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SENATE OF THE UNITED STATES.

FRIDAY, APRIL 8, 1808.

The report of the select committee in the case of Mr. Smith of Ohio, being under consideration—

Mr. PLEASANTS moved, that the Senate do now proceed to consider the resolution, with which the report concludes, and which is in the following words:

"*Resolved*, That John Smith, a Senator from the state of Ohio, by his participation in the conspiracy of Aaron Burr, violated the *Peace, Dignity and Liberties* of the people of the United States, has been guilty of conduct incompatible with his duty as station as a Senator of the United States, and that he be therefore and hereby is expelled from the Senate of the United States".

This motion having been agreed to, Mr. ADAMS spoke in substance as follows:

Mr. PRESIDENT—The question now under consideration appears to be strict propriety to import, only a discussion on the point of fact, and the determination can decide only whether Mr. Smith has or has not been a participant in the conspiracy of Aaron Burr, so far as to be no longer worthy of a seat upon this floor. But as the learned and ingenious counsel of Mr. Smith have rested a part of his defence, upon objections against the principles, proceedings and evidence, and upon which the Senate have hitherto proceeded in this case, I shall be permitted, in the course of the remarks I am now about to submit to the Senate, to make such observations upon the principles mentioned, as for my own guidance, as we are accorded to me, as well as upon the view of the evidence now in our possession, and by which my vote upon the resolution will be governed.

And I cannot but express my satisfaction, that the principles of the report have been brought to our notice in order, and have been called to encounter the whole argument and experience of two such powerful advocaries. Far is it from my wish, sir, that those principles should receive the countenance and sanction of this body, unless upon the severest scrutiny they shall be found to stand upon the foundations of reason, of the Constitution, and of precedent. If the principles proposed by Mr. Smith and his counsel are more sound, they ought unquestionably to prevail, and in order to try their respective validity, my task will be to examine the objections which the learned counsel have urged against the principles of the report, and to standard upon those which they have proposed to substitute in their stead.

The first objection is to the jurisdiction of the Senate. It is said that we had no right to try this case at all; or at least that if we were authorised to enter upon it for purposes of enquiry, we had no right to proceed for purposes of decision. And although this enquiry was originally offered such successes by Mr. Smith himself, I am not desirous of depriving him of the benefit which he can have derive from a fair view of our jurisdiction. His counsel now solemnly protest in his name and their own against our intiligation to try him his respect. If indeed they are right, if we have no authority to try, the conviction and acquittal of other than the gentlemen themselves would be willing to allow. Their argument should be rigidly the Senate to take this question at all. A vote of rejection would affirm the jurisdiction of the Senate, as much as a vote of adoption. Acquittal implies the jurisdiction of the tribunal, as much as condemnation. This is obvious from the practice of the common law courts, where the plea to the jurisdiction never always be decided before the general issue can be tried. Mr. Smith, however, ought upon to be considered as a Vantage of both his grounds. If there are members of the Senate, who thoroughly entertained the opinion, sufficient for his exposition, have been convinced by the arguments of his counsel that they ought not to have been tried here, they will vote again i the resolution. If there are others who believe the course we have taken to be correct, but that the evidence is not sufficient to warrant expulsion, they also will vote against the resolution. The result of every doubt, whether of right or of fact, will operate to favor of Mr. Smith. I do not indeed, therefore, to their separation.

Let us then, examine the reasons why the jurisdiction of the Senate has been contested. The two gentlemen, who so ably conducted the defence of Mr. Smith, did not in all respects take the same grounds; but they shall state the argument urged by each of them, which appear to me material, without always discriminating by which of them they were urged.

It was said by the gentleman whom we lost for the pleasure of hearing on this subject, (Mr. Harper) that if this question were new, he should contend, that the power of expulsion given by the constitution to each of the two Houses of Congress, was restricted to a mere exclusion of polies, for the preservation of order, and that they could therefore investigate no charge of other nature, except for offence committed in the presence of the House. But this ground was taken only to be abandoned; for the gentleman admitted that the authority of precedent was against him; and that authority he was willing for himself and his client to submit. Long ago this position, which I have ventured to the reason for its abandonment. It is a question of constitutional power; and as long as the Senate of the United States shall be multiplied, they would naval against the constitution, for the exercise of a power, which no equal authorities that of precedent ought always to yield. Besides, there is but one precedent, which could in this case call for submission. I have sometimes heard it said that the precedents were of equivalent to a principle; but I never before understood the term precedent could be admitted as of force to silence contradiction. No, sir, there is a better reason than authority, for the exercise of the power this limitation upon the authority of the Senate. There is no such limitation in the constitution, and whatever there is none such in its spirit; and to introduce such a limitation, would involve in the contradiction of a right and the monstrous absurdity, that a man might be convicted of the most infamous crimes in the estimation of his own character, and unless their punishment be capital, would be entitled perhaps for years to hold his seat in the supreme councils of the nation. Such consequence is inevitable, for the constitution cannot recall him; and it has been determined, upon the ground of precedent, and by a solemn decision, that a member of the Senate is not liable to the process of impeachment. Nor is it then no remedy but expulsion; for the idea that a man thus blasted in character, and thus degraded in rank, should be permitted to remain a member of the legislature, is so disgraceful to the reputation of the Senate, and so contrary to the interest of the whole nation, that it cannot for a moment be admitted. I have considered the remark, that if in this objection there were any substance, it ought to be presented at the first entrance. Sir, I am a member thinks it has weight, he should contend a resolution to arrest a violation of their rights. Our juries, sir, are always sworn to give their verdict according to the evidence; it certainly no case of expulsion could be offered in evidence, a jury upon the trial would be sworn. The fact is I have any experience of juries, I have always seen them sufficiently guarded against any thing of a nature of inconsistence; especially such as might operate unfairly to the person upon trial. Nor do I think that the jury, sworn to give their verdict according to the evidence, and if they be sworn, they will be rely relied on. The jury would be sworn upon oath from the time of their duty, to condemn a person accused upon a resolution of this body, which could not be adduced to them in evidence.

Yet we are told that this is the precise distinction between the two cases, which have heretofore occurred in the Senate, and that the case of Mr. Blount was and that of Mr. Blount was not an indictable offence; that this distinction perfectly reconciles the proceedings in those two cases. But no such distinction appears upon the face of those cases. From the terms in which the report against Mr. Blount was expressed, it would seem as if the reporters had a doubt of the opposite kind; a doubt like that urged on Mr. Chase's impeachment—that is, whether a member could be expelled for an offence not indictable—for after describing at some length the material conjecture of Mr. Blount's act, they expressly add that it amounts to a *high misdemeanor*, which seem expressly chosen to intimate an opinion that the act was indictable; a misdemeanor being the technical language of the law, the special characteristic of an indictable offence.

The course recommended to the Senate, as a substitute instead of that which they have pursued, is itself liable to objections, insuperable to my understanding. I do not find in the constitution any authority given to the Senate to directany law officer of the United States to commence a prosecution at law, against one of their members. Neither do I find them invested with the power of sequestering a member from his seat. The gentleman said, it was incidental to the power of expulsion. If so the incident is much broader than the power itself. The superstructure for more extensive than the base. The power of expulsion operates only upon the member. The state recalled its right to be represented, and only suffers during the time, which it may require to supply the vacated place. But to deprive a member from his seat, you also sequester his state from its proportion of representation, and deprive her only one member, while all her sisters have two—and if this sequestration is to continue, during all the impatiences of a prosecution in a court at law, this suspension of the state's representation might last through a whole Senatorial term of six years. The principle by its application to the other House, would often sequester a district of people of their share in the representative presentation during the full Congressional period—not to mention the expense it would affect the public, and enemies and political opponents of taking an obnoxious member from his seat, by the mere institution of a criminal process against him. Another obstacle to this procedure arises from the danger of transferring the decision upon the qualifications of your members from your own hands to a different, and perhaps a distant tribunal. It proposes to place the trial of the cause under the jurisdiction and the sentence to be pronounced by another. Instead of setting upon evidence and information exhibited to your own view, you must take upon trust the correctness of proceeding of every country court of criminal jurisdiction throughout the Union, and resign the right of your members to be brought into the hands of every jury in a court of quarter sessions. This consequence is so strange and so inconsistent with the clearest privileges of this body, that the counsel themselves seemed to feel it, and to shrink from their own conclusions. They admitted that after the trial at law, the verdict of the jury would be to be conclusive, as a ground for the decision of the Senate on the question for expulsion. Why, sir, should the verdict of another a verdict of acquittal, the Senate might again enter upon the trial? If the accused be found guilty and honorable grounds, they thought it would be hard to be bound by it, but if it should be obtained upon legal exceptions, or by the exclusion of the evidence, which would in the more legal competency of the testimony, we might resume the trial, and proceed to expel the person acquitted member, on such evidence excluded by the formal limitations of courts in the judicial sense. Yet, sir, how are the Senate to know, unless it be from the face of the record, upon what grounds the jury was acquitted? Are pleas to the indictment, "not guilty"? This is the issue upon which the trial is tried, and the jury are judges both of the law and the fact. The testimony, whether admitted or excluded, so does appear upon the record. The jury on coming to every point both of law and of testimony, find it insufficient to convict the party accused, and they return a general verdict in the two worded formula, "not guilty." They give no reasons for their verdict. The jurors Richmond, Indeed, on the trial of Mr. Burr for treason, did assign a reason—but this was an extraordinary exception—they have not adopted my rule, and they scarcely ever do give them. How then are we to know whether the acquittal was honorable or otherwise, by reading testimony? Why then we return to that original foundation of our own sound discretion, upon which I have contended that our authority exists.

We send the party to a court of law for trial, and the court sends him back to us for two—one for himself, and one for the jury which acquitted him. We go from discretion to law; and then with an aggravated burthen we return to law to discretion.

Let us however for a moment suppose that this doctrine of Mr. Smith's counsel is correct, and that our authority to try this cause is repealed and not original. The consequence is, that we ought now to do, was then to tell us we ought to have done at first. Their argument invites us now to sequester this gentleman from his seat, and send him to a circuit court of the United States for trial by jury, with directions to the proper law officer to commence a prosecution against him, and that the whole matter of evidence which has been here produced against him, that the personal attendance of the witnesses may be secured at the proper time and place. If, sir, the object were to deprive Mr. Smith of his seat for the remainder of his term, this process would answer admirably well. But the adoption of the resolution before you, I think therefore believe that it cannot be Mr. Smith's desire, that we should on this occasion renounce our own course to follow that inculcated upon us by his counsel.

Having disposed then of the objections to the jurisdiction of the Senate, I now pass to those which have been urged, with equal solemnity against the species of evidence which has been received. I shall bestow the great attention to the comparison drawn by the gentleman who insisted most upon this subject between the evidence in the parallel which he drew between the rebellion merits of written and oral testimony. We are indisputable advantages to be derived from the examination of witnesses in person, which cannot be transferred to written depositions. But therefore not perfection and necessarily yield to possible practice. The evidence on such an enquiry as this is from the nature of the case all written. The member whose conduct is impeached, has great advantages for defence, which are not enjoyed in a trial in a court of law. He is defended by the shill counsel admitted to practice in the highest legal counsel against him. He has the opportunity to collect with sitting leisure, and minutely inspect by his interest, every particle of evidence that can be brought in his favor, while the opposite side is obliged to come come without search; must present itself unbidden. No member of this body can be impeached, but by duty and surely none would spontaneously undertake the task of summoning witnesses to appear from the persons from the two extremities of the union; nor, were they summoned, is a person of his station in life to be compellable to attend. To call witnesses by force, and to compel witnesses in person, is therefore to strike at the root of the Senate's power to pursue any such enquiry; and it is to make the power expressly delegated nugatory. So at least it would be in the great number of cases; and in the present instance it would require us to go through this whole investigation, which we have already seen everything altered to be an absolute nullity, and could perhaps an hundred witnesses of the Western states to Newtown in Connecticut, to assemble here at some day of the next session (supposing it to be the Senate's) to be confronted with the accused, and to testify to the conduct of Mr. Smith, and to the transactions of the Western states, and against him. This objection therefore if valid, would in its operation be sufficiently to Mr. Smith's advantage. As that would send him to a court of law for the trial of a criminal charge, it would be confirming to this would postpone the question upon the right to his seat, until the end of the term, and would be exactly the hope of him.

It is I presume from this notice of the case, that to the British Hon.