THE IMPEACHMENT TRIAL.

This most remarkable feature connected with the impeachment trial—a feature which completely overshadows all others—is the fact that it can take place at all. If republican institutions have proved their strength to carry on a civil war of unexampled magnitude, they are no less proving their ability to withstand a political stratum to which no other government has ever been subjected. Kings have been deposed, and have been submitted to a judicial trial for their crimes against the people, but only after they have been deprived of all power by successful revolutions. Here is the spectacle of a President, commander-in-chief of the armies and navies, possessing the sole executive power of the nation, supported in his opinions and acts by the assent of a considerable majority of all those persons who, five years ago, were deemed to be citizens, under trial for alleged offences against the Constitution and the laws; all the machinery of government moves on as usual; no one suggests resistance; the accused obeys all process of the court, yields to its authority without a murmur, attempts no measures of violence, submits a defense entirely upon the merits. We repeat, this is the remarkable fact; and it is one which may make every thoughtful citizen proud of his country and hopeful of the permanence of its institutions. It shows that the Government is still based upon a universal respect for the laws. The American people are not slow to discuss all questions of policy and of power with a zeal which sometimes appears dangerous; but when the Constitution is plain and express, when the measure is one provided for beyond all doubt by the organic law, the assent to its legality is universal. No thoughtful American, whatever be his party affiliations, can look upon the impeachment trial as an event inferior in moral grandeur to the war waged to suppress the rebellion.

The trial itself has presented some questions of constitutional law hitherto untouched or unsettled, and the decisions thereon will doubtless become precedents for all future action. One of these points involves the position of the Chief-Justice as presiding officer of the Senate. We confess ourselves unable to appreciate the importance which has been attached to the official character of the Chief-Justice. It seems to have been taken by many, both in the Senate and without, as symbolizing some theory which would enlarge or diminish the jurisdiction of that body. It has been suggested that the Chief-Justice is the sole judge of the law and the Senate are the sole triers of the fact. But such a suggestion has been made by no one connected with the trial, and its absurdity is apparent. Two questions have arisen, entirely distinct from each other and depending for their solution upon entirely different considerations. The first is the right of the Chief-Justice to rule in the first instance upon incidental points which arise in the trial, subject to the revision of the Senate. This claim is based not upon any authority residing in him as presiding officer, but simply upon a construction given to the rules of procedure when the Senate adopted. That body assented to the construction, and to remove all doubt made the rule more explicit. The second question is more important, and involves the official character of the Chief-Justice. Has he the right to an absolute and peremptory vote under any circumstances? The claim is simple, and the argument in support seems to us conclusive. Generally, the Vice-President presides. The Constitution clothes him with authority to give the casting vote in all cases of a tie. When the President is tried, the Chief-Justice shall preside. It would appear from this language taken alone that the Chief-Justice was substituted in place of the Vice-President, with all his powers, no more and no less. But this conclusion is strengthened by the motive which probably led to the provision in question. As the Vice-President succeeds upon the removal of the President, it was considered improper that he should form any part of the court, and the Chief-Justice was substituted in his stead. We do not understand that Mr. Chase has claimed anything more than the right to vote in case of a tie, and his casting vote can only be used in deciding interlocutory questions; in the final result he can have no voice, for the majority must be two thirds. It is evident to any one who has carefully examined the proceedings from day to day that the Senate has uniformly acted with great impartiality, and that its rulings in respect to the admission of evidence are, with one or two exceptions, absolutely unobjectionable. The only occasions when there has been any real contest between the Managers and the President's counsel were the offers to prove declarations made by General Thomas, to prove the appointment of Mr. Cooper as Assistant Secretary of the Treasury, and to prove on his behalf declarations made by the President. The first decision, admitting General Thomas's statements made after his appointment, seems to have been in entire accordance with settled principles of the law of evidence. It is true that generally the declarations made by one person cannot be received against another. To this rule there are exceptions; and none is more familiar than in the case of an alleged conspiracy. If the prosecution has laid the foundation by giving some proof of the conspiracy, they may follow it up by introducing the admissions of the assumed conspirators against each other. It cannot be said that the prior proof of the conspiracy must be absolutely conclusive; it can, in the nature of things, be only matter for a jury to weigh. Had such proof been offered? We think it had. The removal of Mr. Stanton, the appointment of General Thomas, and the particular directions of the President to the latter, may make out but a weak case of conspiracy, but they certainly make out a case sufficient to be submitted to a jury. The decision admitting General Thomas's statements prior to the removal of Stanton and his own appointment was, in our opinion, wrong; and for the same reason that the former ruling was right. No evidence of any conspiracy existing at that time between the President and Thomas had been given. We were glad to see that most of the able lawyers on the Republican side of the Senate voted to reject this evidence. To be sure, the declarations proved were perfectly immaterial, and cannot be used to prejudice the case of the respondent.

The proposal to prove the appointment of Mr. Cooper as Assistant Secretary of the Treasury was very properly overruled. The fact itself seems simple enough, but Mr. Butler announced that the Managers intended to raise such an enormous superstructure of hypothesis upon it that they would, in fact, adding another distinctive charge to the articles of impeachment. The Senate, in deciding that they would not try the respondent upon any new allegations, adhered to the acquiescence of the law, as well as with common sense and common justice.

The questions raised by the counsel for the respondent, in their offers to prove the President's declarations, in order to show his intent, are much more grave, and go to the bottom of one entire branch of the defence. The criminal law, administered by ordinary tribunals against ordinary offenders, invariably demands the presence of a wrongful intent as the very essential element of every crime. Although the Managers have denied the necessity of proving such an intent against the President, yet their actions contradict their avowals, and there can be no question that this feature of guilt must be established, and may be disproved. As intent is a mental condition rather than a physical fact, the evidence for or against its existence must be circumstantial, and on the actual trials the aid of presumptions is always invoked. Thus, the President having removed Mr. Stanton, the presumption is conclusive that he intended to do so. If the removal was in violation of the Constitution or of a statute, the presumption would also arise that he intended the violation. This latter design is the actual criminal intent which makes his act a high misdemeanor; but the presumption is not, like the former, conclusive; it may be overcome, and may be strengthened by ancillary evidence. The President claims that he is not guilty of a criminal design, because the validity of the Tenure-of-Office statute is, at least, fairly open to doubt, because the only method by which it can be questioned is for him formally to violate it, in order that the judicial machinery may be set in motion, and because he did, in fact, violate it for that purpose, and for no other. The first two of these propositions are matters of law, and are to be established by argument and not by testimony. The third is a matter of fact, and he proposes to prove it
by showing what he has said to different individuals on the subject.

The Senate permitted him to introduce the statements made to General Thomas, but shut out those made to General Sherman. Is there any inconsistency here? Every tyro in the law knows that as a general rule a party cannot prove what he has himself said in order to explain the nature of an act. To this rule there is the exception that, if the act and the saying were simultaneous, or were so closely connected as to form parts of the same transaction, they shall not be separated; the act shall not be shown and the language shut out; both shall be admitted to explain each other. Under this exception the Senate permitted General Thomas to detail the conversations between the President and himself. But when the counsel for the respondent passed to conversations which took place two months before the act charged in the articles of impeachment, we think the exception does not apply, but that the general rule comes in play. It could hardly be contended that similar evidence would be received on behalf of the prisoner in a trial for murder or any other crime. But we think the Senate ought to have admitted the proposed declarations on Saturday as it did on Monday, when senators had had time to consider the matter. The rules of evidence which prevail in the English and American criminal law were adhered to for trials by jury; they were designed to shut out immaterial matters which might confuse triers unacquainted with the law; they are not necessary when the same tribunal decides the law and the fact. The Senate would not be at all prejudiced by the admission of improper evidence; each senator would for himself separate the good from the bad, and give a judgment according to his convictions. Again, the Senate should preserve the appearance of the utmost fairness; a verdict of guilty will do no good unless the people are satisfied that it was rendered upon a view of the whole case; all errors should be on the side of the President, not on the side of the Managers. Now, the great mass of persons uneducated in the technical rules of evidence would consider statements made by the President, in reference to his design in removing Mr. Stanton, as throwing great light upon his intent; they will regard the rejection of those statements as an act of injustice. We are satisfied that Mr. Butler, by his vehemence in applying the doctrines of criminal evidence with which he is so familiar, is injuring his cause with the people.

The trial itself has developed few facts of importance which were not well known before its commencement. All the articles which are based upon the removal of Mr. Stanton and the appointment of General Thomas rest for their decision upon two considerations. The charge of conspiracy cannot be treated as raising an independent issue. The first of these two considerations is the pure question of constitutional law, in whom does the power of removal reside? We do not intend to discuss this question. It can hardly be expected that the Senate will forget the former action and fail to pronounce the War Office statute a valid law, by a majority of at least two-thirds. The position that Mr. Stanton's case is not covered by that statute seems to us so technical that we may call it a quibble. But the defence will be largely rested upon the issue of wrongful intent. The true construction is certainly a matter of doubt. Mr. Curtis maintains the exact position heretofore assumed in the Nation, that in regard to most laws the President should not interfere, but in regard to some he must interfere or their validity cannot be tested. This statute falls within the latter class, and if the respondent violated it merely to set in motion a judicial proceeding, he is innocent of any misdemeanor. We agree with these views. The trouble is that the facts do not appear to support them. There is not the slightest evidence, except his own declarations, that the President desired a judicial investigation. All of his acts look in another direction; he was endeavoring to get possession of the War Office, and to compel the other side to commence proceedings if they pleased.

We cannot leave this subject without saying that one fact was proved which ought to result in the President's conviction—his direct official communication to the Alabama Legislature advising a defeat of the XIVth Amendment. Here was a bold and plain violation of his official duty; a bold and plain interference with the exclusive functions of Congress.

SQUANDERING THE NATIONAL PATRIMONY.

It is generally acknowledged that, next after class-hatred, the great difficulty in the way of the social regeneration of Southern society is the landlessness of the negroes. If there be any well-established principle in political economy, it is that the possession of land has an elevating effect on the character, and that whatever influence the multiplicity of small holdings may exercises on the gross amount of production, there can be no question as to its influence in promoting independence, industry, frugality, and prudence amongst the cultivators. No argument is needed on this point. It was settled long ago, by the more comparison of the countries in which large landholders abound with those in which small landholders abound. All that is claimed for the former is that they produce larger crops and use better machinery; what cannot be denied to the latter is that they produce better men, which is, after all, the great end of crops and machinery. When one compares the French peasant, even in districts in which vine-culture is unknown or unprofitable, with the English hind, in any district whatever, one feels that the difference is such that neither the large yield nor improved processes of the English farm can compensate for it—and yet the French peasant is by no means the best specimen of the class of small holders.

Wendell Phillips and Thaddeus Stevens both got hold of this principle, and, two years ago, urged it with considerable energy with regard to the Southern negroes. They said, and with great truth, that there was no means of raising a man—and, above all, a degraded and dispirited man—either in his own estimation or in that of his neighbors, so good as that of giving him land of his own, in sufficient quantity to enable him to live on it comfortably. But they spoiled the effect of all they said by parading their desire that the measure should be only in part a philanthropic or reformatory one, and that the remainder should be purely penal; in other words, that they sought through it the infliction of vengeance on the South as well as the elevation of the negro. They proposed to secure the necessary amount of land by confiscation, and Wendell Phillips cited in support of his doctrine various historical precedents, whose sole value, unfortunately, lay in the lesson they afforded of the curse which even "mild confiscation" inflicts on any country in which it is carried out, especially when the sting leaves behind it felt by a large class. In short, we cannot go to the source from which we draw the conclusion that small farms are a benefit to the community—man or human experience—without finding it covered over with warnings against allowing men to acquire small farms by means which look like spoliation of their neighbors. There is one thing more essential to a community than even small holdings, and that is the absence of any extraordinary cause of envy, hatred, and malice amongst its members.