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THE Chief Justice of the United States was announced, the Hon. Salmon P. Chase. He was ushered in and assumed his place as the presiding officer. His official black gown lent its dignity to the occasion. He faced curved rows of desks behind which were seated fifty-four Senators, representing twenty-seven states and nearly forty millions of people. From a side room entered five men who seated themselves at a table placed at the right of the Chief Justice. At the first chair was seated Henry Stanbery, Ex-Attorney General, who resigned his office in order that he might assist in the defense of the President, a man of commanding presence and dignity, now in his 65th year, ill but yet courageously nerving himself for the affray. At his left sat Benjamin Curtis, Ex-Justice of the Supreme Court, a leader of the Massachusetts Bar and author of one of the two dissenting opinions of the Dred Scott decision. Next to him was seated Judge Thomas Nelson, one of the ablest attorneys of Tennessee and an intimate friend of the President. On Nelson's left was seen a thin faced, tall, lank figure, a familiar one in Washington, William M. Evarts, a master of oratory and eloquence. The fifth of the counsel for the President was William Groesbeck of Cincinnati, a stranger to the public, yet destined to make his name a by-word upon the lips of his countrymen, who had been substituted at the last moment for Jeremiah Black who resigned as counsel when the President refused to permit our ships to enter into a conflict of interests over the rights on the island of Alta Vela near San Domingo. Their entrance was quiet but impressive, and had a bearing of confidence.

After the President's counsel were seated, next were ushered in and proclaimed "The Honorable Managers on behalf of the House of Representatives", two by two each linking their arms in couples. Their leader was Benjamin Butler, a man of massive appearance and bald of head, except for a fringe of oily curls. His unattractive person emanated cunning and insincerity. The others were George S. Boutwell, John A. Bingham, Thomas Williams, James F. Wilson

and John A. Logan, the former two being recognized as able lawyers, the latter being obscure and unknown in the courts. The order of entrance was somewhat broken by the entrance of a vengeful and implacable personage, bent with age and with the hand of death hovering over him, that misguided patriot, Thaddeus Stevens, also one of the Managers of the House in charge of the impeachment. The Sergeant at arms next announced the accusers and there was ushered in the members of the House of Representatives headed by the Hon. Elihu B. Washburne.

The galleries were crowded with men and women alike. The women were robed in splendor of gown and society in and near Washington being represented. All alike straining to see and hear the proceedings. All were present, accusers, defenders, and the Judge, but the impeached, the defendant was not present and at no time during his trial did he appear. What a disappointment to those in the galleries.

This was the day of the trial of Andrew Johnson upon the charges of his impeachment. The Senate had previously met and upon presentation of the charges by the House of Representatives, had set a day for hearing. On March 13, 1868, the day of the hearing, counsel for the President had read a statement authorizing them to appear for him, and asked forty days to prepare an answer. Benjamin Butler responded that this was as much time "as God had taken to destroy the world by flood". After deliberation ten days was allowed. Then a replication to the answer was filed and on March 30, 1868, the actual proceedings for impeachment were commenced.

The impeachment was a culmination of the struggle between the executive and legislative branches of the government. After the assassination of President Lincoln, Andrew Johnson as Vice-President was sworn in as President. Calm and possessed, he swore to uphold his duties. What a time for a President to be called upon to make decisions. The Civil War just over; the slaves a problem; the states in insurrection a problem. The new President was besieged on all sides with advice and counsel. The Congress had nothing but contempt for the President and met immediately to put him in his place. Another condition had arisen which was very detrimental, namely, the policy of creating hosts of offices to be filled and

vacated at each election. The Congress fearing the power of the President to remove officials and particularly his cabinet members drew up and in final form passed the Tenure-of-Office Act. In the past, power of removal was exercised by various Presidents and no question as to their right under the constitution to do so had been raised. The purpose of the act was to directly affect the power of the President to remove the Cabinet Officers who were appointed before the death of President Lincoln. The first section of the Act recited that "Cabinet officers should hold their office for and during the term of the President appointing them". The other sections are not material for the purpose of this discussion.

When President Johnson assumed his office, Edward M. Stanton was Secretary of War, having been appointed by Lincoln. There is an interesting story related concerning the appointment of Stanton, who was a Cincinnati lawyer. It seemed that Lincoln was called upon and retained in an important case in which Stanton was involved as his co-counsel. Stanton insulted Lincoln by refusing to associate with him or cooperate at the trial and is reported to have told his friends that "nothing would induce him to associate with that damned, gawky, long armed ape". It must however be said for Stanton that he had rendered loyal service during the trying period of the war. He first gained national prominence as District Attorney of the District of Columbia. His attitude in office was insolent and overbearing to his superiors. He was greedy for office and had a lust for the power it would give him. He was by nature a spy, did not hesitate to deal with both parties in the controversies of the times, if it tended to entrench his own position. Such was the character of the man whom Andrew Johnson attempted to remove to make way for the appointment in his stead of Lorenzo Thomas. No self respecting President could have done otherwise.

With the Tenure of Office Act duly passed and after veto by the President, passed over his veto to be placed upon the Statute Books as a law, and the Congress avowedly intent upon putting the President in his place, as they termed it, the news of Stanton's removal caused a turmoil in both Houses. Stanton immediately appeared before Judge Carter of the Supreme Court and obtained a warrant for the arrest of Thomas

returnable forthwith. The affidavit made by Stanton to obtain the warrant was in effect that he was Secretary of War; that the President's order appointing Thomas was void; that Thomas threatened to forcibly oust him from office; that the appointment was in violation of the Tenure of Office Act; that it was a High Misdemeanor. Thomas was eating his breakfast when served with the warrant and since the writ was returnable forthwith, left immediately and upon bond being fixed for $5000.00, he immediately made the bond and was released. The case was called up several days later and was dismissed upon motion of defendant, counsel for petitioner not objecting. Thomas never actually performed any of the duties of Secretary of War during this period. He made demand for the office and was refused by Stanton who immediately barricaded himself in the office of the Secretary of War. Thomas then occupied another office and claimed himself the rightfully appointed Cabinet member.

Like an avalanche unloosed, furious over the removal of Stanton, the House of Representatives under their constitutional power, met to debate the impeachment of the President. By a vote of 126, all Republicans, and a negative vote of 47, all Democrats, the House, disliking the President and having once tried and failed to impeach him, passed a resolution favoring impeachment. A committee of two were named to notify the Senate and a committee of seven Managers appointed to prepare the articles. Eleven articles were finally adopted and those of any importance related to the order of removal of Stanton as a violation of the Tenure of Office Act and a conspiracy by force and intimidation to hinder the enforcement of the act. The tenth article charged that the President was guilty of a high misdemeanor in expressing his view and opinion that "an act of Congress depriving him of powers as Commander in Chief was unconstitutional". The eleventh article was called the omnibus article, containing general charges of usurpation of office.

With no precedents to be followed or decisions to be used as authority many vexing questions were presented. One question presented was whether the Senate was to sit as a Court or a tribunal when an impeachment question was presented. Also what was the authority and power of the Chief

Justice. The Senate took the view that he was merely the presiding officer and no more. Immediately upon the commencement of the trial, the Managers of the House who brought the impeachment charges contended that the Senate and not the Chief Justice was to rule upon the admissibility of evidence. During the entire trial the Chief Justice would rule and by a vote of the Senate he would be promptly overruled and upon such vote of the Senate the testimony permitted to be given or rejected as they directed. As a result, much testimony was heard that was not proper under rules of evidence due to the continual clash of inconsistent rulings by the Chief Justice and the Senate, each claiming the power to render the decision upon such matters.

Benjamin Butler made the opening argument in favor of impeachment and read a carefully prepared manuscript. After defining every offense impeachable "which the House chose to impeach as proper," he attempted to distinguish the position of the Senate from that of a court by the following argument. He stated, "as a constitutional tribunal solely you are bound by no law, either statute or common which may limit your prerogatives. You are a law unto yourselves, bound only by the natural principles of equity and justice." He further argued that the Senate could not be a court as they could not be challenged for bias. Butler's attempt was to first lay down an elastic definition of the offense, then establish a convenient mode of proof and an absolute tribunal to pronounce it proved. As for proof, he stated, "we rely upon common fame and current history."

James M. Wilson next followed in support of the Managers and read as proof of the charges the President's messages submitting reasons for Stanton's suspension to the Senate. After a week of submission of testimony and the examination of various witnesses by the Managers, they rested their case.

Judge Curtis opened for the defense and ably argued that Stanton's removal was not within the act since he was not appointed by President Johnson, the Tenure of Office Act providing that they shall hold their office during the term of the President appointing them. He further argued that an erroneous construction by the President of an ambiguous Statute could not be proper grounds for impeachment. This argument was answered by the Managers by the contention that

it was the duty of the President to obey and enforce the laws without question as to their constitutionality and by reiterating the argument that Stanton was within the Act since President Johnson was serving out President Lincoln's term.

After other arguments for and against the impeachment, William S. Groesbeck rose to speak as one of the counsel for the President. He laid a foundation for his argument by stating that four Judges and one Senator had been tried for impeachment. In terse, concise and unmistakable language he contended that the powers of the President were that of Chief Magistrate and not Constable. That the constitution had so endowed him with that power and that the Congress was without power or authority to attempt to lessen his authority. He stated that "it seemed hard, that anyone who has served his country and borne himself well, should be condemned upon miserable technicalities".

Thaddeus Stevens, broken and bent and with his doctor predicting he would not live through the trial, arose and read his prepared argument. He protested that a mere mistake persevered in after proper admonition was sufficient to warrant the removal of the President; and further that he was unfit to grace the high office he occupied. He charged the President with misprision of official perjury and defined it "as breaking his official oath by obstructing the execution of the Tenure-of-Office Act." He termed the President "an offspring of assassination".

William M. Evarts then followed for the President and delivered an argument that is considered a classic of logic and precise language. His contentions refuted a statement previously made by counsel, "that some lawyers' practice of their profession sharpens, but does not enlarge their intellect". He termed the impeachment, "an altar of sacrifice erected to the savage demon of party hate".

Stanbery despite illness closed for the defense. He well exemplified his powers as an orator and ended with a plea for the President. He stated "steadfast and self reliant the President stood in the midst of all difficulty, when dangers threatened, when temptations were strong, he looked only to the constitution for guidance. If you condemn him, mark the prophecy, the strong arms of the people will be about him

and he will be rewarded by the majestic voice of the people exclaiming, well done faithful servant, you shall have your reward."

Bingham then closed for the Managers of the House and added nothing new. He too became oratorical and brought rounds of applause from the gallery.

After the vote of not guilty, by failure of one vote, 36 votes being necessary for impeachment and only 35 being received, the ballot was duly recorded and by a very small margin a President was saved from impeachment at the hands of his Congress in the struggle for supremacy and power and readjustment of a great nation at a crucial moment in its history.

The impeachment and trial of President Johnson are interesting not only from a historical standpoint but from a legal standpoint and present the following legal controversies which are of some moment and consideration:

1. What is the power of the Chief Justice of the United States when presiding over the Senate at an impeachment trial?
2. Is the Senate or the Chief Justice presiding at impeachment trial to render the decision as to the admissibility of the evidence to be presented?
3. What is the duty of a President, when a law is clearly unconstitutional?
4. Is the personal presence of the impeached officer in this instance, the President, necessary at the trial?
5. Is the Supreme Court of the United States clothed with the power to issue a warrant for the arrest of a cabinet member, when the said member is acting under authorization by the President of the United States?
6. When the Senate sits for impeachment is it a Court to be bound by law or a constitutional tribunal to exercise its own prerogatives?

The trial was unique as well in many instances and particularly because at no time was the President present at the trial. It tended to solidify our governing power by demonstrating to a nation that President Andrew Johnson was not a weak willed, easily swayed executive but an adamant superior who looked to the constitution of our country for guidance and support and whose reliance had been vindicated.