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SENATE OF THE UNITED STATES.

APRIL 9.

CASE OF JOHN SMITH, CONTINUED.

Mr. GILES—Mr. President, I am called upon as a member of this Senate to *pronounce an opinion* upon the following resolution:

"*Resolved*, That JOHN SMITH, a Senator from the state of Ohio, is guilty of high misdemeanor in the conspiracy of Aaron Burr against the *Power, Dominion and Laws* of the people of the United States, but he is not guilty of contempt incompatible with his duty and station as a Senator of the United States; and that he be therefor and hereby is expelled from the Senate of the U. S. U."

A declaration upon this subject ought not to be made, but upon the most attentive examination of the evidence produced in the case, and the most mature deliberation thereupon. The sentence to be pronounced is important, to the justice of the U. States; but may have another bearing on the reputation of the person accused; it will have also an irreparable influence upon the life of his family. To him and them its effects are all important. The resolution solemnly and unanimously reports, that Mr. Smith, *participated in the conspiracy of Aaron Burr*. Before I can make this report, I must have satisfied my mind of the fact. I must acknowledge, that upon the most attentive examination of all the papers, and the most respectful attention to all the arguments in the case, I have not been able to discover any *sufficiently evidence of that fact*. Yesterday I pointed out, in detail to the clerk, the specified and cautious observations of the gentlemen from Massachusetts (Mr. Adams), relative to the jurisdiction of the Senate to inquire into this case, and the evidence exhibited in support of the charges against the accused. The gentlemen from Massachusetts, I am perfectly convinced, have been influenced in the whole course of this enquiry by the purest and most laudable motives; and I think he is justly entitled to the thanks of the Senate for the judicious conduct he has recommended to be pursued. I perfectly concur with that gentleman in opinion, on the point of jurisdiction; and upon a retrospect of the whole proceedings of the Senate, I am happy to say, that it appears to me the best course for the purposes of justice, has been pursued; that could have been devised, in the novel and difficult situation presented for consideration. A liberal indulgence has been given to the accused, to procure testimony in his defence; and the witnesses impeached have been protected from injury, respecting their persons, should have notice of the time and place of taking all depositions affecting their credibility. The only point of difference in opinion between the gentlemen from Massachusetts and myself, is, *the sufficiency of the evidence in the case*. I shall state the points of difference between us upon this subject, and shall endeavor to assign what may be necessary to explain the reasons of our difference.

The first point of difference relates to the declaration of Aaron Burr, I mean declarations, although in general in their nature, and in no instance more in relation to the accused, inferences of guilt are attached to him. In almost every case, to apply the declarations of one man to the condemnation of another, would not be a just rule of evidence; in this case, it would be peculiarly improper. Because it is well known that Burr was in the constant habit of making misrepresentations in relation to other persons, and that he was influenced by a particular motive in doing so. He appeared to consider that in one of the most effectual means to enhance the importance and promote the success of his enterprise. If his declarations are to be admitted as evidence against other persons, they would apply to some of the most respectable citizens of the U. States as well as to the accused, which is, I do not pretend, would be just or correct in relation to them; and I can see nothing in his declarations but what on the contrary Mr. Smith, that would not apply with a greater force against others, who are neither implicated nor suspected. I therefore put Burr's declarations out of the question of the case, and deny all inferences drawn from them.

The next point of difference between the gentlemen and myself arises from a suggested inconsistency between the letters, the affidavits, and the answer of Mr. Smith. I have paid particular attention to these papers, connected with the remarks made by the gentlemen, and am unable to discover the inconsistency suggested. They appear to me to be substantially the same. The remark was, that in one of these papers Mr. Smith states, that he *does not disclose to Burr the of his objects*; in another he admitted that he did disclose to him his object to settle the Mexican lands. This remark which occurs to me in reply is, that Mr. Smith merely states an unwillingness to disclose his objects; he omits in another, an unnecessary fulsome and unconscionable inconsistency. But the real explanation of this incidental circumstance will be found in the papers themselves. The one omitting the fact in question, in speaking of the objects of Burr, evidently alludes to *multiple objects* of which he has since been accused, and which did not comprehend the settlement of the Mexican lands. This circumstance, therefore, now in my point of view be deemed trifling, and perfectly reconcilable with more importance; and according to my explanation of it, does consequently not exist. I would here remark, that the fact stated in the resolution, is susceptible of the proof of a statement, in the proof and is of such a nature, that if Mr. Smith had consented to it, it would be impossible for him to escape detection by positive proof. I am therefore not inclined to form an inference, from circumstances, particularly when so easily and naturally susceptible of explanation, directly in the evidence. Mr. Smith's own conduct is the sole criterion by which he might be tried, and the testimony of the gentlemen who have departed from, and questionable incidents respecting, the conduct of Mr. Smith, would probably fall into error.

The gentlemen from Massachusetts attach great importance to the relation of this case, concur in the conclusion of the committee of Gloucester, and all the papers connected with it. We, in no respect however, differ on this subject. I have read and relied upon the deposition of Major Biddle forwarded by Governor Lincoln, and have no doubt of its truth—not because I know any thing injurious to the character of the deponent, but because I find in it, the contents of the deposition, impeach of explanations inconsistently with the conduct of Mr. Smith, but on account of the manner of taking and proceeding in the business, I do not place much reliance on it. Ex-parte depositions in cases appear to have been taken and forwarded by Burr, for the purpose of implicating Mr. Smith. They were taken without notice, and in the absence of Mr. Smith. Depositions I believe he was at the time of taking them in the same town where they were taken, and yet no evidence appears to have been summoned to testify in his favor and in his presence—part of them taken after the death of them should end and refused to answer all questions put to them by Mr. Smith. I cannot, under this conduct, see a departure from every thing that is just, fair and honorable; and an evidence of such a perverted state of mind in relation to Mr. Smith, that I do not think they are entitled to the regard of evidence in the case. Exclusion of his case; I therefore excluded them from consideration.

I consider this conduct as disrespectful to the Senate, and on the part of Governor Lincoln, unjustifiable. Because when the Senate were informed, that Mr. Smith intended to prosecute the deposition of Governor Gloucester, they imposed a positive condition on him that Gloucester should have notice of the time and place of taking all depositions for that purpose; thus manifesting a laudable tenderness for the feelings of Mr. Smith, he has strongly repeated in this direct specific attempt upon the fairness, honor and delicacy of their proceedings. I cannot forbear making one more observation on the conduct of Mr. Smith; he appears throughout the whole of the depositions taken by him and to his presence, to endeavor to cover his own misconduct by collusion in his favor the most feelings, which he presumes to attribute to the Senate; thus he has habitually acted, whether from weakness or a serious resolution, and firm support of the present administration? I consider this conduct as an unpracticable and indelicate attempt upon the justice and candor of the Senate, which it furnishes a good apology for his own shortcoming from the Senate, but a tendency, and must have been intended, upon a question of guilt or innocence, to draw the Senate from the immutable principle of justice and truth, *as the standard of trial*; and to substitute in place of it the Senate's sympathy and party sensibility. I have had too clear evidence of the correct principles which actuate the Senate in all their deliberations, to feel any apprehension in the present case from these unfortunate attempts; but it is time the world should know, that they are fortunately exempt, from the dictates of the Senate of the United States.

Having candidly stated the impressions upon my mind made by the portion of the papers just alluded to, and offered my reasons for the conclusion from Massachusetts thereupon; I will now proceed to examine the evidence which appears to be in the case and entitled to more respect as evidence. I shall follow the gentleman pursued, was fair and candid, and well calculated to give a correct view of the evidence in the case, as it is discussed; I shall therefore pursue the same course, which was to take the papers in their chronological order. The first fact in relation to Mr. Smith's conduct, to which our attention has been called, is his visit to Burr, September, 1806. On this day Burr, having previously addressed a note of invitation to Mr. Smith, presented himself at Mr. Smith's house, where he was hospitably received and entertained for the space of three months. Burr had before this time spoken at Gloucester; which, I think it is probable in concert with Blannerhassett, certain pieces under the signature of Publius Valerius were written, and about the time of Burr's leaving the island, were published. The effect of those pieces evidently was to make an expect upon the disposition of the Western people, to be disposed to the measures, which he actually in the contemplation of Burr. It was an object near his heart, and indicated deep and long meditated schemes or serious his ambitious views. Mr. Smith states that he never saw or heard of Burr, or him during his stay at Mr. Smith's house from the time of his first arrival, to his departure. The observation made upon this part of the evidence, is, that it is strange that Mr. Smith should not have heard of the subject under the peculiar circumstances of the case. I concur perfectly in the observation; I think it strange, that Burr should not have mentioned the subject; but am I to infer from the silence, that it was not because it is strange that he should not have mentioned it? Is its being strange, a sufficient ground for evidence of the fact—that it did happen? Particularly when there is no other evidence of the fact, and there is evidence upon that point is against the fact? I will here make an observation that I have made on other occasions, of great weight with me in forming my opinion upon the whole matter of this case. It is, that it does not appear from any part of the evidence, that Burr, should in the course of his visit to discuss his illicit objects to Mr. Smith, or that he ever considered Mr. Smith as a participator in his secrets. Talk want of confidence in Mr. S. for his illicit objects, is disproved by the whole tenor of the evidence, and this consideration alone lessens the presumption of Burr's having communicated the fact to him.