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SENATE OF THE UNITED STATES.

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CASE OF JOHN SMITH—Continued.

Agreeably to the order observed in the Senate the following speech should have preceded that of Mr. Adams.

MR. KEY—Mr. President—In the discharge of that duty to which we are now called by the permission of this honorable body, nothing could have been more gratifying than to have waved all objections to this proceeding or any of its forms; to have presented our evidence and rested our defence upon the unanswerable proofs which it contains. We could have wished to have trespassed no otherwise upon the attention of the Senate than by contrasting the purity, truth and respectability of that evidence with the foulness, falsehood and infamy of those to which the present accusation owes its origin and support. Were the principles which have always heretofore governed legislative and judicial assemblies in the investigation of facts admitted to their just and usual rank on this occasion, was the Senate to be guided by its own former decisions, or by those of every other intelligent tribunal, this would have been the course which we would most gladly have pursued.

But, sir, these principles are denied, and the force of these precedents attacked in the report which the Senate are now called upon to adopt, with a zeal and ability which we cannot hope successfully to resist; and new principles and a new mode of proceeding are recommended, by which we cannot consent to be tried; which we humbly conceive, render innocence, nay even the proof of innocence an unavailing defence.

It is therefore, sir, that we feel ourselves most reluctantly compelled to protest against this enquiry; to plead to the jurisdiction of the Senate, and to deny the obligation of answering to this charge, in any manner and in any place, where those rights of defence which justice, law, and established custom entitle us to, are refused or doubted.

I shall therefore contend, that the Senate have no right to enquire into the truth of a charge which is indictable in a court of law. And I will undertake to prove this by resorting to the same sources from which a contrary conclusion is attempted to be drawn in this report—the commands of the constitution; the dictates of reason, and the sanction of precedents.

The 7th amendatory article of the constitution directs "that no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except, &c." If it is said that this restriction relates merely to the judiciary, I ask why are certain cases contained in the exception which could not in their nature have the least connection with judicial proceedings? Why are cases in the army or navy excepted? If a soldier could not have been held to answer for a capital offence, but for the exception contained in this article; can one of the members of this House, unless a similar exception is shewn? If it would not have been sufficient, in order to try such a case, otherwise than by indictment, to say that this article related only to judicial cases, so neither can the Senate give themselves jurisdiction in this case by adopting this construction.

But, sir, the following article is still more conclusive. "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed."

Let me ask if this privilege thus expressly secured by the most positive terms, is not violated by a proceeding like this. The member accused of an indictable offence may, and most probably always will be indicted; he has a right to a speedy trial. Can the Senate have the power to deny him this right by instituting an enquiry either before or just after he is indicted, and thus delaying the trial until they have procured the testimony of witnesses, and decided upon the accusation? Such a delay would be unavoidable and considerable, where the offence was committed at a distance, and thus the accused is deprived of his constitutional right to a speedy trial. But what is of yet more importance to him, he is denied the right of a trial by an impartial jury. For when this House has declared, after a deliberate investigation, that he is guilty, what jury would be unprejudiced by such a decision? Or if they declare him innocent, will any jury be likely to convict him upon the same testimony? Thus in either case he will not have a trial by an impartial jury.

But, sir, if these injunctions of the constitution can by any ingenuity be evaded, what answer can be given to those which are dictated by the equally authoritative voice of reason.

In the first place, such proceedings here are unnecessary, and if unnecessary, surely unreasonable; for this House and (more particularly from their numbers) the other branch of our national legislature may, if these enquiries are sanctioned, be called on repeatedly during a session to institute similar proceedings. When we consider the feelings which are excited by a warmly contested election, and the resentments of disappointed candidates, it is by no means improbable that many such cases will occur in both Houses. Let the time and attention which this has occupied, (and surely there has been no unnecessary delay) be considered, and it will be obvious that nothing but the most imperious necessity can justify the legislature in neglecting (as they manifestly must do) the various and important national concerns which are pressing upon them, and overlooking the interests of the country in their search after the crimes of each other—crimes too, sir, which are cognizable and punishable elsewhere; which it is the peculiar and exclusive duty of our courts to pronounce upon; which they can always pronounce upon in less time, for they sit more frequently; with less inconvenience, for they have nothing else to do, and I may add with equal justice; for this honorable House must sanction the characters selected to fill them. When they have thus pronounced, their record can be enrolled in this House, and if it contains a member whose guilt is declared by that record, nothing else will be necessary to remove the pollution.

The necessity however of this interference by the Senate between the accusation and the sentence of guilt, is warmly urged in the report of the honorable committee. It is there contended that the Senate are compelled to assume the jurisdiction and discharge the duties of a court, because those duties are neglected and violated by our courts.

Yes, sir, we are told that our judicial tribunals not only allow to notorious offenders impunity for years, but that when a criminal is arrested and brought before them for trial, instead of ascertaining his guilt or innocence, they amuse themselves and him by enquiring into the "possibility of his innocence." Whether this be a correct representation; whether the counsel for a criminal may plead to an indictment "that he is possibly innocent," without any danger of the district attorney's demurrer or the ridicule of the court; whether our judges be thus negligent, corrupt and foolish beyond all former example, I shall not pretend to enquire. But admitting it, how strange is the conclusion drawn from it? The judiciary is depraved; they disregard their duties, and therefore it is urged, that the legislative department should disregard their own duties to perform those of the judiciary. If, sir, this is the degraded condition of our courts, it is within the power, and it is the duty of this honorable House to restore purity and vigor to that department, not by assuming judicial functions, but by the exercise of its legitimate legislative authority. Let them frame a law compelling courts to do their duty; obliging them to catch offenders in a reasonable time, and to punish such as are guilty, notwithstanding they may be "possibly innocent."

Thus, sir, no actual or fancied depravity in our judicial tribunals can impose on this House the necessity of enquiring into indictable offences committed by its members. And not only is it unnecessary, but most oppressive and unjust. I can conceive nothing more injurious to a person accused of a crime than to have the public from whom his jury are to be selected prejudiced against him. There is little difference between punishing a man without a trial and destroying the purity of that trial. Let me ask if any honorable member of this House can reconcile it to his reason and sense of justice to express a public opinion of the guilt of a person about to be tried for an offence? And if he would feel this restraint as an individual, let me now urge him to forbear from throwing the weight of his authority and of the high official station which he bears, into those scales of justice should be most accurately ballanced and held with the most even and steady hand. The offence charged upon Mr. Smith is confessedly indictable. Though the malice of his enemies has been lately foiled in its attempt to procure a prosecution against him at Chilicothe, though that grand jury disbelieved his slanderers, yet even in this case he may be subjected to answer to an indictment for this offence. If this should happen can it be pretended that a laborious investigation and a solemn decision of the Senate of the United States will be without its influence upon that fair and impartial trial which is his right? Will the court and the jury feel no prejudice against him whose crime has been publicly ascertained and declared by so high an authority? The most innocent man alive could expect nothing but the confirmation of that sentence. The slightest circumstance would in such a trial be considered as conclusive proof—the most infamous witness thought worthy of credit—for where would he be disbelieved who had been listened to here? I should not, sir, be without my apprehensions that even the ghost of Elias Glover's departed reputation might be conjured up by the magic of a vote of this House, might stalk into a court of justice restored to its capacity of mischief, and armed with the recommendations of the Senate of the U. S. I might even feel afraid of this shadow.

To these self-evident dictates of reason thus concurring with the opinion of our constitution, allow me now to add the resistless force of the most deliberate and respectable precedents. These, sir, will shew that the principle for which we now contend has already received the solemn sanction of the Senate. The case of Mr. Marshall is precisely similar to the present. This gentleman while a member of this House was accused of perjury and an enquiry into his conduct solicited. A committee highly respectable for talents was appointed as in this instance; and their report is now among the records of this House. This report avows in the most unequivocal language (as will be seen by reference to it) that the Senate had no jurisdiction; that the offence was cognizable in a court; and therefore could not be enquired into here; and, the Senate by a very large majority concurred with this report. The weight of this decision, so confessedly in point, is now most ingeniously resisted in the present report. It is said to have been adopted without due consideration and afterwards departed from, at the very next session in the case of Blount. There are no marks of haste or prejudice to be discovered in the conduct of the Senate on that occasion; no reason to suppose that they acted without that discernment and deliberation which should always attend the proceedings of this House. The accusation was presented by the legislature of Kentucky, a sourse entitled to respect and consideration. Nor could they have been prejudiced in favor of their associate, for he was anxious to wave all objections to their jurisdiction. It would indeed be strange that the very individuals who voted for this report should so soon afterwards have sanctioned a directly contrary one—and though it is contended by the present honorable committee that they have done so, I yet hope to acquit them from a charge of such gross inconsistency.

The decision in the case of Blount instead of being contradictory of any principle established by the case of Marshall is in the strictest conformity with it—they are perfectly reconcilable and mutually strengthen each other, and both enforce the principle I am now contending for. The offence with which Mr. Marshall was charged, was perjury, an indictable offence. That alleged against Mr. Blount was the writing a letter, certainly highly improper and reprehensible, but for which it cannot be pretended that he was liable to indictment. This at once explains the grounds of these two decisions. In one case the Senate saw that our courts had cognizance of the offence; that if guilty a conviction there could be produced as the ground of expulsion; they therefore decided that they could not enquire. In the other case, the member was subject to no prosecution and they therefore with equal propriety and perfect consistency determined to enquire. Thus, sir, the authority of the case of Marshall is unimpeached by that of Blount, nay, they both concur to deny the correctness of such a proceeding as the present where the offence charged is indictable.

These, sir, are the only instances which have occurred in this country—and I shall not think it necessary to refer to the precedents of any other, to support a principle which has received so solemn and deliberate a decision here. Yet if those of England are resorted to they will be found consistent with them, except on one occasion in which prejudice and intemperance evidently operated. I allude to the case of Wilkes, the proceeding in which case was declared at the time to be unprecedented, and is now almost universally allowed to have been unjust. I do not suppose that the authority of this case can be held up as superior to that of decisions here, and will therefore make no attempt to shew the impropriety of that proceeding, & that even if justifiable there, there could be no pretence or excuse for introducing such a precedent in our country. I have now, sir, endeavored to shew from the constitution, from reason, and from precedent, that the Senate are forbidden to proceed in this enquiry.

But, sir, if I have been unsuccessfull in this attempt, if the Senate do proceed, if Mr. Smith's guilt or innocence is to be established without a trial in a court of justice, let me at least hope that he will be tried as if he was in a court of justice; and that none of the substantial benefits allowed in judicial investigations will be denied him here. This honorable House, sir, are not now sitting in their usual deliberative capacity—this is no question of expediency. The moment this enquiry was instituted every such question was waved, and this House became to all intents and purposes a judicial tribunal—for what is that but a judicial tribunal which investigates a criminal accusation and forms and pronounces a judgment upon its truth. However different then the forms of this proceeding may be from those usually adopted in judicial tribunals, let me at least hope that we shall find the substance the same. But this, sir, the present report of the honorable committee forbids us to expect. The principles which always regulate judicial tribunals are denied to be authoritative here; and it is therefore urged that the depositions of witnesses with whom the accused has never been confronted, to whom he has never been permitted to put a question, should be received as evidence against him. Nay the most fundamental principle in criminal enquiries, the most obvious dictate of justice, that which presumes innocence till guilt is proved, is now advised (I humbly apprehend for the first time) not only to be be dispensed with, but to be reversed. And why, sir, should the Senate, when acting as a judicial tribunal, thus disdain to resort to judicial principles and precedents? Does not the source whence they were derived deserve a respectful consideration? The situation of our country, the security which every man feels in the enjoyment of all his rights and possessions, that quiet and repose which is every where visible, constitute the best panegyric upon our civil tribunals and is an unanswerable proof of the purity and respectability with which they are filled, of the fidelity and ability and wisdom with which their duties are discharged: and if we look to the tribunals of that country from which our system of jurisprudence has been so wisely borrowed, we shall find them every way worthy of our regard and admiration. I do not, I think, speak from any professional prejudices when I affirm that the judicial department of that government has always displayed the most marked superiority over every other. In times of the greatest political depravity when every other branch of their civil institutions was stained with pollution, into the sanctuary of their courts corruption did not dare to enter; and a profligate ministry, as their history will shew, have always found it cheaper and easier to purchase a whole Parliament than a single judge. Nor, sir, can it justly be said that those principles thus selected by intelligent men for the promotion of justice, and matured and perfected by the wisdom and experience of successive ages, are either unreasonable in themselves or inapplicable to the present occasion. If the presumption in favor of the innocence of an accused person is universally and properly allowed, if it operates in favor of the meanest vagrant indicted for the most petty offence, the punishment of which is merely to subject him to confinement in a comfortable jail, or a few stripes upon a back already hardened by the lash, under what pretence can it be denied in the present enquiry, when an honorable member of this House, the purity of whose past life has procured him this high mark of confidence from his fellow-citizens, is about to be tried for the most odious offence, and doomed to the most ignominious punishment. And what, sir, can be alledged against the justice of that great rule of evidence which brings a man's accusers from that secrecy which falsehood will always seek, commands them to stand before his face, to submit to his examination and to bear the keen searchings of the eyes of the beholders?

Can it possibly be thought more consistent with justice to dispense with this rule and introduce a mode of proceeding which is to give the name and the effect of evidence to exparte depositions, taken not only without any notice to the accused, but in the most secret and concealed manner for the very purpose of preventing him from having any knowledge of them. There are, sir, depositions now upon your table, of the contents of which and even of the names of the deponents neither the accused nor his counsel had the slightest information till they were yesterday read as evidence against him. And these deponents too, sir, are many of them the very persons who (as Mr. Smith has proved) were called upon by him to ascertain certain facts in his defence, and who refused to attend or to answer any of his enquiries. Against these new slanders, sir, what opportunity has the accused had of defending himself—can he be expected to produce testimony from Ohio to-day to disprove facts or to discredit witnesses which he never heard of till yesterday? Permit me, sir, to call the attention of the Senate to one circumstance which has taken place in this enquiry, which proves more strongly than any arguments I can urge, the flagrant impropriety of considering such information as testimony. When the deposition of Elias Glover was first read in the Senate and a summary proceeding was urged; this witness was no doubt believed, and had a decision taken place before Mr. Smith could have produced testimony to discredit him, his guilt would have been declared and his disgrace effected by a paper which is now rendered as perfectly harmless as if it had never been stained by falsehood. Will the Senate then receive proof taken under similar circumstances, and again run the risque of doing an act of injustice which they had before so happily escaped?

Here, sir, the case of Blount has been again introduced, and it is stated that the Senate on that occasion departed from the ordinary rules of evidence and acted upon such as a criminal tribunal would have declared inadmissible. We are most willing, sir, to submit to this precedent, we consider its authority most respectable and earnestly solicit that the principles there established may regulate the present proceeding.

What then is the evidence which the Senate received in the case of Blount, and which a court would have rejected. The report informs us, & so was the fact, that the Senate acted upon the "production of the original letter and the proof of Mr. Blount's hand writing made by persons who had seen him write." Instead of this being testimony that a criminal court would have rejected, (as it is stated to