

## GREAT LEGAL LIGHTS.

Arguments Before the Supreme Court in the Impeachment Trial.

## BOTH SIDES FAIRLY PRESENTED.

Copious Extracts From Greene's Brief. Press Reports of the Speeches Made by Webster and Lamberton.

## Argument and Eloquence.

The great impeachment trial closed too late last week for THE ALLIANCE-INDEPENDENT to publish the arguments of the lawyers except a summary of Judge Doane's plea.

The following, while not a complete report of any of the speeches, will be sufficient to show the main facts and arguments on each side. In order to be fair, we present the speech of Webster the leading attorney for the defense. The extracts from Greene's argument are printed verbatim from his brief. The others are press reports:

## GREENE'S BRIEF.

Attorney Greene filed a brief of thirty pages in which he cited the law and authorities showing very conclusively that the state officers had committed impeachable offenses. He also presented the facts connected with the cell-house and asylum in a very forcible manner.

The following are extracts from Mr. Greene's brief:

This is a case which calls for the most considerate and dispassionate judgment.

On the one hand the honor and integrity of the respondents are at stake, and upon the result of this trial largely depends their future standing in the state.

If this court shall pronounce against them, then upon their brows will be stamped the mark of Cain, which will not be effaced this side of the grave.

On the other hand are the interests of the state, the fair name of which has already suffered greatly because of irregularities and dishonest methods in the conduct of its business. Indeed, these methods seem to have been so long in vogue that a public office is so far from being a public trust that it has come to be looked upon by many as a private snap, the chief object and aim of which are to fill the coffers of its possessor with ill-gotten gains.

I take it as true that when a man accepts a nomination for a public office, he makes an implied contract first, that he will take into the office, if elected, the strictest honesty; second, that he will take into it industry, and third, that he will take into such office the skill and ability necessary to properly transact the business pertaining thereto; and in consideration for his contract the people agree to give him the position and pay him the salary connected with such office.

I have no sympathy with a construction of the constitution which places the whole people at the mercy of an official, who, either because of incompetency or gross negligence, is permitting the grossest frauds to be perpetrated upon the community from week to week and from year to year. Constitutions are made for men and not men for constitutions.

There is perhaps no principle of the law better settled than that courts of impeachment are organized to protect society from unworthy officials, and this whether such unworthiness arises from corruption, inability or gross neglect of official duties. The people are entitled to honest and efficient public service, and it is as much their right to demand that an incompetent or grossly negligent official be removed as it is to demand that a corrupt one shall be impeached, for in either case society must suffer by the retention of such persons in office.

In the case at bar, it is, as I view it, immaterial whether these respondents acted corruptly or not. The question is, have they so conducted the affairs of the offices which they have assumed to fill that the public has suffered because of their negligence or incompetency? If so, then they should be removed before other occasions of loss accrue to the state. In answering the question it is necessary to summarize their doings and the results which have followed.

The legislature of 1891, in the general appropriation bill, appropriated the sum of \$40,000 with which to erect a wing to the state prison, such wing being known as the "new cell house." The act provided simply that the work was to be done "by day labor," leaving all plans and details to the honesty and capability of the board of public lands and buildings, of which these respondents are members.

How did they carry out the designs of the legislature? Their first act was to employ William H. Dorgan as superintendent of construction of the building, well knowing at the same time that he was the agent for the prison contractor, C. W. Mosher, and that as the agent for the board he was to employ the convicts from himself, as the agent of the contractor, to construct the cell house.

It must have been quite evident to these respondents, that by this act they were opening up the flood gates of corruption and fraud through and by which the state was to be defrauded out of large sums of money, an act so grossly negligent that no man would have thought of such a proceeding in his own private affairs. Every act which Dorgan was called upon to perform, as the agent of the board, was in conflict with his duties as the agent of the state contractor, which must have been evident to the respondents at the time of their employment of Dorgan.

It was but to be expected that Dorgan, whose employment by the prison contractor had been of long standing, and which he expected to continue by faithfulness to his employer, would cause him to be unfair as against the state from which he only expected employment for a short period of time, and at a very small salary; and he at once

manifested such partiality by contracting with himself for the convicts to labor for the state at the price of \$1.00 per day each, more than double the price paid by other parties for the services of convicts. It will be remembered that the evidence shows that forty-five cents was the average price paid by private corporations.

It is not only evident that the state officers knew of these facts when they occurred, but it is also morally certain that these things were but the natural outgrowth of the act of the board in their employment of Dorgan, and just what any man of common business judgment would have anticipated, and in fact just what their conduct invited.

Not yet satisfied with the inducements which followed their conduct, they placed to the credit of Dorgan from time to time large sums of money to-wit: from five to six thousand dollars in advance of the contraction of obligations for which such moneys were to be used, and permitted Dorgan to draw out the same on his individual checks as it suited his own convenience, and then accepted the checks of Dorgan as vouchers for some four or five thousand dollars of the money thus placed to his credit.

It cannot be denied that the act of these respondents in placing the state's money in the hands of Dorgan in advance of its expenditures, or the contraction of obligations for which it was to be used, was in open violation of law and of the duties of these respondents, and was likewise an invitation to perpetrate fraud upon the state.

That great fraud did grow out of the acts of these respondents described, will be readily seen by reference to the evidence touching the construction of the new cell house at the penitentiary. The court will see by an examination of the prices charged and paid by the state that these prices run from fifty to one hundred per cent more than such stone was worth in the market, and in fact from fifty to one hundred per cent more than was actually paid at the quarry. All these bills for stone passed through the hands of these respondents as members of the board, and were by them approved and allowed without question.

I am fully convinced that no sane man would conduct his business in such a loose, careless and indifferent manner, and am quite sure that not one of these respondents would thus slightly pass over his private concerns.

These respondents having therefore shown their inability to protect the public should be removed to protect a reputation of the wrongs already committed.

Taking all the evidence given upon this subject it seems clear that almost half of the appropriation of forty thousand dollars appropriated to build the cell house has gone into the private coffers of some person or persons, and yet all these bills have passed through the hands of these respondents whose duty it was to stand guard over the interests of the state.

But, it seems that they were not content to merely allow Dorgan to use the funds belonging to the state, but that in the month of December, 1891, these respondents took from the cell house fund five hundred dollars and appropriated the same to their own use. This they attempt to justify by saying that they went to investigate prisons for the purpose of getting an improved method of ventilation for the cell house, and this money was to pay expenses of the trip, but this defense falls when we look into the real facts.

In the first place, the evidence clearly shows that these respondents had railroad transportation on the whole trip except from St. Louis to Chester, Illinois, a distance of about one hundred miles. They were only out about two weeks, so it seems that the hotels at which they stopped, must have been wonderfully high priced. Only four persons went on the trip which gave them nearly \$125 each with which to pay hotel bills, as there was no railroad fare to pay except as before stated from St. Louis to Chester. \$62.50 per week ought to get exceedingly good hotel accommodations.

Another fact is established, that they kept no account whatever of their expenses on the trip, and at no time did they present a voucher therefor. They simply drew out the five hundred dollars, went off on a junket and expended the money. Now as to their going to look up ventilation for the cell house let us look at the facts.

As to their claims that they were looking up a system of ventilation for the cells, it is enough to say that the state was not building any cells, but it was the duty of Mosher under his contract with the state to put in the cells. It is also worthy of remark that the evidence shows that they did not bring back a single plan, nor did they at any time make a single hint or suggestion either to Dorgan or any one else as to any improved method of ventilation or any kind of ventilation whatever, nor did they make any suggestions as to the better government of the prison.

Their trip, so far as the evidence discloses, was as barren of results as is Sahara of vegetation.

It seems reasonably certain that five hundred dollars was simply taken and used on a junketing trip for the pleasure and amusement of these respondents. The fact is there is no justification for the appropriation of this money and if state officials may take \$500.00 and appropriate it to their own use, and justify the act by such flimsy pretenses, then there is no limit to the inroads which may be made upon the public treasury. Such conduct is in open violation of law, and ought to subject the person so doing to removal from his office.

Not satisfied with their own trip and investigations, they again drew upon this fund for \$200.00 with which to send Mr. Dan Hopkins, then warden, on a pilgrimage to a wardens' convention, held in Pittsburg where he could study new and improved methods of ventilation and prison management. Hopkins went, he saw, and returned, but not a word escaped his lips as to improved methods, either in ventilation or prison management.

All these acts speak louder than words and their only language is that the claim that these trips were made to study better methods is an afterthought which had its origin in an effort to justify inexcusable conduct, after the occasion arose to demand an explanation.

But this is not all. These same respondents let contracts from time to time for the furnishing of coal to the hospital for the insane at the city of Lincoln, and audited and approved the vouchers therefor, and caused the same to be paid; and it, to my mind, is

clearly established that in the period of time running from October, 1890, to February 28, 1892, the state paid for four thousand nine hundred and four (4,904) tons of coal that were never delivered at the asylum at all.

Can anyone look over these items without believing that they carry on their face such marks of fraud as would put a careful business man on his guard?

Take the month of April, 1891, and you will see that the state paid for 413 tons of coal during that month.

Would any man of ordinary judgment believe that so large an amount was consumed?

The facts that considerably less than half of that amount was ever delivered for that month.

Now look at the month of May, 1891, and you will see that for that month the state paid for 514 tons, or on increase over April of 83 tons. As the weather grew warmer the consumption of coal at the asylum increased. Was there nothing in that fact calculated to arouse suspicion in the mind of a prudent official who wished to guard the people's interests?

We pass to June, 1891, and the state paid for 501 tons of coal, when in fact but 256 tons were delivered. Then to July, 1891, and the weather had grown so cold that it required 540 tons of coal to warm that institution, or an increase over April of 109 tons, an increase over May of 28 tons, an increase over June of 39 tons, and over December 70 tons.

Again I ask were not these things sufficient to cause one seeking to do right to pause and investigate?

If not, then what would it take to arouse these respondents to the fact that the state was being robbed?

From month to month the steal went on, and in the period covered by the table given, the state lost more than sixteen thousand dollars in the one item of coal alone at that one institution. At the same time Sewell & Company were running a gigantic swindle in flour the details of which I will not go into here, and at the same time Dorgan was operating the swindle at the penitentiary cell house.

Can it be possible that these three swindling machines were in full blast at the same time, and each and every grist of fraud passed through the hands of these respondents, and that they were so unsophisticated that no thought of corruption passed through their minds at all? If so, a great reason exists why they should be removed and in their places put men upon whose credulity rogues cannot play.

The defense has likewise sought to show that respondents are so overburdened with work that they had no time to give to an investigation.

But, it should be borne in mind, that the evidence shows that in the office of public lands and buildings alone there are ten clerks, besides the commissioner and his deputy. That there are in fact from twenty-five to thirty people to perform this labor.

It will also be remembered that the evidence shows that the working hours in these offices are from 9 a. m. to 12 m. and from 1 p. m. to 4 p. m., or that one of their working days is but six hours.

It occurs to me that for the purpose of preventing a robbery of the people these respondents might afford to increase their working hours to at least seven per day and still not die prematurely of over-work.

The people who placed them in these position of trust, and whose money is being squandered, work from eight to sixteen hours per day to earn the money which these respondents by their carelessness have suffered to be unjustly taken.

One thing I desire to call the court's attention to: Out of all the various institutions in this state, the bulk of the fraud is found in those in and adjacent to the city of Lincoln. While those in the interior of the state appear to be comparatively clean, those right under the nose and eyes of these respondents reek with corruption, and that too at the hands of men who owe their positions to these respondents.

There seems therefore but one thing to do: Let all men know that in Nebraska a public office is in fact a public trust. Let the young men of the state understand that there is no premium on dishonesty or negligence.

Let them know that he who assumes to do the public business must perform it with that degree of care and integrity which characterizes his conduct in the management of his private business and then we will indeed be on the road to a higher civilization.

## IN BEHALF OF THE DEFENSE.

John L. Webster Holds Attention of Spectators for Two Hours.

John L. Webster, of Omaha, well known as one of the leading attorneys of the state, followed for the respondents, and it was with the closest attention that the spectators listened to his reasoning and occasional bursts of eloquence. Speaking in a forcible but deliberate manner the lawyer's words fell with distinctness on eager ears for two hours.

In opening he said he might touch on some points with no little feeling because he appeared for men who were his friends and who were clothed with the suffrage of the people.

No man was ever impeached without corrupt intent being one of the charges, but not one witness had come forward and intimated corruption on the part of the respondents.

If there is one in Lincoln who had defrauded the state the grand jury has taken notice and the hand of the law is upon him. But stay that hand which seeks with a drag net for whom it may surround. Counsel is here to defend these men from charges of corruption.

The Jewish Method.

In speaking of the times and circumstances surrounding the adoption of articles of impeachment by the legislature Mr. Webster asserted with emphasis that if Mosher's bank had not failed impeachment never would have been heard of. Feeling was aroused and all that was needed was a leading spirit.

In biblical times the Jewish priests cast the sins of the people upon a goat and then turned the animal out into the desert. Sometimes, however, the goat would return, and the people found their sins upon them once more. The priests then took a different course. After leading up the goat with sins they pushed it over into an abyss and it would be dashed to pieces. In this case it is sought to make these people serve as a goat.

In regard to the \$40,000 appropriation for a cell house every cent of money was fully accounted for and the state was in no wise defrauded. In substance the defendants are impeached because they were not informed as to building methods, and in other specifications they are impeached because they used \$500 on a trip in search of information concerning the welfare of prisoners.

At 12 o'clock the court took a recess.

Impeachable Offenses.

Referring to the Balknap case Mr. Webster said there was a case of bank books

(Continued on Third Page.)

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