considerable good, to violating a constitutional provision, or at any rate to transcending the limits of the power they had under the Constitution. His view was that the Pacific Railroad could be constructed only under the war power connecting the country together for common defense. It should be a national work. National works should not be put into the power of corporations, and this objection was growing stronger, for it was getting to be the case under the legislation of Congress that the country was to be controlled by the great corporations and the legislation was to be controlled by them.

"The senator from Massachusetts had put this on the ground of commercial power. He (Fessenden) was a strict, perhaps a narrow, constructionist. It had only recently been found that under the power to regulate commerce the government had the power to make a communication

through States. It was a modern doctrine. It had been strongly held by the Democracy, and he had agreed with them in this, that where channels of commerce existed by nature, the government had the power to improve them under the power to regulate. But the idea that the government could create new channels like railroads or canals was a doctrine that would lead to a most unlimited expenditure of money, and under the power to regulate was assuming power to create, which, in his judgment, did not exist."

He thought that such works as the Pacific Railroad and the Niagara Ship Canal might be constructed under the war power for national defense, but that the government should not construct such a work and pass it over to a corporation to own and control it. Such works should remain under the control of the government. When the bill relating to interstate commerce came up on July 12, he expressed a constitutional objection to it.

A very interesting legal debate occurred during this session upon the admission of John P. Stockton as senator from New Jersey. He was a Democrat. The Republicans of that State claimed that his election was illegal. It raised a nice question of constitutional law. Mr. Fessenden's opinions upon questions of this kind carried so much weight that a strong appeal was made to him to examine the case. Upon doing so he was clearly of the opinion that the election was not valid. In the debate he was obliged to contend against the authority of the almost unanimous report of the committee on the judiciary, which held that Mr. Stockton was lawfully chosen, and therefore entitled to his seat. The committee was largely Republican, and comprised some of the ablest lawyers in the Senate.

When the subject came up before the Senate on the

22d of March, 1866, the debate against the report of the judiciary committee was opened by Senator Clark of New Hampshire, the only dissenting member of the committee. He was sustained by Mr. Fessenden, who, according to Mr. Blaine in his "Twenty Years of Congress," "left little to be said, as was his habit in debating any question of constitutional law."

There was some keen discussion between Mr. Fessenden, in support of his views, and Messrs. Trumbull and Johnson against it. The Senate sustained Mr. Fessenden by a vote of 22 to 20. One vote would have changed the result. With Mr. Fessenden voted Mr. Sumner, Grimes, Howe, Sherman, and, what was unusual, all of the so-called radicals. In his "Twenty Years of Congress," Mr. Blaine observes that Mr. Fessenden's argument was never refuted by his opponents, and that the best presentation of Mr. Stockton's claim could not evade or even dull it. The decision of the Senate was generally accepted. In a new election by the legislature of New Jersey, Mr. A. G. Cattell, a Republican, was chosen, and took his seat without opposition.

Mr. Fessenden would never allow considerations of sentiment or good nature to influence him to vote for propositions, even when they appealed strongly to his feelings, if he thought they were wrong in principle or would establish a hurtful precedent. He opposed the Bounty Bill as a mere gift, and resisted the proposition to take off the duties from articles to be used in the construction of an international telegraph line, on the ground that it would break into the revenue system. For similar reasons he opposed the resolution to purchase for Congress the law library of James L. Petigru of South Carolina, and the bill to create a higher rank for Lieutenant-General Grant.

Mr. Petigru was an honored citizen of South Carolina, a lawyer, and a courageous patriot, who stood out almost alone to condemn the secession of his State. He maintained this attitude fearlessly throughout the war, and died a supporter of the Union. His library was of no value to the government, but it was proposed to purchase it for $5000, as a means of assisting his aged widow, who was poor, for his devoted patriotism. Mr. Fessenden regarded the proposition as nothing more than a gift, which Congress had no right to make. While he admitted the merits of Mr. Petigru, he did not think it would be safe to recognize the principle that because an eminent man in the South had remained true to the Union, his family was to be provided for. There was no more propriety in providing for the relatives of an eminent man than for a humble man who had sacrificed all in remaining faithful. The precedent was a bad one, and was doing indirectly what should not be done directly. He considered the proposition an improper one.

Mr. Reverdy Johnson, who was a personal friend of Mr. Petigru, agreed with Mr. Fessenden, and opposed the resolution. It was postponed, but came up again on July 3, when Senator Howe made an eloquent speech in favor of it, giving a glowing account of Judge Petigru's loyalty to the Union. He closed by saying that the Senate should do anything rather than advertise to the enemies among whom Petigru died that the loyalty which so distinguished him was held so cheap by the Senate.

Mr. Fessenden said he had the highest estimation of Judge Petigru and believed him to have been a very bold and patriotic citizen attached to the Republic. He would be glad if he could vote for the proposition. The sum was small, but in connection with the ten thousand other small sums, it would press hard upon the finances. It was the

principle he objected to. There had grown up a great looseness in legislation, and things were put forth every day as received truths under certain clauses of the Constitution that were entirely different from the ideas with which he had commenced public life. A style of legislation with reference to money matters had been adopted which he regarded as exceedingly dangerous. The method by which this expenditure was to be made was a mere evasion. The Senate might as well say that in consideration of his uniform loyalty and eminence it would give his widow $5000. No one would vote for such a proposition. There was no power under the Constitution to do it. The present proposition was no more than this. It was conceded that it was an old library which Congress did not need. It was proposed to buy it for the sake of the widow. He could not vote for it and was sorry he could not.

The resolution was passed by a vote of 19 to 14.

The House had passed a bill to make General Grant a full general. This rank had been held by Washington during the war of the Revolution. Scott had been made a lieutenant-general by brevet for his services in Mexico. Grant had been promoted to a full lieutenant generalship after the Chatanooga campaign. In the discussion of the bill relating to the pay of the navy, it was proposed to make Farragut a full admiral, with increased pay. Mr. Fessenden said he was willing to raise his pay, but was not disposed to create another office. Farragut had been made our first vice-admiral after his great services had been performed, and he had been put at the head of the navy. The proposed pay was none too much for him, but to make another office was to leave his present office open to somebody else to be promoted to it. There was too great a propensity to hero-worship. He had the highest

respect and admiration for Grant and Farragut. They should be honored for their great services, but there should be a limitation to the disposition to push them forward. He had an objection to creating a new office for either Grant or Farragut. He had thought of this subject anxiously and carefully, and with all his regard for these distinguished men he could not vote to create a new office for them.

Mr. Fessenden also said that while our sense of their great services should be testified to, to every reasonable extent, it was not proper in a republican government to run after men. After these distinguished men had been placed at the very head of their respective professions, Congress ought not then to busy itself with creating new offices for them. It was setting a bad example, which if followed out in a republic would create a great deal of difficulty.

The bill was passed. It was only a moderate recognition of General Grant's services performed since his promotion to the grade of lieutenant-general. Since that promotion he had directed the operations of all the armies of the Union, and had himself commanded the armies of the Potomac and the James in the long campaign of 1864–65 which ended in the surrender of Lee.

It has already been mentioned that Mr. Fessenden opposed the bill to aid the construction of the Union and Central Pacific railroads on the ground that the best location should be first ascertained and then the railroad should be a national work. When he saw it being carried by a union of interests, he regarded it as a mere scheme and would not assent to it.

A similar bill came up in the Senate on July 16, 1866, granting public lands and government bonds to aid the construction of a northern Pacific railroad. He opposed this measure.

On July 21 Mr. Fessenden participated in a debate on the bill to restore Tennessee to her former relations with the Union. The resolution to admit Tennessee had come originally from the committee on reconstruction. Tennessee had a condition distinct from the other States in rebellion, and it was deemed best to state the facts which made her condition different from other States, that the case might not be used as a precedent for admitting others. The amendment now proposed by the judiciary committee varied from the original preamble. Mr. Fessenden had drawn the latter, but the House had changed it, and added other language which he thought was meaningless. He had been in favor of the admission of Tennessee. He objected to the preamble because it substantially declared that any State might be admitted when it adopted the constitutional amendment, before the amendment had been adopted by enough States to make it a part of the Constitution. It was better either to state the reasons for which Tennessee was to be admitted, or else strike out all the reasons, giving none at all, so as to form no precedent with regard to the other States. Every man would then stand upon his own reasons in relation to the matter. He thought the resolution sufficiently asserted the power of Congress over the subject.

During the discussion of a change in the phraseology, Senator Howard said he thought the amplification was useful, to which Mr. Fessenden replied "that amplification was the curse of the body. They have been amplifying all day upon matters as familiar to them as the tips of their fingers, and it was about time to take a vote."

Tennessee was restored to her representation in Congress at this session. One senator had been admitted. In the case of Mr. Patterson, the other, it was admitted that he had taken the oath of allegiance to the Confederate

States, but that it had been forced upon him at the point of the bayonet. Mr. Fessenden remarked that he would not, on a mere rumor, depart from the rule adopted by the Senate; but since it was admitted that Mr. Patterson had taken the oath of the Confederate government, he would vote for a reference of his credentials to the judiciary committee, although circumstances might be shown which would induce him to vote for his admission afterwards. Mr. Patterson was subsequently admitted.

On July 6 a bill of the greatest consequence to the Treasury was called up. Its object was to provide for payments to loyal citizens for supplies taken for the use of the armies. Mr. Fessenden urged that the bill should be confined to citizens of the loyal States, and that such claims urged by citizens of States in insurrection should be proved before the Court of Claims, and not left to be decided by a clerk in the quartermaster-general's department. Without such a restriction the government would be called upon to pay untold millions to persons in the rebellious States for all the property seized in the military operations of the Union armies.

Mr. Fessenden and Mr. Sumner were in accord upon the proposition to publish an official history of the Rebellion by printing the official reports. Mr. Fessenden thought the time had hardly arrived for doing it. When it was done it ought to be done by a competent person. He was in favor of repealing the resolution under which some of the documents had already been published, and providing for having the whole work done by competent persons. In the present state of the finances he thought it better to postpone so expensive a work. The Confederate papers should be printed in juxtaposition with the Union documents.

Mr. Sumner agreed with Mr. Fessenden, and thought

it would be difficult to find a proper person for the work, free from turbulent ambition, willing to live among his books and give his days and nights to serious toil. To which Mr. Reverdy Johnson slyly observed that such a man might perhaps be found in Boston. Then Mr. Fessenden suggested that if Mr. Sumner would resign and take charge of the work, he would agree to serve as his clerk. Mr. Sumner replied that then the work would be surely done. The bill was committed.

In the midst of the severe work at the close of the session came the news of the great Portland fire of July 4, 1866, when a large portion of the city was destroyed, including much of Mr. Fessenden's property. His house, fortunately, was in that part of the town which escaped the conflagration. His office was destroyed and the house belonging to his father, in which his brother Daniel was living with his family. Writing of this on July 8, he said: "I was glad to get your letters, as I had received no direct intelligence. I am most thankful that no lives were lost, and that you are all well sheltered. Our pecuniary losses will be troublesome, but these must be cheerfully borne. I don't see how you contrived to save your books. My greatest expectations did not extend beyond your papers. I hope my dear sons will let their courage arise with the occasion. You have much to do, and I trust you will set about it with brave hearts, and do your whole share in setting things right again. I will come and help you just as soon as my duties here will allow.

"Some are in favor of not adjourning at all, but I see nothing to be gained by staying, and the majority of senators agree with me. I can finish up this week all matters that are essential. Mr. Stevens is determined to stay as long as possible, and his position in the House enables him to obstruct and delay us. Members are terri-

bly afraid of their constituents, and all the office-holders are frightened out of their wits, and write, saying that Congress should not adjourn, a very gross absurdity. I suppose there is not one of my loving friends who would not rather see me die than go out of office himself before next March. To stay here for the mere purpose of enabling people to gnaw the public bone a few months longer is useless, undignified, and can accomplish no good purpose. My powers of endurance are pretty much exhausted. I am glad to spend as much time as possible on the sofa in my committee-room.

"I was not much troubled at my own losses by the fire, even when I found that I had lost pretty much everything, and now my own losses seem to be very trifling. My affliction has been from the beginning for those who have been turned out of their houses, have no place to go to, and nothing to live upon. We must do what we can for them, and it comforts me to think that I can be of more use to them here than at home."

In no session during his career in the Senate were Mr. Fessenden's labors so varied, so numerous, and so important. As chairman of the committee on finance, besides the usual work of carrying through the appropriation bills, he gave five weeks' study in committee to preparing the long and elaborate Internal Revenue Bill and subsequently gave ten days' debate to securing its passage by the Senate.

Mr. McCulloch, the Secretary of the Treasury, had made himself obnoxious to the Republicans by his support of the President's policy, and was bitterly attacked, even in business matters. Mr. Fessenden defended his administration of the Treasury on January 11, and February 9, and again on the 4th of June. In all these cases the Senate sustained Mr. Fessenden's views.

As chairman of the joint committee on reconstruction, he held the most responsible position connected with the great problem of the restoration of the Southern States, the most important question that had come before Congress since the foundation of the government. On this subject he made five speeches during the session, and wrote the report of the committee.

After the adjournment of Congress he received many invitations to address Republican meetings in other States. One of these was from Governor Bullock of Massachusetts, who, with many leading men of that State, invited him to address the citizens of Massachusetts in Faneuil Hall in Boston. The chairman of the committee, in forwarding the invitation, stated "that it seemed desirable to many Republicans that the voice of New England, as it might be uttered in Faneuil Hall by one of the distinguished public men of the country, should be heard upon the state of the country and duty of patriotic citizens. They had selected Mr. Fessenden as the proper person to give this utterance at such time as might suit his convenience."

In thanking the committee for its invitation, Mr. Fessenden said he was obliged to decline it; for debilitated by a long and most arduous session of Congress and by repeated attacks of illness, he was under the necessity of suspending, as far as possible, all effort and avoiding excitement of any kind.

Similar invitations were received from Philadelphia, New York, and other cities, reinforced by private letters from distinguished citizens, urging him to address the people. But all of these he was obliged to decline. After he had declined the New York invitation, he received from his friend Senator Morgan a note saying that, while he approved Mr. Fessenden's decision for the reason that his

opinions upon public questions were so well known, he wished him to come to his house on his way to Washington, that some of the leading citizens of New York might meet him at an evening reception. "There are many reasons," said Mr. Morgan, "why you should do this. You are, and for a long time have been, at the head of the most important committee of the United States Senate. You are the acknowledged leader of the body. You have been at the head of the committee of fifteen, and you are the author of the report which meets all but the universal approval of the country, and has been most satisfactorily indorsed by the Northern, Western, and Central States, and must, I think, be accepted by the States lately in rebellion. Your acknowledged ability, as well as your high personal character, lead my constituents to desire to pay you a personal compliment of the kind I propose."

Mr. Fessenden accepted this invitation, and had a most agreeable evening. His stay in New York was taken advantage of by the Union League Club, of which Mr. William Jay was then the president, to give him a reception at the club-house, which he attended with much enjoyment. Mr. Jay made him a flattering address, to which Mr. Fessenden responded in his best vein. These were almost the only affairs of the kind he attended during his public life.

On public affairs he wrote to a friend before the meeting of Congress as follows: —

"In a few weeks you know the struggle will begin again. What we are about to meet it is not easy to foresee. The President is obstinate and self-willed, and has had bad advisers around him. Copperheads and ex-rebels are his chosen friends, and with the exception of Stanton his Cabinet are good for nothing, or worse than nothing. —— has proved even worse than I thought him. But for

his evil counsels, the President might, in my opinion, have been saved.

"What the President will do, now that the elections have shown him his fate, remains to be seen. I am not seriously apprehensive that he will attempt anything against this Congress. Perhaps such an attempt is not so much to be deprecated after all, for it would precipitate a result and terminate the controversy at once, securing at some cost all we have been struggling for, — the triumph of free principles throughout the land. It is to be hoped, but hardly to be expected, that we may have learned something from experience, and that our next selections for President and Vice-President may be of no doubtful character. But I have little confidence that we shall do any better in the future than in the past. Nothing indicates any improvement in this particular.

"Many people believe that since his utter failure, and manifest proof that the Copperheads can do nothing for him, Mr. Johnson will pause in his career of proscription, and there are some indications in that direction. But he has now gone so far in disregarding the constitutional rights of the Senate, that we shall be obliged, at the next session, to take notice of it, and seek such remedies as legislation may afford. The question is a troublesome one, as the Constitution stands, and our only protection seems to lie in our hold upon the House.

"The recent elections have been so decided that I anticipate no serious trouble, unless it be made by the intemperate folly of some among ourselves. Congress has only to keep cool, act with discretion and firmness, to accomplish all that may be desired. The next presidential election will decide the fate of the country for all future time, and I trust we shall not in the mean time lose public confidence by our own folly."

The close of this session found Mr. Fessenden very much exhausted, and he writes home, January 12, 1867:

"The work of the session has told upon me so severely that I think I shall abandon my leadership and refuse to serve longer upon the committee on finance. If I am to stay here four years longer, I must have a little relief from such unremitted labor. Mr. Sherman thinks he is equal to it, and I can afford to let him try, when Mr. Morrill of Vermont will be at hand to help him along. . . . You see that in turn I tell you my troubles. They are not very severe, but will do to talk about. I wish yours were as light as mine. Never mind, my dear cousin, but bear them as well as you can, for my sake. Get as well as you can by April, so that we may begin the gardening operations together. I, too, am longing for the flowers, and still more to be 'fussing round.' It is healthful, if nothing else."

As it was almost the first of August when Congress adjourned, the senators and representatives went home to plunge at once into one of the most important political campaigns that had ever occurred in the United States. A new House of Representatives was to be elected. The question was to be settled by the people whether the President's policy was to be indorsed, or the reconstruction measures of Congress should be upheld. Mr. Fessenden addressed his constituents in Maine, which voted in September. The State was carried by the Republicans by a tremendous majority. All the Northern States followed the example of Maine. The Republican majorities were overwhelming, and the next House of Representatives was three fourths Republican.

1867–1868

Mr. Fessenden expected an easy session. But though not the most laborious, it turned out the most uncomfortable of his life. This was owing to the impeachment trial. At his own request he was not placed upon either the committee on finance or the committee on appropriations. The Senate assigned him to the committee on foreign relations, made him chairman of the committee on public buildings and grounds, and reappointed him a member of the committee on the library, in which he always took a deep interest. He had at first felt some fear that the judiciary committee of the House would report a resolution to impeach the President, and that it would pass. The suspension of Mr. Stanton by the President, in August, had aroused the hopes of those who favored impeachment. Fortunately the House did not favor this proceeding.

In writing of this he said: "You will have learned that the House has decided not to impeach the President. I am glad of this for many reasons, principally because it is extremely doubtful whether charges against him, such as could justify impeachment, could have been sustained, and because the country needs and demands all the financial relief which can be given by wise legislation. The President has undoubtedly been guilty of very serious offenses, the consequences, I think, of bad temper and of self-confidence, the worst consequence of which has been to encourage the South in its opposition to the measures of Congress, and in keeping alive a spirit of hostility. I doubt, however, if he has committed any specific act which would justify before the world his removal from office. The vote for impeachment would have been still smaller had it not been understood that it would fail. Some thought that consistency required that they should make

fools of themselves. The country will now breathe more freely, and if we can act like sensible men I shall have some hopes of the future. Yet we have many most troublesome problems to solve, while the folly and madness of certain men keep us in constant peril."

On the 15th of January, 1867, a severe attack was made upon Secretary McCulloch and the Treasury, which obliged Mr. Fessenden to defend them.

The Fortieth Congress assembled immediately after the adjournment of the Thirty-ninth, the Republicans being unwilling to leave the President without the control of Congress through the long vacation till December. It was found, too, that the Reconstruction Act did not provide the machinery for accomplishing its purpose. The new Congress at once set to work to supply this deficiency, and the supplementary act was enacted March 19. It was vetoed by the President and finally passed over his veto on the 29th. This being a new Congress, with a number of new members, it was necessary to recast the committees of the Senate. Mr. Fessenden adhered to his resolution to retire from the finance committee, feeling that he could properly do this as the financial affairs of the government were no longer a subject of anxiety. The committee was thenceforth divided into two, and its work was performed by the finance committee and the committee on appropriations. Mr. Sherman became chairman of the first, but without the vexatious and wearisome work of carrying through the appropriations. This labor fell upon Mr. Morrill of Maine, chairman of the new committee on appropriations. Mr. Fessenden wrote home apropos of this change, February 17, 1867: —

"You ask what has become of my resolution to give up one of my committees. The reason is that nobody would consent, so I concluded to worry through this ses-

sion, somehow. Sherman is so anxious to get the finance that I am rather disposed to let him have it. *Entre nous*, they are talking about making me president of the Senate, and two or three persons have asked me if I would take it. It is an easy place, but very stupid, and pays $8000 per annum — quite a consideration just now. Wade's friends have been at work all the session to give the place to him, on the score of his being the oldest senator. I replied that I could n't have a contest with anybody, but rather thought I might accept if it was the general wish — a pretty difficult condition, under the circumstances. The only real good thing about it would be the chance to rest for a couple of years, if I lived so long. I have had no experience in presiding, but that is not very difficult, I suppose."

March 4. "'The King is dead — long live the King!' The Thirty-ninth Congress has just expired, and the Fortieth is born. You may well imagine that after working until after midnight for a whole week, being in the Senate night before last until after 8 A. M. yesterday morning, and last night again until after 12, I don't feel very bright. But it is all finished at last, and pretty well finished but for the loss of the tariff, upon which I bestowed so much hard labor. I am not quite certain, however, that its defeat is a calamity. Time will show. I have pretty much resolved to retire from the finance committee, though the idea is not very well received; but I find that the labors of every session wear upon me much more than that preceding — a common case, I fancy, when a man has so many years upon his head."

During the winter session the division between the radical wing and the more conservative majority of the Republican Senate grew more pronounced. The leading radicals denounced Mr. Fessenden as a conservative, and

his defense of Secretary McCulloch from their attacks provoked their wrath.

The purpose of the new session having been accomplished by the passage of the Supplementary Reconstruction Act, nothing remained but to adjourn. Upon this question there were violent differences of opinion, both between the two houses and between the Republicans of each house. The radical wing, under the lead of Sumner and Chandler in the Senate and Boutwell in the House, proposed to adjourn for short periods, so that Congress would have the power to meet soon and prevent the President from interfering with reconstruction. Mr. Fessenden favored an adjournment to December. Some of those who urged a short adjournment were loud in their assertions that the people expected Congress to remain in session. Mr. Fessenden said he did not believe the people had any expectation about it. It was the fashion for gentlemen to talk about what the people expected. He would like to know what authority they had to speak for the people on the subject? He thought the people of Maine were willing to leave the question to the discretion of himself and his colleagues.

They had transacted their business. The President's hands were tied in reference to appointments. They had provided for the protection of their fellow citizens in the South, and for the institution of republican government there, upon which the people could not act conclusively before December. All was accomplished that gentlemen wished to accomplish. There was nothing to require the assembling of Congress before the usual time.

The Senate voted to adjourn to the first of July, and the House agreed to this proposition.

Senator Fessenden opposed two measures, one designed to aid Republican newspapers in Southern States, by

publishing in their columns the laws of the United States, the other introduced to please the labor organizations by shortening the hours of a day's labor on all United States' works. He said he must dissent from the idea of building up Republican newspapers at the expense of the Treasury. If senators wished to be patriotic, let them put their hands into their own pockets. So to the proposition to make the government pay as much for eight hours' work as other employers paid for ten hours' work, he could not agree to it. It had been found in England that the effect of fixing the hours of labor by trade-unions was to reduce able men of capacity and ambition to the level of the poorest. It worked against the industrious and enterprising.

Congress adjourned on the 30th of March. A special session of the Senate followed, called by President Johnson, to consider nominations to various offices. On the 11th of April, after many nominations had been confirmed, when a motion to adjourn on a fixed day was under consideration, Mr. Fessenden opposed it for the reason that there might be on that day forty or fifty nominations yet to be acted upon. If the Senate rejected them and adjourned without giving time to the President to fill those vacancies, they would be leaving the business of the country not done.

Mr. Chandler was ready to take the responsibility of adjourning. The President should nominate for the offices the men who elected him. He (Chandler) would not be driven into confirming Copperheads. If the President was an obstacle to running the government, they could find out between the present time and July how to run the government without him.

Mr. Fessenden said he thought that the President was just as much a part of the government as the Senate or

the House, and could just as well say that he would find a way to run the government without them. The President could not commit an impeachable offense by nominating officers, and he had a right legally and constitutionally to designate to the Senate those whom he preferred for office. The rights of the President could not be winked out of sight. The question was, What was the duty of the Senate? There were others besides the President and Senate concerned in this question, and those were the people who wanted these offices filled. Every day the President sent in names that were confirmed. The Senate should wait with a proper degree of patience. The President was no longer acting with the Republicans, and they must accept the situation and make the best of it.

Writing of the political situation, he said: "Impeachment may be considered at rest. It has been a miserable farce from the beginning, and will soon become contemptible. Its leaders are pretty much so already, as the people have begun to perceive their miserable self-seeking. General Butler has succeeded in using himself up by his insolent assumption, and his power of making mischief will be much less in the future. Quiet is not to be expected with so much explosive material about; but a gleam of sense makes its appearance occasionally.

"Congress has adjourned to the first Wednesday in July. It is intended that this should be merely a matter of form, a sort of notice to the President that if he does not behave well we shall be after him. Others hope to get Congress together and impeach him. Our famous Tenure of Office Bill has put us in a fix. Either the Senate must yield and stay here all summer, or go home leaving important offices not filled, unless the President yields or a compromise is made. The Tenure Bill was

against my judgment. The truth is, we are disgusting all sensible people very fast and shall feel the consequences when the voting comes.

"I find it is a great relief to be off the committee on finance, though I am every day called on to advise my successors."

To Freeman H. Morse, in London, he writes: "We are doing some very foolish things in Congress, and others still more foolish are attempted. The effort to impeach the President will fail. The whole thing is mere madness. All this I say without reference to the question of guilt or innocence, for upon that I have no opinion. Granting impeachable offenses, however, they are not so palpable as to command general assent, or to divest such a proceeding of all party aims or objects. The people have tried and convicted him, and there he should be left.

"I am becoming disgusted with public life. Treachery on one hand and folly on the other have almost disheartened me."

At this time he received a letter from S. R. Mallory, formerly a senator from Florida, and during the civil war a leading member of the Jefferson Davis cabinet. Mr. Mallory wrote at the suggestion of a mutual friend, asking Mr. Fessenden's influence with the President in favor of a pardon for which he had made an application. His confinement in Fort Lafayette had prostrated his health. He had lost all his property, and the prohibition upon the practice of his profession in the federal courts had deprived him to a large extent of the means of supporting those dependent upon him. Mr. Mallory added that he was willing to accept the conditions imposed upon the South, and conform to them in good faith.

PORTLAND, May 9, 1867.

Sir, — Your letter of the 20th ult. has been received. Though a deep sufferer by the late Rebellion, I indulge in no animosities against those engaged in it, and am looking hopefully for the time when the condition of the country shall be such as to render a very general amnesty safe and desirable. My opinion, however, is that executive clemency should not be extended to those who have borne so prominent a part as yourself until the seceding States shall have been restored to their former condition in the Union, and then only in cases where it can be shown that a sincere effort had been made to repair the injuries inflicted upon the country, by conforming in good faith to the new order of affairs.

While, therefore, I sincerely regret the sufferings to which you are exposed, I cannot, at present, interfere for your relief. I hope, however, the time will soon arrive when I can do so, consistently with my ideas of duty. The opportunity is now presented to all the seceding States to restore themselves, and your individual efforts to accomplish the desired result will undoubtedly be appreciated.

Assuring you that I entertain no feelings of unkindness towards yourself, and should be glad, under other circumstances, to be of service to you, I remain,

Respectfully, W. P. FESSENDEN.

HON. MR. MALLORY.

Congress reassembled on the 3d of July, 1867. The division between the extremists and the conservative majority of the Republicans was quickly manifested. The former proposed to take up general business and keep Congress in session, while the latter wished first to consult and, as far as possible, do nothing beyond what the

political situation required. As soon as the Senate had met and fixed the hour for its daily meeting, Mr. Sumner rose and offered some petitions.

Mr. Fessenden said he deemed it especially inadvisable to proceed to general business, and thought all such matters should be laid upon the table until the two houses could deliberate and settle the question whether they would go into general business, or if not, what particular business they would take up. They had come together with reference to a single question. He should, therefore, object to referring any matters to their appropriate committee until they had come to a definite conclusion as to what they should do.

Mr. Sumner replied that they were a Congress and had the power to attend to anything that concerned the republic. There was the President, the great disturber, and it was the duty of Congress to be on guard.

Mr. Fessenden said that the senator had laid down two propositions from which he did not differ. He agreed that they were a Congress, and had the power to do business. The question was what each senator's sense of responsibility would, in his own judgment, render it necessary that he should act upon. Each senator must determine for himself, and though they did not all have the power of prophecy which his honorable friend from Massachusetts had, to tell exactly what ought to be done, and the way to do it, yet each had his own opinions and was ready and able to act upon them. His proposition was, that, for a day or two, actions upon petitions or bills should be suspended until they could consider what was best to be done.

A measure passed at this session, and which originated in the Senate, was the bill making appropriations for executing the provisions of the Reconstruction Act. It raised an interesting inquiry as to the power of the Senate to

originate an appropriation bill. The House of Representatives had always claimed that the power to originate an appropriation bill belonged exclusively to that body. Such had been the practice. When the bill was under discussion in the Senate on July 13, Mr. Hendricks inquired of Mr. Fessenden if it was not unusual to originate an appropriation bill in the Senate. Mr. Fessenden replied that there was no constitutional objection to originating an appropriation bill in the Senate, because the constitutional provision applied only to bills for raising revenue and not to bills appropriating revenue. The custom had been to originate them in the other house. He recollected that the Senate, to expedite business, once originated an appropriation bill and sent it to the House, but the House objected to it, though it immediately adopted it as its own, originating it as a new bill. The House had uniformly objected to the Senate originating appropriation bills every day for specific purposes, though not the general appropriation bills. In the present instance he presumed the House would make no objection, as the bill appropriated a sum for a specific purpose. There was no constitutional objection to it.

A more important question, which called out very decided views from Mr. Fessenden, came up on July 15, in the debate over the message of President Johnson giving information upon the expense of carrying out the reconstruction acts. The President had said the expense would be largely increased if Congress, by abolishing the state governments, made the federal government responsible for the liabilities of the States. He stated the legitimate debt of those States to be more than one hundred millions, and if the federal government made itself liable for those debts by taking the place of those state governments, it might impair the national credit.

Mr. Fessenden said he regretted that the President had brought the subject before them in the shape it was. It was so fallacious, and had so little foundation, that the President was not justified in making the suggestion. He acceded to the doctrine laid down by the senator from Indiana (Mr. Hendricks), that a conqueror in acquiring territory by conquest did not take it free from the obligations of the conquered government existing at the commencement of hostilities. But as he stated it, with the inference he drew from it, it was quite as fallacious when applied to existing facts. The foundation of the doctrine was that if one nation absorbed a conquered country, deprived it of all revenues, power, and responsibility, it made itself the heir of the other obligations. That doctrine had no application to the existing state of facts. When a nation made war upon another to enforce its own rights, and in doing so interfered with the latter's obligations towards a third independent nation, that last had no just ground of complaint, because every nation had a right to enforce its just claims; and if from the necessity of the case claims were interfered with or postponed, it was no cause of offense against the nation seeking to enforce its own. And if it became necessary for the conqueror to hold in subjection for a time the conquered nation, it had a right to do so, and did not by that course subject itself to be called upon by third parties to meet their claims. The question was whether the conqueror went farther than was necessary, and deprived the conquered of all power of meeting claims upon it.

The United States stood in a better situation than that. The obligation that a State in the Union could assume was perfectly understood by all the world, whether it was towards an individual or a foreign government. That obligation was totally independent of the United States. It

was like the obligation of an individual. The United States was in no way bound to enforce it, except not to improperly interfere to prevent the payment by a State of its obligations. If the United States did improperly interfere, they might thus lay the foundation of an equitable claim.

What was the condition of things here? The United States simply enforced their own rights of government and their own rights of property. They went no farther. Nobody could pretend that the United States had so absorbed these people, or so deprived them of power, as to prevent the enforcement of any just claim against them. Nobody could pretend that the United States had placed themselves in a condition where they were bound to discharge the obligations of these States. The pretense seemed to him an idle one, having no just ground for the suggestion made in the message. When the time had come that the United States had shown that these States should never exist again as States, had deprived them of all power to discharge their obligations, had destroyed them as a people and as a government, it would then be time for claimants upon those States to say that the United States had assumed their obligations. Until then any suggestion like that in the message was uncalled for.

In the debate of July 18, over Indian affairs, it was proposed to confer certain powers upon the general of the army rather than upon the President, to settle the difficulties. Mr. Fessenden replied that it was the business of the Secretary of War under the President to look after such matters. They belonged to the secretary, who was distinguished for his devotion to his duties. It was going too far to intrust these things to the commanding general except as an executive officer. He had the highest respect for General Grant, but did not think it proper to

intrust affairs to him which belonged to the War Department under the direction of Congress. He thought they ought to pause and inquire if they were not setting at defiance the great rules which regulated the conduct of affairs as between the civil and the military. An amendment putting the matter in charge of the Secretary of War was then adopted.

The radical minority of the Republican senators had strongly urged that Congress should remain in session. They had denounced the President as guilty of crimes, and had advocated his impeachment. Mr. Fessenden had favored an adjournment to December, and had expressed an opinion against senators condemning the President in advance, and had advised against the policy of impeachment as a party measure. The feeling of the radicals was now so bitter against Mr. Fessenden that on the last day of the session Chandler and Sumner made what seemed to be a deliberately planned attack upon him. Mr. Chandler made the motion that the secretary of the Senate be directed not to communicate their resolution of adjournment to the House. Having thus obtained the floor, he proceeded to deliver a well-prepared speech against Mr. Fessenden in particular and conservatism in general.

Mr. Chandler said that the same parties who, in the month of April, favored an adjournment to December, now wished to adjourn over to the same time. The conservative senator from Maine had then said, "if there was need of an extra session that the President would call Congress together." He had then informed that conservative senator that the only occasion for an extra session would be the refusal of the President to enforce the law, and that the President would not call them together to enforce a law which he refused to enforce. He had hoped he was mistaken, and the conservative senator from

Maine was right, that there would be no necessity for another session. But, unfortunately, that conservative senator was mistaken. As that conservative senator had full confidence in the President then, he supposed he had the same confidence now. There was no doubt now what the President would do, for he had substantially declared that he would not execute the laws of Congress. They had surrounded the President with nets of zephyr, and yet they proposed to go away for four months and a half and leave him with all the power of the government.

There was a hybrid conservatism which had faith in Andrew Johnson. It was a hybrid that started in 1862 with Mr. Seward and others. Conservatism was buried at that time, and did not raise its head till after the war. But since that reappearance, conservative Republicanism had had its path marked with tombstones. The people were opposed to the adjournment of Congress until laws had been passed which would make it safe to adjourn.

This unexpected attack awakened the deepest interest, and Mr. Fessenden arose amidst the concentrated attention of the Senate. He said he had been somewhat puzzled as to whether he should reply to the senator from Michigan. It was evident that this thoroughly digested speech of the senator was meant particularly as an attack upon himself. He had been alluded to as the "conservative senator" over and over again, and the senator described two occasions when "the conservatives," as he called them, had endeavored to unite with the Democrats to overthrow the Republican party.

It was impossible to mistake the aim of the senator. He had for some time been aware that that senator, with others, had designed to injure his standing in the party to which he belonged. They had represented him as unfaithful because he did not agree with them in their

notions about public affairs. Up to that time he had not thought it worth noticing. His notion was that the people would judge him from what he did and from what he said. He had been aware that this was the object of the senator from Michigan, because he had lately received from the city where that senator lived a newspaper slip in which a similar attack was made, and in which he was denounced as opposing impeachment because he had friends and relatives in office. The accusation had gone the rounds of the newspapers that he was ready to sacrifice his public duty for the protection of those friends and relatives. He believed the Detroit newspapers had said he had forty relatives in office. It so happened that he had three brothers who held office under the President, and it so happened that neither of them was appointed at his request or by his suggestion. He believed they would despise him in their hearts if they thought that he would sacrifice one iota of his belief, or hold his tongue, for a moment, on their account. They were made of different stuff.

"I have," said Mr. Fessenden, "been twitted in the newspapers that my sons were generals in the army. God gave me four sons" (the senator paused, evidently suppressing deep emotion). "Three of them volunteered, and the other volunteered, also, but his health broke down, and he was obliged to stay at home, much to his regret and sorrow. My youngest fell upon his first field. Another had his arm shattered and his leg shot off. The third was not wounded, but served and fought in twenty battles. I never asked for the appointment of one of them to any office. They got their recommendations from their superior officers, and were appointed generals, not on my recommendation. I did not ask for it. I told them they must fight their own way. Perhaps my standing in the

Senate might have been a benefit to them in that particular, and my kindly relations with the Secretary of War. The two that now live are out of the service.

"Sir, I have thought it rather hard that newspapers of my own party should abuse me for having sons who distinguished themselves in the war, one of whom was killed and another shattered. They served their country well, and rose to high rank, which I believe they deserved. I never heard it said they did not, and it appears strange that I should be abused in the newspapers of my own party for that which in others would have been considered a meritorious distinction, — having sons and giving them to the service of their country."

He added that at the commencement of Mr. Lincoln's administration he was offered an appointment abroad for one of his sons, and he declined it because there were too many others in his State who needed those offices; that after this son volunteered he asked his friend, the Secretary of War (Mr. Cameron), if he thought him worthy, to give him a commission, which he did. That young man was the one who had his arm shattered in his first battle, and a leg shot off in another, and who was nominated, — not at his request, not on his suggestion, — being then a colonel, for brigadier-general, and was confirmed by the Senate without being referred, for the gallantry of the action in which he had been.

"I am called a 'conservative' by the honorable senator, and he has shown what he means by conservatism — men who act with the Democracy against his own party. Let senators turn to the record of my votes in this body and find where I have fallen short. Confidence in Andrew Johnson, is it? No, sir, it is a want of confidence that actuates me, and some others, in those who would assume to direct what they have not the capacity to direct.

SENATOR FESSENDEN AND HIS SONS

WILLIAM
SAMUEL
JAMES
FRANCIS

"Sir, if I am a conservative by my vote on this question and others, I am a conservative in company with the honorable senator from Illinois (Mr. Trumbull), with the honorable senator from New York, and from New Jersey, and from Rhode Island, and from New Hampshire, and on this question, as taken at the last session, with one of the senators from Massachusetts (Mr. Wilson). Is he a conservative, too? And there are other honorable gentlemen I can name. Why, then, is this attack made upon me because I happen to act with a decided majority in this body on this question? Sir, we must be at liberty upon great questions of this kind to exercise our own judgments. I have no fear of the most critical examination of my course in this Senate and out of it, upon this question and all other questions. I shall leave my public record to take care of itself. If I had the slightest idea that anything the senator from Michigan can say would affect it before the people of this country, I should look upon myself with a contempt which I do not feel at present."

Mr. Fessenden then said the time had come undoubtedly when there was a serious difference in Congress upon an important question. Upon that question he had not considered it proper for a senator to express an opinion, or, if he could avoid it, to form an opinion. (Mr. Fessenden referred to charges of impeachment against the President.) His idea was that a man who was to be a judge and try another under the sanctity and solemnity of an oath, was bound, as an honest and conscientious man, not only not to form an opinion, but to keep his mind free from prejudice or passion, so that he might come to the examination of it calmly, resolved to try honestly, and decide fairly, without feeling, without anger, without malice, and without having committed himself by denun-

ciations of the individual. Others thought it proper to come to such an examination with temper, with malignity, and with every effort to excite the public mind.

With regard to that great question as a matter of policy and good sense, he had not withheld his opinion from his friends or from anybody who wanted it, and perhaps that opinion was well understood. He would await events. When they came, he would meet them in his place, and he hoped with an honest and pure mind. Whether he was in the majority or minority would make no difference to him personally.

It did make some difference to him how he was judged by the country, and he would leave the country to decide upon so insignificant a matter as what his public course had been. He hoped to be tried with his record, what he had voted for. So long as he was in company with the senators he had named, and with all the senators from New England, except perhaps one, and was sustained by them in the course he had taken, he should endeavor to rest as quiet as possible under the denunciation of even so potent a man as the senator from Michigan.

Mr. Chandler made a sharp reply, saying he had never alluded to the senator's family, had never written a line for a newspaper, and had never seen the article referred to. He took the senator up on his public record. The senator stood there month after month, the defender of Andrew Johnson and his Cabinet.

Mr. Fessenden observed that as to that, the senator stated what was not true, and he could not prove any portion of it.

Mr. Chandler considered it as defending Andrew Johnson, to say the President would call a session of Congress if necessary. The senator had stood up in the Senate week after week defending the Secretary of the

Treasury. The senator had nearly defeated a call for an extra session the previous spring. The people wished them to stay in session until the hands of Andrew Johnson were tied and he could do no more harm to the nation.

A motion to adjourn was then made, and Mr. Sumner asked leave to introduce a proposition to the Senate and have it printed. Permission being granted, Mr. Sumner proceeded to read some long resolutions, which he said *he* would read, as they were in his own handwriting. They were entitled, "Resolutions declaring the privilege of debate in the Senate with regard to civil officers liable to impeachment," and were aimed at Mr. Fessenden's declaration that senators who were sworn to try a man, ought to come to the examination without anger or malice, and without denunciation. The resolutions declared that the idea that senators could not consider and condemn the conduct of an officer liable to impeachment was inconsistent with the privileges of debate in the Senate and tended to shield misconduct in office; and that until the judicial oath required by the Constitution to be taken in a trial had been administered, it was the duty of a senator to express his opinion openly on the conduct of an officer, and invite the judgment of the country upon it. The resolutions were received and ordered to be printed.

In the controversy with Senator Chandler Mr. Fessenden had the sympathy of the great majority of the Senate from his first words. When he began to speak of his sons, he was almost overcome with his feelings. Mr. Dawes, in describing the scene afterwards, said that half the Senate was in tears. The attack was coolly prepared and entirely unprovoked. His constant defense of Secretary McCulloch, his opposition to a continuous session,

and his plainly expressed opinion against the policy of impeachment as a party measure occasioned the complaints and criticism of his opponents, and their friends adopted a course of abusing Mr. Fessenden, which they believed would be grateful to their supporters. Two newspapers especially, the Detroit paper and the "Boston Commonwealth," violently assailed him, and charged that he supported the President to keep his friends and relatives in office.

The onslaught of the radicals upon Mr. Fessenden was followed by Mr. Sumner's criticism of him as reported by a newspaper interviewer. The account was printed in the "Boston Advertiser" of August 30. It was one of the first examples of publishing the opinions of a prominent man through the medium of an interview. But happily it is almost the only instance where a senator in a public utterance deliberately disparaged brother senators of his own party who disagreed with him. The interview ranged over public affairs, besides including his complaints of the leading Republican senators. President Johnson was denounced as "pig-headed and brutal." "He was a usurper and a tyrant." "His crime was shared by Congress." "Congress had hesitated every important question." "But," said Mr. Sumner, "I am blameless." He then said that he had never doubted the President would be impeached; that he would not say what judgment he should pronounce, but he had always felt it proper to say what he thought of him and his sense of the duty of proceeding against him; that the best men in the House were in favor of impeachment; that most of those in the Senate who thought it indecent to speak plainly of the President visited him and asked him for offices. "I do not like," said Mr. Sumner, "to speak of any of my associates except most kindly," and then proceeded as follows: —

"Edmunds was a prodigy of technicality and obstructiveness. So was Conkling, who was a young man of admirable talents, and with a great future, if he did not get shipwrecked in the beginning. Patterson and Frelinghuysen had good sentiments, but it was strange they did not see that something more was needed in dealing with Johnson. But of all these Fessenden was the captain."

His interviewer (Mr. Redpath), who was himself a radical, here said to Mr. Sumner that he would like a photograph of Fessenden, adding, he understood Wendell Phillips had called him a dyspeptic Scotch terrier.

Mr. Sumner again replied, "I do not know whether to answer or not. For several years he has been very unkind to me, unaccountably so. I cannot comprehend it. Sometimes it seemed to me akin to insanity. It is said by his friends to be chronic dyspepsia. I never alluded to him in debate except with respect. He has always been against my ideas, but why should he contend personally? I cannot explain it. All of the slave-masters together never wounded me as did this colleague from New England. Such conduct in one so conspicuous was an evil example in the Senate."

"What order of talent has Mr. Fessenden?"

"His peculiar talent," replied Mr. Sumner, "is controversial. His forte is personality. He runs to personalities as a duck to water, — if not in language, then in manner and tone. Until he gets heated he is dull. He always quarreled with everybody over the appropriation bills which he conducted. John Sherman in the same place is always amiable. Fessenden comes into the debate as the Missouri enters the Mississippi, and discolors it with temper filled and surcharged with sediment. But he has not the volume of the great river. He is of much finer fibre than Andrew Johnson, but resembles the President in

prejudice and combativeness. His words are more select and his sentences better. He is accurate in speech and logical in form. As a lawyer he is of the *nisi prius* order. There is nothing of the jurist in his attainments or nature. From his position he has exercised much influence in the Senate, but from the beginning he has been a drag on reconstruction. But his report on reconstruction is excellent. It is the best thing he ever did, and contains no personality.

"He and the late Judge Collamer were good friends and sat side by side. But on one occasion he flashed out on the judge as upon everybody else. I think the passage was suppressed in the 'Globe.'

"You are right in your curiosity about Fessenden, for his situation is now peculiar. He is the head of the obstructives. If any person calling himself a Republican takes the side of the President, it will be Mr. Fessenden."

Mr. Sumner began his criticism with the remark that Mr. Fessenden's friends attributed his dislike of Sumner to chronic dyspepsia. Mr. Fessenden's friends never said it, but Mr. Sumner's friends often asserted it. It originated with Mr. Sumner, and his complaints to his friends caused them to repeat the cry. Wendell Phillips joined in the chorus. The newspapers which sympathized with them circulated the story. The charge of "dyspepsia" was so often repeated that it was almost accepted as a truth. As a matter of fact, Mr. Fessenden did not suffer from that disease.

Of Mr. Fessenden's powers in debate, which Stephen A. Douglas described as the greatest in Congress, Mr. Sumner said, "His talent is controversial. His forte is personality, if not in language, then in manner and tone." "He quarreled over the appropriation bills, while Mr. Sherman was always courteous." "He came into the

debate as the Missouri enters the Mississippi, surcharged with sediment; but he has not the volume of the great river."

Mr. Sumner's insinuation, that it was Mr. Fessenden's friends instead of himself who attributed his unkindness towards Sumner to chronic dyspepsia, was as unfounded as his assertion that Mr. Fessenden "once flashed on his friend Judge Collamer as he did upon everybody else." Mr. Fessenden and Judge Collamer while in the Senate were on terms of brotherly affection and confidence. The story is untrue.

Senator Grimes wrote concerning the newspaper interview, that he had never been so incensed, and he regarded it as perfectly infamous. The conversation was just what he would have expected from Sumner, but he was astounded to see it in the "Boston Advertiser." He expected that in a little while every public man would once a month get a stenographer into his closet and then safely traduce his absent adversaries, taking proper precautions that his bitter malignity and slander should be published in some "respectable daily." He had received a copy under Ben Butler's frank and fifteen or twenty copies from one source or another. The "Chicago Tribune" had received a copy under Wade's frank. He thought the autumn elections would show a reaction against the radicals.

Mr. Fessenden replied to Mr. Grimes as follows: —

PORTLAND, September 20, 1867.

MY DEAR GRIMES, — I have finished my evening cigar, and, as it happened to be a good one, I am in a most amiable condition. Besides the cigar, I am just now in excellent health, eat well (in spite of the chronic dyspepsia which my friends assign me in excuse of bad temper), sleep well, and my garden flourishes. Should not these happy

circumstances and surroundings enable me to bear even Mr. Sumner's philippics with a reasonable degree of equanimity?

The truth is I did n't get angry with Sumner *this time.* The whole thing was exquisitely funny. All the world this way is laughing at him for making such an ass of himself. It was very manifest that the thing was deliberately got up. I will bet you a guinea he either had a week to prepare or took that time to revise the manuscript.

I have recently returned from a water excursion to St. John and along shore, in company with Hooper and Conkling. We talked very fully of Sumner's manifesto, and Phillips's letter found us at Eastport. Conkling was evidently very much annoyed and thought he should take occasion to have a friendly talk with Sumner. He says that Phillips's letter, so far as it regarded me, was but a repetition of what he had heard Sumner say in the cars when riding from the Capitol. I have not heard from Edmunds. As both of them were fond of complimenting Sumner, I shall let them settle the matter in their own way.

Is it true that Wilson has written a letter avowing himself in favor of impeachment? If so, he has not acted with his usual discretion. Keep cool, my friend, enjoy your leisure, and come back full of love for all your associates, particularly for the writer, who is, as always, yours.

STAFFORD, Vt., October 20, 1893.

DEAR GENERAL, — In reply to your favor of the 16th inst., I have no remembrance of any incident such as Mr. Pierce has recorded. Your father was a very faithful listener to the proceedings of the Senate, never writing letters or reading newspapers there; but talking to near

associates aloud was then, as it is now, a common practice, and this was probably the extent of your father's offense. Senator Sumner was very sensitive, and undoubtedly felt aggrieved by any lack of attention. Your father was a practical conservative statesman. Sumner was more sentimental and radical, and in any eulogies on deceased members he indulged in observations which could not at the time be replied to, which rather exasperated your father. Sumner made great orations; your father was the best and readiest debater I have ever heard in the U. S. Senate. Sumner was much respected for his learning on international law, but on all other law questions the lawyers of the Senate gave him very little attention, while much was ever awarded to your father.

The relations between your father and Sumner were occasionally cool and distant, and then as familiar as brothers, greeting the one as "Pitt" and the other as "Charles."

Thus, in a very off-hand manner, I have given you more, perhaps, than you asked for. I respected Sumner and admired your father.

I am going to Washington Monday next, and am glad to say my health is better.

Very sincerely yours,

JUSTIN S. MORRILL.

General FRANCIS FESSENDEN, Portland, Maine.

UNITED STATES SENATE, WASHINGTON, D. C., August 17, 1893.

GENERAL FRANCIS FESSENDEN, Portland, Maine.

My dear General, — In your letter of July 6 you say: "Mr. E. L. Pierce, who has just published his elaborate and interesting biography of Charles Sumner, says that Mr. Fessenden so far forgot himself at times as to talk audibly in the Senate while Sumner was speaking, and

quotes John Conness as saying that Fessenden was always snapping at Sumner in debate."

You ask me to talk with Mr. Sherman and obtain for you his recollections and impressions upon the above point. I have had that conversation, and submit to you with pleasure what Mr. Sherman says.

"I knew Mr. Fessenden very intimately from my entrance into the Senate until his death. I was a member with him of the committee on finance, until he resigned his position, and I took his place. My seat in the Senate was not far from his, and I feel sure that if he had been guilty of the discourtesy of talking audibly in the Senate while Mr. Sumner was speaking, I should have observed it. No such discourtesy by Mr. Fessenden was noticed by me. He may, as senators frequently do, have conversed in an undertone with others while Mr. Sumner or any one else was speaking, but that, you know, is a universal practice. That he and Sumner did not like each other was manifest in many ways, but chiefly in sharp debate. Both were distinguished, Fessenden for keen analytic discussion of all questions, and Sumner for his devotion to the emancipation and elevation of the colored people. Fessenden was courteous in debate, although sometimes rather sharp and cynical. Sumner was a profound egotist and expected every one to defer to his opinion. I had myself some passages with Sumner because I was not willing to yield to his arrogant manner; but in spite of this, our relations were pleasant and friendly." Yours very truly,

WM. P. FRYE.

October 21, 1893.

GEN'L FRANCIS FESSENDEN, Portland, Maine.

My dear Sir, — Yours of the 16th inst., asking my recollections as to whether Mr. Fessenden at times so far

forgot himself as to talk audibly in the Senate while Mr. Sumner was speaking, was duly received. I have no recollection of ever hearing Mr. Fessenden, while a member of the Senate, talking audibly to the annoyance of any one who was speaking; so far from it, there was no member of the Senate with whom I served more observant of the proprieties of the Senate, or more courteous at all times to its members than Mr. Fessenden.

I have often wished that some one familiar with the extraordinary and unscrupulous means resorted to to convict President Johnson would prepare a truthful history of that trial. I have not the material at hand from which to prepare such an account, and should be unwilling to make any statements, however true, unless I had at hand conclusive evidence of their accuracy. The conduct of Butler's committee, of some senators and outside persons, during the trial, and the pressure brought to bear upon senators to induce them to vote for conviction would, if made known and exposed, consign to everlasting infamy the names of many of the most clamorous advocates for conviction. Yours very truly,

LYMAN TRUMBULL.

On the 14th of January, 1868, in executive session, Mr. Fessenden spoke in defense of Secretary Stanton, who had been unjustly charged with being responsible for the sufferings of Union soldiers while prisoners of war. The speech, though unpremeditated, made a profound sensation in the Senate. Being made in secret session, it was not reported. The charges against Mr. Stanton had been made the previous day in executive session. Late that evening, in executive session, the charges were repeated, when Mr. Fessenden made an eloquent defense of the great Secretary of War. The speech silenced his accusers.

The completeness of the vindication was reported to Mr. Stanton, who immediately wrote the following acknowledgment:—

Washington, January, 1868.

My dear Friend, — You have my thanks and gratitude ever and forever. I will see you some time to-day.

Yours, Edwin M. Stanton.

But in the following letter to Mr. Fessenden's son Mr. Stanton expressed in fuller terms his appreciation of the speech.

My dear Friend,—It gives me great pleasure to acknowledge to you the great and inestimable service rendered me by your father in my vindication against the aspersions and calumnies that have recently beset me. His speech in my behalf electrified the Senate and is regarded by those who had the good fortune to hear him as surpassing anything ever heard in the Senate. Unfortunately for me and for the country, it was made in secret session, where there were no reporters, but he has been urged by many to write it out. I know how irksome such task may be, and fear that he may not comply with the request. But whether he does or not, it will always make me happy to have been defended by him, and has given me a claim to regard him as a father, and his sons as my brothers. He has done more for me than his offspring have ever needed at his hands, for he has delivered me from revilers and persecutors who sought to destroy my good fame and has covered them with confusion.

Accept me, therefore, I beg you, as a brother, whose heart is filled with love and gratitude to your father, and believe me that my heart is dedicated to him and those who are dear to him. Yours truly,

Edwin M. Stanton.

General Frank Fessenden.

Referring to this incident, Mr. Fessenden wrote: "Mr. Stanton is in excellent spirits, and the decision of the Senate has done much good. I received more compliments upon my speech than for any other I ever made. People are very anxious I should write it out for a campaign document, and Mr. Stanton claims it, but it is absolutely impossible. I had no memoranda and none were taken. It was not even laid out in my own mind. I simply went on from one thing to another, as the subject grew upon me. Chandler said he forgave me all my sins. Stanton told him to confess his own towards me."

To his son Frank, who sent him a copy of Mr. Stanton's letter, he wrote: "I received yours inclosing a copy of a letter from Mr. Stanton. In his warmth of gratitude he far overestimates the speech made by me on the occasion referred to. The truth was that certain personal attacks were made upon him which excited my indignation and contempt, and I did not hesitate to express both rather plainly. Of course I cannot write it out, for I made absolutely no preparation and could not remember what I said or how I said it."

At the time this speech was delivered, Senator Dawes was a member of the House. Upon the death of Senator Fessenden the following year, Mr. Dawes pronounced one of the obituary addresses in the House, and thus alluded to this speech: Referring to Mr. Fessenden's "power to stir the deepest fountain by his eloquence if a fitting occasion required it," Mr. Dawes said, "The defense of Mr. Stanton, pronounced by Mr. Fessenden at midnight upon the floor of the Senate, will live forever."

Two months later, on the 25th of March, in a discussion upon the standing rules of the Senate with regard to resolutions calling for information from the departments, Senator Garret Davis of Kentucky complained that a

resolution of his own calling for certain information had not been answered. That the infamous secretary at the head of the department, in the absoluteness of his power, had disregarded the call as he had disregarded law and every other obligation. This Carnot of the War Department had not deigned to answer.

Mr. Fessenden said he "would not reply to the senator as to what he had stated about the Secretary of War, calling him the infamous secretary, etc. All he would observe about that was, that if the senator or himself ever arrived at the degree of infamy which the Secretary of War would have in the history of this country, they would stand much better than either was likely to do at present."

This remark was acknowledged by Mr. Stanton in the following note: —

My dear Friend, — You are always placing me under obligations for your kindness, of which your vindication of yesterday was the latest occasion. One of the inducements for carrying into speedy effect my fixed resolve forever to abjure public life is that my friends may be relieved of the task of repelling malignant assaults like that of the "Garrulous Davis" yesterday.

With many thanks, I am, as ever, devotedly your friend,

Edwin M. Stanton.

Hon. Wm. Pitt Fessenden.

Unhappily the friendship between these men was soon to be broken. The course of Mr. Fessenden in the impeachment of the President so offended Mr. Stanton that it caused an estrangement. Mr. Stanton's whole soul was absorbed in his struggle with President Johnson, and he looked upon a vote of acquittal as joining the enemy.

Nothing was said by either, but they never met afterwards. The break in their friendship was a sore grief to Mr. Fessenden. After the impeachment trial was over, a resolution of thanks to Mr. Stanton was passed by Congress. Mr. Fessenden was asked to speak upon the resolution, and did so. He said there was no public honor which could be paid to Mr. Stanton that would not be gratifying to him, and of which he did not think Mr. Stanton worthy. He had said before that there was no man in the country who had, in the events of the last seven years, rendered greater services, if as great, to the country, as Mr. Stanton. He had been intimate with him since he had entered the War Office. He had seen not only the remarkable energy, ability, and purity with which he had discharged his duties and rendered great services to his country at a trying period, but he could see and feel his entire disinterestedness. If there was any man, not excepting President Lincoln, who served his country for the love of it, and a desire to save it from impending dangers, it was Mr. Stanton. He had been in a trying position, and had developed a greatness of character in holding a peculiar position which some lookers-on might think he ought to retire from, but he had been impelled by a feeling of duty to his country.

Mr. Stanton held it to be his duty and the duty of the executive government to adopt the policy of Congress with regard to reconstruction and carry it out. He (Fessenden) agreed with him in this. It had brought him into collision with the head of the government, and probably with the rest of the Cabinet, and being in that collision, he felt it his duty to remain in his office. Mr. Stanton believed it to be his duty to sacrifice his own wishes to meet a great and overruling exigency. For that he (Fessenden) honored him. Few men would have had the cour-

age to do it. The fact that Mr. Stanton had remained at his post from the highest considerations of the public welfare, and was willing to risk the great reputation he had acquired by his unsurpassed service in carrying to an end that which he believed to be for his country's good, entitled him to a still larger measure of their approval. It was peculiarly fitting that Congress should express its approbation to a man who had rendered such distinguished services and was retiring from public life. He hoped that senators on the other side would indorse the whole course of this distinguished public officer.

The resolution was adopted by a strict party vote. Mr. Stanton made no sign, and the two gentlemen remained separated. An effort towards a reconciliation was made by mutual friends, but was abandoned. Mr. Fessenden died in September of the next year, and Mr. Stanton followed him in December.

Towards the last of February public affairs seemed so threatening that he feared the approaching presidential election would go against the Republicans, and nothing would be gained from the war. The old order of things would be restored, and ten years more would bring on another revolution. On February 22 he wrote: "I have been quite out of sorts and much depressed. Even the exciting events of yesterday and to-day have not overcome, but rather increased my feelings of prostration. We were in session last night until ten o'clock, and closed by passing a very unwise resolution, upon the strength of which Mr. Johnson will probably be impeached, and that will end us. I did not vote for the resolution, and it was of no use to vote against it. Either I am very stupid or my friends are acting like fools and hurrying us to destruction. I am very tired of public life, and would gladly retire if I could do so with honor. Passion has

banished sense, and it would not surprise me if we are beaten at the coming elections. I tried hard to soften the Senate resolution, expressing the opinion that the act of the President in removing Stanton was illegal, into a mere disapproval, but was unsuccessful. I feared that the House would take precisely the advantage of it to impeach the President. The country has so bad an opinion of him, which he fully deserves, that it expects his condemnation and removal from office. This fact places those who are to try him, if they are conscientious men, in a possibly painful position, especially as a failure to convict may be attended with very disastrous consequences to the dominant party, and consequently to the great cause which depends upon its success. Still, it is a responsibility from which there is no escape, and I humbly trust we may be able to judge him impartially, as we have sworn to do. I still think that whatever may have been his misdemeanors, it would have been better to tolerate him to the end of his term, rather than to expose our party and our country to so great a hazard. Whatever may be the consequences to myself personally, I will not decide the question against my own judgment. Everybody seems to forget that senators have taken an oath to try the man impartially. But whatever I may think and feel as a politician, I cannot and will not violate my oath. I would rather be confined to planting cabbages the remainder of my days."

CHAPTER IX

IMPEACHMENT TRIAL

January – June, 1868

In 1865 Andrew Johnson, who had been elected Vice-President of the United States by the Northern or Union party, largely Republican, became, upon the death of President Lincoln, the President of the United States. The power in the House of Representatives and the Senate was largely with the Union party, the party which had paid its tribute of money, life, and sorrow to crush the Rebellion, and which had elected Mr. Johnson Vice-President.

No sooner had President Johnson taken office than a difference arose between him and Congress upon the question where lay the right to determine the conditions upon which the States lately in rebellion should be admitted to the United States, and when and how they should come in. President Johnson, like President Lincoln, believed that the power was vested in him by the Constitution, and Congress that it was vested in it. There was also a difference of opinion on the question of the status of the Confederate States. Were they constitutionally and legally in or out of the Union?

President Johnson continued in office President Lincoln's Cabinet, including Edwin M. Stanton, Secretary of War, whose services in that office during the war had made him much loved and esteemed at the Union North. Secretary Stanton agreed with the congressional view, while the rest of President Johnson's Cabinet and his

personal advisers agreed with the President. The difference between President Johnson and Congress became, as time passed, a bitter feud, characterized by hatred, contempt, and vilification. Speeches were made in the Senate and House reviling the President. Bills were passed over his veto, and he, on his part, lost no opportunity in public and private speech to denounce Congress with all the force and bitterness which his great abilities, strong nature, and pride made possible. The Union North, as a populace, thought it saw, in the course of President Johnson, a menace to the preservation of all that the North had won by the war; they thought they saw the Southern States about to be readmitted, with full powers, without punishment, able to take part in the nation's counsels; to rehabilitate the South and pay the war debt, and pay the Southerners for the loss of their slaves, at the expense of the general government; and therefore President Johnson became to be cordially hated and detested by the great party which had elected him.

The Constitution of the United States contained a provision that the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors, and also a provision empowering the Senate of the United States to try and convict such officers upon charges formulated and presented to the Senate by the House.

The constitutional provisions bearing upon removals from office were Art. II, Sec. I: "The executive power shall be vested in a President." . . . Art. II, Sec. II: "The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session." Art. II, Sec. IV: "The President,

Vice-President, and all civil officers . . . shall be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors."

In 1867 the power of removal was limited by an act called the "Tenure of Office Act." It modified the right of removal from office by the President which had hitherto been supposed to exist; and as to cabinet officers, it provided that the members of the Cabinet should hold their offices, unless removed with the consent of the Senate, for the term of the President who appointed them, and for one month longer.

The first talk of impeaching President Johnson began in 1866, after the Republicans had carried the elections of that autumn. Senator Fessenden had opposed the idea then and always, writing home, at the commencement of the session, that "enough had transpired to show that his 'radical' friends meant to make war upon Andy in devious ways," . . . "though the impeachment idea found little favor;" and later he wrote that he "thought very little would be made of the impeachment business, and that it was coming nearer and nearer every day to be a fizzle."

Matters went from bad to worse, however; the feud between the President and Congress became more bitter. The friction between Secretary Stanton and the President became more grave, and the feeling was constantly growing among the people in the North that an attempt ought to be made to remove the President from office by impeachment. This feeling was fanned and fostered by a party of men at Washington, in and out of Congress, and many local Republicans outside of Washington, who worked in concert toward the removal of the President by impeachment.

In August, 1867, President Johnson suspended Secretary Stanton, and within twenty days of the next meeting

of the Senate, in December, 1867, he reported to the Senate the reason for such suspension, and also that he had appointed General Grant Secretary of War *ad interim*. On the 13th of January, 1868, the Senate having refused to concur in said suspension, and having so notified President Johnson, he first strove to induce General Grant to refuse to surrender the office to Mr. Stanton; but failing in this, on the 21st of February, 1868, he made the following order, addressed to Edwin M. Stanton: —

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

(Signed) ANDREW JOHNSON.

On the same day the President addressed a letter as follows to General Thomas: —

The Honorable 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.

Shortly prior to this the House had considered the matter of impeaching the President for what he had done up to that time, and had voted against it; but his removal, or attempted removal, of Secretary Stanton brought the matter again into life and encouraged the impeachment party, who at once promulgated with considerable success the idea that this was an effort by President Johnson to gain possession of the machinery of the war office and utilize it in furtherance of his schemes relative to the South.

In order to convict the President by the Senate, a two thirds vote was necessary, and if all the Republicans could be induced to vote for impeachment, his conviction would be certain; but seven Republican votes for acquittal would save him. It was known that some of the Republican senators, among them Senator Fessenden, did not think the President's conduct was sufficient ground for his impeachment for high crimes and misdemeanors; but immediately upon the happening of the Stanton incident a resolution was offered in the Senate by Senator Wilson of Massachusetts, to the effect that under the Constitution and laws of the United States the President had no power to remove the Secretary of War and to designate any other person to perform the duties of that office *ad interim*. Senator Fessenden opposed this resolution, and endeavored to have it softened into a mere expression of disapproval, but unsuccessfully. The Senate was much excited, and after a short debate the resolution was adopted by vote of two thirds of the senators. This vote made a sufficient number to convict the President, and no time was lost by the impeachers in taking advantage of their opportunity. On the day the resolution passed the Senate, a resolution was offered in the House that the President be impeached for high crimes and misdemean-

ors. It was referred to the House committee on reconstruction and reported back the next day, with a recommendation that it be passed. An excited debate took place on Saturday and was adjourned until Monday, when it was brought to a vote, and not one Republican member acted or voted against the resolution; all who spoke advocating impeachment. And it may here be stated that it was the unanimous view of the Republican North that for three years President Johnson had resisted all the measures of the party which elected him. That party to a man considered that he had betrayed his trust and deserted his party. He had opposed laws passed by Congress which provided for colored citizenship, secured the public debt, the public pensions, and outlawed the Confederate debt. He had sought to restore the States lately in rebellion to representation in Congress without safeguards for the future, and without the abolition of slavery, and to put the political power of those States into the possession of the rebel (so-called at the North at that time) element without restraint and without conditions. He had resisted giving protection to the freedmen, and vetoed laws passed to that end; he had opposed every scheme that equalized representation in Congress as between North and South, and while he was unwilling to confer suffrage upon the negroes, he contended that they should be counted in the basis of apportionment, thus increasing in political power all those recently in rebellion. The North believed that he had been treacherous in connection with the political massacres of Northern men in the city of New Orleans. He had vetoed the Freedmen's Bureau Bill and the Civil Rights Bill, which conferred power upon the colored citizen to enable him to protect himself, and had so encouraged and sustained the rebel element in the disloyal States that they had now insolently defied Con-

gress, contemptuously rejected its terms for restoration, and instituted a series of outrages and persecutions upon the white Unionists and freedmen, to suppress their political power. In addition it may be stated that the President had recently made a speaking tour, appearing and speaking in public in a state of apparent inebriety, and he had removed Republican federal office-holders by the wholesale.

Such was the indictment of President Johnson in the heart of the North, and the North demanded the removal of the President.

Following the vote in the House to impeach the President came the preliminary proceedings. The House prepared, through its committee, the charges to be sent to the Senate. They may be abstracted as follows: —

Art. 1. That the President issued the order of removal with intent to violate the Tenure of Office Act, and to remove Mr. Stanton.

Art. 2. That he issued the letter of authority to Thomas with intent to violate the Constitution and the Tenure of Office Act.

Art. 3. That he appointed Thomas Secretary of War *ad interim*.

Art. 4. That he conspired with Thomas and others unknown unlawfully to hinder and prevent Mr. Stanton from exercising the office of Secretary of War.

Art. 5. That he conspired with Thomas and others to prevent and hinder the execution of the Tenure of Office Act, and in pursuance of said conspiracy did attempt to prevent Mr. Stanton from holding his office.

Art. 6. That he conspired with Thomas and others to seize by force the property of the United States in the War Department contrary to the Conspiracy Act of 1861 and the Tenure of Office Act.

Art. 7. That he conspired with Thomas with intent to

seize and take such property contrary to the Tenure of Office Act.

Art. 8. That, with intent to control the disbursements for the War Department, and contrary to the Tenure of Office Act, and in violation of the Constitution, he issued the letter appointing Thomas.

Art. 9. That he instructed General Emory that the clause in the Appropriation Act of 1867, requiring that all orders should pass through the general of the army, was unconstitutional and in contravention of Emory's commission, with the intent to induce Emory to accept orders directly from him, and with the intent to violate the Tenure of Office Act.

Art. 10. That, with the intent to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States, and the several branches thereof, and to impair and destroy the respect of the people for them, he made the speeches at the Executive Mansion, at Cleveland, and at St. Louis, contemning and vilifying Congress.

Art. 11. That he attempted to prevent the execution of the Tenure of Office Act by unlawfully devising means to prevent Mr. Stanton from resuming the functions of his office, and to prevent the execution of the said clause in the Appropriation Act of 1867 and the Reconstruction Act of March 2, 1867.

These charges were presented to the Senate; the answer of the President was presented to the Senate, and on the 30th of March, 1868, the trial was actually commenced. The Senate had been organized with Chief Justice Salmon P. Chase of the Supreme Court as its presiding officer. Each senator was solemnly sworn as follows: "To do impartial justice upon the trial according to the Constitution and the laws."

Senator Fessenden had now been fourteen years continuously senator of the United States from the State of Maine, with the exception of eight months during which he had been the Secretary of the Treasury. He had been during the time of Republican control the acknowledged leader of the Republican party upon the floor of the Senate. He had received from the Senate its highest honors, continuously the chairman of its most important committees and the champion upon the floor of the Senate for the bills which came from those committees. He had, in the prime of life, in 1854, surrendered a very eminent position at the bar of his native State and the joys of continuous home and family life to enter the Senate and oppose slavery. He had put his hand to the plow and kept it there through fourteen years of the nation's greatest need, through fourteen years of time fraught with more good or ill to the country than any period of American history excepting the Revolution. The terrific labor and responsibility which he had discharged had permanently impaired his health, and made him the victim of a wasting and incurable illness. He had given up his opportunity of a federal judgeship, for there had been no time from his entrance to the Senate until the present time when he could perform his duty to his country and deprive the country of the benefits of his acquired knowledge, experience, and familiarity with its affairs and needs. His senatorial term was to continue until 1871; and at sixty-two years of age, with his practice abandoned, his health gone, the party which he loved and helped to form, and which ruled the country he had done so much to serve, demanded, with almost unanimous voice, that he accede to its wishes, and vote for the conviction of the President, under penalty of ostracism, obloquy, and political death.

The pressure brought to bear upon Senator Fessenden was terrific. The Republican press was for conviction, and day after day, in its editorials, demanded conviction, named certain senators who were considered doubtful among the Republicans, and threatened them with infamy in case they did not support the movement. Mass meetings were held all over the North, resolutions to the same effect were passed, and hundreds of Senator Fessenden's friends, men who had helped him in the past to his eminence, and could be invaluable to him in the future, and some of his relatives, wrote him that there was no question about his duty to convict; and all of these editorials and the resolutions of the mass meetings were forwarded to him by those who desired conviction and were willing to impress their views and wishes upon the man who was to be a judge.

The managers or counsel to present the evidence against the President and to argue for conviction were noted men and able lawyers, — Benjamin F. Butler, Thaddeus Stevens, Messrs. Bingham, Williams, Wilson, Boutwell, and Logan. The President's counsel were Benjamin R. Curtis, William M. Evarts, Mr. Groesbeck, ex-Attorney-General Stanbery, and Thomas A. Nelson of Tennessee. It was a part of the procedure that the senators should vote upon all questions of admission or rejection of evidence, and through the trial all disputed questions of that kind and other interlocutory matters were so referred to the Senate and decided by a majority vote.

President Johnson filed his answer to the charges. He admitted the acts charged with reference to his attempt to remove Stanton and substitute Thomas. He claimed that he did that lawfully; that the right was in him to do so; that he did it without any intent to violate any law and for the good of the public service, claiming that at the

time there was a vacancy existing in the office of Secretary of War; that it was lawful and according to long and well-established usage for him to authorize Thomas to act as secretary *ad interim*. That if the Tenure of Office Act was valid, he had not violated it, and that the Tenure Act was contrary to the Constitution of the United States. He denied the charges of conspiracy in connection with that matter, and to Article 9, the Emory charge, he claimed that he did not do more than express to Emory the opinion which he had previously expressed to the House of Representatives.

Concerning the tenth article, which was the one which charged him with improper speeches and accusations against Congress, he claimed that he had not been truthfully quoted in the charges, and that what he had said was said upon occasions which made them appropriate, and that what he did say was not cognizable by the Senate as a high misdemeanor in office, within the meaning and intent of the Constitution of the United States.

To Article 11 he denied that on the 18th of August, 1866, he declared, by public speech or otherwise, 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 declared 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 in the article alleged as denying or intending to deny that the legislation of said Congress was valid or obligatory upon him, except so far as he saw fit to approve the same; he claiming that the speeches then and on other occasions alluded to in the charges did not make him subject to question, inquisition, or impeachment, in any form

or manner of or concerning such rights of freedom of opinion or speech, or his said alleged exercise thereof. He denied the allegation of the eleventh article that he did, unlawfully and in disregard of the requirements of the Constitution that he should take care that the laws should be faithfully executed, attempt to prevent the execution of the Tenure of Office Act by unlawfully devising, contriving, or attempting means by which he should prevent Edwin M. Stanton from assuming the functions of Secretary of War. He denied unlawfully devising 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 generally denied being guilty of a high misdemeanor in office, making the distinction that the charges did not allege commission of acts by him in his office of President.

On the 30th of March General Butler made the opening speech to the Senate on behalf of the House, in the course of which he defined an impeachable high crime or misdemeanor as follows: —

"*One in its nature or consequences subvertive of some fundamental or essential principle of government or prejudicial to the public interest, and this may consist of the violation of the Constitution, of law, of an official oath or of duty, by an act or omission, or, without violating a positive law, by the abuse of a discretionary power from improper motives or for any improper purpose.*"

He said: "Therefore, by these articles and the answers thereto, the momentous question here now is raised, whether the presidential office (if it has the prerogatives and powers claimed for it) ought, in fact, to exist as a part of the constitutional government of a free people; while, by the last three articles, the simpler and less im-

portant inquiry is to be determined whether Andrew Johnson has so conducted himself that he ought longer to hold any constitutional office whatever. The latter sinks into merited insignificance compared to the grandeur of the former. If that is sustained, then a right and power hitherto unclaimed and unknown to the people of the country is ingrafted on the Constitution most alarming in its extent, most corrupt in its influence, most dangerous in its tendencies, and most tyrannical in its exercise. Whoever, therefore, votes 'not guilty' on these articles, votes to enchain our free institutions and to prostrate them at the feet of any man who, being President, may choose to control them."

Farther on, concerning the speeches of the President, he states the issues to be, first, that he had the right to say what he did of Congress, in the exercise of freedom of speech, and, second, that what he did say in those speeches was a highly gentleman-like and proper performance in a citizen, and still more becoming in a President of the United States.

The taking of testimony was begun after the conclusion of General Butler's argument, and the managers proved that on August 12, 1867, President Johnson attempted to suspend Mr. Stanton from the exercise of his office and designated General Grant to act *ad interim*, and that he communicated the matter to the Senate, and that the Senate did not concur, and so notified President Johnson. The subsequent Stanton-Thomas incident and the President's part therein was proven. It was also proven that on January 27, 1867, President Johnson received the following telegram : —

"Montgomery, Alabama, January 17, 1867. Legislature in session ; effort making to reconsider vote on constitutional amendment. Report from Washington says it is

probable an enabling act will pass; we do not know what to believe. I find nothing here. Lewis E. Parson, Exchange Hotel." (Addressed to His Excellency, Andrew Johnson, President.)

The President's reply was by telegraph: —

"January 17, 1867. What possible good can be obtained by reconsidering the constitutional amendment? I know of none in the present posture of affairs, and I do not believe the people of the whole country will sustain any set of individuals in attempts to change the whole character of our government by 'enabling acts' or otherwise. I believe, on the contrary, that they will eventually uphold all who have patriotism and courage to stand by the Constitution and who place their confidence in the people. There should be no faltering on the part of those who are honest in their determination to sustain the several coördinate departments of the government in accordance with its original design."

It was then proved that on the 18th of August, 1866, when a committee waited upon the President at the White House, he answered the address of the spokesman of that committee, and in his reply said, after alluding to the ordeal of the war, that the country did not find itself free of difficulties and dangers; that every effort had been made, so far as the Executive was concerned, to restore peace; that he thought he had personally succeeded, but as the work progressed, he found a disturbing and alarming element of opposition thrown in.

"We have witnessed in one department of the government every effort, as it were, to prevent the restoration of peace, harmony, and union. We have seen, as it were, hanging upon the verge of the government, as it were, a body calling itself, or assuming to be, a Congress of the United States, when it was but a Congress of a part of

the States. We have seen Congress assuming to be for the Union, when every step they took was to perpetrate dissolution and make disruption permanent. We have seen every step that has been taken, instead of bringing about reconciliation and harmony, has been legislation that took the character of penalties, retaliation, and revenge. This has been the course, this has been the policy of one department of your government. The humble individual who has been addressed here to-day and now stands here before you has been occupying another department of the government. The manner of his going there I do not allude to now; suffice it to say that I was there by the Constitution of my country; and being there by the Constitution of my country, I placed my foot upon the Constitution as a great rampart of civil and religious liberty, having been taught early in life, and having practiced through my whole career, to venerate and respect and make the Constitution of my fathers my guide through public life.

"But tyranny and despotism! We all know that tyranny and despotism, even in the language of Thomas Jefferson, can be exercised, and exercised more effectually, by many than one. We have seen Congress organized, we have seen Congress in its advance, step by step, has gradually been encroaching upon constitutional rights and violating the fundamental principle of the government, day by day and month after month. We have seen a Congress that seemed to forget that there was a Constitution of the United States; that there was limits, that there was boundaries to the sphere or scope of legislation. We have seen Congress in a minority assume to exercise, and have exercised powers, if carried out and consummated will result in despotism or monarchy itself. My pride and power is, if I have any, to occupy that position which

retains the power in the hands of the people. It is upon them that I have always relied, and it is upon them that I now rely; and I repeat, neither the taunts nor jeers of Congress, nor of a subsidized and calumniating press, can drive me from my purpose."

The speech made by the President on the 4th of September, 1866, at Cleveland, was proved. The parts of it claimed by the managers to support the charges were as follows: —

"I come before you as an American citizen simply, and not as the chief magistrate. . . . Where is a man or woman who can place his finger upon one single act of mine deviating from any pledge of mine, or in any violation of the Constitution? Who is he, what language does he speak, what religion does he practice, that can come and place his finger upon one pledge I ever violated, or on one principle I have proved false to?"

Interruptions were frequent in this speech, and I will quote from the report of the speech, which was placed in evidence, including interruptions: —

"(Voice, 'New Orleans.') (Another, 'Why don't you hang Jeff Davis?') Hang Jeff Davis? (Shouts and laughing cries of 'Down with him!') Why don't *you* hang him? (Cries of 'Give us an opportunity!') Have n't you got the court? Have n't you got the attorney-general? Who is your chief justice, who has refused to sit on his trial? (Groans and cheers.) I am not the chief justice — I am not the attorney-general. I am no jury; but I will tell you what I did do; I called upon your Congress that is trying to break up the government. (Hisses, and a cry of 'A lie!') (Great confusion, voice, 'Don't get mad.') I am not mad. (Hisses.) I will tell you who is mad. 'Whom the gods want to destroy they first make mad.' Did your Congress order any of them to be

tried? (Three cheers for Congress.) Then, fellow citizens, we might as well allay our passion and permit reason to resume her empire and prevail. In presenting the few remarks that I design to make, my intention was to address myself to your common sense, your judgment, your better feelings, not to the passion and malignancy of your hearts. (Voice, 'How about Moses?') This was my object in presenting myself on this occasion, and to say 'How d' ye' and 'Good-by.' In the assembly here to-night the remark has been made 'traitor.' Traitor, my countrymen? Will you hear me, and will you hear me for my cause and for the Constitution of my country? ('Yes, yes, go on.')

"I want to know when or where, or under what circumstances Andrew Johnson, not as Executive, but in any capacity, ever deserted any principle or violated the Constitution of this country. ('Never, never.') Let me ask this large and intelligent audience if your Secretary of State, who served four years under Lincoln, and who was placed upon the butcher's block, as it were, and hacked and gashed all to pieces, scarred by the assassin's knife, when he turned traitor? (Cries of 'Never.') If I were disposed to play the orator, and deal in declamation, even to-night I would imitate one of the ancient tragedies, and would take Mr. Seward, bring him before you, and point you to the hacks and scars upon his person. (Voice, 'God bless him!') I would exhibit the bloody garments, saturated with gore, from his gaping wounds. Then I would ask you, who is the traitor? (Voice, 'Thad. Stevens.') Why don't you hang Thad. Stevens and Wendell Phillips? (Cheers.) I have been fighting traitors in the South. They have been whipped and crushed. They acknowledge their defeat and accept the terms of the Constitution. And now, as I go round the circle, having fought traitors

at the South, I am prepared to fight them at the North (Cheers), God being willing, with your help. (Cries, 'We won't give it.') They will be crushed North and this glorious Union of ours will be preserved. (Cheers.) I do not come here as the chief magistrate of twenty-five States out of thirty-six. (Cheers.)

"I come here to-night with the flag of my country and the constellation of thirty-six stars untarnished. Are you for dividing this country? (Cries, 'No.') Then I am President, and President of the whole United States. (Cheers.) I will tell you another thing. I understand the discordant notes in this crowd to-night. He who is opposed to the restoration of the government, and the union of the States is a greater traitor than Jeff Davis, or Wendell Phillips. (Loud cheers.) I am against both of them. (Cries, 'Give it to them.') Some of you talk about traitors in the South, who have not courage to go away from your homes to fight them. (Laughter and cheers.) The courageous men, Grant, Sherman, Farragut, and the long list of distinguished sons of the Union, were in the field, and led on their gallant hosts to conquest and to victory, while you remained cowardly at home. (Applause, 'Bully.') Now, when these brave men have returned home, many of whom have left an arm or a leg, or their blood, upon many a battlefield, they found you at home speculating and committing fraud upon the government. (Laughter and cheers.) You pretend now to have great respect and sympathy for the poor, brave fellow who has left an arm on the battlefield. (Cries, 'Is this dignified?') I understand you — you may talk about the dignity of the President. (Cries, 'How was it about his making a speech on the 22d of February?') I have been with you on the battlefields of this country, and I can tell you furthermore, to-night, who have to pay these

brave men who shed their blood. You speculated, and now the great mass of the people have got to work it out. (Cheers.)

"It is time that the great mass of the American people should understand what your designs are. (A voice, 'What did General Butler say?') What did General Butler say? (Hisses.) What did Grant say? (Cheers.) And what did General Grant say about General Butler? (Laughter and cheers.) What does General Sherman say? (A voice, 'What does Sheridan say? New Orleans, New Orleans.') General Sheridan says that he is for the restoration of the government that General Sheridan fought for. ('Bully.') But, fellow citizens, let this all pass. I do not care for my dignity. There is a certain portion of our countrymen will respect a citizen wherever he is entitled to respect. (A voice 'That's so.') There is another class that have no respect for themselves, and consequently cannot respect any one else. (Laughter and cheers.) I know a man and a gentleman whenever I meet him. I have only to look in his face, and if I was to see yours by the light of day I do not doubt but that I should see cowardice and treachery written upon it. (Laughter and cheers.) Come out here where I can see you. (Cheers.) If you ever shoot a man you will do it in the dark, and pull the trigger when no one is by to see. (Cheers.) I understand traitors. I have been fighting them at the southern end of the line, and we are now finding them in the other direction. (Laughter and cheers.) I came here neither to criminate nor recriminate; but when attacked, my plan is to defend myself. (Cheers.)

"I tell you, my countrymen, that though the powers of hell and Thad. Stevens and his gang were by, they could not turn me from my purpose. There is no power that

could turn me, except you and the God who spoke me into existence."

In conclusion he said that Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the union of these States? No; on the contrary, they had done everything to prevent it; and, because he stood now where he did, when the Rebellion commenced, he had been denounced as a traitor. Who had run greater risks, or made greater sacrifices than himself? But Congress, factious and domineering, had taken to poisoning the minds of the American people. It was with them a question of power. "Every friend of theirs who holds an office as assessor, collector, or postmaster (Voice, 'Turn Benedict out') wanted to retain his place. Rotation in office used to be thought a good doctrine by Washington, Jefferson, and Adams; and Andrew Jackson, God bless him, thought so. (Applause.) This gang of office-holders — these bloodsuckers and cormorants — had got fat on the country. You have got them in your district."

Another speech made by the President was proven, — the speech made September 8, 1866, from a balcony of the Southern Hotel in St. Louis, after he had been welcomed by the mayor in the afternoon. In this speech he said, among other things (reading from the report of the speech which was placed in evidence at the trial):—

"If you will take up the riot at New Orleans, and trace it back to the radical Congress (great cheering, and cries of 'Bully'), 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 there knew (cheers) that a convention was to be called which was extinct, by its powers having expired; that it was said, and the intention was, that a new government

was to be organized, and in the organization of that government the intention was to enfranchise one portion of the population called the colored population, who had just been emancipated, and at the same time disfranchise white men. (Great cheering.) When you begin to talk about New Orleans (confusion), you ought to understand what you are talking about. . . . So much for the New Orleans riot. And there was the cause of the origin of the blood that was shed, and every drop of blood that was shed is upon your skirts, and they are responsible for it. (Cheers.) I could trace this thing a little closer, but I will not do it here to-night. But when you talk about New Orleans, and talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been traduced here, and you have provoked questions of this kind, though it don't provoke me, I will tell you a few wholesome things that *has* been done by this radical Congress. (Cheers.)

"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 it has elsewhere, and that I have attempted to exercise an arbitrary power in resisting laws that *was* intended to be enforced on the government. (Cheers and cries of 'Hear.')

"Yes, that I had exercised the veto power ('Bully for you'); that I had abandoned the power that elected me, and that I was a t-r-ai-tor (cheers) because I exercised the veto power in attempting to, and did, arrest for a time a bill that was called a Freedmen's Bureau Bill. (Cheers.) Yes, that I was a t-r-ai-tor! And I have been traduced, I have been slandered, I have been maligned, I have been called Judas — Judas Iscariot, — and all that. Now my countrymen, here, to-night, it is very easy to indulge in

epithets, it is very easy to call a man a Judas, and cry t-r-ai-tor, but when he is called upon to give arguments and facts, he is very often found wanting.

"*Judas, Judas Iscariot, Judas!* There was a Judas once, one of the twelve apostles. Oh, yes; and these twelve apostles had a Christ. (A voice, 'And a Moses, too.' Great laughter.) The twelve apostles had a Christ, and he could not have had a Judas unless he had 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? (Hisses and cheers.) Are these the men that set up and compare themselves with the Saviour of men, and everybody that differs with them in opinion and try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas? ('Hurrah for Andy,' and cheers.)

"In the days when there were twelve apostles, and when there were a Christ, while there were Judases there were unbelievers, too. Y-a-s; while there were Judases there were unbelievers. (Voices, 'Hear!' 'Three groans for Fletcher.') Yes, oh, yes! unbelievers in Christ; men who persecuted and slandered and brought him before Pontius Pilate, and preferred charges and condemned and put him to death on the cross to satisfy unbelievers. And this same persecuting, diabolical, and nefarious class to-day would persecute and shed the blood of innocent men to carry out their purposes. (Cheers.) But let me tell you — let me give you a few words here to-night — and but a short time since I heard some one say in the crowd that we had a Moses. (Laughter and cheers.) Yes, there was a Moses. And I know sometimes it has been said that I have said that I would be the Moses of the colored man. ('Never!' and cheers.) Why, I have

labored as much in the cause of emancipation as any other mortal man living. But while I have strived to emancipate the colored man, I have felt, and now feel, that we have a great many white men who want emancipation. (Laughter and cheers.) There is a set amongst you that have got shackles on their limbs, and are as much under the heel and control of their masters as the colored man that was emancipated. (Cheers.) . . .

"As we talk about this Congress let me call the soldiers' attention to this immaculate Congress — let me call your attention. Oh! this Congress, that could make war upon the Executive because he stands upon the Constitution and vindicates the rights of the people, exercising the veto power in their behalf — because he dared to do this, they can clamor and talk about impeachment. And by way of elevating themselves and increasing confidence with the soldiers throughout the country, they talk about impeachment. . . .

"The brave boys, the patriotic young man who followed his gallant officers, slept in the tented fields, and periled his life, and shed his blood, and left his limbs behind him, and came home mangled and maimed, can get fifty dollars bounty, if he has served two years. But the members of Congress, who never smelt gunpowder, can get four thousand dollars extra pay. (Loud cheering.) . . .

"How, then, does the matter stand? It used to be one of the arguments that if the States withdrew their representatives and senators, that that was secession — a peaceable breaking up of the government. Now, the radical power in this government turn around and assume that the States are out of the Union; that they are not entitled to representation in Congress. (Cheers.) That is to say, they are dissolutionists, and their position now is to perpetuate a disruption of the government, and that, too,

while they are denying the States the right of representation, they impose taxation upon them, a principle upon which, in the Revolution, you resisted the power of Great Britain. We deny the right of taxation without representation. That is one of our great principles. Let the government be restored. I have labored for it. Now, I deny this doctrine of secession, come from what quarter it may, whether from the North or from the South. I am opposed to it. I am for the union of the States. (Voices, 'That 's right,' and cheers.) I am for thirty-six States, remaining where they are, under the Constitution, as your fathers made it, and handed it down to you; and if it is altered or amended, let it be done in the mode and manner pointed out by that instrument itself, and in no other. (Cheers.) . . .

"Large numbers have applied for pardon, and I have granted them pardon. Yet there are some who condemn and hold me responsible for so doing wrong. Yes, there are some who stayed at home, who did not go into the field on the other side, that can talk about others being traitors, and being treacherous. There are some who can talk about blood, and vengeance, and crime, and everything to 'make treason odious,' and all that, who never smelt gunpowder on either side. (Cheers.) Yes, they can condemn others and recommend hanging in torture, and all that. If I have erred, I have erred on the side of mercy. Some of these croakers have dared to assume that they are better than was the Saviour of men himself — a kind of over-righteousness — better than anybody else, and always wanting to do Deity's work, thinking he cannot do it as well as they can. (Laughter and cheers.) Yes, the Saviour of man came on the earth and found the human race condemned and sentenced under the law. But when they repented and believed, he said, 'Let them

live. Instead of executing and putting the world to death, he went upon the cross, and there was painfully nailed by these unbelievers that I have spoken of here to-night, and there shed his blood that you and I might live. (Cheers.) Think of it! To execute and hang and put to death eight millions of people. (Voices, 'Never.') It is an absurdity, and such a thing is impracticable even if it were right. But it is the violation of all law, human and Divine. (Voice, 'Hang Jeff Davis.') You call on Judge Chase to hang Jeff Davis, will you? (Great cheering.) I am not the court, I am not the jury, nor the judge. (Voice, 'Nor the Moses.') Before the case comes to me, and all other cases, it will have to come on application as a case of pardon. That is the only way the case can get to me. Why don't Judge Chase — Judge Chase, the Chief Justice of the United States, in whose district he is — why don't he try him? (Loud cheers.) But perhaps I could answer the question, as sometimes persons want to be facetious and indulge in repartee. I might ask you a question: Why don't you hang Thad. Stevens and Wendell Phillips? (Great cheering.) A traitor at one end of the line is as bad as a traitor at the other. . . .

"These people who have been enjoying these offices seem to have lost sight of this doctrine. I believe that when one set of men have enjoyed the emoluments of office long enough, they should let another portion of the people have a chance. (Cheers.) How are these men to get out (Voice, 'Kick him out.' Cheers and laughter), unless your Executive can put them out, unless you can reach them through the President? Congress says he shall not turn them out, and they are trying to pass laws to prevent it being done. Well, let me say to you, if you will stand by me in this action (cheers), if you will stand by me and try and give the people a fair chance, soldiers

and citizens, to participate in those offices, God being willing, I *will* 'kick them out' just as fast as I can. (Great cheering.) Let me say to you in concluding what I have said, — and I intended to say but little, but was provoked into this rather than otherwise, — I care not for the menaces, the taunts and jeers; I care not for the threats; I do not intend to be bullied by my enemies nor overawed by my friends (cheers); but God willing, with your help, I will veto their measures whenever they come to me. (Cheers.) I will place myself upon the ramparts of the Constitution, and when I see the enemy approaching, so long as I have eyes to see, or ears to hear, or a tongue to sound the alarm, so help me God, I will do it, and call upon the people to be my judges. (Cheers.) I tell you here to-night that the Constitution of the country is being encroached upon. I tell you here to-night that the citadel of liberty is being endangered. (A voice, 'Go it, Andy.') . . .

"I now, then, in conclusion, my countrymen, hand over to you the flag of your country with thirty-six stars upon it. I hand over to you your Constitution with the charge and responsibility of preserving it intact. I hand over to you to-night the union of these States, the great magic circle which embraces them all. I hand them all over to you, the people, in whom I have always trusted in all great emergencies — questions which are of such vital interest. I hand them over to you as men who can rise above party, who can stand around the altar of a common country with their faces upturned to Heaven, swearing by Him that lives forever and ever, that the altar and all shall sink in the dust, but that the Constitution and the Union shall be preserved."

A Mr. Wood was examined as a witness, who testified that he had, in September, 1866, called upon the Presi-

dent, presenting him testimonials for employment in the government service, and that President Johnson said to him his claim was good, or words to that effect, and inquired about his political sentiments; and upon being told by Mr. Wood that he was a Union man, and in favor of the administration, and that he had confidence in Congress and in the Chief Executive, the President asked him if he knew of any difference between himself, the President, and Congress. Wood said he did, that he knew of some differences on minor points, and the President said, "They are not minor points."

With this the prosecution closed its case, and Mr. Curtis opened the defense on the 9th day of April, in an address which was considered to change considerably the appearance of the proceeding. He argued that the Tenure of Office Bill did not cover, and was not intended to cover, Mr. Stanton's appointment as Secretary of War; that Mr. Stanton was appointed by Mr. Lincoln during his first term, and that Mr. Johnson had a lawful right to remove him. The weakness of the case against the President began to be realized through the North, and an acquittal appeared to be within the range of possibilities, and as those possibilities began to appear, the clamor for conviction increased. The pressure upon the senators was renewed in all possible ways. Senator Fessenden had not been impressed, as his letters prior to the trial, and during the trial up to the point last reached, indicate.

He wrote, January 12, 1867: "I do not know how we are coming out here, but we are doing all we can to destroy the confidence of the people in our discretion, and even in our integrity. I think the impeachment business will give us little further trouble. The sentiment of the country is against it, and the principal difficulty now is how to get rid of it decently."

December 1, 1867: "Things are looking a little better here, and I am beginning to think that impeachment has gone up."

December 15, 1867: "It hardly seems a month since I left home, and I should hardly have found it out, but for the necessity of having my hair cut. We have done much in the time by getting rid of the impeachment folly, and having the road open for travel. The impeachment gentlemen in and out of Congress are in a great rage. It extinguished the aspirations of the Radical-Radicals. Mr. Wade's visions of being President *pro tem.* have faded. For once, Mr. Sumner cannot boast of the fulfillment of his prophecy, and his bitterness beats 'wormwood and gall.' It is of no use, however. They are in a minority of their own party and must stay there."

And again, on February 29, 1868: "The New York expedition will have to be given up, I fear, as the impeachment will be upon us in a few days, and its termination cannot be foreseen. If I have strength enough and a good opportunity arises, I may have to make a speech by and by upon matters and things in general, but about that I have no anxiety. You will be amused to learn that my friend is quite exalted by the present state of affairs. The impeachment has restored all his old arrogance, whereas, up to that time he had been quite modest, for him. We seem to think he is expecting to be Secretary of State, under Wade. It would not surprise me, though how he can take the place, unless with the idea of being continued under the new administration, I cannot imagine, as it would seem to involve the giving up of his senatorship and renouncing his chances."

February 8 he writes: "My spirits are very much depressed by the bad state of public affairs; my own position, both in the Senate and before the country, is

such as I am well-nigh satisfied with, but this affords me no consolation so long as dangers ahead are so threatening and imminent; many who once thought me too timid, if nothing worse, now recognize the wisdom of my counsels and regret that they were not followed; but it is now useless to look back."

March 21, 1868, to his cousin: "In a few days we shall be in the midst of the impeachment trial, so that I see no chance of being able to visit New York. My belief is that the trial will last through April, at least, and the effect will be, I fear, to protract the session. The trial will be very dull and stupid work and the country will probably be tired and disgusted with it. The result will, in my judgment, be politically disastrous, whatever else may come of it."

March 29, 1868, to his son: "We have a tedious job before us in the impeachment, and I regard it with very serious apprehension. I would give much to avoid the responsibility, for it may be that I shall feel compelled to disappoint all the expectations and wishes of our friends. Whatever may be the consequences to myself personally, I will not decide the question against my own judgment. However, we must wait and see. I have carefully kept my mind as free as possible, and shall try to do right."

March 31, 1868, to his cousin: "I find it hard work to behave decently. First, I have somehow taken another severe cold; next, this impeachment matter interferes with everything. Everybody, too, seems to forget that senators have taken their oath to try the man impartially; and if any one avows his determination to keep to his oath, villains and fools set him down as a friend of the President. If he was impeached for general cussedness, there would be no difficulty in the case. That, however, is not the question to be tried. I detest Copperheads and Demo-

crats, particularly New York Democrats. They are just a little meaner than the men who call themselves radicals; but whatever I may think and feel as a politician, I cannot and will not violate my oath. I would rather be confined to planting cabbages for the remainder of my days."

April 5, 1868, to his son: "We adjourned the court to Thursday next. I expressed no opinion to Judge Davis, except generally, that Andy was a fool."

April 12, 1868, to his cousin: "The impeachment drags itself along slowly; every day adds to my previous conviction that the whole thing is most unwise and can result only in disaster. The counsel of bad men and unwise men have led us to the brink of a precipice, and, I fear, nothing can save us from going over. The probabilities are now that the President will be convicted. I have not yet conclusively determined how I shall vote, but I am determined to keep my oath, if my wishes and prejudices will permit me to do so, and to take all the consequences, whatever they may be. Cowardice has led us to follow bad counsels because the majority so determined; as far as I can go, I prefer tar and feathers to lifelong regret. I hope, however, to see my way clear to a right conclusion."

April 19, 1868, to his cousin: "This trial has almost killed me, and will probably quite do so by the time it is finished."

Upon the conclusion of Mr. Curtis's address, which was telegraphed all over the country, telegrams were sent from Washington to the States of the doubtful senators; more mass meetings were organized, and resolutions instructing the senators to vote for conviction passed and forwarded to the senators. The Republican press threatened them with political destruction and everlasting infamy if they

voted for acquittal. Senator Fessenden received many letters threatening his life. One was as follows: —

Senator Fessenden, — Any Republican senator who votes against impeachment need never expect to get home alive; so take notice from A Radical.

In the State of Maine almost everybody assumed the President's conviction as certain, and took it for granted that Senator Fessenden would vote for it. General Neal Dow, the father of prohibition in the State of Maine, a man who had been one of Senator Fessenden's warmest supporters and most useful allies in politics, wrote him as follows: —

Portland, Maine, April 6, 1868.

Dear Mr. Fessenden, — In writing to thank you for your kind attention in sending me a valuable Pub. Doc., I did not say so much as I felt, *as we all feel*, about our great hope of deliverance from the bad man whose presence in the White House has been a shame to our country and an infinite mischief to our affairs. Speedy deliverance from his misrule will bring joy to every loyal heart and inspire the world with renewed confidence in the stability of our institutions.

That the sentence may come quickly is our earnest hope; and there is among us no hesitation or doubt that it should include the constitutional "disability." To omit that would be to repeat the weakness of Winslow in permitting the escape of Semmes when the Alabama went down. Hang Johnson up by the heels like a dead crow in a cornfield, to frighten all his tribe.

Truly yours, Neal Dow.

In saying this I am sure I express the unanimous opinion and feeling of every loyal heart and head in this State.

General Dow received an answer from Senator Fessenden as follows: —

WASHINGTON, April 11, 1868.

MY DEAR SIR, — I was not a little surprised at the character and contents of your letter of the 6th instant. Several persons unknown to me have undertaken to give me their opinions as to the guilt or innocence of the President, and to advise me as to my duties. I did not expect that a gentleman of your intelligence could commit so grave an error.

You cannot but be aware that in the trial of this impeachment I am acting *as a judge*, under oath to administer "impartial justice according to the Constitution and the laws." Does this oath mean anything? Is it binding upon me as a man of conscience, or even as a man of honor? If so, by what right can any man upon whom no responsibility rests, and who does not even hear the evidence undertake to advise me as to what the judgment, and even the sentence, should be?

Suppose, my dear sir, that you were on trial for an offense against the laws, — what, in such a case, would you think of me, if, without even waiting to hear all the evidence, I should presume to urge upon judge or jury, or both, my opinions of what the verdict and sentence should be, and endeavor to influence the result by an appeal to popular feeling and opinion? In a trial involving the most trifling consequences, this would be an offense justly subjecting the offender to punishment; is it any less so in a case involving the gravest consequences to the person accused?

I wish you, my dear sir, and all others my friends and constituents, to understand that I, and not they, am sitting in judgment upon the President. I, not they, have solemnly sworn to do impartial justice. I, not they, am

responsible to God and man for my action and its consequences. The opinions and wishes of my party friends ought not to have a feather's weight with me in coming to a conclusion. You, as a friend, should advise me to do my duty fearlessly, regardless of the opinions and wishes of men, and of all consequences to myself, and you should add to that advice your prayers that no outside clamor, either of the press or of individuals, no prejudice or passion, no hope of benefit, or fear of injury to myself, no just indignation against the individual on trial, no considerations of party, no regard for those I am most anxious to please, should induce me to swerve from the straight line of impartial justice according to the Constitution and the laws.

I will only add that all statements and rumors with regard to any conclusions expressed or formed by me are entirely without foundation.

Yours very truly,

W. P. Fessenden.

Neal Dow, Esq.

The defense of the President proceeded. Lorenzo Thomas testified that when he received the two Stanton letters — one to Mr. Stanton and one to himself — from the President, the latter, in a conversation, said that he was determined to support the Constitution and the laws, and desired General Thomas to do the same. That he reported to the President that Mr. Stanton had said: "I do not know whether to obey the instructions or resist them," and the President said: "Go and take charge of the office and perform the duties."

A great mass of documents was put in by the defense, tending to show a long-established custom of removals by the President of civil officers without the Senate's concur-

rence, and with that, on the 20th of April, the defense closed its case. No testimony was added to the record on behalf of the prosecution, and the arguments began on the 22d of April, with the filing of an argument, on behalf of the managers of the impeachment, by Mr. Logan. He was followed by George S. Boutwell, on behalf of the prosecution, and Thomas Nelson for the President followed him. Mr. Groesbeck then addressed the Senate on behalf of the President, and in the course of his speech he referred to and quoted the Sedition Act of 1798, and then said that inasmuch as there was not sufficient law to convict the President for the acts which he had performed, he was about to propose one, and he read his proposed enactment as follows : —

" Whereas, it is highly improper for the President of the United States or any other officer of the executive department, or of any department, to say anything tending to bring ridicule or contempt upon the Congress of the United States, or to impair the regard of the good people of the United States for the Congress and the legislative power thereof (which all officers of the government ought inviolably to preserve and maintain) ; and, whereas [quoting in part from an argument of the managers], the dignity of station, the proprieties of position, the courtesies of office, all of which are a part of the common law of the land, require the President of the United States to observe that gravity of deportment, that fitness of conduct, that appropriateness of demeanor, and those amenities of behavior, which are a part of his high official functions; and, whereas, he stands before the youth of the country as the exemplar of all that is worthy of ambition, or that is to be sought in aspiration, and before the men of the country as a grave magistrate, and before the world as the representative of free

institutions; and, whereas, it is the duty of Congress, and especially of the House of Representatives, as the fountain of national dignity, to lay down rules of decorum, and to regulate the manners of etiquette proper for this and every other high officer of the government; Therefore,

"Be it enacted, etc., that if the President or any other officer, shall say anything displeasing to Congress, or either branch thereof, or shall in any addresses, extemporaneous or written, which he may be required to make in response to calls from the people, say anything tending to impair the regard of the people for Congress, or either branch thereof, or if he shall use any unintelligible phrases, such as that 'Congress is a body hanging, as it were, on the verge of the government,' or say that it is a 'Congress of only a part of the States,' because ten States are not represented therein; or, if he shall charge it in such addresses with encroaching upon constitutional rights, however he may think; or, if he shall misquote or carelessly quote the sacred scriptures, or in any of said extemporaneous addresses use bad grammar, then, and in either of such cases, he shall be guilty of a high misdemeanor, and upon trial and conviction thereof shall be fined in any sum not exceeding $10,000, or imprisoned not exceeding ten years.

"That is article ten."

This caused great laughter, and went a considerable distance in making the impeachment ridiculous.

Thaddeus Stevens, for the prosecution, followed Mr. Groesbeck, and confined himself to the eleventh article, the one he personally had drawn. In the course of his remarks he said, after enumerating the offenses of the President, "Yet he continued him in office. And now this offspring of assassination turns upon the Senate, who

have thus rebuked him in a constitutional manner, and bids them defiance. How can he escape the just vengeance of the law? Wretched man, standing at bay, surrounded by a cordon of living men, each with the axe of an executioner uplifted for his just punishment. Every senator now trying him, except such as had already adopted his policy, voted for this same resolution, pronouncing his solemn doom. Will any one of them vote for his acquittal on the ground of its unconstitutionality? I know that senators would venture to do any necessary act if indorsed by an honest conscience or an enlightened public opinion; but neither for the sake of the President, nor any one else, would one of them suffer himself to be tortured on the gibbet of everlasting obloquy. How long and dark would be the track of infamy which must mark his name, and that of his posterity! Nothing is therefore more certain than that it requires no gift of prophecy to predict the fate of this unhappy victim."

Thomas Williams, for the prosecution, followed Mr. Stevens. The peroration of his speech is as follows, and I quote it fully in order that the reader may take in the actual proportion of proof under the articles, and unproven matters which entered into the prosecution's claim for a vote of guilty.

"The not irrelevant question, 'Who is Andrew Johnson?' has been asked by one of his counsel, as it had often been by himself, and answered in the same way, by showing who he *was* and what he had done before the people of the loyal States so generously intrusted him with that contingent power which was made absolute only for the advantage of defeated and discomfited treason by the murderous pistol of an assassin. I will not stop to inquire as to scenes enacted on this floor so eloquently rehearsed by the counsel for the President, with two pictures of so

opposite a character before me, or even to inquire whether his resistance to the hegira of the Southern senators was not merely a question, himself being the witness, as to the propriety and wisdom of such a step at that particular time. The opportunity occurs just here to answer it as it is put, by showing who Andrew Johnson *is* and what he has been since the unhappy hour of that improvident and unreflecting gift. *Eheu! quantum mutatus ab illo!* Alas, how changed, how fallen from that high estate that won for him the confidence of a too confiding people! Would that it could have been said of him as of that apostate spirit who was hurled in hideous ruin and combustion down from heaven's crystal battlements, that even in his fall 'he had not yet lost all his original brightness, nor appeared less than archangel ruined.'

"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 our 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 condition 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 to 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 endowments, 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 the 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 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 bloodthirsty, 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 longer 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 had 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 we have come up to us on 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.

"And because for all that he has not been called to render an account, for the reasons that have been already named, it is now assumed and argued by his counsel, that he stands acquitted by a judgment which disapproves its truth, although it rests for the most part on record evidence, importing that 'absolute verity' which is, of course, not open to dispute. This extraordinary assumption is but another instance of that incorrigible blindness on the part of the President in regard to the feelings and motives of Congress that has helped to hurry him into his present humiliating predicament as a criminal at your bar.

"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 to ruin 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. It was an act that smote upon the nerve of the nation in such a way as to render it impossible that it could be either concealed, disparaged, or excused, as were the muffled blows of the pickaxe that had been so long silently undermining the bastions of the republic. It has been heard and felt through all our wide domain like the reverberation of the guns that opened their iron throats upon our flag at Sumter; and it has stirred the loyal heart of the people again with the electric power that lifted it to the height of the sublimest issue that ever led a martyr to the stake or a patriot to the battlefield. That people is here to-day, through its representatives, on your floor and in your galleries, in the persons alike of the veterans who have been scarred by the iron hail of battle and of the wives and mothers and daughters of those who have died that the republic might live, as well as of the commissioned exponents of the public will, to demand the rewards of their sacrifices and the consummation of their triumph in the award of a nation's justice upon this high offender."

At the conclusion of the last address, General Butler took leave to make a reference to the preceding speech of Mr. Nelson, and in doing it he criticised Mr. Nelson very severely, and questioned his veracity. Whereupon Mr.

Nelson replied to General Butler with considerable spirit, and said: "So far as any question that the gentleman desires to make of a personal character with me is concerned, this is not the place to make it. Let him make it elsewhere, if he desires to do it." Mr. Nelson was at once called to order, and for the present this controversy was dropped, and William M. Evarts then addressed the Senate on behalf of the President. The Senate took an adjournment during Mr. Evarts's address, and when the Senate reconvened, Senator Charles Sumner sent an order to the chair as follows: —

"Whereas, Mr. Nelson, one of the counsel for the President, addressing the Senate, has used disorderly words, as follows, viz: Beginning with personal contest directed to one of the managers, he proceeded to say, 'So far as any question that the gentleman desires to make of a personal character with me is concerned, this is not the place to make it. Let him make it elsewhere, if he desires to do it,' and,

"Whereas, such language, besides being discreditable to these proceedings, is apparently intended to provoke a duel, or to signify a willingness to fight a duel, contrary to law and good morals, therefore,

"Ordered: That Mr. Nelson, one of the counsel of the President, has justly deserved the disapprobation of the Senate."

At the conclusion of this reading, Mr. Nelson started to speak, and asked the necessary unanimous permission. Mr. Sumner objected, unless it was in direct explanation. Mr. Sherman objected to the consideration of the resolution. The Chief Justice asked Mr. Nelson if he proposed to make an explanation. Mr. Butler said he hoped that nothing would be done about the matter. Senator Johnson moved to lay Senator Sumner's resolution on the

table. Mr. Nelson begged to be allowed to say one word. Senator Sumner inquired whether he could do it except by the unanimous consent; the Chief Justice replied that he could not, whereupon Senator Sumner made objection to any persons proceeding "who had used the language in this chamber used by that gentleman." Senator Trumbull moved that Mr. Nelson have permission to make an explanation, and it was carried, whereupon Mr. Nelson said that his remarks were made under the heat of what he might estimate a great provocation; that he intended no offense to the Senate; that as Mr. Butler had signified a willingness that the matter should end, as far as he (Mr. Nelson) was concerned, he desired to say nothing more of a personal character.

Mr. Evarts then proceeded with his address, until adjournment. Upon the reconvening of the Senate, Mr. Sumner brought up his Nelson resolution again. Mr. Johnson again moved to lay it on the table. The yeas and nays were asked for, and Mr. Anthony said that before voting he would like to propose a question to Mr. Nelson. He was allowed to do it, and he asked Mr. Nelson if, in the remark which was quoted in the resolution, it was his intention to challenge the manager alluded to, to a mortal combat? Mr. Nelson replied: —

"It is a very difficult question for me to answer. During the recess of the Senate the day before yesterday, the honorable gentleman (Mr. Manager Butler) remarked to me that he was going to say something upon the subject of Alta Vela, and desired me to remain. When the gentleman read his remarks to the Senate, I regarded them as charging me with dishonorable conduct before the Senate, and in the heat of the discussion I made use of language which was intended to signify that I hurled back the gentleman's charge upon him, and that I would answer

that charge in any way in which the gentleman desired to call me to account for it. I cannot say I had particularly the idea of a duel in my mind, as I am not a duelist by profession; but, nevertheless, my idea was that I would answer the gentleman in any way in which he chose to call upon me for it. I did not intend to claim any exemption on account of age, or any exemption on account of other things that are apparent to the Senate. That was all that I meant to signify, and I hope the Senate will recollect the circumstances under which this thing was done. The Senate has treated me and every other gentleman concerned in this case with the utmost kindness and politeness, and has given marked attention to what we have said, and the idea of insulting the Senate is a thing that never entered my mind. I had no such thought or design. I entertain the kindest feelings and the most respectful feelings towards the Senate, and would be as far as any man upon the face of the earth from saying anything which would justly give offense to the gentlemen of the Senate whom I was addressing."

Whereupon, on vote, Mr. Sumner's resolution was laid upon the table.

Mr. Evarts then concluded his argument, which lasted until the first day of May.

An amusing passage between Messrs. Boutwell and Evarts is this: Mr. Boutwell, in his arguments against the President, said: —

"Travelers and astronomers inform us that in the southern heavens, near the Southern Cross, there is a vast space which the uneducated call the hole in the sky, where the eye of man, with the aid of the powers of the telescope, has been unable to discover nebulæ, or asteroid, or comet, or planet, or star, or sun. In that dreary, cold, dark region of space, which is only known to be less than

infinite by the evidence of creation elsewhere, the Great Author of celestial mechanism has left the chaos which was in the beginning. If this earth were capable of the sentiments and emotions of justice and virtue, which in human mortal beings are the evidence and pledge of our Divine origin and immortal destiny, it would heave and throw, with the energy of the elemental forces of nature, and project this enemy of two races of men into that vast region, there forever to exist in a solitude eternal as life, or as the absence of life, emblematical of, if not really, that 'outer darkness' of which the Saviour of man spoke in warning to those who are the enemies of themselves, of their race, and of their God."

Mr. Evarts moved the Senate to much merriment by replying to Mr. Boutwell as follows: —

"I may as conveniently at this point of the argument as at any other pay some attention to the astronomical punishment which the learned and honorable manager, Mr. Boutwell, thinks should be applied to this novel case of impeachment of the President. Cicero, I think it is, who says that a lawyer should know everything, for sooner or later there is no fact in history, in science, or of human knowledge that will not come into play in his arguments. Painfully sensible of my ignorance, being devoted to a profession which 'sharpens and does not enlarge the mind,' I yet can admire without envy the superior knowledge evinced by the honorable manager. Indeed, upon my soul, I believe he is aware of an astronomical fact which many professors of that science are wholly ignorant of. But nevertheless, while some of his honorable colleagues were paying attention to an unoccupied and unappropriated island on the surface of the seas, Mr. Manager Boutwell, more ambitious, had discovered an untenanted and unappropriated region in the skies, re-

served, he would have us think, in the final councils of the Almighty, as the place of punishment for convicted and deposed American presidents.

"At first I thought that his mind had become so 'enlarged' that it was not 'sharp' enough to discover the Constitution had limited the punishment; but on reflection I saw that he was as legal and logical as he was ambitious and astronomical, for the Constitution has said 'removal from office,' and has put no limit to the distance of the removal, so that it may be, without shedding a drop of his blood, or taking a penny of his property, or confining his limbs, instant removal from office and transportation to the skies. Truly, this is a great undertaking; and if the learned manager can only get over the obstacles of the laws of nature, the Constitution will not stand in his way. He can contrive no method but that of a convulsion of the earth that shall project the deposed President to this infinitely distant space; but a shock of nature of so vast an energy and for so great a result on him might unsettle even the footing of the firm members of Congress. We certainly need not resort to so perilous a method as that. How shall we accomplish it? Why, in the first place, nobody knows where that space is but the learned manager himself, and he is the necessary deputy to execute the judgment of the court.

"Let it then be provided that in case of your sentence of deposition and removal from office, the honorable and astronomical manager shall take into his own hands the execution of the sentence. With the President made fast to his broad and strong shoulders, and, having already essayed the flight by imagination, better prepared than anybody else to execute it in form, taking the advantage of ladders, as far as ladders will go, to the top of this great Capitol, and, spurning then with his foot the crest of

Liberty, let him set out upon his flight, while the two houses of Congress and all the people of the United States shall shout, '*Sic itur ad astra.*'

"But here a distressing doubt strikes me: How will the manager get back? He will have got far beyond the reach of gravitation to restore him, and so ambitious a wing as he could never stoop to a downward flight. Indeed, as he passes through the constellations, that famous question of Carlyle, by which he derided the littleness of human affairs upon the scale of the measure of the heavens, 'What thinks Bœotes as he drives his dogs up the zenith in their race of sidereal fire?' will force itself on his notice. What, indeed, would Bœotes think of this new constellation?

"Besides, reaching this space, beyond the power of Congress even 'to send for persons and papers,' how shall he return, and how decide in the contest, there become personal and perpetual, the struggle of strength between him and the President? In this new revolution, thus established forever, who shall decide which is the sun and which is the moon? Who determine the only scientific test which reflects the hardest upon the other?"

Mr. Stanbery, on behalf of the President, followed Mr. Evarts. Then came Mr. Bingham, with his argument for the prosecution, which he concluded on the 6th of May. Some miscellaneous business connected with the trial was then enacted by the Senate, including a resolution that each senator shall be permitted to file, within two days after the vote shall have been so taken, his own opinion. The question which should be put to each senator upon voting, and how the vote should be taken, was agreed to.

On May 11 the senators held a session "for deliberation," and Senators Fessenden, Fowler, Grimes, Henderson, Trumbull, and Van Winkle declared themselves

in favor of acquittal upon all the articles, while among the other senators the second, third, and eleventh had the most support.

On the 16th of May, Mr. Williams, one of the managers for the prosecution, made a motion that the senators should vote, first, on the eleventh article. That not being a debatable question by the Senate, the yeas and nays were ordered and the vote was: Yeas, 34; nays, 19. Senators Fessenden, Henderson, Ross, Trumbull, and Van Winkle, Republicans, voted against that resolution. Mr. Grimes did not vote. The Senate then proceeded to vote upon the eleventh article.

Senator Fessenden wrote (May 3d): —

"We shall finish up the impeachment this week. Everybody is tired and I am satisfied that with present light the thing never would have begun. People now say, as I have always told them here, that the result is to be disastrous anyway. I have opposed it from the beginning, and the responsibility is not on me even for the foolish vote of the Senate, which I refused to vote for; after that vote the House could hardly be expected to do otherwise than impeach him, and the Senate is therefore responsible both as accuser and judge. The whole country, including Maine, is, I see, in a furious state of excitement. I have received several letters from friends warning me that my political grave is dug if I do not vote for conviction, and several threatening assassination. The first is quite probable, but such considerations do not affect me; I should feel a sense of personal dishonor if they did. Let it be so; I shall be resigned if my sense of duty and justice lead to that result. The probable effect of an acquittal upon the country is a more serious consideration; but such apprehensions can afford no justification of the violation of my oath. At any rate, the responsibility must

rest upon those who have urged forward this matter, regardless of all consequences, against my remonstrances and repeated warnings. Make up your mind, if need be, to hear me denounced a traitor and perhaps hanged in effigy. I have not yet formed a conclusive opinion, but my vote will be given according to my convictions, whatever they may be. The result is, in my judgment, quite uncertain; it takes but seven Republican votes to acquit; three have informed me of their intention to vote for acquittal on all of the articles, and there are seven or eight more who say they find great difficulties in their way. I am utterly weary and disgusted with the great trial. All imaginable abuse has been heaped upon me by the men and papers devoted to the impeachers, and, unfortunately, the mass of the people do not understand the question. Mr. Greeley has improved the occasion to vent his spite, and others have followed his example. These people do not know that I am own cousin to you, and, consequently, it is not an easy thing to drive me. There is some talk of a ten days' recess after this matter is decided, in which case I should like to come home. I should much like to see you all, to look at the garden and feel that there are a few persons left in the world who love me none the less for not sacrificing my sense of right to outside clamor or party expectancy; that is, *if* I vote against conviction."

Senator Justin S. Morrill of Vermont and Senator Fessenden were devoted friends, and the following letter from Senator Morrill added much to the pain with which Senator Fessenden came to his decision to vote not guilty.

WASHINGTON, D. C., May 10, 1868.

DEAR FESSENDEN, — If you do not know it, it is nevertheless a fact, that there is no man on earth for whom I

have so much affection and admiration as yourself, and I want you *right* all the time. You need not fear that any vote you may feel it your duty to give will forfeit my esteem, but I want it such a vote as you can defend without tearing your life out of you for the rest of your days. I am satisfied the best legal learning of the Senate will sustain the 1st, 2d, and 3d Articles of Impeachment. My opinion is of no value, but with a very close attention to the subject for two months, I think there is no doubt about it. Bingham leaves no chance, as it seems to me, for argument touching the Legal Tenure Act. Not much in favor of this act nor of impeachment as original questions, yet I must do my duty at all hazards. I hope my judgment is not warped by political considerations.

But, my friend, I want you right on the constitutional and legal questions involved. I have ever contended you would be, and do not now know at all what you propose to do; but I do know this, that you could do nothing which would fulfill the ancient grudge of a certain clique of your foes sooner than a vote on your part in favor of Andrew Johnson. As an idol of a very large portion of our people you would be knocked off your pedestal. Then, the sharp pens of all the press would be stuck into you for years, tip'd with fire, and it would sour the rest of your life. As independent as I know you really are, I feel that this abuse would drive you into the company of Cowan and Doolittle within six months. I feel that I cannot have this so. You must be right. You cannot afford to be buried with Andrew Johnson, nor can a poor devil like myself afford to have a cloud of suspicion thrown on the correctness of his vote by a wholly different vote given by yourself on a question of so grave consequences as that pending. I know that this may be selfish, but I know that there is no other aspect of this case where any particle of

self crops in. All my feelings would lead me to protect and defend your reputation. All I desire in the present issue is justice to the President and to our country.

For your happiness I hope you will not become a sour croaker without any faith in the future. For your happiness I trust you will be sure you are right, and I beg pardon for this intrusion. I could not do less.

Sincerely and devotedly now and always yours,

JUSTIN S. MORRILL.

Hon. WM. PITT FESSENDEN, U. S. S.,
Washington, D. C.

May 13th: "The agony is over, so far as I am concerned, and having resolved, it is enough to say that I could come to no other conclusion, and not for all this world could I violate my oath to party mandates. It is rather hard that at my time of life, after a long career, which I believe has been honorable, to find myself the target of pointed arrows from those whom I have faithfully served, for what I should know to be the one act of my life for which I am most entitled to the respect and confidence of all men. It is not an uncommon case, however. The public, when roused and excited by passion and prejudice, is little better than a wild beast, and, unfortunately, the men who now guide and control it are both dishonest and incapable, or either one or the other. However, I have nothing to repent of, be the consequences to me personally what they may. I shall at all events retain my own self-respect and a clear conscience, and time will do justice to my motives at least."

For several days prior to the taking of the vote, Senator Fessenden's letters assumed a very threatening tone. The letters from Maine were particularly savage. He was told that if he voted against conviction, he might as well

leave Maine; that a Republican senator who voted for acquittal could never look his constituents in the face. One well-known man in Maine wrote him that he "never believed he could betray his party, and begged him not to crush the people of Maine with shame and misery." Another: "He would not dim his glorious record by voting against conviction." Another: "Is it possible that you have turned traitor and that your name will be handed down with that of Benedict Arnold?" He was begged not to sell his integrity, not to give the devil the first chance, but to give it to his country. One writer asked him to name his price and thus save his name from dishonor worse than Booth's. A meeting of workingmen in Philadelphia declared that his course would blacken his memory for all time.

These are but samples of the notes and letters — and most all from people who in the past had been his friends and political helpers — which were sent him. More mass meetings were now held in Washington, in the principal cities of Maine, — in Lewiston, Bangor, Gardiner, Bath, and in Portland, Senator Fessenden's own city, — all resolving that the President was guilty, and that the clear duty of Senator Fessenden was to so vote. His old friend, Rufus Dwinell of Bangor, an important and much respected man in Maine, wrote Senator Fessenden twice, in the first letter asking him if he was willing to sacrifice himself forever and place himself in a position to defy the wishes of his party; was his individual opinion better than all others; the bitterest feelings were felt against him; he must not desert his party; he was bound to vote for conviction to satisfy those who elected him; his action, adverse to his friends, would irrevocably ruin his standing.

The second letter said that Mr. Dwinell grieved over Mr. Fessenden's position. His standing was only a fea-

ther's weight against the storm of indignation that was raging. He could not go against all his friends and his party; his resignation was the only thing that remained. Mr. Dwinell regretted to say this, for no one grieved more than himself over Mr. Fessenden's downfall. Mr. Fessenden replied as follows: —

WASHINGTON, May 22, 1868.

MY DEAR SIR, — Among all those who call themselves my friends, from whom I have received letters, you are the only one who has seemed not to be aware that I was acting under the solemnity of an oath; or, if that was not forgotten, who has called upon me to violate that oath in obedience to the wishes of my constituents, and because not to do so would expose me to the loss of popular favor.

Knowing me as long and intimately as you have, it is somewhat astonishing you could suppose for a moment that I could be influenced by such unworthy considerations. You must have been aware, my friend, that I knew well what I should have to meet. I had much to put at hazard; all my apparent interests and all my comfort, the loss of that popular favor which has ever followed and sustained me. Of course, I well understood that all those who desired to put another man in my place and to destroy my influence and standing for that purpose, would seize the occasion to break me down. On the other hand, I had nothing to gain. The President has nothing to give, even if there was anything I desired. What, then, could induce me to vote for his acquittal but an imperative sense of what was due, not so much to him, as the great office he holds, and above all to myself as a judge, sworn in all things "to do impartial justice."

Let me quote a few lines from your letters: "You cannot, must not desert us. You have no right to assume

you know more than all others. If for nothing else, to satisfy those who elected you, you are bound to vote for conviction."

Do you know how atrocious such a sentiment is, addressed to a judge and juror acting under the solemnity of an oath? It implies, avers, that whatever I may think, whatever I may believe, I must base my vote upon the wishes of those who elected me.

Mr. Dwinell, if I followed your advice I could not look an honest man in the face. I should feel a degree of self-contempt which would hurry me to my grave. The people of Maine, yourself among others, must do as they see fit. If they wish for a senator a man who will commit perjury at their bidding, either from party necessity or a love of popular favor, I am not that man. He who may be selected to succeed me on such grounds, and be willing to take the office, would, of course, sell his constituents as readily as he sold his honor and his conscience. I should pity not only him, but the people who selected him.

You say you shall "grieve over my downfall." Give yourself no anxiety on that account. The loss of office will not trouble me. It will be attended with no disgrace, but the cause of it will, I know, redound to my honor, and will not do much credit to a people who reject a public servant because he had the courage to do his duty at the risk of forfeiting their good will. But I cast behind me all personal considerations, and if I live to get home once more I shall meet my friends and constituents with the proud consciousness that, in acting as I have done, their honor as well as my own is not lost, but preserved. I say these things in all kindness to you and all others. It is not at all strange that they should have been excited. They could not look upon this question as I was com-

pelled to look at it, and as the whole nation is already beginning to see it.

They thought we were trying the President for all his sins of omission and commission, and not on specific charges beyond which we could not go. They were made to think this trial a political and not a judicial question. Thinking men all over the country are now beginning to consider it in all its aspects. The course of some party newspapers has excited a general burst of indignation. I am receiving letters every day from ardent radicals thanking me for setting so good an example, and when the country comes to know, as it soon will, the infamous course of those, or most of those, who have raised this storm, the indignation will all be on the other side.

Those public meetings to pass resolutions upon such a matter were got up in obedience to directions from Washington, and were all wrong. But the resolution passed at Bangor was respectful and kind, and a meeting which, under such excitement and misapprehension, treated me with so much consideration, is entitled to my thanks.

Will you please say to Mr. Fenno and Mr. Hallowell that I have read their letters. Tell Mr. H. that he is mistaken in his facts. I voted for neither the Tenure of Office Bill, nor the Senate resolution, and opposed impeachment from the beginning as unwise and likely to do the party great injury, whether it succeeded or failed.

Your friend truly, W. P. Fessenden.

R. Dwinell, Esq.

The excitement at this time at the Capitol is described in a letter by Senator Fessenden, as follows:—

"Here a change of administration had long been contemplated and was now counted upon as a certainty. They looked for a change and its usual attendants. The coming

in of a new President could hardly have warmed into life a more numerous brood of expectants or stimulated more extensive hopes of honors and profits. The city was filled with men ready to jump into places to be made vacant, as they hoped and believed, for their benefit. Gamblers thronged the saloons, staking more than they were able to pay, upon conviction or acquittal. As those hopes fell or rose with the rumors of the hour, as impeachment stock went up or down upon the political exchange among the crowd of hungry expectants, so, for a time, rose and fell the character and reputation of those senators upon whose votes the result was supposed to depend; while the telegraph was at hand to carry over its wires to the homes and friends of those senators every calumny which disappointed ambition or cupidity and malignity could invent, and while a portion of the press, claiming for itself a character for decency and even Christian virtue, stood ready to indorse and circulate the lie."

Senator Ross of Kansas, who was a member of the court, described the moments preceding the vote as follows: —

"Upon the closing of the hearing, even prior thereto, and again during the few days of recess that followed, the Senate had been carefully polled, and the vote of every member — save one — ascertained and authoritatively registered in scores of private memoranda. Two thirds of the Senate were necessary to convict. There were fifty-four members, all present. According to these private memoranda, the vote would stand eighteen for acquittal, thirty-five for conviction, one short of two thirds. What would the one vote be, and could it be had? were queries asked of one another in all manner of places, and at all hours of the day and night, more especially among those who had set on foot the impeachment and staked their all

"THE BAULKY TEAM ON THE EDGE OF THE PRECIPICE"

A contemporary cartoon

upon its success. Given for conviction and upon sufficient proofs, the President must step down and out of his place, the highest and most honorable and honoring in dignity and sacredness of public trust known in the constitution of human governments, a disgraced man and a political outcast. If so cast upon insufficient proofs and from partisan considerations, the office of President would be degraded, cease to be a coördinate branch of the government, and ever after subordinated to the legislative will. Before this accumulating power even the judiciary must sooner or later, in its turn, have declined in quality and dignity. It would practically have revolutionized our splendid political fabric into a partisan congressional autocracy. A tremendous political tragedy was imminent.

"On the other hand, that one vote given for acquittal, if warranted by the testimony, would free the office of President from imputed stain of dishonor and strengthen and solidify our triple organization and distribution of powers and responsibilities. It would preserve the even tenor and course of administration, and effectually impress upon the world a conviction of the strength and grandeur of republican institutions in the hands of a free and enlightened people — institutions rendered vastly more substantial and enduring by reason of having passed successfully and safely through the fiery ordeal of partisan prejudice and turmoil into which they had been cast.

"The city of Washington was a seething caldron. Thousands of people had been drawn thither from all parts of the country; many by their anxious interest in the trial and its result, many in the hope of having an opportunity to aid in some way the side on which their sympathies were enlisted, others from curiosity and for the enjoyment of the excitement of the occasion; but many more by the expectation of political preferment on

the anticipated removal of the President and the resulting change of partisan dominancy in the executive office. Throughout the country, and in all walks of life, as indicated by the correspondence of members of the Senate, the condition of the public mind was not unlike that preceding a great battle, the issue of which was to be determined by the one unregistered vote.

"Rumors of plots and counterplots were rife. It was stated that large sums of money were sought to be used to influence votes, that intimidation and violence were threatened and intended, and there was better foundation for those rumors than the general public then knew. Where partisan fealty was likely to fail to control the action of the senators, one or the other of these agencies was resorted to, — sometimes both, — but in ways that, while perfectly understood, were so guarded as not to afford sufficient ground to warrant bringing the offenders to the bar of the Senate. Even the tongue of scandal was employed as a weapon of coercion. But those who stooped to that base device mistook their intended victim, as did those who acted on the equally erroneous presumption that poverty predisposes to venality. But the most astonishing and startling of all was the fact that demands were received by telegraph from constituents of members of the court, brazenly dictating the nature of the verdict they should render."

On the 16th day of May the Senate convened for the trial at twelve o'clock in the forenoon. The galleries were crowded. The Secretary of the Senate was directed to inform the House of Representatives that the Senate was now ready to receive them in the senate chamber, and the members of the House entered. Mr. Williams, one of the managers of the prosecution, moved the consideration of the order submitted previously to direct the

Secretary to read the eleventh article first, and to take up the question on that article and the other ten successively. This was done because the managers thought that they had made out their strongest case for conviction on the eleventh article. The order was adopted, thirty-four to nineteen, and it was then ordered that the Senate proceed to vote. The Chief Justice admonished the citizens and strangers in the galleries that absolute silence and perfect order were required. The Secretary then read the eleventh article in full, as follows: —

"That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit, on the 18th day of August, A. D. 1866, at the city of Washington and the District of Columbia, by public speech, declare and affirm, in substance, that the Thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, but, on the contrary, was a Congress of only a part of the States, thereby denying, and intending to deny, that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, and also thereby denying, and intending to deny, the power of the said Thirty-ninth Congress to propose amendments to the Constitution of the United States; and, in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterwards, to wit, on the 21st day of February, A. D. 1868, at the city of Washington, in the District of Columbia, did, unlawfully, and in disregard of the requirements of the Constitution that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act

entitled, 'An act regulating the tenure of certain civil officers,' 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 theretofore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and also by further unlawfully devising and contriving, and attempting to devise and contrive, means then and there to prevent the execution of an act entitled, 'An act making appropriations for the support of the army for the fiscal year ending June 30, 1868, and for other purposes,' approved March 2, 1867; and also to prevent the execution of an act entitled, 'An act to provide for the more efficient government of the rebel States,' passed March 2, 1867, whereby the said Andrew Johnson, President of the United States, did then, to wit, on the 21st day of February, A. D. 1868, at the city of Washington, commit and was guilty of a high crime and misdemeanor in office."

The opinions of most of the senators were known. There were fifty-four present. According to the estimate from the *known* opinions of senators, the vote would stand eighteen for acquittal and thirty-five for conviction, thus failing of conviction by one vote, thirty-six being wanted out of fifty-four. Seven Republican votes of "not guilty" were needed to acquit. Of these it was known that Fessenden, Fowler, Grimes, Henderson, Trumbull, and Van Winkle would vote "not guilty." The position of Ross of Kansas, a Republican, was an uncertainty. It was thought that he was for acquittal. Two days before the vote was taken he received a dispatch from his State

saying, "Kansas has read the evidence, and demands the conviction of the President. (Signed) D. R. Anthony and one thousand of our truest and best men."

Senator Ross had immediately replied that he did not recognize their right to demand that he should vote for or against conviction; that he had taken an oath to do impartial justice, and he hoped to have the courage to vote according to the dictates of his judgment.

As the moment approached for taking the vote, Senator Grimes entered, suffering from a paralytic stroke of two days before; he had insisted upon being carried from his bed to the senate chamber, into which he was borne by four men who placed him in his seat. When his name was called to vote, the Chief Justice said he might remain seated; but with the assistance of friends he rose, and to the interrogation of the Chief Justice, he replied, with firm voice, "Not guilty." Writing of the occasion afterwards, to a friend in Iowa, Mr. Grimes said: —

"I shall ever thank God that in that troubled hour of trial, when many privately confessed that they had sacrificed their judgments and their consciences at the behests of party newspapers and party hate, I had the courage to be true to my oath and my conscience and refuse, when I had sworn to do a man impartial justice according to the Constitution and the laws, to do execution upon him according to the dictation of the chairman of the Republican Congress or the howlings of a partisan mob. I would not to-day exchange the recollection of that grasp of the hand and that glorified smile given me by that purest and ablest of men I have ever known, Mr. Fessenden, when I was borne into the senate chamber in the arms of four men, to cast my vote, for the highest distinction of life."

The first senator to vote was Senator Anthony. He rose in his place when his name was called by the clerk, and

the Chief Justice said to him: "Mr. Senator Anthony, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of the high misdemeanor as charged in this article?" Mr. Anthony: "Guilty."

This form was continued in regard to each senator, and they voted according to their previously announced intention, until the name of the first Republican senator who might vote "not guilty" was called.

"Mr. Senator Fessenden, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of the high misdemeanor as charged in this article?"

Senator Fessenden, gray and worn, standing as he heard the question, gazing into his political grave, as he thought, voted, with an even and clear voice, "Not guilty," one vote of the necessary seven required for acquittal.

A quarter of a century later, Senator Ross wrote an interesting book on this trial in which he says:—

"Senator Fessenden of Maine was the first of the Republican senators to vote 'not guilty.' He had long been a safe and trusted leader in the Senate, and had the unquestioning confidence of his partisan colleagues, while his long experience in public life and his great ability as a legislator, and more especially his exalted personal character, had won for him the admiration of all of his associates regardless of political affiliations. Being the first of the dissenting Republicans to vote, the influence of his action was feared by the impeachers, and most strenuous efforts had been made to induce him to retract the position he had taken to vote against conviction. But being moved on this occasion, as he had always been on others, to act upon his own judgment and conviction, though foreseeing that his vote would probably end a long career of con-

spicuous public usefulness, there was no sign of hesitancy or weakness as he pronounced his verdict."

The vote went on, on the expected lines, Senator Fowler voting "not guilty," two for acquittal of the needed seven, Senator Grimes, three, Senator Henderson, four, and then came the supreme moment, the vote of Ross, a Republican, whose intention was not known. "Mr. Senator Ross, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of the high misdemeanor as charged in this article?" His first response to the demand of the Chief Justice was unintelligible in the distant parts of the chamber; a repetition of his vote was called for by several senators, and the Chief Justice again put the question, and Senator Ross replied in prompt and decided tones, "Not guilty." A buzz of conversation and expression of feeling followed which had to be checked by the Chief Justice. The call proceeded, and with the votes for acquittal of Trumbull and Van Winkle, making the seven Republican votes necessary to save the President, impeachment was defeated, the votes standing thirty-five "guilty" and nineteen "not guilty." The Senate, sitting as a Court of Impeachment, thereupon adjourned to meet at twelve o'clock on Tuesday, the 26th of May. The throng in the galleries dispersed, the members of the House of Representatives withdrew, and Senator Fessenden, alone, erect, but ashen of face, walked through the Capitol and proceeded to his home, amid the jeers and curses of the angry and disappointed mob, entered his lonely chamber, and, with no friendly hand or loving voice of sympathy to comfort and encourage, stood alone, facing the ruin of his career, and then, for the first time, the great heart faltered and he threw himself, sobbing, upon his couch in the presence of his colored serving man.

CHAPTER X

AFTERMATH OF IMPEACHMENT

1868

The morning broke, after the vote, more bright for the senator. Those who had striven to coerce his vote were those who did not have the sense of fitness to tell them that it was not right to communicate their wishes to a judge before he rendered his decision. The vote of the day before had been telegraphed to every town and city in the country, and to Europe, and while Senator Fessenden had tossed in troubled sleep, the telegraph wires were busy bringing to him the opinions and commendations of those who had forborne to express their opinion until his action was decided. He awoke to find awaiting him an avalanche of cheering and commendatory messages from all over the country from its best men, Republicans as well as Democrats, and from the great men of Europe who had watched the drama which had just been concluded. In an hour his misery was changed to content; for he knew that while he might have forfeited the political support of the party of which he had hitherto been a revered and honored leader, he had with him the good opinion of those whose judgment, he thought, was founded in high-minded intelligence.

During the ten days between the vote on the eleventh article and the 26th of May, the adjourned day, renewed efforts were made and more pressure was put upon him to induce him to vote "guilty" on one or more of the

William Pitt Fessenden in 1868

remaining articles, but in vain. On the 26th of May the Senate voted thirty-five "guilty," nineteen "not guilty," on the second and third articles, and adjourned *sine die*. The other articles were never brought to vote.

During the period between the vote on article eleven and the vote on the second and third articles, Senator Fessenden had recovered his spirits enough to write cheerfully: "We four men, Grimes, Trumbull, Henderson, and myself have had, and are having, a hard time of it, but it seems to agree with me so far, for I am very well. Time, I think, will show the utter vileness of most of those who have urged on this impeachment folly and the cowardice of others; but we must let the storm rage for the present; I am content to wait. Bill (his son William) arrived yesterday, and I was delighted to see the dear fellow. I made him admit that he came to take care of me; that was all nonsense, but I love him none the less for it. I am getting letters from Republicans in Maine and elsewhere, saying that all want to get rid of the President, and I must do my duty and they will stand by me."

May 27 he writes: "We have now finished up the impeachment, and I hope we shall begin to make progress in business so as to get home before the summer is ended. I am determined to get away at all events. During the long trial I have been forced to hold my tongue, but I am mad enough to let out upon everybody at the first opportunity. Among all the disagreeables, I have most felt the necessity of grieving Mr. Stanton, next the gratifying Sumner; but I am fast getting consoled for the latter."

On May 23 he writes: —

William's visit was a very great comfort and pleasure to me; in my troubles it is an agreeable relief to see a

loving face. Yesterday I had a kind and manly letter from James. I glory more in having three such sons than in all else. They at least will understand and appreciate the sacrifice I have been obliged to make in the discharge of my duty. The satisfaction of knowing that I have acted from the purest motives and a devotion to the honor and best good of my country, regardless of my own personal interest and comfort, cannot be taken away from me. The whole thing, however, has made me sick at heart. I have seen in the Senate so much of meanness, such utter want of conscientiousness, such base cowardice, even among men calling themselves Christians, that I almost despair of the future, and when I look around me and see what the people are, how easily misled, how willing to be both unjust and ungenerous, I am surprised that anybody should be willing to render them an honest service.

Mr. Trumbull is fortunate in having in his own city two leading papers, under the control of upright and independent editors who have the manliness to step forward in his defense. The result, I am happy to say, has been to raise the already high character of the papers and to increase their subscription lists. Mr. Richardson is a good friend of mine, and would, no doubt, be glad to do the like. But the course of the "Press" is pusillanimous and weak. It is suffering the proper time to go by, and permitting false principles to become fixed in the public mind. The paper should publish the opinions of the press. People are influenced by the opinions of others. I inclose you a slip from the "Chicago Tribune" and also an extract from an article in the last "Harper." That paper speaks boldly and manfully for the right — our "Portland Press" has not yet learned that to be influential a paper must have a character of its own. Until it has, it must

always play a small fiddle. The Chicago Convention did not obey the dictates of certain gentlemen here, and read us out of the party. It now remains for us to decide whether we chose to stay in. If the party desires to swap me off for Ben. Butler, I shall enter no protest. I owe the party nothing and have no favors to ask. With much love to all, and thanking Jim for his letter, I am, most affectionately, your father,

W. P. Fessenden.

May 31 he writes: "The truth will leak out and the people learn to estimate this impeachment folly at its true value. The tide has fairly turned and the belief is fast gaining ground that the 'seven' have saved the party from utter ruin. Wade & Co. are terribly sore over their defeat, and have already become of little consequence. They do not dare to make a move."

The abuse showered upon Mr. Fessenden for some time after the trial is incredible; he was charged with being actuated by jealousy and personal dislikes. The action of the seven senators was called "the conspiracy" in the Senate. It was openly charged in the newspapers that Senator Fessenden had been bribed to vote as he did; but by this time he knew that much valuable representative opinion was that he had been patriotic and honorable in his course. He had a kindly letter from his old partner, Hon. William Willis. The letter and reply are as follows: —

My dear Fessenden, — I think of you much, my friend, in the trying position in which you are placed in the impeachment question. I have felt from the beginning the weakness of the charges against the President, and their inadequacy for so grave a movement. Although

I have deeply regretted his whole policy as calculated to keep up a dangerous agitation in the country, I do not wish to see great principles violated by the use of public or doubtful measures to remove it.

The excitement here is very great; and the first impulse is to reproach you, especially by the radical politicians. But I have always believed and maintained that your constant and fearless mind would not be swerved from the right, whatever might be the consequences.

On this ground you will stand firm; no party clamor or partisan rancor can hurt you. The *mens conscia recti* will sustain you, whatever temporary ill blast may blow from heated politicians or fiery demagogues. "They have their day and cease to be." In the mean time, in whatever action your judgment may dictate, you will have the respect and approval of honorable men who regard principle more than expediency, and will choose that you be governed in this emergency by honest conviction.

Believe me, always your constant friend,

Wm. Willis.

My dear Willis, — You have known me too long and too intimately, I trust, to have believed for one moment any of the vile calumnies which have been so industriously circulated, imputing to me all sorts of motives but the right ones. They are, I need not say to you, without even a shadow of truth. I have not been bribed. I have been actuated neither by jealousy, malice, nor disappointed ambition. Nor have I been a party to any political scheme. In fact, there is none such anywhere except with the noisy demagogues who have been active in the impeachment folly — among whom, I am happy to say, are none of the Maine delegation.

The simple truth is, I was and still am unable to see

any just ground for convicting the President upon any of the charges against him. I advised and warned the Senate against passing the resolution they did pass upon Mr. Stanton's removal, and refused to vote for it, because I doubted whether the President had violated any law, or done more than he had a legal right to do, whatever might be his motives. I foresaw, too, and so stated, that the House would make the resolution a ground of impeachment, and thus place the Senate in the position of accusers and judges. I foresaw, from the beginning, and so repeatedly stated, that impeachment must bring disaster to our party, whether it succeeded or failed. But certain men could not bear to wait, and when the President foolishly removed Stanton, the tide of wrath swept everything before it. Having once begun, conviction was demanded by the same men as a party necessity, and no means, however base, have been omitted to accomplish the result desired. Unfortunately, the country could look only at Mr. Johnson, and his conviction has been demanded because he was Mr. Johnson, and had made himself odious to the people who had elected him. Taking advantage of this feeling, every effort has been made to rouse the passion of men against any man who felt that he was bound to try Mr. Johnson as he would try any other person upon the specific charges against him, and to regard the oath he had taken, and the foulest means have been resorted to for the purpose of frightening senators into a verdict. Time will develop the truth, and I must wait for it patiently. Much as I value the good will of my constituents I would not, for all the honors of this world, render judgment against the meanest wretch who ever walked the earth, if I thought that judgment was not justified by the law and the evidence. Whatever comes, I must retain my own self-respect.

Any one who takes the trouble to think must see that I had every possible motive to vote for conviction. By doing otherwise, I knew I should sacrifice my comfort, offend my friends, and in all probability alienate the great mass of those who had so long given me their generous support, besides exposing myself to the ribald abuse of a reckless and infuriated partisan press. On the other hand, I had nothing in the world to gain. I had and could have no sympathy with Mr. Johnson or those who supported him. He is utterly powerless and must remain so. But notwithstanding all this, I could not do an act which my deliberate judgment did not approve. I could not consent to look upon impeachment as a mere question of party, or shape my course under the dictation of public meetings inflamed by passion.

Still, I do not wonder at the intensity of public feeling, and have no reflections to cast upon anybody. Possibly, had I been at home, and freed from the personal responsibility under which I was compelled to act, I should have shared that feeling. It was hard enough to keep down my own strong impulses towards conviction as it was. The great mass of the people could not understand that we were trying Mr. Johnson for specific offenses, and not for his whole public course. Even the resolution passed at Portland shows this fact. I, however, acting in a judicial capacity, was forced to ignore all but the charges before me, and I could not recognize the right of any man or set of men to dictate my decision.

I see by the "Press," received this morning, an Associated Press report of the ticket agreed on at Judge Chase's dinner. Of course it is all unmitigated falsehood — there was no such dinner or meeting. I have consulted with nobody in relation to any such matters, nor, as I believe, has any one of the gentlemen named. If Judge Chase

has any supporters for the Presidency in the Senate, they will be found among those who supported conviction. In fact, every rumor that has gone through the papers is utterly unfounded except that no one knew what my opinion was. Excuse me for writing you so much at length.

Yours always truly,

W. P. FESSENDEN.

Hon. WM. WILLIS.

The violent abuse and loss of friends experienced by Mr. Fessenden, in consequence of his vote for acquittal, were not without compensation. In losing some old friends he gained many new ones. Communications from the most eminent judges, financiers, lawyers, and merchants, commendatory in their nature and expressive of confidence and belief in his virtue and honor, poured in upon him from every quarter. Benjamin R. Curtis wrote him shortly after the trial: "I say with entire sincerity that no man in my time has been in a position to render so great service to the Constitution of our country as you have been enabled to render, and that you have completely performed the work."

Chief Justice Bigelow of the Supreme Court of Massachusetts: "I venture to write you this note for the purpose of saying that there are many firm and consistent Republicans here who rejoice in the courage and independence which you have shown in declaring your conscientious convictions upon the several issues involved in the impeachment trial."

A. J. Drexel, of Philadelphia: "After reading your able and convincing speech in favor of right and justice and the Constitution, I feel impelled to write you to say how much I admire the noble stand taken by you and the other senators of the Republican party, who, despite polit-

ical clamor, came to the rescue of the country in this its hour of peril."

Hon. William Gray: "You and your six associates have saved the Senate and the country from the disgrace which would have attached to both if the highest judicial tribunal had submitted to become the mere register of a partisan edict."

The foregoing are but samples of notes and letters which came to Senator Fessenden in the weeks succeeding the great trial, which by degrees completely took the wretchedness from his heart. During the summer which followed the trial, Senator Fessenden was much gratified by an invitation to a public dinner at Boston signed by men so distinguished that it implied a very great personal compliment. I insert the letter of invitation and his reply thereto as an interesting exposition from him of his views of the impeachment and what brought it about: —

Boston, June 10, 1868.

Hon. William P. Fessenden:

Dear Sir, — The undersigned members of the National Republican Party are desirous of expressing to you our sense of the value of your public services.

While some of us strongly dissent from the conclusion at which you arrived with regard to the conviction of President Johnson, we all heartily recognize and admire your courage and conscientiousness under circumstances of peculiar difficulty.

We beg the honor of your company at a public dinner to be given in the city of Boston at such time as may suit your convenience.

With great respect, your obedient servants,

Alex. H. Bullock, Charles Allen,
Geo. Tyler Bigelow, Samuel Bowles,

Thomas Hill,
Emory Washburn,
Richard H. Dana, Jr.,
Amos A. Lawrence,
John M. Forbes,
E. R. Mudge,
Henry Lee,
Peleg W. Chandler,
Edward T. Rand,
William Dwight,
T. R. Payson,
Francis Parkman,
J. Elliot Cabot,
J. Russell Lowell,
Chas. Eliot Norton,
Asa Gray,
John H. Clifford,
Augustine Heard,
Geo. Wm. Bond,
Robert M. Mason,
F. W. Lincoln, Jr.,
Geo. O. Shattuck,
Geo. S. Hale,
Geo. H. Gordon,
Samuel Eliot,
Harrison Ritchie,
Francis Brooks,
Edward Atkinson,
Francis E. Parker,
Edward Bangs,
Chas. W. Storey,
Theodore Lyman,
Chas. F. Adams, Jr.,
J. L. Stackpole,
Joshua C. Stone,
A. G. Browne, Jr.,
Waldo Higginson,
Charles S. Storrow,
Charles H. Dalton,
Edmund Dwight,
Henry G. Clark,
C. Wm. Loring,
George Higginson,
Benjamin S. Rotch,
S. Frothingham, Jr.,
Geo. N. Macy,
Francis W. Hurd,
J. M. Day,
Robert T. Paine, Jr.,
John Jeffries, Jr.,
Patrick T. Jackson,
Stephen N. Bullard,
John Gardner,
Edward C. Cabot,
John C. Ropes,
D. A. Dwight,
Algernon Coolidge,
B. F. Nourse,
Greely S. Curtis,
A. J. C. Sowdon,
Jas. J. Storrow,
Geo. B. Chase,
Geo. W. Baldwin,
R. M. Morse, Jr.,
Lemuel Shaw,
Henry Van Brunt,
Walbridge A. Field,
Hamilton A. Hill.

SENATOR FESSENDEN'S REPLY.

WASHINGTON, June 25, 1868.

TO THE HONORABLE ALEXANDER H. BULLOCK, GEORGE TYLER BIGELOW, AMOS A. LAWRENCE, and others:

Gentlemen, — I beg you to accept the assurance that nothing but constant occupation in public affairs has so long delayed an answer to your communication, inviting me to meet you at a public dinner to be given in the city of Boston at such time as may suit my convenience. For that invitation, and particularly for the kind and flattering terms in which it is conveyed, you will please accept my grateful acknowledgments.

It would be affectation to conceal the very great satisfaction which this marked expression of regard and confidence from gentlemen so distinguished in their several walks of life has afforded me; and if I find myself compelled by considerations of a public and private nature to decline your invitation, be assured, gentlemen, that it has impressed me deeply, and that I estimate your kindness and the honor it confers at their true value.

The present session of Congress will probably extend far into the summer, and while it continues it will not be in my power to fix a day upon which I could meet you. The close of a session is the most important part of it, and I am unwilling to absent myself unless obliged to do so by circumstances which justify such absence. The pleasure of meeting you, great as it would be, could hardly afford the requisite justification.

I trust you will pardon me, therefore, if, while respectfully and gratefully declining your invitation, I allude to the circumstances referred to in your letter as of a somewhat "peculiar" character.

The impeachment of the President of the United

States for high crimes and misdemeanors was a most extraordinary event, and will constitute a remarkable chapter in our country's history. The conduct of the President had, almost from the commencement of his administration, been such as to render him obnoxious to the suspicion of designing to defeat the cherished objects of those who elected him, and of plunging the country back into a condition which they considered to be little better than that from which it had recently been rescued at so vast a sacrifice. Having confidently and fondly looked forward to the second term of President Lincoln to consummate the great work of complete and peaceful restoration upon a broad and durable basis, it was not only humiliating to them, but irritating in the extreme, to find in his successor an adversary and a stumbling-block. Such a state of affairs called for an amount of patience not to be reasonably expected from men who had set their hearts upon the accomplishment of a great purpose, for which they had long and earnestly toiled, and, but for this unlooked-for obstruction, seemed to have won.

In the state of public feeling aroused by this condition of affairs, an opportunity of removing such an obstacle to their hopes by constitutional means seemed to present itself, and was seized with avidity. I do not wonder that the idea of impeachment was popular, nor did it surprise me that, under such circumstances, but few could stop to consider that the long catalogue of the President's alleged offenses prior to the removal of Mr. Stanton had, for the most part, been under investigation by a learned and able committee of the House, and had been reported upon, and that the House, by a very large majority, had voted against impeachment for those offenses; and, accordingly, with the exception of the charge in the tenth article, which was also prior in date,

they made no part of the allegations against him upon which he was finally tried. Again, by the public at large it was taken for granted that in the removal of Mr. Stanton the President had violated a law passed expressly with a view to protect that officer against removal, unless with the advice and consent of the Senate. Laboring under the strong impressions produced by disappointment and anger at the President's policy and conduct, the belief that he was on trial for all his acts of omission and commission, and the fixed opinion that he willfully violated an act of Congress, it is not strange that the great majority of those who elected Mr. Johnson could see no reason why he should not be at once removed from office, nor any good excuse for hesitation to pronounce his sentence.

Nor was this all. As the trial proceeded it became doubtful whether the result so much desired would be accomplished; the public feeling, already excited, was artfully and industriously aggravated through the press by appeals to party interests and party prejudice. It was assumed that the trial could have but one honest termination; that the case was too clear for argument; that the existence of the Republican party was staked upon the issue, and that consequently every senator belonging to that party who should hesitate to convict must necessarily be false to his principles, controlled by base if not criminal influences, and a deserter of his flag. Recourse was accordingly had to the most powerful enginery of party. The air was filled with lying rumors which found their way to the public ear through the appropriate channels. Denunciations, vituperation, calumny, threats of personal violence and of lifelong infamy, were profusely hurled at all who might dare to disobey the public sentiment. The most direful consequences were predicted in case impeachment should fail. Union men, white and colored, were to

be driven from their homes and all the horrors of another revolution, bloodier than the first, were to be let loose upon our devoted land.

It is not to be wondered at, that appliances like these should have excited the public mind almost to frenzy. The men who resorted to them were accustomed to the use of such weapons and knew well how to wield them. Unscrupulous, familiar with detraction, believers neither in public nor private virtue, or if believers, considering both as out of place in politics, they could not resist such an opportunity nor fail to improve the occasion.

The excitement elsewhere, however, was trifling when compared with that which prevailed at the Capitol. Here a change of administration had long been contemplated and was now counted on as a certainty. That looked-for change had its usual attendants — the coming in of a new President could hardly have warmed into life a more numerous brood of expectants or stimulated more extensive hopes of honors and profits. The city was filled with men ready to jump into places to be made vacant, as they hoped and believed, for their benefit. Gamblers thronged the saloons, staking more than they were able to pay upon conviction and acquittal. As these hopes rose and fell with the rumors of the hour, as impeachment stock went up or down upon the political exchange among the crowd of hungry expectants, so, for the time, rose and fell the character and reputation of those senators upon whose votes the result was supposed to depend, while the telegraph was at hand to carry over its wires to the homes and friends of those senators every calumny which disappointed ambition could imagine, or cupidity and malignity could invent, and while a portion of the press, claiming for itself a character for decency and even Christian virtue, stood ready to indorse and circulate the lie. What effect such

a condition of things might have had upon the conclusions of senators it is not easy to determine. The result has shown that in the estimation of that portion of the public which I have attempted to delineate it was of little consequence what the opinions of senators might be upon particular questions, so that conviction and removal were secured. The immediate cause of impeachment, and the main article upon which it was founded, was the removal of the Secretary of War. Two honorable and learned senators not included in the "seven" announced their opinions that the President was not guilty upon this article, and it was not considered in them even an error of judgment, much less a betrayal of party, so long as they were able to vote for conviction upon the eleventh. Other senators in their opinions declared themselves unable to sustain the fourth, fifth, sixth, seventh, ninth, and tenth. No articles could be found which would secure the votes of thirty-five senators except the second, third, and eleventh. And yet the political orthodoxy of senators was saved by a vote for conviction upon something. To all such the full right of independent judgment was fully conceded, while such as claimed and exercised the same right upon *all* the articles were unsparingly denounced as traitors and proclaimed infamous in advance, by a manager who had substantially declared in the House that without the eleventh article the whole were good for nothing.

You will readily perceive, gentlemen, that a state of opinion and feeling throughout the country, such as I have described, was not favorable to a calm and impartial judgment. Senators could not but see and feel that any vote other than for conviction would expose them to a storm of popular indignation which, however unjust, is hard to be borne and slow to be appeased. Nevertheless, experience has shown that there are occasions in the life of most

public men when to breast such a storm becomes a simple act of duty. There may be cases in which party loses its claim upon the representative; when party objects and party advantages must be subordinated to high considerations of the public good; in which every individual must judge for himself, and cannot regulate either his opinions or his action by the wishes of those who elected him to office, being responsible of course to that popular judgment which will scan his motives and eventually decide whether he has acted as becomes an honest and upright servant of the people.

It seemed to me that this trial of the President was from its very nature eminently one of those occasions. The officer impeached was the elected chief magistrate of the nation. He was arraigned upon specific charges. Although the offenses specified were political, the proceeding itself I could not but regard as of a judicial character. The constitution of the tribunal, the oath imposed upon its members, impressed me with the belief that in coming to a conclusion I was bound to lay aside, so far as possible, all prejudice against the individual, and to try him solely upon the law and the facts applicable to the crimes and misdemeanors charged in the articles. In this great and most important proceeding the people themselves were prosecutors before a tribunal of their own selection. The members were, to be sure, servants of the people, responsible to them, but only as judges are, for an honest decision of the case submitted; all the attempts to coerce a decision by outside pressure, by appeals to party obligations or party necessity, by public meetings, by threats and vituperation, were in my opinion as essentially wrong as if applied to any case of private right before any court in the land, and were in their nature subversive alike of justice and of public and private morality.

Entertaining these views, gentlemen, I was of the opinion that, in coming to a conclusion upon the articles of impeachment against the President, I must base the question of guilt or innocence upon those articles and those alone; and further, that, acting in a judicial capacity, it was my duty to decide according to my own deliberate judgment upon the case presented; that although the questions involved were, in a general sense, of a political, they were in no sense of a party, character; that party newspapers and party meetings had no right to dictate, and I ought not to allow them to influence my decision; that I was bound to disregard all external influences and all attempts to control my judgment by appeals of a party nature addressed either to my hopes or fears. In a word, I considered the matter entirely beyond and above party jurisdiction.

The conclusion at which I arrived is well known to you. My reasons are before the country, and I do not desire to repeat them. All I claim for them is that in common justice they may be believed to be my true reasons. For them and for the vote I gave I offer no excuse or apology, and ask no vindication; nor do I consider myself entitled to any especial credit for courage or conscientiousness in the discharge of what I considered an imperative duty. I could not, it is true, shut my eyes to the fact that by voting to acquit the President I should disappoint the hopes of those who honestly desired his conviction, and expose myself to severe animadversion from long tried and highly valued friends, and the great mass of that party for the success of which I had earnestly and faithfully labored. All this was exceedingly painful to contemplate, for a man in public life does not willingly place himself in antagonism with his political friends, or hazard the loss of popular favor. Nevertheless, it did seem to me that

considerations like these were not to be taken into the account. One thing the people had a right to demand of me before and above all others, to wit, that in discharging the great trust they had committed to my hands, I should shrink from no responsibility which that trust imposed, and allow no coward fears of personal consequences to lead me astray from the path of official duty, and I flattered — perhaps deluded — myself with the hope that the testimony of a life including more than fourteen years of consecutive public service would protect me against the vile calumnies of those who sought and affected to find for a course of action by which I could gain nothing and might lose much, motives criminal or mean. This hope was founded on a belief in the intelligence and candor of the American people, who seldom fail eventually to justify those who serve them faithfully. I am proud and happy to acknowledge that you, gentlemen, have strengthened and confirmed that confidence.

You do not, I am sure, overrate the importance of preserving and supporting judicial independence and judicial integrity. Permit me to say that legislative independence is of equal value; not that independence which defies the popular will, or disregards public opinions, but that which prefers a consciousness of integrity to popular applause. In our country, the inducements to sacrifice the right to the expedient, especially in party questions, are sufficiently strong to preclude all reasonable apprehensions of a willful disregard of constituencies. It is easy and pleasant to float with the current. It may not always be pleasant to reflect that by so doing a bad precedent has been established, or a blow struck, the evil consequences of which may be felt in all future time.

Especially in questions involving great principles affecting the framework of government itself, it is of the

last importance that no sacrifice be made to mere temporary expediency. There are periods in the history of all governments when great danger arises from this source, and all wise rulers will carefully guard against such dangers. I regard the present as one of those periods in our history. But as in the recent conflict of arms, the patriotic devotion and energy of our people carried them safely and triumphantly through, so now, I trust and believe, their calmness and moderation in the exercise of political power will finally soften all the asperities and smooth the troubled waters of civil strife.

Again thanking you, gentlemen, for the compliment tendered me, and the more for coupling an honor to myself with your desire to recognize and vindicate an important principle, and trusting that I may hereafter at no distant period have the pleasure of meeting you on some less formal occasion,

I have the honor to be most respectfully yours,

W. P. Fessenden.

Impeachment was over, but throughout the month of June it was still uppermost in the minds of those connected with it. Those who were looking to President Wade for office disappeared. The bettors paid or received their money and the losers denounced "the seven recreants." More than ever was Mr. Fessenden abused as a conservative, though no Republican senator had acted more straight with his party even while disapproving some of its extreme measures. It was not until he opposed the first impeachment schemes that the radicals styled him conservative. They ascribed to him the motive of obtaining offices for his friends from the President, forgetting that the President had no patronage left, and was also checkmated by the Senate. Towards the last of June

things settled down into their old fashion. Sensible people began to see the folly of being led by Stevens and Butler. Those who remained angry were men for whom nobody cared. Mr. Fessenden said the thought that he had rendered a service to his country made up for the loss of popular favor. Singularly enough, he received less marks of kindness from Portland than from other places, and was meanly assailed in the leading Republican paper of his own town. The generous course of the Boston gentlemen was in sharp contrast with this treatment. Even the Republican State Convention, held at this time, had not the courage to condemn the attacks upon him and express its confidence. The most it could do was to remain silent.

Thirty opinions were filed by the senators, and, in order that this history may completely show the divergent views which the senators held upon the question involved, attention is called to them. Senator Fessenden's is as follows : —

OPINION OF MR. SENATOR FESSENDEN.

The House of Representatives have, under the Constitution of the United States, presented to the Senate eleven distinct articles of impeachment for high crimes and misdemeanors against the President. Each senator has solemnly sworn, as required by the Constitution, to "do impartial justice, according to the Constitution and the laws," upon the trial. It needs no argument to show that the President is on trial for the specific offenses charged, and for none other. It would be contrary to every principle of justice, to the clearest dictates of right, to try and condemn any man, however guilty he may be thought, for an offense not charged, of which no notice has been given to him, and against which he has had no opportu-

nity to defend himself. The question then is, as proposed to every senator, sitting as a judge, and sworn to do impartial justice, "Is the President guilty or not guilty of a high crime or misdemeanor, as charged in all or either of the articles exhibited against him?"

The first article of the series substantially charges the President with having attempted to remove Edwin M. Stanton from the office of Secretary of War, — which he rightfully held, — in violation of law and of the Constitution of the United States. Granting that an illegal and unconstitutional attempt to remove Mr. Stanton in the manner alleged in the article, whether successful or not, is a high misdemeanor in office, the first obvious inquiry presents itself, whether under the Constitution and the laws the President had or had not a right to remove that officer at the time such attempt was made, the Senate being then in session. To answer this inquiry it is necessary to examine the several provisions of the Constitution bearing upon the question, and the laws of Congress applicable thereto, together with the practice, if any, which has prevailed since the formation of the government upon the subject of removals from office.

The provisions of the Constitution applicable to the question are very few. They are as follows: —

"Article II, section 1. The executive power shall be vested in a President of the United States of America."

"Article II, section 2. He, (the President) . . . shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law."

Same section. "The President shall have power to fill

up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

"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."

The whole question of removals from office came under the consideration of the first Congress assembled after the adoption of the Constitution, and was much discussed by the able men of that day, among whom were several who took a prominent part in framing that instrument. It was noticed by them that the only provision which touched in express terms upon the subject of removals from office was found in the clause which related to impeachment; and it was contended that, consequently, there was no other mode of removal. This idea, however, found no favor at that time, and seems never since to be entertained. It is quite obvious that as such a construction would lead to a life tenure of office, a supposition at war with the nature of our government, and must of necessity involve insuperable difficulties in the conduct of affairs, it could not be entertained. But it was equally obvious that a power of removal must be found somewhere, and as it was not expressly given in the impeachment clause, it must exist among the implied powers of the Constitution. It was conceded by all to be in its nature an executive power; and while some, and among them Mr. Madison, contended that it belonged to the President alone, because he alone was vested with the executive power, and, from the nature of his obligations to execute the law and to defend the Constitution, ought to have the control of his subordinates, others thought that as he could only appoint officers "by and with the advice and consent of the

Senate," the same advice and consent should be required to authorize their removal. The first of these constructions finally prevailed, as those who have read the debates of that period well know. This was understood and avowed at the time to be a legislative construction of the Constitution, by which the power of removal from office was recognized as exclusively vested in the President. Whether right or wrong or wise or unwise, such was the decision, and several laws were immediately enacted in terms recognizing this construction of the Constitution.

The debate referred to arose upon a bill for establishing what is known as the Department of State. And in accordance with the decision of that first Congress, the right and power of the President to remove the chief officer of that department was expressly recognized in the second section, as follows:—

21 P. Fol. iii. "Sec. 2. And be it further enacted, That there shall be in the said department an inferior officer," etc., "who, *whenever the said principal officer shall be removed from office by the President of the United States*, or in any other case of vacancy, shall, during such vacancy, have the charge," etc. Act approved July 27, 1789.

The same provision is found *in totidem verbis* in the act establishing the Department of War, approved August 7, 1789; and terms equally definite are found in the act to establish the Treasury Department, approved September 2, 1789. These several acts have continued in force to the present day; and although the correctness of the legislative construction then established has more than once been questioned by eminent statesmen since that early period, yet it has been uniformly recognized in practice; so long and so uniformly as to give it the force of constitutional authority. A striking illustration

of this practical construction arose in the administration of John Adams, who, when the Senate was in session, removed Mr. Pickering from the office of Secretary of State without asking the advice and consent of the Senate, nominating to that body for appointment on the same day, John Marshall, in the place of Timothy Pickering, *removed*. No question seems to have been made at the time of this exercise of power. The form of all commissions issued to the heads of departments and to other officers whose tenure was not limited by statute has been "during the pleasure of the President, for the time being." And the right to remove has been exercised without restraint, as well upon officers who were appointed for a definite term as upon those who held during the pleasure of the President.

It has been argued that even if this right of removal by the President may be supposed to exist during the recess of the Senate, it is otherwise when that body is in session. I am unable to perceive the grounds of this distinction, or to find any proof that it has been recognized in practice. The Constitution makes no such distinction, as it says nothing of removal in either of the clauses making distinct provisions for appointment in recess and during the session. Probably this idea had its origin in the fact that in recess the President could appoint for a definite period without the advice and consent of the Senate, while in the other case no appointment could be made without that advice and consent. It has been uniformly held that a vacancy occurring in time of a session can only be filled during session by and with the advice and consent of the Senate, and cannot be lawfully filled during recess. But I am not aware that the President's power of removal during the session has ever been seriously questioned while I have been a member of the

Senate. The custom has undoubtedly been to make the nomination of a successor the first step in a removal, so that the two acts were substantially one and the same. But instances have not unfrequently occurred during session where the President thought it proper to remove an officer at once, before sending the name of his successor to the Senate. And during my time of service, previous to the passage of the Act of March 2, 1867, I never heard his right to do so seriously questioned. The passage of that act is, indeed, in itself an admission that such were understood to be the law and the practice.

I will not attempt to discuss the question here whether the construction of the Constitution thus early adopted is sound or unsound. Probably it was thought that while the restraining power of the Senate over appointments was a sufficient protection against the danger of executive usurpation from this source, the President's responsibility for the execution of the laws required a prompt and vigorous check upon his subordinates. Judging from the short experience we have had under the act of March 2, 1867, the supervising power of the Senate over removals is poorly calculated to secure a prompt and vigorous correction of abuses in office, especially upon the modern claim that where offices are of a local character the representative has a right to designate the officers; under which claim this branch of executive authority, instead of being lodged where the Constitution placed it, passes to one of the legislative branches of the government.

Such as I have described was a legislative construction of the Constitution on the subject of removals from office and the practice under it, and such was the statute establishing the Department of War, distinctly recognizing the President's power to remove the principal officer of that department at pleasure, down to the passage of the

act regulating the tenure of certain civil offices, which became a law March 2, 1867. Although that act did not receive my vote originally, I did vote to overrule the President's veto, because I was not then, and am not now, convinced of its unconstitutionality, although I did doubt its expediency, and feared that it would be productive of more evil than good. This is not the occasion, however, to criticise the act itself. The proper inquiry is, whether the President, in removing, or attempting to remove, Mr. Stanton from the office of Secretary of War, violated its provisions; or, in other words, whether, if the President had a legal right to remove Mr. Stanton, before the passage of that act, as I think he clearly had, he was deprived of that right by the terms of the act itself. The answer to this question must depend upon the legal construction of the first section, which reads as follows, viz.:

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

In considering how far these provisions apply to the case of Mr. Stanton, the state of existing facts must be carefully borne in mind.

Mr. Stanton was appointed by President Lincoln during

his first term, which expired on the 4th of March, A. D. 1865. By the terms of his commission, he was to hold "during the pleasure of the President for the time being." President Lincoln took the oath of office, and commenced his second term on the same 4th day of March, and expired on the 15th day of the succeeding April. Mr. Johnson took the oath of office as President on the day of the death of President Lincoln. Mr. Stanton was not reappointed Secretary of War by either, but continued to hold under his original commission, not having been removed. How, under these circumstances, did the act of March 2, 1867, affect him?

A preliminary question as to the character under which Mr. Johnson administered the office of President is worthy of consideration, and may have a material bearing.

The fifth clause of section 1, article II of the Constitution provides as follows, viz.: In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve upon the Vice-President."

What shall devolve upon the Vice-President? The powers and duties of the office simply, or the office itself? Some light is thrown upon this question by the remainder of the same clause, making provision for the death, etc., of both the President and Vice-President, enabling Congress to provide by law for such a contingency, as to declare "what officer shall *act as president*," and that "such officer shall *act* accordingly" — a very striking change of phraseology. The question has, however, in two previous instances received a practical construction. In the case of Mr. Tyler, and again in that of Mr. Fillmore, the Vice-President took the oath as President, assumed the name and designation, and was recognized as constitutionally President of the United States, with

the universal assent and consent of the nation. Each was fully recognized and acknowledged to be President, as fully and completely, and to all intents, as if elected to that office.

Mr. Johnson then became *President.* Did he have a term of office? Was he merely the tenant or holder of the term of another, and that other his predecessor, President Lincoln? Did Mr. Lincoln's term continue after his death, as has been argued? It is quite manifest that two persons cannot be said to have one and the same term of the presidency at the same time. If it was Mr. Lincoln's term, it was not Mr. Johnson's. If it was Mr. Johnson's, it was not Mr. Lincoln's. If Mr. Johnson had no term, when do the secretaries appointed by him go out of office, under the act of March 2, 1867? When does the one month after "the expiration of the term of the President by whom *they* have been appointed" expire? A President without a term of office would, under our system, be a singular anomaly, and yet to such a result does this argument lead. I am unable to give my assent to such a proposition.

If Mr. Stanton was legally entitled to hold the office of Secretary of War on the 21st of February, 1868, as averred in the first article, he must have been so entitled by virtue of his original appointment by President Lincoln, for he had received no other appointment. If the act of March 2, 1867, terminated his office, he must, to be legally in office on the 21st of February, 1868, have been again appointed and confirmed by the Senate. He must, therefore, be assumed to have held under the commission by the terms of which he held "during the pleasure of the President for the time being." After the death of President Lincoln, then, he held at the pleasure of President Johnson, by his permission, up to the passage

of the act of March 2, 1867, and might have been removed by him at any time. Did that act change his tenure of office without a new appointment, and transform what was before a tenure at will into a tenure for a fixed period? Granting that this could legally be done by an act of Congress, which may well be questioned, the answer to this inquiry must depend upon the terms of the act itself. Let us examine it.

It is obvious to my mind that the intention was to provide for two classes of officers; one, the heads of departments, and the other comprising all other officers, appointed by and with the advice and consent of the Senate. The act provides a distinct tenure for each of these classes; for the heads of departments a fixed term, ending in one month after the expiration of the term of the President by whom they were appointed; for all others, an indefinite term, ending when a successor shall have been appointed and duly qualified. These two provisions are wholly unlike each other. Both are intended to apply to the present and the future, and to include all who may come within their scope. Does Mr. Stanton, by any fair construction, come within either? How can he be included in the general clause, when the Secretary of War is expressly excepted from its operation? The language is: "Every person holding any civil office, etc., shall be entitled to hold such office, . . . *except as herein otherwise provided.*" Then follows the proviso, in which the Secretary of War is specifically designated, and by which another and a different tenure is provided for the Secretary of War. Surely it would be violating every rule of construction to hold that either an office or an individual expressly excluded from the operation of a law can be subject to its provisions.

Again, does Mr. Stanton come within the proviso?

What is the term therein fixed and established for the Secretary of War? Specifically, the term of the President by whom he was appointed, and one month thereafter. *He* was appointed by President Lincoln, and the term of President Lincoln existing at the time of his appointment expired on the 4th of March, 1865. Can any one doubt that had a law been in existence on that day similar to that of March 2, 1867, Mr. Stanton would have gone out of office in one month thereafter? The two terms of Mr. Lincoln were as distinct as if held by different persons. Had he been then reappointed by Mr. Lincoln, and confirmed, and a law similar to that of March 2, 1867, been then in existence, is it not equally clear that he would have again gone out of office in one month after the expiration of Mr. Lincoln's second term? If so, the only question would have been whether Mr. Lincoln's term expired with him, or continued, notwithstanding his death, until the 4th day of March, 1869, although he could no longer hold and execute the office, and although his successor, elected and qualified according to all the forms of the Constitution, was, in fact and in law, President of the United States. How could all that be, and yet that successor be held to have no term at all? To my apprehension, such a construction of the law is more and worse than untenable.

The word "term" as used in the proviso, when considered in connection with the obvious design to allow each person holding the presidential office the choice of his own confidential advisers, must, I think, refer to the period of actual service. Any other construction might lead to strange conclusions. For instance, suppose a President and Vice-President should both die within the first year of the term for which they were elected. As the law now stands, a new election must be held within thirty-

four days preceding the first Wednesday of December then next ensuing. A new term of four years would commence with the inauguration of the new President before the term for which the preceding President was elected had expired. Do the heads of departments appointed by that preceding President hold their offices for three years of the term of the new President and until one month after the expiration of the term for which such preceding President was elected? Such would be the consequences of giving to the word "term" any other meaning than the term of actual service. It must be evident, therefore, that the word "term" of the President, as used in the proviso, is inseparable from the individual, and dies with him.

If I am right in this conclusion, Mr. Stanton, as Secretary of War, comes neither within the body of the section, nor within the proviso, unless he can be considered as having been *appointed* by Mr. Johnson.

Words used in a statute must, by rules of construction, be taken and understood in their ordinary meaning, unless a contrary intention clearly appears. As used in the Constitution, *appointment* implies a designation — an act. And with regard to certain offices, including the Secretary of War, it implies a nomination to the Senate and a confirmation by that body. A Secretary of War can be *appointed* in no other manner. This is the legal meaning of the word "appointed." Is there any evidence in the act itself that the word "appointed," as used in the proviso, was intended to have any other meaning? The same word occurs three times in the body of the section, and in each case of its use evidently has its ordinary constitutional and legal signification. There is nothing whatever to show that it had, or was intended to have, any other sense when used in the proviso. If so, then it cannot be contended that Mr. Stanton was ever appointed Secretary of War by

Mr. Johnson, and he cannot, therefore, be considered as included in the proviso. The result is, that he is excluded from the general provision because expressly excepted from its operation, and from the proviso by not coming within the terms of description.

It not unfrequently happens, as every lawyer is aware, that a statute fails to accomplish all the purposes of those who penned it, from an inaccurate use of language, or an imperfect description. This may be the case here. But when it is considered that this proviso was drawn and adopted by eminent lawyers, accustomed to legal phraseology, who perfectly well knew and understood the position in which certain members of Mr. Johnson's cabinet stood, not appointed by him, but only suffered to remain in office under their original commissions from President Lincoln; and when it is further considered that the object of that proviso was to secure to each President the right of selecting his own cabinet officers, it is difficult to suppose the intention not to have been to leave those officers who had been appointed by President Lincoln to hold under their original commissions, and to be removable at pleasure. Had they intended otherwise, it was easy so to provide. That they did not do so is in accordance with the explanation given when the proviso was reported to the Senate, and which was received with unanimous acquiescence.

It has been argued that Mr. Johnson has recognized Mr. Stanton as coming within the first section of the act of March 2, 1867, by suspending him under the provisions of the second section. Even if the President did so believe, it by no means follows that he is guilty of a misdemeanor in attempting to remove him, if that view was erroneous. The President is not impeached for acting contrary to his belief, but for violating the Constitution

and the law. And it may be replied that, if the President did entertain that opinion, testimony was offered to show that his Cabinet entertained a different view. Whatever respect the opinion of either may be entitled to, it does not settle the question of construction. But a sufficient answer to the argument is that, whether Mr. Stanton comes within the first section of the statute or not, the President had a clear right to suspend him under the second section. That section applies to all civil officers, except judges of the United States courts, "appointed as aforesaid;" and that is, "by and with the advice and consent of the Senate;" and Mr. Stanton was such an officer, whatever might have been his tenure of office. The same remark applies to the eighth section, in relation to the designation of General Thomas. That section covers every "person" designated to perform the duties of any office, without the advice and consent of the Senate. Both of these sections are general in their terms and cover all persons coming within their purview, whether included in the first section or not.

I conclude, then, as Mr. Stanton was appointed to hold "during the pleasure of the President for the time being," and his tenure was not affected by the act of March 2, 1867, the President had a right to remove him from office on the 21st of February, 1868, and, consequently, cannot be held guilty under the first article.

Even, however, if I were not satisfied of the construction given herein of the act of March 2, 1867, I should still hesitate to convict the President of a high misdemeanor for what was done by him on the 21st of February. The least that could be said of the application of the first section of that act to the case of Mr. Stanton is that its application is doubtful. If, in fact, Mr. Stanton comes within it, the act done by the President did not

remove him, and he is still Secretary of War. It was, at most, an attempt on the part of the President which he might well believe he had a right to make. The evidence utterly fails to show any design on the part of the President to effect his purpose by force or violence. It was but the simple issuance of a written order, which failed of its intended effect. To depose the constitutional chief magistrate of a great nation, elected by the people, on grounds so slight, would, in my judgment, be an abuse of the power conferred upon the Senate, which could not be justified to the country or the world. To construe such an act as a high misdemeanor, within the meaning of the Constitution, would, when the passions of the hour have had time to cool, be looked upon with wonder, if not with derision. Worse than this, it would inflict a wound upon the very structure of our government, which time would fail to cure, and which might eventually destroy it.

It may be further remarked that the President is not charged in the first article with any offense punishable, or even prohibited, by statute. The *removal* of an officer contrary to the provisions of the act of March, 2, 1867, is punishable, under the sixth section, as a high misdemeanor. The *attempt* so to remove is not declared to be an offense. The charge is, that the President issued the order of February 21, 1868, *with intent* to violate the act, by removing Mr. Stanton. If, therefore, this attempt is adjudged to be a high misdemeanor, it must be so adjudged, not because the President has violated any law or constitutional provision, but because, in the judgment of the Senate, the attempt to violate the law is in itself such a misdemeanor as was contemplated by the Constitution and justifies the removal of the President from his high office.

The second article is founded upon the letter of authority addressed by the President to General Lorenzo Thomas,

dated February 21, 1868. The substantial allegations of the article are that this letter was issued in violation of the Constitution and contrary to the provisions of the "Act regulating the tenure of certain civil officers," without the advice and consent of the Senate, that body being then in session; and without the authority of law, there being at the time *no vacancy* in the office of the Secretary of War.

In the view I have taken of the first article, there was legally a vacancy in the Department of War, Mr. Stanton having been removed on that same day, and the letter of authority states the fact, and is predicated thereon. It is a well-established principle of law that where two acts are done at the same time, one of which in its nature precedes the other, they must be held as intended to take effect in their natural order. The question then is, whether, a vacancy existing, the President had a legal right to fill it by a designation of some person to act temporarily as Secretary *ad interim*. The answer to this question will depend, to a great extent, upon an examination of the statutes.

The first provision of statute law upon this subject is found in section eight of an act approved May 8, 1792, entitled "An act making alterations in the Treasury and War Departments."

That section empowers the President, "in case of the death, *absence from the seat of government, or sickness*, . . . of the Secretaries of State, War, or the Treasury, or of any officer of either of said departments, whose appointment is not in the head thereof, in case he shall think it necessary, to *authorize* any person or persons at his discretion, to perform the duties of the said respective offices until a successor be appointed, or such absence or inability by sickness may cease."

It will be noticed that this act provides for one case of vacancy and two of temporary disability, making the same provision for each case. In neither case does it require any consent of the Senate or make any allusion to the question whether it is or is not in session. It is viewed as a mere temporary arrangement in each case, and fixes no specific limit of time to the exercise of authority thus conferred. Nor does it restrict the President in his choice of a person to whom he may confide such a trust.

By an act approved February 13, 1795, chapter xxi, to amend the act before cited, it is provided "that *in case of vacancy*" in either of the several Departments of State, War, or the Treasury, or of any officer of either, etc., "it shall be lawful for the President, . . . in case he shall think it necessary, to *authorize* any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or such vacancy be filled, provided that no one vacancy shall be supplied in manner aforesaid for a longer term than six months."

This act, it will be observed, applies only to vacancies, and does not touch temporary disabilities, leaving the latter to stand as before, under the act of 1792. It still leaves to the President his choice of the person, without restrictions, to supply a vacancy, and while it provides for all vacancies arising from whatever cause, like the law of 1792, it makes no allusion to the Senate, or to whether or not that body is in session. But this act differs from its predecessor in this, that it specifically limits the time during which any one vacancy can be supplied to six months.

Thus stood the law down to the passage of the act of February 20, 1863. (Stat. at Large, vol. 12, page 656.) In the mean time, four other departments had been created,

to neither of which were the provisions before cited applicable. And yet it appears from the record that almost every President in office since the creation of those departments had, in repeated instances, exercised the same power and authority in supplying temporary vacancies and disabilities in the new departments which he was authorized to exercise in those originally created, without objection, and even without remark.

The act of February 20, 1863, provides "that in case of the death, resignation, absence from the seat of government, or sickness of the head of any executive department, or of any officer of either of said departments," etc., "it shall be lawful for the President . . . to *authorize* the head of any other executive department, or other officer in either of said departments whose appointment is vested in the President . . . to perform the duties . . . until a successor be appointed, or until such absence or disability shall cease; *provided*, that no one vacancy shall be supplied in manner aforesaid for a longer term than six months." Section two repeals all acts or parts of acts inconsistent, etc.

This act, it will be observed, covers, in terms, the cases provided for in the act of 1792, and one more, — a vacancy by *resignation*. It limits the range of selection, by confining it to certain specified classes of persons. It limits the time for which any *vacancy* may be supplied to six months, and it extends the power of so supplying vacancies and temporary absence and disability to all the departments. Clearly, therefore, it repeals the act of 1792, covering all the cases therein enumerated, and being in several important particulars inconsistent with it. There was nothing left for the act of 1792 which was not regulated and controlled by the act of 1863.

How was it with the act of 1795? That act covered

all cases of vacancy. Had it repealed the prior act of 1792? It had applied the limitation of six months for any one *vacancy* and to that extent was inconsistent with the act of 1792, so far as a vacancy by death was concerned. But it left the cases of sickness and absence untouched. The power conferred by the act of 1792 in those cases remained, and was exercised, without question, in a multitude of cases, by all the presidents down to the passage of the act of 1863.

In like manner, the act of 1863, while it took out of the operation of the act of 1795 the case of vacancy by resignation, and made a new provision for it, left untouched vacancies by removal and by expiration of a limited tenure of office. Suppose the act of 1863 had provided in terms for only the two cases of absence and sickness specified in the act of 1792, will it be contended that in such a case the power conferred in that act in case of death would have been repealed by the act of 1863? If not, by parity of reason the enumeration of a vacancy by *resignation* in the act of 1863 would extend no further than to take that case out of the act of 1795, leaving the cases for removal and expiration of term still subject to its operation. The conclusion, therefore, is that whatever power the President had by the act of 1795, to appoint any person *ad interim*, in case of removal, remains unaffected by the act of 1863.

It has been argued that the authority vested in the President by the act of 1795 is repealed by the sixth section of the act of March 2, 1867, which prohibits and punishes "the making, signing, sealing, countersigning, or issuing of any commission, or *letter of authority*, for or in respect to any such appointment or employment." If the act of 1795 is repealed by this section, it must operate in like manner upon the act of 1863. The conse-

quence would be that in no case, neither in recess nor in session, neither in case of vacancy, however arising, absence or sickness, would the President have power, even for a day, to authorize any person to discharge the duties of any office, in any of the departments which is filled by presidential appointment. All must remain as they are and all business must stop, during session or in recess, until they can be filled by legal appointment. This could not have been intended. The words above cited from the sixth section of the act of 1867 are qualified by the words "contrary to the provisions of this act." The language is "commission or letter of authority for or in respect to any *such* appointment or employment;" to wit, a "removal, appointment, or employment made, had, or exercised contrary to the provisions of this act." If, therefore, the removal is not contrary to the act, neither is the designation of a person to discharge the duties temporarily, and a letter of authority issued in such a case is not prohibited.

In confirmation of this view, it will be noticed that the eighth section of the act of March 2, 1867, expressly recognizes the power of the President, "without the advice and consent of the Senate," to "designate, authorize, or employ" persons to perform the duties of certain offices temporarily, thus confirming the authority conferred by the preceding acts.

My conclusion, therefore, is, that as the President had a legal right to remove Mr. Stanton, notwithstanding the act of March 2, 1867, he had a right to issue the letter of authority to General Thomas to discharge the duties of the Department of War, under and by virtue of the act of 1795.

It has been urged, however, that the six months' limitation in the act of 1795 had expired before the 21st of

February, 1868, in consequence of the appointment of General Grant as Secretary of War *ad interim* on the 12th day of August, 1867. I am unable to see the force of this argument. Whatever may have been the opinion of the President as to his power of suspending an officer under the Constitution (and I am of the opinion that he had no such power), he clearly had the right to suspend Mr. Stanton under the second section of the act of March 2, 1867, and must be held in law to have acted by virtue of the lawful authority thereby conferred; more especially as he saw fit to conform in all respects to its provisions. The action of the Senate upon that suspension restored Mr. Stanton to his office of Secretary of War. This suspension cannot be considered as a removal, and the subsequent removal on the 21st of February created a vacancy in the office from that date. The designation of General Thomas cannot, therefore, be considered as a continuation of the original designation of General Grant on the 12th day of August, 1867.

But even if I am wrong in this conclusion, and the President had no power by existing laws to appoint a Secretary of War *ad interim*, yet, if Mr. Stanton did not come within the first section of the act of 1867, the second article fails. The gravamen of that article is the violation of the Constitution and the act of March 2, 1867, by issuing the letter of authority with intent to violate the Constitution, etc., "there being no vacancy in the office of the Secretary of War." If a legal vacancy existed, the material part of the accusation is gone. A letter of authority, such as that issued to Thomas, is in no sense an appointment to office as understood by the Constitution. If it be, then the power to issue such a letter in any case without the assent of the Senate cannot be conferred by Congress. If it be, the acts of 1792, 1795,

and 1863 are unconstitutional. The sixth section of the act of March 2, 1867, recognizes the distinction between an appointment and a letter of authority. The practice has been frequent and unbroken, both with and without the authority of statute law, to issue letters of authority in cases of vacancy and temporary disability, almost from the formation of the government. It has been called for by the necessity of always having some one at the head of a department. There is no law prohibiting such a designation in case of a vacancy in a department. If the President had no authority to issue the letter in this individual case, it was, at most, a paper having no force and conferring no power. It was no violation either of the Constitution or the law. The fact that on the very next day a nomination was actually sent to the Senate, though, as the Senate had adjourned, it was not communicated until the succeeding day, goes to show that there might have been no design to give anything but the most temporary character to the appointment. To hold that an act of such a character, prohibited by no law, having the sanction of long practice, necessary for the transaction of business, and which the President might well be justified in believing authorized by existing law, was a high misdemeanor, justifying the removal of the President of the United States from office, would, in my judgment, be, in itself, a monstrous perversion of justice, if not of itself a violation of the Constitution.

The first two articles failing, the third, fourth, fifth, sixth, seventh, and eighth must fail with them.

The third differs from the second only in the allegation that the President *appointed* Lorenzo Thomas Secretary *ad interim* without the assent of the Senate, that body being then in session and there being no vacancy in said office. The answer to this allegation is, first, it was not

an appointment requiring the assent of the Senate, but a simple authority to act temporarily; and, second, there was a legal vacancy in the office existing at the time.

Of article four it is sufficient to say that there is no evidence to sustain it. There is nothing bearing upon it except the idle vaporing of Thomas himself of what he intended to do; and he testifies, under oath, that the President never authorized or suggested the use of force. What was said by Thomas was said out of doors, not to Mr. Stanton, nor communicated to him by message. The interviews between General Thomas and Mr. Stanton were of the most pacific character. The reply of Mr. Stanton when the letter of the President was delivered to him was of a nature to repel the idea of resistance, and the testimony of General Sherman shows that the President did not anticipate resistance.

It is essential to the support of this fourth article, and also of article sixth, that *intimidation and threats* should have been contemplated by the parties charged with the conspiracy, under the act of July 31, 1861. These failing, the charge fails with them in both articles.

As to the fifth and seventh articles, the attempt is made to sustain them under a law of Congress passed February 27, 1804, extending the criminal laws of Maryland over so much of the district as was part of that State. Inasmuch as the common law was, so far as it had not been changed by statute, the law of Maryland, and conspiracy a misdemeanor, the President is charged with a misdemeanor by conspiring with Thomas to do an act made unlawful by the act of March 2, 1867. This is the only interpretation which I am able, with the aid of the arguments of the managers, to place upon these articles. Granting the positions assumed as the foundation for the charges in these articles, they must fail, if the act

which the President proposed to do was a lawful act, and he did not propose to accomplish it by unlawful means. The removal of Mr. Stanton is the means proposed in order to prevent him from holding his office, as charged in the fifth, and to take and possess the property of the United States in his custody, as charged in the seventh article. The right to remove him, therefore, disposes of both articles.

Outside of any of these considerations, I have been unable to look upon either of these four articles as justifying a charge of conspiracy. The legal idea of a conspiracy is totally inapplicable to the facts proved. The President, if you please, intends to remove a person from office by an open exercise of power, against the provisions of a law, contending that he has a right to do so, notwithstanding the law, and temporarily to supply the vacancy thus created. He issues an order to that effect, and at the same time orders another person to take charge of the office, who agrees to do so. How these acts, done under a claim of right, can be tortured into a conspiracy, in the absence of any specific provision of law declaring them to be such, is beyond my comprehension.

Article eight is disposed of by what has been said on the preceding articles.

Article nine is, in my judgment, not only without proof to support it, but actually disproved by the evidence.

With regard to the tenth article, the specifications are sufficiently established by proof. They are three in number, and are extracts from speeches of the President on different occasions. It is not pretended that in speaking any of the words the President violated the Constitution, or any provision of the statute or common law, either in letter or spirit. If such utterance was a misdemeanor, it must be found in the nature of the words themselves.

I am not prepared to say that the President might not, within the meaning of the Constitution, be guilty of a misdemeanor in the use of words. Being sworn "to preserve, protect, and defend the Constitution," if he should in words persistently deny its authority, and endeavor by derisive and contemptuous language to bring it into contempt, and impair the respect and regard of the people for their form of government, he might, perhaps, justly be considered as guilty of a high misdemeanor in office. Other cases might be supposed of a like character and leading to similar results. It remains to inquire what was the character of the words proved.

Those spoken on the 18th day of August, 1866, contained nothing calculated to impair the confidence of the country in our form of government, or in our cherished institutions. They did contain severe reflections upon the conduct of a coördinate branch of the government. They were not an attack upon Congress as a branch of the government, but upon the conduct of the individuals composing the Thirty-ninth Congress. He did not speak of *Congress* generally as "hanging upon the verge of the government, as it were," but of a particular Congress, of which he spoke as assuming to be "a Congress of the United States, while in fact it is a Congress of only part of the States;" and which particular Congress he accused of encroaching upon constitutional rights, and violating the fundamental principles of government.

It may be remarked that those words were not official. They were spoken in reply to an address made to him by a committee of his fellow citizens — spoken *of* Congress and not *to* it. The words did not in terms deny that it was a constitutional Congress, or assert that it had no power to pass laws. He asserted what was true in point of fact, that it was a Congress of only a part of the States.

Granting that the words spoken would seem to imply that he had doubts, to some extent, of the true character of that Congress, and the extent of its powers, so long as several States were excluded from representation, he did not, in fact or in substance, deny its constitutional existence; while in all his official communications with that Congress he has ever treated it as a constitutional body. Is there another man in the republic, in office or out of office, who had not on that day a perfect right to say what the President said? Would any one think of punishing any member of Congress for saying out of doors precisely the same things of the body of which he was a member? Is the President alone excluded from the privileges of expressing his opinions of the constitution of a particular Congress and of denouncing its acts as encroachments upon "constitutional rights" and the "fundamental principles of government?" In process of time, there might possibly be a Congress which would be justly liable to the same criminations of a President. In such a case, is he to remain silent, and is he forbidden by the Constitution, on pain of removal from office, to warn the people of the United States of their danger?

It is not alleged that the President did not believe what he said on this occasion to be true. Whether he did or not is a question between him and his conscience. If he did, he had a perfect moral right so to speak. If he did not, his offense is against good morals, and not against any human law. There is, in my judgment, nothing in these words to prove the allegation that the President's intent in speaking them was to impair and destroy the respect of the people for the legislative power of Congress, or the laws by it duly and constitutionally enacted, or to set aside its rightful authority and powers. If the words were designed to bring that particular Con-

gress into contempt and to excite the resentment of the people against it, however much I may disapprove both words and intention, I do not think them an impeachable offense.

The remarks contained in the second and third specifications present themselves to my mind in the same light. They, too, contain severe reflections upon the Thirty-ninth Congress; nothing more. I have not been able to discover any menaces or threats against Congress, unless they are found in the declaration that he would veto their measures; and this, I think, must in fairness be taken as applying to measures of a certain character, of which he had been speaking. The speeches at Cleveland and St. Louis, though highly objectionable in style, and unbecoming a President of the United States, afford nothing to justify the allegation that they were menacing towards Congress or to the laws of the country. To consider their utterance a high misdemeanor, within the meaning of the Constitution, would, in my view, be entirely without justification.

So highly did the people of this country estimate the importance of liberty of speech to a free people, that, not finding it to be specifically guaranteed in the Constitution, they provided for it in the first amendment to that instrument. "Congress shall make no law . . . abridging the freedom of speech." Undoubtedly there are great inconveniences, and perhaps positive evils, arising from the too frequent abuse of that freedom; more, perhaps, and greater from an equally protected freedom of the press. But the people of the United States consider both as essential to the preservation of their rights and liberties. They, therefore, have chosen to leave both entirely unrestrained, subjecting the abuse of that liberty only to remedies provided by law for individual wrongs. To deny

the President a right to comment freely upon the conduct of coördinate branches of the government would not only be denying him a right secured to every other citizen of the republic, but might deprive the people of the benefit of his opinion of public affairs, and of his watchfulness of their interests and welfare. That under circumstances where he was called upon by a large body of his fellow citizens to address them, and when he was goaded by contumely and insult, he permitted himself to transcend the limits of proper and dignified speech, such as was becoming the dignity of his station, is matter of deep regret and highly censurable. But, in my opinion, it can receive no other punishment than public sentiment alone can inflict.

If I rightly understand the accusation contained in the eleventh article, it is substantially this: "That on the 18th day of August, 1866, the President, by public speech, declared, in substance, that the Thirty-ninth Congress was not a Congress of the United States, authorized to exercise legislative power, thereby intending to deny that the legislation of said Congress was valid or obligatory on him, except so far as he saw fit to approve the same, and thereby denying, and intending to deny, the power of said Thirty-ninth Congress to propose amendments to the Constitution;" and, "*in pursuance of said declaration*," the President, on the 21st day of February, 1868, attempted to prevent the execution of the act of March 2, 1867:

First. By unlawfully attempting to devise means to prevent Mr. Stanton from resuming the functions of Secretary of War, after the Senate had refused to concur in his suspension.

Second. By unlawfully attempting to devise means to prevent the execution of the Appropriation Act for the

support of the army, for the fiscal year ending June 30, 1868.

And that further, in pursuance of said declaration, he unlawfully attempted to prevent the execution of the so-called Reconstruction Act of March 2, 1867.

Whereby he was guilty of a high misdemeanor in office on the 21st day of February, 1868.

I have already stated, in commenting on the tenth article, that I do not consider the President's declaration on the 18th of August, 1866, as fairly liable to the construction there put upon it and repeated in this article. There were no such words said, nor can they be fairly implied. The words were that it was not a Congress of the United States, but only of a part of the States. Taken literally, these words were true. But a Congress of a part of the States may be a constitutional Congress, capable of passing valid laws, and as such the President has uniformly recognized the Thirty-ninth Congress. The declaration being perfectly susceptible of an innocent meaning, and all his official acts being consistent with that meaning, it would be unjust to suppose a different one, which he did not express.

In this view the foundation of the article fails.

But whether in pursuance of that declaration or not, did he *unlawfully* devise means to prevent the execution of the law of March 2, 1867, in the manner charged?

The first specification rests, if upon anything, upon the letter to General Grant, dated February, 10, 1868. This letter must be taken as a whole, and not considered by detached parts.

From that letter I am satisfied that the President expected General Grant, in case the Senate should not concur in the suspension of Mr. Stanton, to resign the office to him so that he might have an opportunity to fill the

office before Mr. Stanton resumed the performance of his duties, with a view to compelling Mr. Stanton to seek his remedy in the court. If the President had such a design, it could only be carried out legally by removing Mr. Stanton before he should have time to resume the functions of Secretary of War, if the President had a right to remove him. It has been seen, by my remarks upon the first article, that I think the President had such a right. The design, then, if the President entertained it, was not unlawful.

As to the second specification, it has not, that I can see, any proof to sustain it; and if it had, it is not quite apparent how an attempt to prevent the execution of the act for the support of the army can be considered as proof of an intention to violate the Civil Tenure Act, which seems to be the gravamen of this article.

No evidence whatever was adduced to show that the President had devised means, or in any way attempted, to prevent the execution of the "Act to provide for the more efficient government of the rebel States."

It has been assumed in argument by the managers that the President, in his answer, claims not only the right under the Constitution to remove officers at his pleasure, and to suspend officers for indefinite periods, but also to fill offices thus vacated for indefinite periods — a claim which, if admitted, would practically deprive the Senate of all power over appointments, and leave them in the President alone. The President does claim the power of removal, and that this includes the power of suspension. But a careful examination of his answer will show that he claims no other power than that conferred by the act of 1795, to fill vacancies in the departments temporarily, and for a period not exceeding six months, not by appointment, without the consent of the Senate, but by designa-

tion, as described in the act — a power conferred by Congress, and which can be taken away at any time, if it should be found injurious to the public interests.

Even, however, if the claim of the President did go to the extent alleged, it is not made a charge against him in the articles of impeachment. And however objectionable and reprehensible any such claim might be, he cannot be convicted of a high misdemeanor for asserting an unconstitutional doctrine, if he has made no attempt to give it practical effect, especially without a charge against him and a trial upon it.

I am unwilling to close the consideration of this remarkable proceeding before adverting to some other points which have been presented in the argument.

The power of impeachment is conferred by the Constitution in terms so general as to occasion great diversity of opinion with regard to the nature of offenses which may be held to constitute crimes or misdemeanors within its intent and meaning. Some contend, and with great force of argument, both upon principle and authority, that only such crimes and misdemeanors are intended as are subject to indictment and punishment as a violation of some known law. Others contend that anything is a crime or misdemeanor within the meaning of the Constitution which the appointed judges choose to consider so; and they argue that the provision was left indefinite from the necessity of the case, as offenses of public officers, injurious to the public interest, and for which the offender ought to be removed, cannot be accurately defined beforehand; that the remedy provided by impeachment is of a political character, and designed for the protection of the public against unfaithful and corrupt officials. Granting, for the sake of the argument, that this latter construction is the true one, it must be conceded that the power thus

conferred might be liable to very great abuse, especially in times of high party excitement, when the passions of the people are inflamed against a perverse and obnoxious public officer. If so, it is a power to be exercised with extreme caution, when you once get beyond the line of specific criminal offenses. The tenure of public offices, except those of judges, is so limited in this country, and the ability to change them by popular suffrage so great, that it would seem hardly worth while to resort to so harsh a remedy, except in extreme cases, and then only upon clear and unquestionable grounds. In the case of an elective chief magistrate of a great and powerful people, living under a written Constitution, there is much more at stake in such a proceeding than the fate of the individual. The office of President is one of the great coördinate branches of the government, having its defined powers, privileges, and duties; as essential to the very framework of the government as any other, and to be touched with as careful a hand. Anything which conduces to weaken its hold upon the respect of the people, to break down the barriers which surround it, to make it the mere sport of temporary majorities, tends to the great injury of our government, and inflicts a wound upon constitutional liberty. It is evident, then, as it seems to me, that the offense for which a chief magistrate is removed from office, and the power intrusted to him by the people transferred to other hands, and especially where the hands which receive it are to be the same which take it from him, should be of such a character as to commend itself at once to the minds of all right thinking men as, beyond all question, an adequate cause. It should be free from the taint of party; leave no reasonable ground of suspicion upon the motives of those who inflict the penalty, and address itself to the country and the civilized world

as a measure justly called for by the gravity of the crime and the necessity for its punishment. Anything less than this, especially where the offense is not defined by any law, would, in my judgment not be justified by a calm and considerate public opinion as a cause for removal of a President of the United States. And its inevitable tendency would be to shake the faith of the friends of constitutional liberty in the permanency of our free institutions, and the capacity of man for self-government.

Other offenses of the President, not specified in the articles of impeachment, have been pressed by the managers as showing the necessity for his removal. It might be sufficient to reply that all such were long prior in date to those charged in the articles, have been fully investigated in the House of Representatives, were at one time decided by a majority of the learned committee on the judiciary in that body to present no sufficient ground for impeachment, and were finally dismissed by the House, as not affording adequate cause for such a proceeding, by a vote of nearly, if not quite, two to one. But it is enough to say that they are not before the Senate and that body has no right to consider them. Against them the President has had no opportunity to defend himself, or even to enter his denial. To go outside of the charges preferred, and to convict him because, in our belief, he committed offenses for which he is not on trial, would be to disregard every principle which regulates judicial proceedings, and would be not only a gross wrong in itself, but a shame and humiliation to those by whom it was perpetrated.

It has been further intimated by the managers that public opinion calls with a loud voice for the conviction and removal of the President. One manager has even gone so far as to threaten with infamy every senator who

voted for the resolution passed by the Senate touching the removal of Mr. Stanton, and who shall now vote for the President's acquittal. Omitting to comment upon the propriety of this remark, it is sufficient to say, with regard to myself, that I not only did not vote for that resolution, but opposed its adoption. Had I so voted, however, it would afford no justification for convicting the President, if I did not, on examination and reflection, believe him guilty. A desire to be consistent would not excuse a violation of my oath to do "impartial justice." A vote given in haste and with little opportunity for consideration would be a lame apology for doing injustice to another, after full examination and reflection.

To the suggestion that popular opinion demands the conviction of the President on these charges, I reply that he is not now on trial before the people, but before the Senate. In the words of Lord Eldon, upon the trial of the queen, "I take no notice of what is passing out of doors, because I am supposed, constitutionally, not to be acquainted with it." And again, "It is the duty of those on whom a judicial task is imposed to meet reproach and not court popularity." The people have not heard the evidence as we have heard it. The responsibility is not on them, but upon us. They have not taken an oath to "do impartial justice according to the Constitution and the laws." I have taken that oath. I cannot render judgment upon their convictions, nor can they transfer to themselves my punishment, if I violate my own. And I should consider myself undeserving the confidence of that just and intelligent people who imposed upon me this great responsibility, and unworthy a place among honorable men, if for any fear of public reprobation, and for the sake of securing popular favor, I should disregard the convictions of my judgment and my conscience.

The consequences which may follow either from conviction or acquittal are not for me, with my convictions, to consider. The future is in the hands of Him who made and governs the universe, and the fear that He will not govern it wisely and well would not excuse me for a violation of His law.

EXTRACTS FROM THE OPINION OF SENATOR SHERMAN, REPUBLICAN, VOTING GUILTY.

This cause must be decided upon the reasons and presumptions which by law apply to all other criminal accusations. Justice is blind to the official station of the respondent and to the attitude of the accusers, speaking in the name of all the people of the United States. It only demands of the Senate the application to this cause of the principles and safeguards provided for every human being accused of crime. For the proper application of these principles we ourselves are on trial before the bar of public opinion. The novelty of this proceeding, the historical character of the trial, and the grave interests involved, only deepen the obligation of the special oath we have taken to do impartial justice according to the Constitution and laws.

And this case must be tried upon the charges now made by the House of Representatives. We cannot consider other offenses. . . .

In forming this conviction, we are not limited merely to the rules of evidence, which by the experience of ages have been found best adapted to the trial of offenses in the double tribunal of court and jury, but we may seek light from history, from personal knowledge, and from all sources that will tend to form a conscientious conviction of the truth. And we are not bound to technical definitions of crimes and misdemeanors. A willful viola-

tion of the law, a gross and palpable breach of moral obligations tending to unfit an officer for the proper discharge of his office or to bring the office into public contempt and derision, is, when charged and proven, an impeachable offense. And the nature and criminality of the offense may depend on the official character of the accused. . . .

The principal charges against the President are that he willfully and purposely violated the Constitution and the laws, in the order for the removal of Mr. Stanton, and in the order for the appointment of General Thomas as Secretary of War *ad interim*. These two orders were contemporaneous, — part of the same transaction, — but are distinct acts, and are made the basis of separate articles of impeachment.

Their common purpose, however, was to place the Department of War under the control of General Thomas, without the advice and consent of the Senate. . . .

If the President has the power, during the session of the Senate, and without their consent, to remove the Secretary of War, he is not guilty under the first, fourth, fifth, and sixth articles presented by the House, while, if the exercise of such a power is in violation of the Constitution and the laws, and was done by him willfully, and with the intent to violate the law, he is guilty not only of malfeasance in office, but of a technical crime, as charged by the first article, and upon further proof of the conspiracy alleged is guilty, as charged by the fourth, fifth, and sixth articles.

The power to remove Mr. Stanton is claimed by the President, *first*, under the Constitution of the United States, and, *second*, under the act of 1789, creating the Department of War.

First. Has the President, under and by virtue of the Constitution, the power to remove executive officers? . . .

The power of removal at his will is not a necessary part of his executive authority. It may often be wise to confer it upon him; but if so it is the law that invests him with discretionary power, and it is not a part, or a necessary incident, of his executive power. It may be and often is conferred upon others.

That the power of removal is not incident to the executive authority is shown by the provisions of the Constitution relating to impeachment. The power of removal is expressly conferred by the Constitution only in cases of impeachment, and then upon the Senate, and not upon the President. . . .

The sole power of the President conferred by the Constitution as to officers of the government is the power to appoint, and that must be by and with the advice and consent of the Senate. . . .

I am still of the opinion that the Constitution does not confer upon the President as a part of or as incident to his executive authority the power to remove an officer, but that the removal of an officer, like the creation of an office, is the subject of legislative authority, to be exercised in each particular case in accordance with the law.

I therefore regard the Tenure of Office Act as constitutional and as binding upon the President to the same extent as if it had been approved by him. . . . If, therefore, the removal of Mr. Stanton is within the penal clauses of that act, the President is guilty not only of an impeachable, but of an indictable offense. . . .

It follows, that, as Mr. Stanton is not protected by the Tenure of Civil Office Act, his removal rests upon the act of 1789, and he, according to the terms of that act and of the commissions held by him, and in compliance with the numerous precedents cited in this cause, was law-

fully removed by the President, and his removal, not being contrary to the provisions of the act of March 2, 1867, the first, fourth, fifth, and sixth articles, based upon his removal, must fail.

The only question remaining in the first eight articles is whether the appointment of General Thomas as Secretary of War *ad interim*, as charged in the second, third, seventh, and eighth articles, is in violation of the Constitution and the laws, and comes within the penal clauses of the Tenure of Office Act, and was done with the intent alleged. If so, the President is guilty upon these articles. . . .

I, therefore, conclude that the appointment of General Thomas was a willful violation of the law, in derogation of the rights of the Senate, and that the charges contained in the second, third, seventh, and eighth articles are true.

The criminal intent alleged in the ninth article is not sustained by the proof. All the President did do in connection with General Emory is reconcilable with his innocence, and, therefore, I cannot say he is guilty as charged in this article.

The tenth article alleges intemperate speeches, improper and unbecoming a chief magistrate, and the seditious arraignment of the legislative branch of the government. It does not allege a specific violation of law, but only personal and political offenses for which he has justly forfeited the confidence of the people.

Am I, as a senator, at liberty to decide this cause against the President even if guilty of such offenses? That a President, in his personal conduct, may so demean himself by vice, gross immorality, habitual intoxication, gross neglect of official duties, or the tyrannous exercise of power, as to justify his removal from office is clear enough; but the Senate is bound to take care that the

offense is gross and paplable, justifying in its enormity the application of the strong words, "high crime and misdemeanor." . . .

The House of Representatives of the Thirty-ninth Congress refused to rest an accusation upon these speeches, and so of the present House, until other acts of a different character induced these articles of impeachment. We must pass upon this article separately, and upon it my judgment is that it does not allege a crime or misdemeanor within the meaning of the Constitution.

The great offense of the President consists of his opposition, and thus far successful opposition, to the constitutional amendment proposed by the Thirty-ninth Congress, which, approved by nearly all the loyal States, would, if adopted, have restored the rebel States, and thus have strengthened and restored the Union, convulsed by civil war. Using the scaffoldings of civil governments formed by him in those States without authority of law, he has defeated this amendment, has prolonged civil strife, postponed reconstruction and reunion, and aroused again the spirit of rebellion overcome and subdued by war. He, alone, of all the citizens of the United States, by the wise provisions of the Constitution, is not to have a voice in adopting amendments to the Constitution; and yet, he, by the exercise of a baleful influence and unauthorized power, has defeated an amendment demanded by the result of the war. He has obstructed as far as he could all the efforts of Congress to restore law and civil government to the rebel States. He has abandoned the party which trusted him with power, and the principles so often avowed by him which induced their trust.

Instead of coöperating with Congress, by the execution of laws passed by it, he has thwarted and delayed their execution, and sought to bring the laws and the

legislative power into contempt. Armed by the Constitution and the laws with vast powers, he has neglected to protect loyal people in the rebel States, so that assassination is organized all over those States, as a political power to murder, banish, and maltreat loyal people, and to destroy their property. When he adds to these political offenses the willful violation of a law by the appointment of a high officer during the session of the Senate, and without its consent, and with the palpable purpose to gain possession of the Department of War, for an indefinite time, a case is made not only within the express language of the law a high misdemeanor, but one which includes all the elements of a crime, to wit: a violation of express law, willfully and deliberately done, with the intent to subvert the constitutional power of the Senate, and having the evil effect of placing in the hand of the President unlimited power over all the officers of the government.

This I understand to be the substance of the eleventh article. It contains many allegations which I regard in the nature of inducement, but it includes within it the charge of the willful violation of law more specifically set out in the second, third, seventh, and eighth articles, and I shall therefore vote for it.

EXTRACTS FROM THE OPINION OF MR. SENATOR EDMUNDS (REPUBLICAN).

My duties are clearly judicial, and I have no concern with, or responsibility for, the consequences, political or other, that may flow from my decision. . . .

The statement of these principles would have been a work of entire supererogation, but for the fact that the appeals and remonstrances of the press of the country, touching our disposition of the case, have been urgent,

and which, if extended to all trials, would poison the fountains of justice.

I cannot doubt that the regulation of the tenure of the offices to be established by law was not confided by the Constitution to the President, but was left to be provided for by the legislature. . . .

Does the act apply to the case of Mr. Stanton, and forbid his removal at the will of the President? . . .

If, as we have shown, when the Tenure of Office Act passed, he was the Secretary of War named in and affected by the proviso, the question is, Was he, on the 21st day of February, 1868, holding office in the same way and under the same tenure that he was at the passage of the act? It is not disputed that he was. Was he, then, at the passage of the act holding his office "during the term of the President by whom he was appointed?" He was appointed by President Lincoln. Then was March 2, 1867, the time of the passage of the act, during the term of Mr. Lincoln, who was, so far as relates to Mr. Stanton, the President named in the proviso?

The Constitution says that the President "shall hold his office during the *term of four years*," and that the Vice-President shall be "chosen for the same term." It creates and permits no other term or period whatever, but provides only, in case of death, etc., for the devolution of "duties" or *office*, not the term, upon the Vice-President.

Mr. Lincoln began a regular term on March 4, 1865, and died in April of that year, when the office devolved on the respondent. Now, if the respondent became thereby invested with a constitutional "*term*" of his own, as President, he must be in for *four years* from April 15, 1865, which is not pretended by any one. Hence, he must take the office for the unexpired term of Mr. Lincoln, his pre-

decessor. It was the *office* and not the *term*, which are distinct things, that Mr. Lincoln held when he died. The *office* did not die with him, but survived in all its current identity and force to his successor, the respondent, measured by precisely the same "*term*" that it was before. When, therefore, the statute speaks of "the term of the President," it does not refer to ownership or possession, which a man cannot be said to have after his death, but it plainly refers to the term *for and in relation to which* that President was elected, and which, by the Constitution, was attributed to him. A reference to any lexicon will show that this is the principal and most frequent meaning of the word "of."

To claim that at the death of Mr. Lincoln the "term" applicable to him thereby expired and ended, would be as erroneous as to claim that the death of a tenant for a term of years, not yet expired, produces an end of the term, and that his legal representative either takes a new term or none at all. . . .

The act, then, prohibited the removal of Mr. Stanton and the appointment of General Thomas, and it declared such removal or appointment to be a high misdemeanor and denounced a punishment against it.

But it is contended that, as the articles charge not only an intentional doing of the acts forbidden, — which the respondent admits, — but also an intent thereby to violate the law and the Constitution, — which he denies, — he cannot be found guilty unless it is also proved that such intent existed in point of fact. I do not understand that to be the law, and I think no authority for such a proposition can be found anywhere. . . .

It is enough, for the present, to say that if the respondent be legally guilty, to acquit him upon any such grounds as are claimed would be to sanction a disregard

of law and to invite him, as well as future presidents, to try more forcible and dangerous experiments upon the government, instead of teaching the great lesson, that, in some form, all nations must learn at last that its highest officers ought to be most careful and scrupulous in the observance of its laws. I conclude, then, that the intents charged in these three articles are either immaterial or such as the law conclusively infers from the acts proved, although I should have no hesitation in finding, as a matter of fact, that in the removal of Mr. Stanton, the respondent did intend to violate the act of March 2, 1867, if not the Constitution. . . .

I am of the opinion, therefore, that the respondent is guilty, as charged in the first three articles.

The fourth article I do not think is proved.

The fifth article charges an unlawful conspiracy to prevent the execution of the act of March 2, 1867, and an unlawful attempt to prevent Mr. Stanton from holding the office. This article is, I think, embodied within the same principles as the first, and I am of the opinion that the respondent is guilty.

I cannot resist the conclusion that the sixth and seventh articles are proved and that the respondent is guilty, as therein charged.

The respondent is not guilty upon the eighth article.

The ninth article appears to me also to be wholly unsustained by proof.

The tenth and eleventh articles, so far as they relate to the sayings and speeches of the respondent, require for their support, under the rule I have before adverted to, an unlawful and criminal design and intent. However disgraceful these speeches may be, — and they certainly do not need any comment in that respect, — fairly considered they were, I think, only intended to appeal to the

political prejudices of the people, and to induce them to overturn the party of Congress by a revolution at the polls, and not by illegal violence. As such, I think them, in a legal sense, within the liberty of speech secured by the Constitution and by the spirit of our institutions; a liberty so essential to the welfare and permanency of a free government in a state of peace and under the rule of municipal law, that it were better to tolerate a considerable abuse of it, rather than to subject it to legal repression or condemnation.

Besides the accusation of criminal speech, article eleven seems to contain three charges: a contriving of means to defeat the act of March 2, 1867; to defeat the army appropriation bill of 1867; and to defeat the act for the more efficient government of the rebel States. The first and third of these charges, I think, for the reasons already stated, are proved by the evidence already referred to as to the causes for and the attempt to remove Mr. Stanton. The second, I think, is not. But upon the construction put upon this article by the Senate, that it only contains an accusation touching Mr. Stanton, I feel bound to vote guilty upon it.

In my opinion this high tribunal is the sole and exclusive judge of its own jurisdiction in such cases, and that, as the Constitution did not establish this procedure for the punishment of crime, but for the secure and faithful administration of the law, it was not intended to cramp it by any specific definition of high crimes and misdemeanors, but to leave each case to be defined by law, or, when not defined, to be decided upon its own circumstances, in the patriotic and judicial good sense of the representatives of the States.

EXTRACTS FROM THE OPINION FILED BY SENATOR CHARLES SUMNER.

Voting guilty on all the articles, I feel that there is no need of explanation or apology. Such a vote is its own best defender; but I follow the example of others. . . .

Not to dislodge them is to leave the country a prey to one of the most hateful tyrannies of history, especially is it to surrender the Unionists of the rebel States to violence and bloodshed. Not a month, not a week, not a day should be lost. The safety of the republic requires action at once. The lives of innocent men must be rescued from sacrifice. I would not in this judgment depart from that moderation which belongs to the occasion; but God forbid that when called to deal with so great an offender I should affect a coldness which I cannot feel. . . .

The formal accusation is founded on certain recent transgressions, enumerated in articles of impeachment, but it is wrong to suppose that this is the whole case. It is very wrong to try this impeachment merely on these articles. It is unpardonable to higgle over words and phrases, when for more than two years the tyrannical pretensions of this offender, now in evidence before the Senate, as I shall show, have been manifest in their terrible heartrending consequences. . . .

Before entering upon the consideration of the formal accusations, it is important to understand the nature of the proceeding; and here on the threshold we confront the effort of the apologists, who have sought in every way to confound this great constitutional trial with an ordinary case of *nisi prius*, and to win for the criminal President an Old Bailey acquittal, where, on some quibble, the prisoner is allowed to go without delay. From beginning to end this has been painfully apparent, thus degrading the

trial and baffling justice. Point by point has been pressed, sometimes by counsel, and sometimes even by senators; leaving the substantial merits untouched, as if on a solemn occasion like this, involving the safety of the republic, there could be any other question. The first effort was to call the Senate sitting for the trial of impeachment, a court, and not a Senate. . . .

As we discern the true character of impeachment under our Constitution, we shall be constrained to confess that it is a political proceeding before a political body with political purposes; that it is founded upon political offenses properly for the consideration of a political body and subject to a political judgment only. . . .

The form of procedure is a topic germane to the last head (political offenses are impeachable offenses) and helping to illustrate it. It is natural that the trial of political offenses before a political body with a political judgment only should have less of form than a trial at common law. . . .

From the form of procedure I pass to the rules of evidence, and here, again, the Senate must avoid all technicalities and not allow any artificial rule to shut out the truth. On this account I voted to admit all evidence that was offered during the trial, believing, in the first place, that it ought to be heard and considered, and in the second place, that even if it were shut out from these proceedings, it could not be shut out from the public, or shut out from history, both of which must be the ultimate judges. Another rule relates to the burden of proof, and is calculated to have a practical bearing. The other relates to matters of which the Senate will take cognizance without any special proof, thus importing into the case unquestionable evidence, which explains and aggravates the transgressions charged. The Senate considers only how

the safety of the people, which is the supreme law, can be best preserved, and to this end the ordinary rule of evidence is reversed. If on any point you entertain doubt, the benefit of these doubts must be given to your country. And this is the supreme law. When tried on an indictment in the criminal courts, Andrew Johnson may justly claim the benefit of your doubts, but at the bar of the Senate, on the question of his expulsion from office, his vindication must be in every respect and on each charge beyond a doubt. He must show that his longer continuance in office is not inconsistent with the public safety: —

> "Or at least so prove it, that the probation bear
> No hinge or loop to hang a doubt on."

Anything short of this is to trifle with the republic and its transcendent fortunes. . . .

Another rule of evidence, having particular virtue in this case, is that courts will take judicial cognizance of certain matters without any special proof on the trial. Among these are whatever ought to be generally known within the limits of the jurisdiction, including the history of the country. . . . Applying this rule to the present proceeding, it will be seen at once how it brings before the Senate, without any further evidence, a long catalogue of crime affecting the character of the President beyond all possibility of defense, and serving to explain the latter acts on which the impeachment is founded. It was in this chamber that Andrew Johnson exhibited himself in beastly intoxication while he took his oath of office as Vice-President, and all that he has done since is of record here. Here in the Senate we know officially how he has made himself the attorney of slavery, the usurper of legislative power, the violator of law, the patron of rebels, the helping hand of rebellion, the kicker from office of good citizens, the open bunghole of the treasury, the architect

of the whiskey ring, the stumbling-block of all good laws by wanton vetoes and criminal hindrances. To the apologists of the President, who set up the quibbling objection that they are not alleged in the articles of impeachment, I reply that even if excused on this account from judgment, they may be treated as evidence. They are the reservoir from which to draw in determining the true character of the latter acts for which the President is arraigned, and especially the intent by which he was animated . . .

I should not proceed further under this head but for the new device which makes its appearance under the auspices of the senator from Maine, Mr. Fessenden, who tells us that whether Mr. Stanton came under the first section of the statute or not, the President had a clear right to suspend him under the second.

It is a device well calculated to help the President and to hurt Mr. Stanton with those who regard devices more than the reason of the statute and its spirit. . . . (Swarm of technicalities and quibbles.)

I now come upon that swarm of technicalities, devices, quirks, and quibbles which, from the beginning, have infested this great proceeding. It is hard to speak of such things without giving utterance to a contempt not entirely parliamentary. To say that they are petty and miserable is not enough. To say that they are utterly unworthy of this historic occasion is to treat them politely. They are nothing but parasitic insects, like "vermin generated in a lion's mane," and they are so innumerable and numerous that to deal with them as they skip about one must have the patience of the Italian peasant, who catches and kills one by one the diminutive animals that invest his person. . . .

Constantly we are admonished that we must confine

ourselves to the articles. Senators express a pious horror at looking outside the articles, and insist upon drawing attention to those only. Here the senator from Maine is very strong. It is the specific offense charged, and this only, he can see. He will not look at anything else, although spread upon the record of the Senate and filling the land with its accumulated horrors. A senator who begins by turning these articles into an inverted opera glass takes the first step towards a judgment of acquittal. . . .

The lawyers have made a painful record. Nothing ever occurred so much calculated to bring the profession into disrepute, for nothing before has been such a theatre where lawyers were the actors. A quibble is a golden apple for which the lawyer will always turn aside from his career. A quibble, poor and barren as it is, gives him such delight that he is content to purchase it by the sacrifice of reason, propriety, and truth. . . .

Next to an outright mercenary, give me a lawyer to betray a great cause. The forms of law lend themselves to the betrayal. It is impossible to forget that the worst pretensions of prerogative, no matter how carelessly made, have been shouldered by the lawyers. It was they who carried ship money against the patriotic exertions of Hampden, and in our country it was they who held up slavery in all its terrible pretensions from beginning to end. What is sometimes called the legal mind of my own honored State, bent before the technical reasoning which justified the unutterable atrocities of the Fugitive Slave Bill, while the Supreme Court of the State adopted this crime from the bench. Alas, that it should be so. When will lawyers and judges see that nothing short of justice can stand. . . .

After this survey it is easy for me to declare how I

shall vote. My duty will be to vote guilty on all of the articles. If consistent with the rules of the Senate, I should vote, "guilty of all, and infinitely more." . . .

Something also has been said of the people now watching our proceedings with patriotic solicitude, and it has been proclaimed that they are wrong to intrude their judgment. I do not think so. This is a political proceeding which the people at this moment are as competent to decide as the Senate. They are the multitudinous jury. . . . In nothing can we escape their judgment, least of all on a question like that now before us. It is a mistake to suppose that the Senate only has heard evidence. The people have heard it also, day by day, as it was delivered, and have carefully considered the case on its merits, properly dismissing all political subtleties. It will be for them to review what has been done. They are above the Senate and will re-judge its justice.

CHAPTER XI

REPUDIATION OF NATIONAL DEBT REJECTED BY THE PEOPLE: DEATH OF SENATOR FESSENDEN

1868–1869

At the conclusion of the impeachment trial, Congress resumed its ordinary labors, and Senator Fessenden took his part in them, strengthened and rejoiced by the numerous evidences that his vote on the impeachment commanded much praise and admiration in estimable quarters, and that he was far from being bereft of political standing and the respect of his fellow countrymen.

Some important financial measures came up. The country was yet far away from a specie basis, and numerous were the measures to restore a normal condition of business without suffering or disturbance. Mr. Fessenden remarked that he had read all these schemes, and thought there was nothing in any of them. He believed that the true course was to reduce the legal tender paper gradually until the government could pay in specie, and then the national bank currency could be increased as business demanded; that the proper way to accomplish this was by taxation sufficient to obtain a surplus which should be devoted to retiring the legal tenders.

In the debate on the bill to increase the national bank currency, Senator Fessenden opposed the clause authorizing the issue of five per cent bonds to run absolutely for thirty years, because it involved the idea of the government losing that controllability which had been a part of its financial system, and because the time would come

when the bonds could be funded at a lower rate of interest than five per cent.

In discussing the proposition to retire an amount of legal tenders equal to the issues of bank currency to the new national banks, he said if it was made imperative it must be done either by issuing bonds for that purpose or by securing a surplus in the Treasury. The better way to return to specie payments was to have a surplus in the Treasury to do it. But if taxation was lightened so that there would be no surplus with which to redeem the greenbacks, and Congress refused to issue any bonds in place of them because they paid no interest, it would end in an indefinite postponement of a return to specie payments. The true idea in his judgment was to have a surplus every year in the Treasury, to be raised by taxation, and apply that surplus to a limited and reasonable extent every month as they went along, to accomplish a return to specie payments, without which they could never have any sound financial operations in the country.

He said the question was, whether the condition of the reconstructed States did not absolutely require an increase of their local bank circulation, which could only be had by increasing the amount now permitted by the law fixing the circulation of the national banks. The proposition to increase the circulation and retire a proportionate amount of legal tenders had the germ of the correct principle for returning to specie payments. Three hundred millions of bank currency was not enough circulation for the country, but it was plainly enough while there was four hundred millions of government currency. If the national bank system was to remain permanent, its currency must be increased from time to time as the business of the country increased. It could not be done without dangerously inflating the currency, until a sys-

tem was adopted for withdrawing the government legal tender notes. They could not throw the banking system open to everybody until the government currency was withdrawn, as the circulation would soon become enormous, and specie payments be indefinitely postponed.

The proposition from the finance committee was to increase the circulation of the national banks by twenty millions additional, to be issued to the banks of those States and Territories which had less than five per cent of currency per capita. The amount of the national bank currency authorized by law was three hundred millions, and this had been all taken, leaving none for the reconstructed States. This proposition was for their relief. Mr. Fessenden favored it, but wished the government to enter upon a policy that would retire its paper money until it could resume specie payments.

Senator Fessenden always advocated the most honorable performance of the contracts of the government. In the debate on the bill for the issue of temporary loan certificates to take up interest-bearing notes about coming due, Mr. Cole argued that if the interest-bearing notes had become payable, the government could let them lie unpaid until it was convenient to pay them. Mr. Fessenden replied that such a course was nothing more nor less than repudiation and bankruptcy. The obligations were due at a certain date. They must be paid when they became payable. The senator proposed to let go unpaid a large amount of the government obligations, principal and interest. "No government upon the face of the earth could deal with its creditors upon such principles."

He resisted at the outset the propositions to equalize bounties, or to pay pensions except for disabilities incurred in actual service. He foresaw the enormous demands that

would be made upon the Treasury if bad precedents were once established. His courage in legislation was shown in his remarks on the bill, which came up on March 12, to pay pensions to the surviving soldiers of the war of 1812 who had served not less than three months. They had, he said, within a comparatively recent period, given a pension to each surviving soldier of the Revolution. The expediency of this was doubtful, but the country then was able to do it, and the argument was that the services in the Revolutionary war were of peculiar merit. The idea that a man must be pensioned simply for three months' military service would not be tolerated in any other nation. It was now proposed to put upon the pension roll every man who served three months in the war of 1812 who was now surviving. By and by, it would be proposed to do the same thing for the survivors of the Seminole war, of the Black Hawk war, of the Mexican war, and, not far hence, of the recent great war, in which millions of men were engaged. No other nation could stand a principle of that kind carried out in practice. He "dreaded the establishment of a precedent which could not be resisted hereafter and the effect of which would be to keep the country continually loaded with debt," and said: "We considered ourselves a great people. Whether we were a wise people was more questionable. But to imagine we could throw overboard all the rules that other great nations had considered essential to the management of public affairs, and do it with impunity because we were a nation where everybody voted, was very problematical."

Mr. Sherman and Mr. Edwards also opposed the bill. But the bill passed. Since then the predictions made by Mr. Fessenden have come true. The survivors of the Mexican war have been pensioned and laws have been enacted which will pension all the soldiers of the civil

war. The annual appropriations for pensions have grown to a colossal sum, far greater than the annual expense of the German or French army. More than half of the soldiers drawing pensions in the year 1900 are men whose disabilities were not incurred in the service but are due to the advance of age or the incidents of life since the war.

Mr. Fessenden would never violate just principles of financial legislation on grounds of sentiment or for what appeared to be meritorious reasons. As in the session of 1866 he opposed the purchase of Mr. Petigru's library by Congress for the reason that it was a mere gift of the public money, so now he opposed the proposition to remit the duties on a bell made in France from American copper and presented to an institution of sisters of charity in this country. He said he feared the introduction of such a principle as taking off the duties of any kind, either internal or external, because it was to benefit some charitable institution. Congress had hitherto steadily refused to do anything of the kind for fear it might prove an entering wedge.

He opposed a clause in the Naval Appropriation Bill which required master carpenters, rope-makers, and calkers, employed in navy yards, to be appointed from civil life, and prohibited the employment of such men from the naval service. The object of the clause was to give such employment to political workers, and mix up politics with business. The Senate struck it out.

He successfully resisted a bill to issue an American register to a vessel whose owners, loyal citizens, had transferred her during the civil war, under the British flag. He spoke at length on June 29 against the proposition to strike out the appropriation for sick and disabled seamen. This fund usually sustained itself by a very small reserva-

tion from sailors' wages. When speaking against an appropriation to purchase copies of the Constitution for distribution among members of Congress, Mr. Fessenden remarked that he belonged to that illiberal class of persons who thought the matter of education of the people did not exactly come within the regulation of the general government, but had better be left to the States. He believed the States would slacken in their efforts if the general government took the education of the people into its own hands, and it would result in injury rather than benefit. The measure adopted by Congress providing for a commissioner of education with an educational bureau did not meet his approval.

The war between Congress and President Johnson had disposed Republicans to curtail the power of officials. In the Deficiency Bill were two clauses, one punishing officials for retaining in office any person for whom no appropriation had been made, while the other forbade any contract for a larger sum than had been appropriated, and provided that any official violating it should be sent to the penitentiary. Mr. Fessenden pointed out that the first proposition might stop all the work of the government, as very often the appropriations were not made till after the new year had begun. As to the other proposition, it would leave the government at the mercy of the contractors if officials were not allowed to contract for the whole of the work in the beginning, though Congress was in the habit of appropriating only enough to keep the work going on for the fiscal year.

Congress adjourned from July 27 to the 21st of September. A few members assembled on September 21, when the two houses were immediately adjourned till October 16. An adjournment was then made to November 10 and again to December. President Johnson

behaved with moderation during the balance of his term.

Public opinion as to impeachment began to change in July. It was seen that the Republicans had been saved from a political blunder by the defeat of the impeachment. Mr. Fessenden received, even from old Abolitionists and Free Soilers, many letters approving his course. Hamilton Fish declared that his letter in reply to the Boston invitation "was admirable, and the Republicans would yet learn that he, with Trumbull, Grimes, and Henderson, were their best friends, who had saved them from ruin." To the charge that Fessenden had been bought, the Rev. Dr. Storrs replied that he would as soon think that he himself could be bought. A letter that afforded him as much satisfaction as any was from his lifelong, faithful, and steadfast friend, Rensselaer Cram of Portland. Mr. Cram was a leading citizen who had always been an active supporter of Mr. Fessenden, and who, while never holding office himself, had exercised great influence in state politics by his wisdom, uprightness, and character. He congratulated his friend on "his proud position that he has passed through a fiery ordeal; that every one now agreed that the result was best for the party; that he had always justified Mr. Fessenden's vote, and believed the civilized world outside of the United States sustained it." A number of influential citizens of the State, whose names had been published as vice-presidents of the public meetings got up to influence the votes of senators, now wrote that their names had been used without their consent or knowledge. They added that they fully agreed with him in his action and opinion. Senator Dixon of Connecticut sent a letter to express the deep feeling he entertained of the immense obligations of the country to Fessenden and Grimes for their action on the impeach-

ment trial. "Time would be required to measure the good you did and the courage you exhibited. Johnson's removal was of no consequence compared to the danger of overthrowing our institutions. It is due mainly to you and Grimes that the country was saved from seeing the President removed by violence when any party desired it. This was averted by a degree of courage and patriotism the world had never seen surpassed. My respect for men who resisted the tremendous influences brought to bear upon them is too great for ordinary language to express."

Nearly thirty years after these events, that eminent scholar and diplomatist, Andrew D. White, in his oration on evolution in politics, thus spoke of Mr. Fessenden's action: —

"We need first of all a generation of journalists who will give a fair summary of the doings of our representatives. The country would then be educated to see that some of the so-called great men are but futile bubbles on the stream of our national life, while other things and other men of real greatness would be revealed. There is the Morrill bill of 1862, which gave to each State a centre for scientific and technical instruction. Let me give one more example to illustrate my meaning. Several years ago an effort was made to impeach the President of the United States. The current was strong, and most party leaders thought best to go with it. One senator of the United States refused. William Pitt Fessenden of Maine, believing the impeachment an attempt to introduce Spanish-American politics into this country, resolutely refused to obey the mandate of his party as expressed at its state convention, resisted the entreaties of friends and relatives, stood firmly against the measure, and finally, by his example and his vote, defeated it. It was an example of

Spartan fortitude, of Roman heroism worthy to be chronicled by Plutarch. How was it chronicled? It happened to me to be traveling in Germany at that time, and naturally I watched closely for the result of the impeachment proceedings. One morning, I took up the paper containing the news and read: 'The impeachment has been defeated; three senators were bribed.' And at the head of the list of the bribed senators was the name of Fessenden. The time will come when his statue will commemorate his great example."

On the other hand, he continued to receive abusive letters from unknown and angry persons, telling him he had been influenced by envious and corrupt motives; that he had lost the respect and confidence of Republicans, and was now consorting with copperheads and rebels, and the Republican papers of his own city did not spare the lash. One of its articles cut him to the quick, but he made no outward sign, though writing to his son: —

"Who wrote '&' in Friday's 'Press'? It is a most malignant and insidious article, while professing great fairness, designed under a specious garb to do me as much injury as possible. I should like to know who the author is, and to remember him. I am surprised that Richardson should have admitted such an article, if he could help it. It is very kind of the author to admit that I am probably not corrupt, or bribed, and to impute to me a meanness of motive which equally unfits me for a legislator. The writer misstates facts, also, most grossly. In the first place, I never styled myself a conservative, or was called so until denounced by Wade, Chandler, and others because I would not support their impeachment schemes. I have acted straight with the party, though disapproving some of its extreme measures.

"Looking over the 'Globe' since 1861, you will find

several speeches on leading party topics, one of which (which one exactly, I do not now remember) was largely circulated. Notwithstanding that my time was engrossed by financial labors which fell heavily on me, I reviewed severely Johnson's speech of February, 1866, and though overwhelmed with my finance committee work, was compelled to take the head of the reconstruction committee, and wrote its report, which was the campaign document of 1866. I always refused ever to be spoken of as a candidate for president or vice-president, and was not otherwise a candidate for Mr. Wade's place than to say, when asked by others, that I had no desire for the place, but would take it if desired by the Senate, but would not go into a contest against anybody. All these things are grossly misstated. The writer of '&' is a knave or a fool.

"Mr. Johnson has no patronage left. The Senate checkmates him. How ridiculous to suppose such an absurd motive!

"I write these things to enlighten you, and for no other reason, for I suppose all such imputations must be borne patiently."

He had hardly returned to his home after the summer adjournment when the political campaign opened. The state election was to be held on the 14th of September. Maine was one of the first States to vote. The National Republican Convention had unanimously nominated General Grant for president, and had adopted for its platform the two great principles of equal political rights for all, and the maintenance of the public faith in the financial obligations of the government. The Democrats had nominated Seymour and Blair, and had adopted a platform which denied both of the Republican propositions. They denounced the reconstruction acts as unconstitutional, and having formerly denied the power of Congress

to issue paper money to carry on the war, they now declared the right of the government to pay off its coin bonds in that depreciated paper currency. Upon these issues the election was to be fought. No man had borne a greater part in the measures of finance and reconstruction than Mr. Fessenden. There was the deepest interest to know what course he would take. Some thought he might refuse to sustain the Republican ticket on account of the abuse which Republicans had heaped upon him. But he entered the campaign at once. No sooner had he arrived in Portland than numerous invitations to speak poured in upon him from all sections of the State. The alarm caused by the Democratic doctrine of paying the coin bonds of the United States in greenbacks impelled many financiers in the great cities to urge him to speak upon the financial issues. Leading newspapers requested a copy of his first speech in advance for publication. This he could not furnish, as he did not write out his speeches. Grant clubs had been formed in all the principal cities of Maine, and Portland, Bangor, Bath, Augusta, Lewiston, Auburn, Biddeford, Bucksport, and numerous towns solicited him to address them upon the political issues of the campaign. These invitations were reinforced by appeals from citizens outside of the State as well as in it.

On the evening of August 31 Mr. Fessenden spoke to the citizens of Portland. The excitement of the election and the angry feeling engendered by his action on the impeachment of the President called out an immense audience. The great city hall was packed. Thomas B. Reed, then a young man just entering public life, and a staunch friend of Mr. Fessenden, was an interested spectator. In his oration on the one hundredth anniversary of the incorporation of the town of Portland, eighteen years afterwards, he thus described the meeting: —

"The most impressive scene I ever witnessed took place in this very hall. Here almost on the very spot where I now stand, William Pitt Fessenden stood before the constituency which had loved and honored him for so many years. The hall was black with the thronging multitude. It was at the beginning of a great presidential campaign, the last he was ever to witness. The great problem of reconstruction was to be reviewed. Mr. Fessenden had been the master spirit in its solution. The war debt was to be assailed — Mr. Fessenden had been chairman of the committee on finance and Secretary of the Treasury. To all this was added the intense personal interest of his recent defeat of the impeachment of Andrew Johnson. With full knowledge of the storm about him, but with the courage of perfect conviction, he faced the responsibility. The occasion was a great one, but the man was greater than the occasion. Calmly ignoring, except in one sharp, incisive sentence, all that was personal, with his old vigor, terseness, and simplicity he explained to his townsmen the momentous issues of the campaign. From the moment he began, the party rage commenced to cease, and the old pride in his greatness and honesty began to take its place. How strong he looked that night! Although all the world might falter, you knew that calm face would be steadfast. To him had happened the rare good fortune of having the courage and character which matched a great opportunity. Few men would have been so brave, and fewer still successful."

When Mr. Fessenden stood up, he received so warm a welcome that he paused to control his emotion. He said he had doubted whether his voice any longer had power with his fellow citizens, but their welcome had dispelled any apprehensions of that sort. They would remember that when he entered the Senate the great question which

touched all hearts was the extension of slavery. They would remember that he and those with whom he acted were determined to stay its progress over the land. They would remember the election of Abraham Lincoln, the threats of war which followed, and the tempest of ruin which swept over the country. Were they to stop and be trampled on because they sought to prevent the spread of slavery? They determined to meet rebellion and civil war, and it was found the people had the great qualities necessary to meet the issue.

The Republican party took the government under unparalleled circumstances, with a great war impending. Most of its leaders were untried men. President Lincoln was a sample, a clear-headed, honest man, whom Providence seemed to have raised for the occasion. The country had been stripped of the means of defense or aggression. Everything had to be created, and there was an enemy at the gates of the Capitol, long prepared for rebellion.

The Republican party had to contend not only with a determined enemy in the South, but with the Democratic party at home. He would speak respectfully of the Democratic party because it had of late spoken respectfully of him. (Laughter.) Though that party had many noble spirits who fought for the government, yet the Democratic organization, state and national, was an enemy. The North succeeded in the contest, but the contest left a legacy. One thing it did was to destroy African slavery. This was done against the opposition of the Democratic party. The people would in time become alike in their interests, sympathies, and feelings, which was impossible while slavery remained. They would soon become a united and prosperous people.

But they could not carry on such a great war for four years without borrowing vast sums of money. They had

been obliged to contract a great debt. The Democratic party had compelled the Republicans to contract it, and that party must be held responsible for it. How was that debt contracted? The government borrowed money, and now both parties said it must be paid. The great question was, how should it be paid? The Republican party declared it must be paid not only according to the letter, but the spirit of the contract. What was the spirit of that promise? No nation ever carried on a great war on a gold basis. Gold had disappeared early in the contest, and the government decided to issue its paper promises. Those promises read in this way: "The United States promise to pay ten dollars." The law said a dollar consisted of so many grains of gold or so many grains of silver. A dollar represented value. Did that promise mean that the government never meant to pay? That that promise was to be succeeded *ad infinitum* by other pieces of paper? Had he supposed so he never would have voted for the bill, although he reported it.

In February, 1862, Congress passed the law to issue promises, — greenbacks, as they were called, — and decreed they should be legal tender. He had doubted the expediency of making them a legal tender and he made a speech against it. But Congress, in order to give these promises a currency circulation, decreed they should be a legal tender. It was now agreed that inasmuch as the law said that these paper promises should be legal tender for all public and private debts, except the interest on the government bonds and the customs duties, therefore the principal of these bonds should be paid off in these paper promises. The next section of this very law provided that people who had these promises should have the right to invest them in the public bonds which promised to pay their interest in coin, and their principal in twenty years.

The Democrats claimed that it was never meant to pay the principal in coin. Was it to be supposed that Congress meant to pay the bonds after twenty years in depreciated paper? The provision to pay the interest in coin was to secure its payment in coin during the war, and not to make a distinction between interest and principal.

The provision that the bonds might be redeemed in five years was inserted because Congress thought the war would then be over, and if the government could not pay the bonds it could renew them at a lower rate of interest. Now the Democratic party proposes to take advantage of this five years' stipulation and pay off the bonds with more promises. This would be a violation of the spirit of the contract. There was another argument against paying the bonds in more greenbacks. Congress provided by law for setting aside a fund of coin from the duties on imports with which to pay the principal of the bonds. In the debate every man stated that principal and interest were to be paid in coin. Secretary Chase had stated it publicly in a letter. Everybody at that time so understood it.

When he took the Treasury it was at its last gasp. One hundred millions were overdue and one hundred millions more would come due within two months. "It was," said Mr. Fessenden, "the tightest place I ever was in except when I was obliged to vote to keep the President in office. I appealed to the people for a loan, and I authorized my agents to say that the principal of the five-twenty bonds would be paid in gold." That was what the people of this country and of foreign countries thought they were contracting for.

The Democratic doctrine was to pay the government with its discredited paper. The Democrats would issue enormous quantities of paper worth little or nothing,

and pay the debt with it. They would keep on giving promises, year after year, continually growing less in value, and there was no justice and no honesty in the doctrine. The Republicans acted upon no such miserable quibble. They proposed first to bring the greenbacks up so that a paper dollar would be worth as much as a gold or silver dollar and then pay the debt. There was but one way to deal with this question, and that was for the government to pay its debts and redeem its obligations in good faith, in common honesty, in the face of the world, and in the spirit as well as the letter of the contract. A nation that had put a million of men in the field, and had raised thousands of millions of dollars to support them there, could not afford to stand dishonored in the eyes of the world by saying, "I will not pay the expenses of the battles I have fought." In closing this part of his speech, he said, "Discharge at once and forever all idea of tampering with your obligations. If anybody advises you to repudiate, repudiate the repudiator; whether he belongs to the Democratic party or to the Republican party, whether he lives in Ohio or in Massachusetts, repudiate him. He is unworthy of the confidence of an honest, God-fearing, intelligent people."

Mr Fessenden then discussed the great question of the readmission of the Southern States into the Union. The Confederate States had gone out of the Union and made war upon the national government, and by doing so had lost all the rights they ever possessed under that government. They had no rights except the rights that remained to them under the laws of war. The first question was the status of the colored people; were they to be citizens of the republic? He had favored a proposition which declared inoperative and void any provision in the Constitution or laws of a State whereby any distinction was

made in political or civil rights on account of race, creed, or color. He did not wish to hurry the rebel States back into the Union. He would offer them a fair proposition, and if they did not choose to accept it, he would let them stay out of the Union until they did. Though called a conservative, his proposition was thought to be too strong, and the committee adopted another which excluded from the basis of representation all persons denied the elective franchise on account of race, creed, or color. This was defeated in the Senate by the vote of all the Democrats, the Johnson senators, and nine Republicans. Finally a proposition not so good was adopted. This was the Fourteenth Amendment, which, besides the subject of representation, settled the question of citizenship, provided for the payment of the public debt, and against the payment of the rebel debt, and excluded certain leading rebels from office. These terms were reasonable, and were only sufficient guarantees against future evils. Yet the Democrats were complaining of their severity, and the rebels were weeping over the loss of power. He reserved *his* tears for those who fell in defense of their country.

The question that remained with regard to the Southern States was, Shall the work of reconstruction be sustained? The Republican platform says it shall be permanent. The Democratic platform declares the reconstruction measures are unconstitutional, and must be overthrown. He had faith that the people who had carried the country through a great war would now go forward in the performance of their duties without flinching.

At the close of his speech, cheers were given for the senator, and the great audience slowly dispersed. The newspapers said: —

"The Democrats had hoped that Mr. Fessenden would

play the part of Achilles, and suffer the enemy to gather the spoils of the field. They could not have been more mistaken. Mr. Fessenden had gone into the field with a spirit that could not be surpassed, and had set an example of magnanimity and political fidelity that others would do well to follow."

The election in Maine resulted in a sweeping Republican victory. As soon as it was over Mr. Fessenden received numerous invitations to speak in New England, New York, Ohio, and the West. He was especially called upon by leading financiers to speak upon the finances. Governor Morgan, with many others, urged him to speak in New York city. These requests were declined, for he was in need of rest, and he disliked speaking outside of his own State.

Writing on the evening before the election to F. H. Morse in London, he said: —

"We have had the most active and exciting campaign I have known. The result is of great consequence, and I think it will be satisfactory. Our great danger arises from the reconstructed rebel States. Were these all out, the fight would be a mere matter of form. I got my name of conservative by advising against the reconstruction acts. It seemed to me, that when we had proposed the Fourteenth Amendment, the rebel States had rejected it, and we had provided military protection for our friends, enough was done by Congress towards reconstruction, and we had better leave the matter where it was until the people of those States asked for admission in proper form. Our furious radical friends, however, thought that they could secure the votes of all those States through the aid of the negroes. My opinion was that, once recognized, the wealth and intelligence of the State would rule them, and we had better let them stay out until after this election. I believe

that now these gentlemen regret that in this particular they were not as conservative as I was.

"Virginia, Mississippi, and Texas are not reconstructed. Should they vote, as they probably will, in some shape, and it is found that their votes would elect Seymour, we may have trouble. I hope such a complication may not occur.

"As to the impeachment folly, every sensible man admits that its failure saved the party, or rather that its success would have ruined us. The sober truth is, there was no decent ground for an impeachment, and the people were goaded to madness by bad and weak men. Nevertheless, I voted for acquittal reluctantly, for I saw and felt the storm and would gladly have avoided it. In my judgment had senators voted according to their honest convictions, freed from the pressure of outside opinion, impeachment would have proved a fizzle. But cowardice ruled the hour."

He was obliged to decline the invitation to address the great Ohio mass meeting at Cleveland on October 8, and replied as follows: —

PORTLAND, October 3, 1868.

W. N. HUDSON, Secretary, etc., — I sincerely regret my inability to be with you at the proposed mass meeting in Cleveland. Having long contemplated a visit to that section of the country, I should be happy to avail myself of so favorable an occasion to make it.

We are all just now looking to Ohio with peculiar interest. One of her most prominent sons claims to be the originator of a financial doctrine which the Democratic party has adopted in its platform, and which I cannot but consider as at war with the plainest principles of common honesty. Maine has spoken her opinion in terms not to be misunderstood. It remains to be seen what Ohio thinks

of it. For the honor of that magnificent State, as well as for the national credit, it is to be hoped her voice will be equally loud and emphatic. Permit me to say that upon this particular point Ohio is compelled to bear a peculiar responsibility. On a question of such vital importance to the character and welfare of this great people, I think nothing but the highest ground can be taken consistently with either national or party honor. The tone of the Republican platform in this particular is beyond all praise. The men who made it scorned all compromise with repudiation as unworthy the character and principles of that great party which had conducted the nation through the perils of a mighty war. Anything short of the payment of the national debt in good faith, according to the understanding of those who contracted it, is, in its essence, repudiation, however it may be disguised. The evils which would flow from such an attempt are even greater than defeat in a conflict of arms. A people which has justly forfeited the respect of mankind has nothing left worthy of preservation.

> "When faith is gone and honor lost
> The man is dead."

I trust, therefore, that in Ohio, as in Maine, this campaign will be conducted throughout upon the principle of open defiance to all such demoralizing doctrines, whatever shape they may assume. In civil as in military life, courage in the right doctrine, faith in a good cause, and confidence in the people, will prevail as well against the arts of the demagogue as against rebels in arms.

I will not touch upon the other great issue involved in the coming election. None of us can fail to understand it, and to feel its importance. We all know that upon it depends the question of quiet or confusion, of order or disorder, of peace or war. With such an issue awaiting

popular decision, it is plainly the duty of every man to spare no effort to save his country from the calamity of a Democratic triumph. Happily, if we do our whole duty, success is sure. That Ohio will be able to claim an enviable share in the coming victory, I have the most abiding confidence. Very truly yours,

W. P. Fessenden.

Congress assembled on December 7. Mr. Fessenden found most of his indignant Republican associates had survived their disappointment, and nearly every one was disposed to be friendly. What most amused him was the great cordiality of several members of Congress who would hardly speak to him after impeachment.

Concerning the various rumors about the new Cabinet of the incoming President, he, Fessenden, wrote: —

"It is said that General Grant wishes to continue Schofield as Secretary of War, and to appoint Porter Secretary of the Navy. Public opinion, however, is so much against it that it is doubtful whether he will do so. I think Schofield an excellent secretary, but my own opinion is decidedly adverse to the policy of confounding the military and civil services. They had better be kept distinct. It is enough to have military Presidents, but these the people will have.

"This has been a mischievous Congress, and I shall breathe more freely when the fourth of March comes. All sorts of schemes are on foot for depleting the Treasury, and I fear that some of them may succeed. It is said that General Grant sets his face against all new undertakings until our national debt becomes less burdensome. If so, it affords new proof of his sagacity and patriotism. Nobody can even guess who he will select for his Cabinet. It is believed that Mr. Sumner is desirous of being Secre-

tary of State. Although I dislike the man, I do not think it would be a bad appointment, as he is well qualified for the position and very cautious. Still, I doubt if he would suit General Grant."

The first party debate of the session occurred on December 15. It was over the proposition to repeal the act which prohibited the States lately in rebellion from maintaining a militia. Mr. Hendricks opposed the repeal, which he asserted was proposed with the view of extending an odious system of government. The militia force which Mr. Hendricks condemned was the militia organized by the governments of the reconstructed States, and was in the hands of the Republicans.

Mr. Fessenden said he thought the true reason of the law it was now proposed to repeal was the general distrust of the loyal character of the governments first organized in the rebel States after the Rebellion, and the danger of putting an armed militia under their control. The senator from Indiana had forgotten that the grossest enormities had been committed in those States which no force of the state or general government had been able to put down. The States not yet reconstructed needed a militia force. Such a force was especially needed in Texas. Congress had, for the sake of economy, reduced the army too much, and there was no force adequate to put down the outrages perpetrated upon the loyal people. Unless Congress lodged a military power with somebody to repress violence by force, it would see no end to existing trouble.

After considerable debate, the Senate passed the act to permit the reconstructed States to organize the militia, but refused to extend it to those States which were not yet reorganized.

One of the most important debates of the session in which Mr. Fessenden participated was the bill to pay Sue

Murphy for the destruction of her buildings at Decatur, Alabama. Miss Murphy was the daughter of a former officer in the United States army, and was loyal. Her buildings were destroyed in pursuance of orders to fortify Decatur. General Thomas vouched for her loyalty and recommended the payment of her claim. The committee on claims had reported unanimously in her favor. Senators Howe and Anthony supported the bill. Senator Fessenden opposed the bill, saying he thought it would lead to an exhausting drain upon our financial resources, and, perhaps, double the public debt. In a short but emphatic speech he pointed out the consequences of establishing such a dangerous precedent, and stated the rule of the laws of war governing the case.

He presumed this was a very hard case, and as the lady was loyal it was natural that it should excite much good feeling. He could not vote for it as it would establish a precedent that would, to say the least, lead to an exhausting drain upon the Treasury. What propriety was there in paying for property taken in this way? The army was in an enemy's country, had taken possession of it by force of arms, and had found it necessary in its military operations to demolish a house for military defense. He did not know it could be established that whenever a hostile force in an enemy's country took possession of property for military defense, it could be called upon to pay for it. By passing the bill, Congress would establish the principle that wherever the armies went in this hostile territory, war being flagrant, and found it necessary to take possession of what must be considered enemy's property for purposes of defense, it must be all paid for. There would be no end of such claims if the door was once opened. He said these things reluctantly, for he had seen the young lady, had heard all the circumstances, and

his sensibilities would lead him to vote for the bill. But the bill was of a dangerous character, and they could not defend themselves before the country if they began to pay such claims.

Mr. Hendricks said if it had been in the North, he supposed, if the buildings had been taken for such a purpose, that no one would say he could not vote for her. Was it any less just that she was from Alabama? He did not admit the law to be as stated by the senator from Maine. He knew that in a war between independent nations each citizen was an enemy of the other nation. But in the Rebellion it was the doctrine of the government that it was not a war by sovereign States, but by insurgent inhabitants of States, and only those citizens were enemies who made themselves so. Those who were loyal were friends, and he would not adopt the doctrine of a war between independent nations as applicable to the war between the States.

Mr. Fessenden replied, the senator from Indiana could not be aware that the Supreme Court had decided that in all matters relating to the ordinary incidents of war as between nation and nation, the same rules and the same consequences were applicable to the States in rebellion, after the war was declared and understood, that would exist between two independent nations. That doctrine was established, and none other could, with propriety, be applied to that contest. The consequences would be, if loyal persons could recover their property thus taken, that everybody who did not take an active part in hostilities would prove their loyalty during the war, and would recover their claim against the government for property taken or destroyed by the Union armies.

Destruction of property was an incident of war, whether between two independent nations, or between a nation

and a portion of its people who have, for a time, made themselves independent and established a government. There was no distinction between them as to the consequences of warfare. If this distinction was made, and this precedent set, the debt would be doubled. Citizens of the South would claim compensation for the slaves emancipated by the war except for the constitutional amendment, no more applicable to that than to anything else.

The senator from Indiana, in the view he took of all questions arising out of the war, might be right in his view of this case. It had been the Democratic doctrine that there was no war, only an insurrection of a portion of the people who undertook to oppose the execution of the law. Under this doctrine one could advocate the claims of everybody who did not actually take part in rebellion. It would be one of the things that would make the war and its consequences unpopular with the people by heaping upon them burdens of this description.

He hoped the Senate would pause before it established a precedent fraught with extreme danger and extreme consequences.

These remarks, made as soon as the bill was taken up, awakened the Senate to the real magnitude of the measure, which, instead of being a private claim for seven thousand dollars, would establish a precedent for boundless demands upon the Treasury. The bill was continued for further discussion. Many senators gave it careful study, learned speeches upon the laws of war were delivered, nearly one half of the Senate spoke upon the question, and after a month of constant debate the bill was referred back to the committee. The committee never reported.

The session was marked by the passage of the Fifteenth Amendment. This planted impartial suffrage in the Con-

stitution. It was in effect adopting Mr. Fessenden's first proposition to the committee on reconstruction.

The similarity of the Fifteenth Amendment to Mr. Fessenden's proposition in 1866 will be seen by comparing the language of the two. The Fifteenth Amendment reads: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Mr. Fessenden's proposition was even more sweeping: "Any provision in the Constitution or laws of any State, whereby any distinction is made in political or civil rights on account of race, creed, or color, shall be inoperative and void."

In the debate over the suffrage amendment, on February 9, Senator Fessenden said that the senator from Wisconsin had made a remark which might place him, Mr. Fessenden, in a false position before the country. It conveyed the idea that he had opposed the extension of the franchise to the colored people. There could be no greater mistake. It would be remembered that he was chairman of the joint committee on reconstruction. There the subject of the basis of representation came up early. It was in fact the first question. A sub-committee was selected to report to the general committee some proposition as a basis of representation. He was also the chairman of the sub-committee. He reported to the general committee two propositions, one declaring that representatives should be apportioned according to the number of citizens of the United States in each State, and that any provision in the laws or Constitution of any State whereby any distinction was made in civil or political privileges on account of race, creed, or color, should be inoperative and void. The other proposition reported was what was known as the Blaine amendment, which pro-

vided that whenever the elective franchise should be denied or abridged on account of race, creed, or color, all persons of such race, creed, or color should be excluded from the basis of representation. He, Fessenden, drew the first proposition. But the committee adopted the second proposition to be reported to Congress, by a vote of eleven to three. When he reported the proposition adopted, he stated that it was not his proposition, though he felt obliged to sustain it as the decision of the committee, but he preferred a proposition that abolished all distinctions on account of race, creed, or color. His opinion was that all these side propositions which went only half way, which provided modes of escape, partly limiting the evil, would be found without that effect which they were designed to produce, and it was better to strike at once at the root of the evil.

But the majority thought his own proposition could not be carried, and directed him to report the Blaine amendment.

As finally passed, the Fifteenth Amendment was exactly in line with Mr. Fessenden's proposition in the committee on reconstruction for the Fourteenth Amendment.

After the war, a devoted Union man from Virginia, who had suffered for his faith, met Mr. Fessenden in Washington. The two earnestly discussed the best plan for the restoration of harmony. The Southerner had been an abolitionist at heart, and rejoiced in the destruction of slavery. But he was still so much influenced by habits of thought created by the influence of slavery that he opposed every plan for making the ex-slaves citizens of the country. After much patient discussion, Mr. Fessenden quietly remarked to his Southern friend: "Mr. B——, do you know that you have no idea of *your* rights that does not involve depriving another of *his* rights?"

The victory of the Republicans in the national election, on the platform of maintaining the public faith against the greenback heresy, created a general desire in Congress to pass a measure pledging the payment of the five-twenty bonds in coin. On February 26 the finance committee reported the bill to strengthen the public credit. The bill declared that to remove any doubt of the purpose of the government to discharge its just obligations to the public creditors, and to settle conflicting interpretations of the laws, it was hereby provided that the faith of the United States was pledged to the payment in coin or its equivalent of the interest-bearing obligations of the United States, except in those cases where the law authorized their payment in lawful money by express provision.

Senators Sherman and Morton had both argued that by the terms of the law under which the gold-bearing bonds were issued, the principal of the bonds could be paid in greenbacks, though Sherman had said it would not be right to do it. Senator Doolittle had argued in favor of a measure for the United States to sell its bonds, buy gold with the proceeds, and with the gold buy up its own depreciated paper and pay off its bonds with such paper. There were several propositions, all looking to the evasion of the payment of the bonds in gold. Mr. Fessenden looked upon all of them as departures from straight-forward dealing, as injurious of the public credit, and as contrary to the spirit and plain intent to the law. The debate was a long one, and it was late at night when Mr. Fessenden took the floor.

He said if the Senate would excuse him for speaking at that late hour, he wished to say a word or two, because he had heard doctrines advanced to which he could not assent, and, as he was connected with the enactment of the law, he felt an interest that it should not be perverted.

"The senator from Indiana (Hendricks) has charged the Republican party with passing that bill with the design of issuing a depreciated currency." There was no foundation for the statement.

When these notes were authorized, the government could no longer obtain gold. It was necessary to have a currency that would pass as money for all the uses of the war, and with which the taxes might be collected. It was with that design that the promises to pay were issued. It was a foul reproach upon the character of the people and of Congress to say that when they issued their promises to pay so many dollars they meant to pay less. They endeavored to guard against the possibility of it. They provided that these promises, thus issued, might be turned into a bond which should pay so many dollars and a certain amount of interest, and that the interest should be paid in gold. Was it the design that that should be depreciated paper? That less should be paid for it than it bore on its face? Did they mean to pay sixty cents when they said they would pay a dollar? The idea would have been repudiated as a reproach and a scandal, and for a senator to say that the United States issued their promises to pay with the design of defrauding the public is without the slightest foundation in fact. He, Fessenden, meant what he said, and Congress meant what it said, when it promised to pay so many dollars. A dollar was defined by statute. It was gold and silver coin. That was the promise, and the United States meant to perform it.

Mr. Fessenden said he did not design to go into the argument, but he protested against the idea that the senators from Ohio and Indiana (Sherman and Morton) should be held as representing the United States because their opinions were one way. It had been argued by those

senators, and by the senator from Wisconsin (Doolittle), as if the words of the former were law to the country. They were not the law for him (Fessenden). The senators from Ohio and Indiana argued that the bill was making a new contract. He had the greatest respect for both of those senators; but they could not get up and argue at one another, and let anybody else found an argument that, because they thought so, therefore everybody else must think so. Yet that was the style of argument adopted between themselves, that they were to settle this question, and because they have given these opinions, one is reproaching the other and holding him to it, as if that was the conclusion of the country and Congress. He undertook to say that by the ordinary rules for construing statutes there was no doubt about the meaning of the statute, and that was that the principal and interest should be paid in coin.

Gentlemen founded their argument on the fact that only the interest was mentioned as payable in coin. But let them take the statute together and their construction would render it ridiculous. The statute allowed persons to exchange their greenbacks for a bond bearing interest payable in coin. If the bond was payable in greenbacks, all a person would have to do would be to go to the Treasury and exchange his bond for greenbacks, and then go to the other side of the Treasury and exchange his greenbacks for a bond. This he could do every five minutes in the day. It was not till long after the statute was passed that the law allowing the conversion of greenbacks into a bond was repealed. The statute must be construed as it stood before any subsequent statute was passed. It was sticking in a word against the whole spirit and the whole meaning of that law. He would not argue over it at length, because it was too late at night. He had risen to enter his

protest against the opinions of those senators going out to the country as the sense of the body.

The senator from Wisconsin (Doolittle) proposed to issue bonds and go into a foreign market and borrow gold, then buy up the depreciated paper of the United States with that gold, and with that depreciated paper pay off the six per cent bonds. If a merchant dealt in that way he would be called a cheat. No one would trust him. It was nothing but flat knavery, and when it was put forth by the Democratic party as a new phase of the doctrine of repudiation, which the people repudiated in the last canvass, he hoped it would meet the same fate.

Mr. Dixon asked Mr. Fessenden if it was more knavery coming from the senator from Wisconsin than when it came from the senator from Indiana (Morton)?

Mr. Fessenden replied that he did not hear the senator from Indiana propound the doctrine, but did hear the senator from Wisconsin propound it, and from what he had heard in this debate, from sundry gentlemen of the Democratic party, he saw it was to be their platform hereafter.

Mr. Dixon here rose and Mr. Fessenden said: "Not my friend. I desire to exclude him, for he has put himself upon a proper platform. I only hope that with the company around him he may be able to stand upon it." (Laughter.) Mr. Dixon, though acting with the Democrats, had spoken on the side of the Republicans on this question.

Mr. Dixon again asked if the doctrine was not as objectionable coming from the senators from Ohio and Indiana as from a senator called Democratic?

Mr. Fessenden answered that there was a wonderful difference between the theory and practice of knavery. The senators from Ohio and Indiana had argued that,

according to the strict letter of the law, they had a right to pay the bonds in greenbacks, but they took a higher ground and maintained that the bonds ought not to be paid in greenbacks, but that the credit of the government should be brought up to that point where the greenbacks were equal to gold. The senator from Wisconsin took the ground that the government *should* issue its bonds at a lower rate of interest, go into the London market and get gold, come back with this gold, buy up the depreciated greenbacks, and with these pay off the six per cent bonds. That was an entirely different proposition. He characterized that as dishonest in its nature and essence, and an individual doing so would lose his credit as an honest man. He hoped his country would not lose its integrity by resorting to such a plan.

The bills before the Senate had his approbation altogether. He had never had any doubt about the true meaning of the law under which these bonds were issued. He had favored this declaration, not that it made a new contract, not that it incurred a new obligation, but since a great party had taken the ground that the country ought not thus to deal with its contracts, and as two distinguished senators had taken the ground that the government had a right so to act, he wished to dissipate all such clouds as were overshadowing the credit of the country. He wished to put it on the broad ground that by the original contract, according to any true legal construction of it, these bonds must be paid in gold; and also upon the fact that the officers of the government had so declared with the approbation of the people; and that inasmuch as they did that, the present declaration was now made that they who represented the great party which originated this debt, and from the necessities of the case borrowed this money and promised to pay it,

would keep their faith intact. If senators on the other side proposed to go before the people with the declaration that the government was not bound in law or honor to pay the dollars that were promised, he wished Congress to speak on that subject, and say that until some other set of men acquired the power to rule these halls they would keep the faith of this government on the proud eminence where it had stood unshaken by any efforts to break it down, unshaken, even, by the mistaken ideas of excellent gentlemen who were mistaken about a matter so vital to the welfare of the people.

His friend from Ohio (Sherman) began wrong when he adopted any such ideas. That original error had tainted his excellent mind and great knowledge of the subject all through. He was glad to see it had not tainted his perceptions of right, and that whatever might be his construction of the contract, he wished the people to discharge their obligations in full faith and honor. The bill was a proof that all error on the subject was vanishing, and the point had been reached when there was no longer any doubt that the people meant to preserve their credit, keep their faith, discharge all their obligations according to the spirit as well as the letter of the law, and not be deluded by the idea that a party could rule in Congress which sought to flatter and deceive the people into false notions of what constituted the public faith.

The speech was unexpected, and was a protest against the false and timid ideas which were advanced by some Republicans against the honest payment of the debt. A noted correspondent, describing the scene, said "it was one of the most telling speeches Mr. Fessenden had ever uttered upon the Senate floor; that the Maine statesman roused like a blooded racing charger to his last full bent, poured out on the Senate, under the glow of the midnight

lamps, his most eloquent, fervid speech for years. The old members of the Senate gathered around him at its close, assuring him he had equaled his best things." The same writer, speaking of Mr. Fessenden's power over the Senate, said his character "was all grit and his intellect was all fibre; that he was as high-strung as a duke, and that no tenure of opinion could, with him, qualify or excuse any deviation from the perpendicular."

The bill passed the Senate by a vote of 31 to 16; but failed to pass the House. It was immediately brought forward again in the special session of the next Congress, which met on March 4, and was passed without debate by both houses, and approved by General Grant, who had now become President.

He writes home at this time: "Things are in a queer state about the Cabinet, General Grant keeping his own secret to perfection. I think the difficulty is in deciding who are to be Secretary of State and of the Treasury. One of these will probably go to New England — in the general opinion. Opinions vary from day to day. Sumner has never been supposed to have a chance. Motley was the favorite here for a few days. Then came Governor Fish — then Mr. Hobb. To-day I have been the man. To-morrow it will probably be somebody else. The truth is, nobody has any good ground for a sound opinion, and I should not be surprised if General Grant should surprise everybody. I sincerely hope that he will not think of me for any office, as I want none, and an offer would embarrass me. The salary is not sufficient to live on, and I think, after all, that Sumner would be about as good a selection as could be made for Secretary of State, so far as fitness for the part is concerned."

The Fortieth Congress adjourned March 4, at the moment Vice-President Colfax entered the chamber to take

the oath of office and open the first session of the Forty-first Congress. The session lasted until the 23d of April. In the rearrangement of the committees, Mr. Fessenden was urged to take the chairmanship of the committee on appropriations, and he accepted it. In addition to this chairmanship, he was made second on the committee on foreign relations, and a member of the committee on the library.

One of the first measures to come before Congress was the repeal of the Tenure of Office Act. In the debate on March 6, Mr. Fessenden said he should vote for the repeal of this law, but not because a vote otherwise would exhibit a distrust of the President. He would vote for the repeal because he did not approve of the bill when passed. He foresaw and foretold that it would be attended with more evil than good, and therefore withheld his vote, though he did not choose to differ with the great majority of his friends in the action they had decided upon. He did not believe it to be unconstitutional. On the contrary, he still thought that Congress had the right to impose upon the President the restrictions of that act. But he thought they had a sufficient check upon the action of the President to withhold their consent to his nominations. The law in his opinion was unnecessary except for the particular occasion, and he was not in the habit of framing his legislation for particular occasions unless absolutely necessary.

During the civil war, the British steamer Labuan, having been wrongfully captured by a United States warship and sent in as prize of war, it was decided by the United States courts that the capture was illegal. A bill came up on March 19, which proposed, in accordance with international usage, to pay to the owners of the vessel and cargo their value and interest. Mr. Stewart of

Nevada opposed the measure on the ground that as the United States had claims against Great Britain, no British subject should be paid for any claim against the United States.

Mr. Fessenden expressed his surprise at the doctrine enunciated by the senator from Nevada. While the United States was at war with a portion of its own citizens, certain British ships, pursuing their lawful commerce, were seized by the cruisers of the United States, and the United States courts had decided that those seizures were wrongful, and had decreed restitution. To say that the sums thus adjudicated by the United States courts to be due shall not be paid because certain wrongs committed by private citizens of Great Britain upon United States commerce remain unredressed was to assume a ground not tenable either in law or equity. Nor was it consistent with national honor and national obligation. A refusal to right those cases could not be justified under the laws of nations. It was not consistent with honor or honesty to refuse to make proper reparation because there were unsettled questions with that government.

Mr. Sherman's bill relating to the national banks and the currency having failed to pass the preceding Congress, he introduced it again on March 6, and on the 9th reported it from the finance committee. The bill was the same as the former one with an additional section, which provided for the withdrawal of twenty millions of bank circulation from the New England States, which had received more than their proportionate share, and its redistribution among the Southern and Western States, which lacked circulation.

Mr. Fessenden thought it was unjust under these circumstances to take away from the New England banks any of their currency. To the argument by Sherman and

Morton that the circulation already issued to the New England banks could be withdrawn, because Congress had reserved the right amend the act, he replied that the proposed change was violating a contract made with one individual for the benefit of another The right to amend the act means simply that Congress retained the power to protect itself, to prevent abuses. It did not reserve the power to pick out one individual and tell him that he should not enjoy the benefits of the law, while others were not touched.

The bill again passed the Senate, but failed to become a law at this session, in the House.

In the course of the debate, when it was proposed to relieve the South and the West by increasing the bank circulation, it was answered that it would not be popular. And when it was suggested that it might be done without injury to the country, by withdrawing the greenbacks proportionately to the increase of the bank circulation, it was replied that that, too, would be unpopular. In answer to this Mr. Fessenden said, the question for them, as legislators, was whether they would choose a mode that was not popular in doing what they ought to do, or would take a mode which violated the rights of individuals. Having recently seen too much disposition to yield to public clamor, he was less disposed than ever to treat with patience those arguments upon financial questions which he suspected were made in deference to erroneous public opinion.

A special session of the Senate followed. Its only business was to confirm appointments. Mr. Fessenden's last debate was on the 21st of April, upon the subject of appointments to office. The secession of the Southern States had occasioned many removals from office, and this, with the vast increase of clerks in the departments,

had caused a greater proportion of appointments from the Atlantic States. The Southern and Western States felt that they did not have their share. Mr. Carpenter offered a resolution calling upon the heads of departments to furnish the names, age, and compensation of the clerks, the States from which they were appointed, how long they had resided in those States, and by whose recommendation they had been appointed. Mr. Trumbull regarded the manner of appointment to office as a great evil. Senators had become mere solicitors at the departments. He thanked the senator from Wisconsin for his resolution.

Mr. Fessenden said he did not regard the resolution as so great a piece of patriotism as did the senator from Illinois. It seemed to him as aiming to ascertain whether one State had more clerks than another in proportion to population and to see that each State had its share. It should be remembered that for some time a portion of the States had been engaged in another business, which rendered it a little dangerous to employ their citizens. Now when other States had furnished clerks who had gone into the departments and perhaps unfitted themselves for other business, gentlemen were uneasy, and wanted a revolution at once, so as to obtain their share. If a change was to be made, it should be gradual. If the work of the departments was to be properly done, a large number of trained clerks could not be turned out at once, and a lot of green men put in their places. He had the idea that the principal thing was to get men capable of doing the work, and the more they had shown themselves fit for it the better it was for the government. Next to that he was willing to accede to the modern principle that the offices were made for the individuals and not for the State.

Upon his return to Maine, Mr. Fessenden found the movement to defeat his reëlection was quietly going on. He received letters from many quarters pointing out this scheme, and inquiring as to his intentions of being a candidate. He had resolved to be a candidate, for he felt it a duty to be so, after the circumstances of the impeachment trial. On May 14 he wrote to a friend: —

"All I can now say in reply to your inquiry is that, at the present, I see no reason why I may not be a candidate for reëlection. I am not conscious of having failed on any occasion to promote what I believed to be for the public good, or to advance the principles and true interests of the Republican party; nor do I perceive that my ability to serve the State has been lessened by age and experience.

"Nevertheless, although as at present advised I may probably desire a reëlection, yet I shall have no wish, even were it in my power, to force myself upon the people, especially after the generous confidence and support I have received in the past. As a general rule, personal considerations should be of little weight in selections for office. If, therefore, when the proper time arrives, it shall seem to be the general opinion that, for whatever reason, the public good requires a change, I shall certainly have no complaint to utter. Should it happen that, after the passions of the hour have had time to cool, an unfavorable judgment shall be passed upon my official action on a recent exciting and important occasion, I shall regret such decision much more for its injurious, if not fatal, effect upon the integrity of public men, than for any consequences to myself. And it will, notwithstanding, be my earnest hope that the place I now occupy may be filled by one who will not fear to obey his own convictions of duty without regard to personal consequences; and who

with equal devotion to the public interests will possess greater ability to defend them.

"Meanwhile, it is most desirable that a question of such importance should be thoroughly canvassed and understood by those whose duty it will be to determine it. In this, as in all similar matters, the voice of the people should be fully and distinctly heard."

On August 8 Mr. Fessenden wrote, for the last time, to his friend Grimes: —

"The election in Tennessee, the result of which you will know before this reaches you, is, in my judgment, but an indication of what we must expect in most of the rebel States at the next Presidential election. The result there, as in Virginia, is no more than every man of ordinary sagacity must have foreseen. I both foresaw and foretold it.

"Several local papers have taken occasion to attack me, counseling that no man be selected for the legislature who is not pledged against my reëlection. What the result will be I cannot foresee, and on my own account do not much care, for I am about tired of the whole thing. I shall be a candidate, for duty to myself and the State requires it of me. But I shall contend at some disadvantage, for I will not use the weapons that will be used against me. If money is to be used, be it so. It will not be used by me or for me. I will have no hand in corrupting legislative morals. If elected at all it must be on my merits, and because the people so decree. For corrupt and corrupting honors I have no desire. My hands are clean thus far, and I mean to keep them so. Any but an honest and high-minded people I have no desire to serve. If Maine prefers that her senators shall be selected by petty newspapers and office-seeking politicians, it is very clear that I shall not be one of them, nor, in such a case, do I wish to be."

Many years had elapsed since Mr. Fessenden had visited the northeastern part of Maine. Partly for health and pleasure, and partly for political objects, he spent a portion of July in traveling with some friends through those counties. The journey was one of much enjoyment. The month of August was passed at home occupied with correspondents throughout the State upon the subject of his reëlection in 1871. His term expired in March of that year. All the members of the legislature who were to be nominated for the first time in the autumn of 1869 would, by party usage, be entitled to a renomination in 1870, and would, therefore, be members of the legislature which would meet in January, 1871, and would choose his successor.

There still remained much of the anger and disappointment arising from his course on impeachment. It was evident that he was to meet a bitter opposition. Several of the Republican newspapers had already attacked him. The Bangor, Rockland, Calais, and Biddeford papers assailed him personally and politically. Others, while not opposing him, were not friendly. The leaders who were secretly opposing him were advising the selection of candidates for the legislature who were unpledged on the senatorial question, that they might be free to follow that course which would be most advantageous for the whole party. This meant that they might be free to support an opponent. Nor were Mr. Fessenden's friends idle. Besides his experienced political supporters, who were awake to the importance of securing the nomination to the legislature of men who favored his reëlection, there were many leading citizens through the State who took the manly ground that his independent and fearless conduct in the impeachment trial should be sustained. These formed a large and influential element which had a great effect in creating a sound public opinion.

All the old accusations of cold manners, of ice-like dignity, of indifference to his friends, of favors to his family, were brought out anew and made to do service against him. But these were soon forgotten in his death. On the evening of August 31 he had a few friends at his house for a game of whist. Some light refreshments were taken after the game. Mr. Fessenden retired as well as usual. At midnight he called his son William, who found him walking his room in extreme pain. His physician was at once summoned. He administered morphine, which allayed the pain and permitted the senator to go back to bed. He never left it. The attack was a rupture of the lower intestine, resulting from an irritation of many years' standing.

His physicians perceived the fatal character of the attack. There was little that could be done beyond alleviating the pain and keeping the patient comfortable. After the first two days he seemed to improve. The ashy hue which had covered his face passed away, and was succeeded by his natural color. He appeared in good spirits, though conscious of his danger. He told his sons he wished them to be with him as much as possible. He conversed cheerfully and sometimes with fun and banter. But the end was inevitable. On the morning of September 9 a further giving away of the intestine occurred, when he sank into a stupor and died, unconscious, at four o'clock in the morning.

CHAPTER XII

HOME LETTERS: EULOGIUMS

I AM reluctant to close my review of father's life at this point, although the narration of his public services is ended. Reading over what I have written, I feel that I have pictured only the official side. The reader may well wonder what kind of man was the senator at home, among his intimate friends, and with his wife and family. Father had little continuous home life, but what he did have was very dear and precious to him. Very early in their married life mother became an invalid, so much so that she could not leave home with father. When he was at home she was his first thought and was first in his love. His attitude towards people generally was not effusive nor expansive, but he loved his family and his home circle intensely, and, in sharp contrast to his attitude to people generally, was warmly demonstrative and affectionate. He loved us and had no embarrassment or reticence about telling us so. When a valued and old friend came to the house to call of an evening, father, if he saw him coming, would go to the door, sometimes to the sidewalk, and greet his friend with a warm hug, and lead him into the house with his arm about him. He loved to sit in the garden back of the house on one of the benches or in the summer-house, with mother or me or one of the other boys, with his arm around us, and have long talks about the smallest details and occurrences during his absence from home.

During his public life and for many years of his professional life he was a very busy man and compelled to long

and many absences, and in taking up his Washington life he deprived himself of his home life and family companionship.

Mother was ill and we boys were going to school at Portland, or to college at Brunswick, and the home had to be at Portland. But we were never absent from his thoughts. He was writing all the time to somebody at home, and if any one of his sons did not write him frequently, we received from father a prompt complaint about it. He fairly hungered for home letters.

After we were old enough to understand matters, father never imposed a command nor refused a request without a kindly statement of his reasons. He had a slight muscular contraction on one side of his face which gave it a severe, stern look on that side, while the expression of the other side was genial and smiling. This was first brought to our notice by a lady who was visiting the house. Father used to sit in a small square ell of the house which jutted into the garden. It had windows on each side so that one could from the outside look through it. One day this lady was in the garden and father was sitting in the ell. She saw him there in profile, and the expression of his face was so stern that she hesitated to enter, but upon entering found him in the pleasantest frame of mind, but with one side of his face stern while the other was pleasant. She told my brother to go and look at father from both sides. My brother did so and saw the difference in the expression of the two sides of father's face. Thus we came to perceive it.

His letters home were spontaneous, rapidly written, and very frequent, and as I read them now after many years, it seems as though father was with me. They are so like his home talks.

When I was at college in 1855 he wrote me: —

"We have not heard from you so often this winter as we could have desired, but do not impute it to any want of affection. I hope you will write after returning to college. God bless you, my dear boy, and keep you always, as hitherto, I fully trust, honest, true-hearted, and deserving the warmest affections of your father."

I remember my brother James had spent more money at college that year than he ought, and had borrowed some money. He wrote father about it and father sent him some funds in a letter which I have found: —

"I must enjoin it upon you to borrow no more money, unless in case of such a pressing necessity that you have no time to write to me. Especially have you no moral right to borrow money for mere purposes of amusement, and which you have no means of paying. I shall have something to say to you when we meet on this matter of money, for I perceive you are getting loose in your habits of spending, and careless of proper distinctions between what you have and have not a right to use. Proper notions on this subject cannot be too carefully cultivated.

"However, my dear boy, I do not mean to scold you much, as I trust in the main you are correct and studious, and you have always been a good son. A little reflection will, I have no doubt, set all right with you. I have proud hopes of you and could not bear to see you straying in any degree from the path of duty. Attend well to your studies, learn to deny yourself when necessary or expedient, and you will do well."

During vacation I wished greatly to go to Moosehead Lake, but the "sinews" had to come from father and I asked his permission with a strong intimation that I wanted money also. He refused me, but wrote: —

"Though anxious to indulge you, I feel under the necessity of deciding against the Moosehead expedition,

unless it is necessary for your health. If well and hearty, I think you must be content with such exercise and amusement as we can find for you nearer home. The truth is, I must husband my cash. The repairs are costing me a very large sum, your bills and Sam's are high, and your mother is now at Brattleboro' at a very heavy expense. Taking all these things together, with necessary household expenses and what my unfortunate political position costs me, my pecuniary resources diminish at a very rapid rate. Even my capacity to earn money is pretty severely tested. Besides, I am not well, and though needing it much, am compelled to deny myself a vacation and devote myself to unceasing labors.

"Under these circumstances, my boy, I am sure that you will cheerfully dispense with what I cannot well afford."

Next year I wanted to visit Calais with some companions, but my experience of the year before led me to ask mother instead of father. She wrote to him and he replied to me: —

1856. "Your mother writes me that you desire to make a visit to Calais during your coming vacation. You have been so good a son, and I love you so much, that I should at any time refuse any request of yours with reluctance. I have, accordingly, written her on the subject, and have not refused my assent, if you very much wish to go. My principal objection arises from a nervous anxiety lest some evil should befall you. William is far away, and I am anxious for him. Sam has left us, and God only knows what will become of him. My heart is troubled for both of them. To be deprived of you would, I fear, destroy me. Be careful and prudent, then, my dear boy, for my sake. Do not rashly expose yourself either on the water or on the land. Young fellows of your age are naturally

confident, and fond of boating and hunting, and think little of the risk and exposure which we, of maturer years, well understand. If you decide to go, therefore, keep clear of all that may subject you to danger, and be not over-confident of yourself nor trust too much to associates no wiser than yourself.

"You will remember, too, that I shall have little opportunity to see you, and that your society is always a pleasure to me.

"I am compelled to be as economical as possible in order to avoid pecuniary embarrassment. There is no prospect of immediate relief. I hope you will bear this in mind on all occasions, and endeavor not to add to my burdens. I do not complain of you, my son, for I have nothing to complain of; but it is as well that you should exactly understand my position."

Here are two of many letters to James, my brother, expressive of his affection and fatherly gratification, and a few early letters to me: —

1856. "Thus far in life you have done nothing but add to my state of happiness, and I daily thank the great Author of all living for having given me so upright and affectionate a son. Hasten, my dear boy, to fit yourself for the active duties of life, so that, should I be called to my account, I may leave you in the full tide of usefulness and honor."

1858. "It seems but as yesterday, my dear boy, since I looked upon you in your cradle. In a fewer number of years, and in much less *apparent* time to both of us, I shall probably be elsewhere. You, I trust, will be spared for a long life of usefulness and honor, for which I have been anxious to educate all my children, — being satisfied that, if I accomplish this, I shall have done something to redeem the many errors of my life.

"It is a great pleasure to be able to say that I am happy in all my sons."

1858. "I do not agree with you that an *oath* is ever useful in conversation, under any circumstances. It adds neither force nor beauty, but detracts from both. Besides, as a general rule, it betokens want of ideas, or, at least, of proper language, and the habit is always to be eschewed by every well-bred man."

1858. "Both your letters have been received, that of the 2d inst. having come to hand this evening, and been read with much pleasure, assuring me as it did that those whom I love so much, at and about my own home, are all well and happy.

"You, in the mean time, can be preparing for your turn at the wheel. It will come soon enough, for if I leave my sons nothing else, I shall bequeath them the legacy of eternal warfare upon this infamous slave system, in all its parts and aspects. It is to be a contest of years, and I shall not live to see the end. If you do not witness its extinction, you will, I trust, live to see its gradual and sure decay — the fatal arrow in its side."

1859. "I wish you and William to be comfortably provided for during the winter, and am willing that your arrangements should be such as gentlemen require. Within that limit, using sound discretion, I leave the selection to your judgment."

1860. "You are, I believe, of age to-day, and my legal control over you ceases. I have no fears, however, that any influence I might wish to exert will be seriously diminished, for my rule has been one of affection, which has always been cheerfully acknowledged and submitted to. You have been a dearly loved son from the hour of your birth, and your legal emancipation will in no degree lessen my love. Up to this hour you have never given me pain,

but have been to me a comfort and a pleasure. Keep on, my dear boy, in the good and manly course you have thus far followed, and you will meet my warmest hopes for your usefulness in life. I shall be able to meet with cheerfulness the termination of my career, if I can see all my sons walking manfully in the ways of truth and uprightness before God and man."

1859. "William and I have spent a part of the time playing billiards, as he gives me 20, and then beats me by as many more, and says that you and Sam play better than he does. I have a faint idea where my money has gone. I trust, however, that you will give me a better account of it by and by."

When I had my first professional interview with a client I wrote father about it, and I find his letter in reply. There must have been something conceited in it which he thought needed taking down, for he answered: —

1857. "It is quite possible that your *client* might have been a better judge of dignity than learning. In which case, it is possible that in your case she was most impressed by what she knew the least about — '*Verb. sap.*'"

James and I were both in active service during the war, and father lavished on us both letters, and letters full of cheering words and sustaining love. Hardly a day was allowed to pass by him, when we were in any possible danger of hardship or injury, that he did not write some cheery, comforting message to us. There are hundreds of them preserved, but a few will serve to show how his affection followed us through those days of peril: —

1864. "Once more farewell, my beloved son, and may God preserve and bless you."

1864. "Never could a father love son more than I love you, and life for me would be almost, if not quite,

unendurable without any one of my remaining children. I will not allow myself to anticipate any calamity, but hope always for the best. I am sure that you will do your duty, as you always have, like a Christian soldier."

1864. "My anxiety for your life and health overrules all considerations of glory — for I love *you*, and no amount of glory would render you more dear to my heart. This consideration always deters me from taking the responsibility of advising you. You must therefore consult your own judgment, and decide as a sense of duty and a regard for your own reputation under all the circumstances may dictate. I suppose there will be some little time before any movement."

1864. "I have just received a telegram, stating that you had left N. O. in good spirits and doing well. I hope this will find you still better — I write this in my seat, overwhelmed with the tax bill — the good news has made me light as a feather. Welcome home, my dear boy, and God bless you."

1864. "I will be content, however, as I must be, to hope that we may soon meet again, and that I may have the happiness of again embracing my beloved son, feeling and knowing that he is in health and safety."

1864. "May this find you, my beloved son, in life and fast returning health. My anxiety is intense. Soon I will hope to be relieved by the assurance that you will soon again be restored to the arms of your loving father."

1864. "I think of you constantly and with intense affection. May God preserve and bless you, my dear boy."

1864. "May a good Providence still watch over and protect you and our dear James, who, I am told, is handsomely mentioned by General Hooker in his report of the Lookout battles.

"Your reputation for courage and coolness is now well established, and I hope you will, for the sake of those who love you, take all the care of yourself which military rules and your sense of duty will allow."

1864. "My constant hopes and prayers are for your health and happiness, and above all that you may so live as to be at all times ready to die, if need be, in the discharge of your duties to God and man. If you are to leave this world before me (which may God avert), I shall have nothing but a life of obedience and love to reflect upon, on the part of my darling son. But I trust you will be spared to comfort my declining years, and to close my eyes.

"Take care of yourself, my dear boy, and that God may preserve you from harm and keep your feet from falling, is the unceasing prayer of your loving father."

1864. "You have done your duty nobly, and endeared yourself more, if possible, than ever to all of us. You well know, however, that my love for you can neither be increased nor diminished. I await further news from you with extreme impatience.

"You will not, I trust, lose your life, but if you should, it will not be half so great a misfortune as having done a thing to be ashamed of.

"However this may find you, my dear son, keep up a good heart, trust in God, and know that many anxious and loving hearts are beating for you."

1864. "Finally, my dear son, let my wishes prevail upon you to take all needful care of yourself, for the sake of those to whom you are so dear. I think of you daily, if not hourly, and always with the most anxious and intense love — for on earth there is no one dearer to me than you are, and always have been."

"And now, my beloved son, take with you your father's

assurance that you have always been a most dutiful and affectionate child. You have honored your father and your mother always, and have entitled yourself to the length of days promised to those who keep that commandment. Feel assured, wherever you are, that your father's thoughts will and do attend you continually."

To a cousin father wrote frequently. She was Mrs. Warriner, a widow. After mother's death, Mrs. Warriner made her home with us for many years. Some of his letters to her throw an interesting light on his own feelings towards divers matters and individuals: —

1864. "How I should like to look at the garden this morning — just to stroll up the main walk, and see if everything was in order. How much better than sitting here, pen in hand, indulging vain wishes and thinking, Porthos-like, how much better and nicer is the little spot I claim as my own than any other I ever saw."

1866. "If 'I will work,' you say. How can I help it? The questions at issue are infinitely important to the future of this country. The Senate designate the share I must take in their solution. How can I shrink from the burden thus laid upon me? Could I feel safe in leaving them in other hands, I would gladly retire from the position. But I can see that I cannot safely do so. At times I am despairing, — despairing of a favorable issue, despairing of my own strength to go through, and disposed to give up all to chance. All I can do is to act as if I was patient, swallow my wrath, and try to evoke something like order and safety out of the danger around us. But enough of this."

1866. "I must stay, come what will, until our course is defined. No excuse for leaving my post now would be satisfactory to the country. How heartily I wish myself a nobody."

"WASHINGTON, January 7, 1866.

"Mr. Hooper has undertaken to reconcile Sumner and myself. I said a word to Hooper commendatory of Sumner's speech, and he was so much pleased that he opened his heart. He said that Sumner said that if we only went together we might rule the Senate — said that Mr. Webster would never let any one speak to him when Mr. Clay was speaking, though they were not on good terms, but that I seldom listened to him. . . . This is 'confid.' — as I promised H. not to tell anybody. H. wished to know if I was willing to be reconciled to Sumner. I said 'Yes, if he desires it and makes the advances.'"

1866. "A few evenings since I went up, by invitation, to the Hoopers', and had a game of bezique. The widow looked prettier than ever, and I became convinced it would not do for me to see too much of her. We had finished two games, and were in the midst of third when callers came in and broke it up. I begin to think Mr. Sumner is looking in that direction. He is always in attendance at the Senate, finding seats, and on hand to wait on them out — a most unusual thing for him. Perhaps, however, it is only in payment of the many good dinners. By the way, have you seen that we are friends again? The papers, with their usual accuracy, state that I made advances. The fact is just the reverse. As I stepped out of the Senate one morning to go to my committee-room, I heard some one say, 'Fessenden,' and, on turning round, saw Mr. Sumner, who advanced with his hand extended, and smiling, said: 'I wished to shake hands with you.' I gave him my hand and said: 'What about?' He said 'You understand it, — I have wished to shake hands with you ever since our friend's funeral. Do you understand me?' I replied, 'Precisely.' And we separated. Since

that we have met as of old, and he often comes to my seat to say something. How the idea got abroad that *I* made advances is a mystery, unless he so intimated, which he is quite capable of doing. I don't love him, and never can, — but the hatchet is buried and I shall not dig it up again. The Hoopers are very much rejoiced, and I suspect they had something to do with it."

1866. "Why did n't I take the judgeship? Simply because I did not dare to leave my post just at this time. I desired it much, and most joyfully would I have left Washington behind me forever. But there are yet so many great interests at stake, and so much remains to be done, that I had not the courage to retreat into a safe place. Most reluctantly did I give up what has long been my favorite wish. But it is done, and I rejoice that I was able to secure the place for so good and capable a man."

1860. "Any one reading my letters to you must think me very short of ideas. They are all 'garden,' 'garden,' 'garden.' But, in truth, you are so connected with all my thoughts of home that, having no one else to talk with about it, the subject is always uppermost, for you know how I love that little spot of my own. There is none upon earth where I have enjoyed so much pleasure, none where my presence seems so welcome. If its beauties are invisible to others, I never fail to see them. Oh! that I was there on this sweet and quiet morning, reveling in its delights, and dreaming of others yet to come. My very pen leaps to the anticipation of all the pleasures it has in store for me when these wearisome labors are over."

"Washington, February 5, 1860.

"My dear Cousin, — I return ——'s letter as you desired. I hope she will give up the school unless she can get matters fixed to suit her. I wish I was rich enough

to give you all a fortune, so that no one of you would be obliged to do anything you don't like. You know that I think —— a darling, but there are sundry serious troubles in the way of proposing the arrangement you refer to. You are aware, my dear cousin, of one preliminary condition without which no arrangement would ever satisfy me, and with regard to which I require the strongest assurance. Without it my pen will refuse to write and my tongue to speak. Supposing that difficulty removed, there remains a case of conscience. Suppose that she would accept me, which is not probable (though the chance of a refusal would not influence me), ought I to allow such a charming girl to sacrifice herself, even if she would? I am not rich enough to leave her a fortune. At best I should have but a few years of what could be called life to give her. She would be exposed to the contingency of wasting her best years upon an old man who has pretty much drained his cup to the bottom. Is it not rather my duty to watch over her so far as I may, and guard her youth and inexperience against such an error? Would I be justified in winning her love, if I could? Would the few years of possible happiness together, with the position that I could give her, counterbalance all that I might rob her of? Tell me what you think about all this.

"Between two people not too far removed from each other — say not more than a dozen or fifteen years, the exchange of love is equal. It will justify the surmounting of many obstacles which to appearance are insuperable. Experience has satisfied me that in such a case compensation may be found for many sacrifices — indeed for all. The flowers and fruit which spring from such a soil are beyond all price, whatever may be their cost. When once enjoyed in perfection, their odor and flavor are never lost. Their presence is divine; their memory is refreshing,

and the hope of their return is worth all other hopes. Just hear P. talk about *his* wife, and judge whether I am not right. I wonder whether she loves him as much? I believe he is nearly or quite fifteen years older than she is. Do you suppose he could part with her for another? Believe it not."

1861. "Well, twenty-one years are quite a large portion of life, and they have gone rapidly, leaving their traces upon both of us. Much grief have I suffered during that time, but I have had my share of pleasure too. Your constant affection through all has been a great comfort to me. You have done your best to console me in sorrow, and added largely to my sum of happiness. It would be strange, then, if I did not love you, and feel the most affectionate interest in all that concerns you. That I do so, I trust you are well assured."

1861. "I feel quite sad sometimes, when thinking how much better off in all particulars I might be among the friends from whom I have experienced so much kindness, and whom I so dearly love. Isn't it abominable that I cannot have their company just when I want it? I don't think a man of my age ought to be left so much alone. He is apt to grow rusty and dull, and it takes too long to 'brighten' him up. Talking in the Senate is one thing, and talking with you is quite another. That quiet little circle where I always seem so welcome is of far more importance to me than the listening crowds which throng our galleries, and its pleased approval far more satisfactory than mere popular applause."

1864. "I cannot help contrasting this Sunday morning with the last, when I had the first news from Louisiana, and my heart was torn with apprehension as to the fate of my dear son. This morning's mail brings me a long letter from him, assuring me of his safety, his perfect

health, and his pride in the good conduct of his regiment. Then I was rebelling against Providence — now I am profoundly thankful to a merciful God. Tears of penitence and joy fill my eyes as I write. Such is my nature. Suffering hardens me. Kindness softens, and makes me grateful, and, therefore, better."

With a few contemporary opinions of Mr. Fessenden I will close this history.

Reverdy Johnson said of him: —

"That he had no superior as a debater; that his style was not ornate but studiously simple; that his propositions were laid down in plain language and enforced with a masterly logic which, if it did not on all occasions convince, caused his opponents in debate the greatest difficulty. His great industry, his perfect mastery of his subjects, and his clear elucidation of them were universally admired and hardly ever failed of producing their adoption."

John R. French was sergeant-at-arms of the Senate during the period of the civil war and reconstruction, and in his account of these times he says: —

"No ten years of the Senate were marked by larger questions or more brilliant statesmanship. By general consent William Pitt Fessenden was placed at the head of the galaxy of the great men of that period. He was an untiring worker in committee, preëminently wise in counsel, and unmatched in debate. He made no attempts at oratory, but no other man's statement was so clear, no other man's argument was so impregnable. He scarcely ever raised his voice above a conversational tone, used few gestures, and using common, every-day words, talked straight on to the full elaboration of his theme, and to the complete discomfiture of his opponents. The great

questions of the war brought forth his great powers of logic and invective, which have rarely been surpassed in any legislative body. His sole aim seemed to be to forward the business of the Senate."

Mr. Sumner: —

"The absence of his ready power, his guiding judgment, and his conspicuous presence in debate, seemed to take away that identity of the Senate which it received so largely from him." Alluding to his debating power, Mr. Sumner described his speech as being "direct, argumentative, and pungent, exerting more influence on those who heard it than on those who read it, vindicating his place rather as a debater than an orator. This place he held to the end without a superior, without a peer. Nobody could match him in immediate and incisive reply. His words were swift and sharp as a scimiter. He shot flying and with unerring aim."

Mr. Trumbull: —

"As a debater engaged in the current business of legislation the Senate has not had his equal in my time, and no political friend ever feared the result of a discussion that was in his hands."

Senator Patterson of New Hampshire said: —

"While the grasp of his intellect was large and comprehensive, his most striking characteristic was a marvelous power of analysis. The nature and minutest relation of every question seemed to come to him by an instantaneous intuition. How often have we seen him blast some fine theory by a single word as potent as the spear of Ithuriel."

Murphy, the veteran reporter of the Senate, after thirty years' service, was asked who of all the men he had seen during that time in the Senate he considered the greatest. He replied: —

"There is one thing I can say, as a debater in the Senate I have never seen the equal or superior of William Pitt Fessenden. There was a clearness, evenness, and ability in his speeches and interchanges that make him, to me, one of the great characters of the English language in legislation."

Senator Dawes: —

"There was no mind in organism or culture like his, so completely made for antagonism and argument, and trained like an athlete for his work, to constant conflict and wrestling. For this reason he seemed to stand alone among his peers, that the sphere in which he worked was left him, few venturing to dispute his supremacy in it. To this peculiarity of mental structure and discipline is attributable much of that occasion for criticism to which his course not infrequently gave rise. In debate he so hated sophistry that nothing could prevent him from rending it to pieces, no matter whom he wounded. Subterfuge and pretense in argument were dealt with by him as downright dishonesty and fraud. Thinking he saw these phantoms flitting across the field of debate, he would charge indiscriminately on friend and foe, and leave wounds that were long in healing. Perfect command of thought and language in the most animated debate were marked characteristics of his mind. He wielded a Damascus blade that was never broken and seldom parried. With the coolness and deliberation of a surgeon with his dissecting knife, he laid bare every argument that fell in his way, and never left his subject so long as a muscle remained uncloven or a limb disjointed. He had power to touch the tenderest chord. Once, when forced to speak of his sons, he moistened every eye in the Senate, and his unpremeditated defense of Stanton at midnight on the floor of the Senate will live forever. In the dull and painful

drudgery, as well as the responsible duties of the statesman, he was equally patient and faithful, performing what each day fell to his lot as if it were his specialty."

Mr. Hendricks said that Mr. Fessenden was the ablest debater he had ever heard, that Fessenden would take up a measure, and without a note to aid him would never miss a point.

Mr. Hamlin remarked that Fessenden had one peculiarity that marked him in intellectual conflicts, that anger only stimulated him, and that he needed to be irritated a little to bring out all his powers.

An associate, in speaking of the charge against Mr. Fessenden that he was irascible, and sometimes lectured the Senate, remarked that —

"The Senate knew their man when they made him their leader; they knew his powers were sharp, and his impulses quick as lightning. They put upon him labors too great for the strongest man. They made him responsible for the due dispatch of business. They did not arm him, as the House arms its leaders, with the previous question to cut off useless debate, but they did expect he would apply the bit if necessary for restraint, and the whip and spur if needful to push on the revenue and appropriation bills. What if his patience was occasionally too much taxed, and his words too sharp? Much was to be borne from a man in his position. And everything was forgiven, for he was a man as quick to apologize as he was to assail."

Sergeant-at-arms French says : —

"He bore himself with graceful ease, but as he warmed with his subject and took fire at the interruptions and responses of his opponents, then that head which was usually inclined slightly forward was proudly thrown back, and he carried himself with an imperial bearing which attested the royalty of his nature."

And George W. Julian, the noted anti-slavery leader, and long a member of Congress, in his "Political Recollections" says, "There was a sort of majesty in the appearance and brow of Fessenden when he addressed the Senate."

Congressman Holman, in speaking of the great men of his time, described Fessenden as almost the only man of his period who appeared to him like Clay, Calhoun, and the line of great orators and statesmen of the first half of the century; that he delighted to see him debate, he was so skillful, so real, and so graceful. "In personal manner and bearing he was called 'the trimmest figure in the Senate.' His familiarity with his position gave him a light and easy grace of manner as if he had been born and bred to the place. No man seemed so much at home and accustomed there. As he walked the floor, dressed with airy neatness, you might have dubbed him a Premier, without the change of a hair."

"When he spoke," said Senator Morrill, "with nerves as firm and elastic as a Damascus blade, he bore himself proudly and with graceful ease, always choosing language the most simple, chaste, and fluent to express his meaning, and few who beheld his imperial bearing would have suspected his sensitive and retiring nature."

At his death the "Chicago Tribune" pronounced him "the most acute debater, the most thoroughly and masterly lawyer, the most commanding and judicious leader, the most accomplished and persuasive orator, and for years had been the model senator of the United States."

The impression he made upon the refined and talented Grace Greenwood is shown in one of her letters to the "New York Tribune," after his eulogies in Congress: —

"The eulogists vied with each other in their gracious tributes — in their honorable testimony. And yet the

bounds of simple truth were not overpassed, were scarcely reached. Their most glowing epithets, their most sounding periods, failed to give one that sense of Mr. Fessenden's rare nobility of nature and intellectual supremacy which was caught by a single glance at his living face, so pure and so intense, so strong, yet so exquisitely refined. It was a face set inflexibly against all shams and sophisms, social, moral, and political; but it was not an unbelieving face. It was keen and penetrant in expression, without a touch of cunning. It was marked by a peculiar pride, watchful but not jealous, lofty but not lordly. Much has been said of this characteristic pride of the great senator, but little perhaps understood. It was not an assumption, it was not even a habit. It was a native, vital element of the man. It hung about him like an atmosphere, a still, cold mountain air, utterly without the sting of hauteur, or the bluster of arrogance. You felt it without resenting it. It would never have prevented the unfortunate from approaching him or kept a little child from his knee. It made his smile more beautiful, made every indication of the inner sweetness and tenderness of his nature the more irresistible."

His most intimate friend among the senators, Mr. Grimes of Iowa, in a letter read in the Senate by one of his eulogists, described him in one terse and expressive sentence as "the highest-toned man he had ever known, the purest man he had ever known in public life, and the ablest man of his day."

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[Note. — In the index F. stands for W. P. Fessenden]

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