**OPENING ARGUMENT**

**of**

**MR. BENJAMIN CURTIS**

The CHIEF JUSTICE. The Managers of the House of Representatives state that the evidence on their part, with the exception first indicated, is closed. Gentlemen of counsel for the President, you will proceed with the defense.

Mr. CURTIS, of counsel for the respondent, rose and said: Mr. Chief Justice, I am here to speak to the Senate of the United States sitting in its judicial capacity as a court of impeachment, presided over by the Chief Justice of the United States, for the trial of the President of the United States. This statement sufficiently characterizes what I have to say. Here party spirit, political schemes, forgone conclusions, outrageous biases can have no fit operation. The Constitution requires that here should be a "trial," and as in that trial the oath which each one of you has taken is to administer "impartial justice according to the Constitution and the laws." the only appeal which I can make in behalf of the President is an appeal to the conscience and the reason of each judge who sits before me. Upon the law and the facts, upon the duties incumbent on that high officer by virtue of his office, and his honest endeavor to discharge those duties, the President rests his defense. And I pray each one of you listen to me with that patience which belongs to a judge for his own sake, which I cannot expect to command by any efforts of mine, while I open to you what that defense is . . . .

Now, there is a question involved here which enters deeply, as I have already intimated, into the first eight articles in this series, and materially touches two of the others; and to that question I desire in the first place to invite the attention of the court. That question is, whether Mr. Stanton's case comes under the tenure-of-office act when applied to the facts of his case excludes it, then it will be found by honorable Senators when they come to examine this and the other articles that a mortal wound has been inflicted upon them by that decision . . . .

**"That the Secretaries of State & c., shall hold their offices respectively for and during the term of the President by whom they have been appointed."**

The first inquiry which arises on this language is as to the meaning of the words "for and during the term of the President." Mr. Stanton, as appears by the commission which has been put into the case by the honorable Managers, was appointed in January, 1862, during the first term of President Lincoln. Are these words, "during the term of the President," applicable in Mr. Stanton's case? That depends on whether an expounder of this law judicially, who finds set down in it as a part of the descriptive words "during the term of the President," has any right to add "and any other term or terms for which he may afterward be elected." By what authority short of legislative power can those words be put into the statute so that "during the term of the President" shall be held to mean "and any other term or terms for which the President may be elected?" I respectfully submit no such judicial interpretation can be put on the words. Then, if you please, take the next step. "During the term of the President by whom he was appointed." At the time when this order was issued for the removal of Mr. Stanton was he holding "during the term of the President by whom he was appointed?" The honorable Managers say yes, because, as they say, Mr. Johnson is merely serving out the residue of Mr. Lincoln's term. But is that so under the provisions of the Constitution of the United States? I pray you to allow me to read two clauses which are applicable to this question. The first is the first section of the second article:

**"The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows."**

There is a declaration that the President and the Vice President is each respectively to hold his office for the term of four years; but that does not stand alone; here is its qualification:

"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 dame shall devolve on the Vice President."

So that although the President, like the Vice President, is elected for a term of four years and each is elected for the same term, the President is not to hold his office absolutely during four years. The limit of four years is not an absolute limit. Death is a limit. "A conditional limitation," as the lawyers call it, is imposed on his tenure of office. And when, according to this second passage which I have read, the President dies, his term of office of four years for which he was elected, and during which he was to hold, provided he should so long live, terminates, and the office devolves on the Vice President. For what period of time? For the remainder of the term for which the Vice President was elected. And there is no more propriety, under these provisions of the Constitution of the United States, in calling the time during which Mr. Johnson holds the office of President after it was devolved upon him a part of Mr. Lincoln's term than there would be propriety in saying that one sovereign who succeeded to another sovereign by death holds a part of his predecessor's term. The term assigned to Mr. Lincoln by the Constitution was conditionally assigned to him. It was to last four years if not sooner ended; but if sooner ended by his death, then the office was devolved on the Vice President. and the term of the Vice President to hold the office then began.

I submit, then, that upon this language of the act it is apparent that Mr. Stanton's case cannot be considered as within it. . . .

I have now gone over, Senators, the considerations which seem to me to be applicable to the tenure of office bill, and to this allegation which is made that the President knowingly violated the Constitution of the United States in the order for the removal of Mr. Stanton from office while the Senate was in session; and the counsel for the President feel that it is not essential to his vindication from this charge to go further upon this subject, Nevertheless, there is a broader view of this matter, which is an actual part of the case, and it is due to the President it should be brought before you, that I now propose to open to your consideration.

The Constitution requires the President of the United States to take care that the laws be faithfully executed. It also requires of him, as a qualification for his office, to swear that he will faithfully execute the laws, and that, to the best of his ability, he will preserve, protect, and defend the Constitution of the United States. I suppose everyone will agree that so long as the President of the United States, in good faith, is endeavoring to take care that the laws be faithfully executed, and in good faith and to the best of his ability is preserving, protecting, and defending the Constitution of the United States, although he may be making mistakes, he is not committing high crimes or misdemeanors.

In the execution of these duties, the President found, for reasons which it is not my province at this time to enter upon, but which will be exhibited to you hereafter, that it was impossible to allow Mr. Stanton to continue to hold the office of one of his advisers, and to be responsible for his conduct in the manner he was required by the Constitution and the laws to be responsible, any longer. This was intimated to Mr. Stanton, and did not produce the effect which, according to the general judgment of well-informed men, such intimations usually produce. Thereupon the President first suspended Mr. Stanton and reported that to the Senate. Certain proceedings took place which will be adverted to more particularly presently. They resulted in the return of Mr. Stanton to the occupation by him of this office. Then it became necessary for the President to consider, first, whether this tenure -of-office law applied to the case of Mr. Stanton; secondly, if it did apply to the case of Mr. Stanton whether the law itself was the law of the land, or was merely inoperative because it exceeded the constitutional power of the Legislature.

I am aware that it is asserted to be the civil and moral duty of all men to obey those laws which have been passed through all the forms of legislation until they shall have been decreed by judicial authority not to be binding but this is too broad a statement of the civil and moral duty there never could be a judicial decision that a law is unconstitutional, inasmuch as it is only by disregarding a law that any question can be raised judicially under it. I submit to Senators that not only is there no such rule of civil or moral duty, but that it may be and has been a high and patriotic duty of a citizen to raise a question whether a law is within the Constitution of the country. . . .

My first position is, that when the Constitution speaks of "treason, bribery, and other high crimes and misdemeanors" it refers to, and includes only, high criminal offenses against the United States, made so by some law of the United States existing when the acts complained of were done; and I say that this is plainly to be inferred from each and every provision of the constitution on the subject of impeachment.

"Treason" and "bribery." nobody will doubt that these are here designated high crimes and misdemeanors against the United States, made such by the laws of the United States, which the framers of the Constitution knew must be passed in the nature of the Government they were about to create, because these are offenses which strike at the existence of that Government---"other high crimes and misdemeanors." Noscitur a sociis. High crimes and misdemeanors; so high that they belong in his company with treason and bribery. That is plain on the face of the Constitution in the very first step it takes on the subject of impeachment. "High crimes and misdemeanors; so high that they belong in this company with treason and bribery. That is plain on the face of the Constitution; in the very first step it takes on the subject of impeachment. "High crimes and misdemeanors" against what law? There can be no crime, there can be no misdemeanor without a law, written or unwritten express or implied. There must be some law; otherwise there is no crime. My interpretation of it is that the language "high crimes and misdemeanors" means "offenses against the laws of the United States." Let us see if the Constitution has not said so.

The first clause of the second section of the second article of the Constitution reads thus: "The President of the United States shall have the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." Offenses against the United States" would include "cases of impeachment" and they might be pardoned by the President if they were not excepted. Then cases of impeachment are, according to the express declaration of the Constitution itself, cases of offenses against the United States.

Still, the learned Manager says that this is not a court, and that, whatever may be the character of this body, it is bound by no law. Very different was the understanding of the fathers of the Constitution on this subject.

The next position to which I desire the attention of the Senate is, that there is enough written in the Constitution to prove that this is a court in which a judicial trial is now being carried on. "The Senate of the United States shall have the sole power to try all impeachments." "When the President is tried the Chief Justice shall preside." The trial of all crimes, except in case of impeachment, shall be by jury. This, then, is the trial of a crime. You are the triers, presided over by the Chief Justice of the United States in this particular case, and that on the express words of the Constitution. There is also, according to its express words, to be an acquittal or a conviction on this trial for a crime. "No person shall be convicted without the concurrence of two thirds of the members present." There is also to be judgment in case there shall be a conviction.

**"Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under the United States."**

Here, then, there is the trial of a crime, a trial by a tribunal designated by the Constitution in place of court and jury, a conviction, if guilt is proved, a judgment on that conviction, a punishment inflicted by the judgment for a crime; and this on the express terms of the Constitution itself. And yet, say the honorable Managers, there is no court to try the crime and no law by which the act is to be judged. The honorable Manager interrupted me to say that he qualified that expression of no law; his expression was "no common or statute law." Well, when you get out of that field you ar in a limbo, a vacuum, so far as law is concerned, to the best of my knowledge and belief.

I say, them, that it is impossible not to come to the conclusion that the Constitution of the United States has designated impeachable offenses as offenses, that it has provided for the trial of those offenses, that it has established a tribunal for the purpose of trying them, that it has directed the tribunal in case of conviction to pronounce a judgment upon the conviction and inflict a punishment. All this being provided for can it be maintained that this is not a court, or that it is bound by no law? . . .

I submit, then Senators, that this view of the honorable Managers of the duties and powers of this body cannot be maintained. But the attempt made by the honorable Managers to obtain a conviction upon this tenth article is attended with some peculiarities which I think it is the duty of the counsel to the President to advert to. So far as regards the preceding articles, the first eight articles are framed upon allegations that the President broke a law. I suppose the honorable Managers do not intend to carry their doctrine so far as to say that unless you find the President did intentionally break a law those articles are supported. As to those articles there is some law unquestionably, the very gist of that charge being that he broke a law. You must find that the law existed; you must find that the law existed; you must construe it and apply it to the case; you must find his criminal intent willfully to break the law, before the articles can be supported. But we come now to this tenth article, which depends upon no law at all, but, as I have said, is attended with some extraordinary peculiarities.

The complaint is that the President made speeches against Congress. The true statement here would be much more restricted than that; for although in those speeches the President used the word "Congress," undoubtedly he did not mean the entire constitutional body organized under the Constitution of the United States; he meant the dominant majority in Congress. Everybody do understood it; everybody must so understand it. But the complaint is that he made speeches against those who governed in Congress. Well, who are the grand jury in this case? One of the parties spoken against. And who are the tryers? The other party spoken against. One would think there was some incongruity in this; some reason for giving pause before taking any great stride in that direction. The honorable House f Representatives sends its Managers here to take notice of what? That the House of Representatives sends its Managers here to take notice of what? That the House of Representatives has erected itself into a school of manners, selecting from its ranks those gentlemen whom it deems most competent by precept and example to teach decorum of speech; and they desire the judgment of this body whether the President has not been guilty of indecorum, whether he has spoken properly, to use the phrase of the honorable Manager. Now, there used to be an old-fashioned notion that although there might be a difference of taste about oral speeches, and, no doubt, always will be such differences, there was one very important test in reference to them, and that is whether they are true or false; but it seems that in this case that is no test at all . . . .

It must be unnecessary for me to say anything concerning the importance of this case, not only now but in the future. It must be apparent to everyone, in any way connected with or concerned in this trial, that this is and will be the most conspicuous instance which ever has been or can ever be expected to be found of American justice or American injustice, of that justice which Mr. Burke says is the great standing policy for all civilized States, or of that injustice which is sure to be discovered and which makes even the wise man mad, and which, in the fixed and immutable order of God's providence, is certain to return to plague it's inventors.