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SENATE OF THE UNITED STATES.

APRIL 9.

CASE OF JOHN SMITH.

Speech of Mr. Giles concluded.

What is here disclosed? two objects only. The first to settle his Washita lands, the second—*in the event of war with Spain* to head a company of volunteers and be the first to march into Mexico. What was the charge against Burr? A misdemeanor, by beginning and setting on foot, a military expedition or enterprise against a nation, with which *the United States were at peace, &c.* Would this evidence have had any tendency towards supporting this charge? certainly not. Spain had nothing to do with the settlement of the Washita lands; and with respect to the contemplated military expedition into Mexico—it was to be undertaken *only in the event of a war*—and of course could be no violation of a law which forbids such enterprises, only *against nations with which the U. States are at peace.* The evidence, therefore, could not support the charge; and whether such enterprise *in time of war* would have been lawful or not, would have depended upon *the circumstance of the partizan's acting with or without a commission from the U. States*—but the gentleman from Massachusett's remarks that this pretended condition, upon which the expedition against Mexico, was to be undertaken, was too thin a disguise to impose upon the most credulous or ignorant. I will here admit, that I always thought it a very thin disguise: but did every body think so? and parcularly before Burr's other views were disclosed? It is known that many men of the first talents were deceived by this disguise long after this period. It was urged by many as a substantial ground of defence in favor of Burr, during the whole course of his trial at Richmond, and many adhered to it, even after the trial was over. Why is it expected that Mr. Smith particularly ought not to have been the dupe of this disguise at that particular period? It cannot be because he is known to have reposed a blind confidence in Burr. It is probable that Burr's knowledge of that circumstance, induced him to suggest the disguise. It is certainly the circumstance, which lulled Mr. Smith's suspicions & made him the dupe of the artifice. It may be said, and truly said, he ought to have been more guarded—it would certainly have been better for Mr. S. to have been a better judge of human nature, and his present condition is sufficient evidence of the misfortune of the want of that knowledge; but it is no evidence of a crime, or of a criminal intent. The only conclusion I draw from this circumstance is, that Mr. Smith furnishes a striking examples of a plain dealing, unsuspicious man, involved in irretrievable difficulties, from the professions and flatteries of an artful and designing one.

The next observation made upon this part of the evidence disclosed by Mr. S. is, that he consented to let his sons go with Burr, from which a knowledge of Burr's illicit views is inferred. It certainly would be an incorrect application of the rules of evidence to *infer an object* different from the *one disclosed* by the evidence; particularly when the *one expressed* is much more natural and probable, *than the one inferred.* Mr. Smith himself furnishes both the *fact* and the *object.* He says, he was induced to consent to his sons going with Burr, from Burr's promises to advance their fortunes, by giving them large portions of his Washita lands. Was not this a very natural object? What could be more natural or probable than for a father to be influenced by a motive of advancing his sons fortunes? But it is said this conduct discovered too much confidence in Burr, and too much simplicity in Mr. Smith; there must be therefore some other concealed motive for it. It is admitted that none is proved, and I believe none exists. It is perfectly consistent with all the rest of the evidence. It does demonstrate *too much confidence and too much simplicity;* but it demonstrates nothing else. It demonstrates no crime. *It does not demonstrate any participation in the conspiracy of Aaron Burr.* We have now passed through these scenes of inferences and suspicions, and arrived at the 14th December, 1806. The gentleman from Massachusetts, with his usual candor, here states, that from this time Mr. Smith's conduct became exemplary; from this date every effort on his part was made to defeat the conspiracy; he contributed his full quota of exertion for that purpose, and succeeded. How can this laudable conduct be reconciled with the inferences of guilt made against him? Why, sir, another inference more preposterous than any other, is brought up to support all the former inferences, in my judgment, sufficiently preposterous and improbable in themselves. It is said that this laudable exertion to suppress the conspiracy by Mr. Smith, was intended as a cover to his former misconduct. But certainly, sir, before this inference is drawn, the former misconduct ought to be proved. It ought not to be made evidence of the misconduct itself. It certainly cannot be a correct rule of evidence, to infer *a wrong motive* from a right action. But, sir, this inference is made against every rule of probability. It is not probable that if the conspiracy should be suppressed by Mr. Smith's exertions in common with others, that such supression would cover his own misconduct. It would have been the most effectual mode of detecting and exposing it. What hope could Mr. Smith have indulged, that if he had been engaged in the conspiracy, and had turned traitor to the rest by exerting himself in its suppression, that he would have been exempted from exposure? Would not such conduct have tended to excite the resentment of the other conspirators against him, and to call forth from them every exertion to expose him? This conduct was placing them at defiance, and in my judgment, is one of the strongest circumstances of his innocence. It was not at all calculated to cover his participation, and it appears to me absurd to conclude, that it was resorted to for that purpose. But, sir, look at Mr. Smith's disclosure to the secretary at war at this period. At this time, he could not have anticipated any prosecution against himself. It was the day after the receipt of the President's proclamation. *At that time* he communicates to the secretary at war all the communications made by Burr to him at any previous time, confirmed in every respect by the evidence of Gen. Gano. I believe he did it with candor, and then he makes the following natural and correct observation; after having stated that Burr had deceived him with his apparent candor, that he had before believed Burr's views to be honorable, he remarks—"From the proclamation of the President, I am induced to believe that he is possessed of much more information than has come under my notice, and therefore the utmost attention will be paid to it, as the people here are universally (almost) well disposed to the government, &c. &c."

Upon the supposition that Mr. Smith is innocent, this conduct is natural and its object obvious. Upon the supposition of his guilt, it is unaccountable, and would have been without a rational object. I cannot therefore infer guilt against all the probabilities of innocence. I have now gone thro' all the evidence which has been deemed by the gentleman from Massachusetts the most material against Mr. Smith. I have omitted many circumstances both in the papers formerly before the Senate, and those now presented by Mr. Smith's counsel, tending further to demonstrate his innocence; to these I merely request the attention and recollection of the Senate. It has not been my object to dilate on them, but merely to state the reasons on my mind, why the conviction of Mr. Smith's guilt was not produced on it, which has been on the gentleman's from Massachusetts.—This has been done, by the best consideration of those parts of the evidence, which he so ably and eloquently selected and presented to our view; of course the worst part of the picture has been constantly before us. Upon a candid review of all the circumstances, to what do they amount? To suspicions, and suspicions only—suspicions unnatural and improbable. Has a single act of participation in Burr's conspiracy been proved? Not to my discernment. Has any been suggested to have been proved? I have heard of none. If any criminal act has been committed, why do not gentlemen tell us what it is, in what it consists? Why do they not put their finger upon it? I call upon gentlemen, I challenge them to do it. That at least must be done, before I can convict the accused of guilt.

I have already extended my observations much further than I originally intended; but I am still impelled by an indescribable and irresistable impulse, to make a few more general observations. They are impelled by impressions resulting from a view of the general complexion of the case under consideration. The conspiracy of Aaron Burr, has been so mysterious, complicated and extensive, that the patriotic mind has been left in great doubt and uncertainty in fixing on objects the connected with it. The wickedness, and dangerous tendency of his plans, have excited a just and general detestation and indignation against the author, and all his associates. This state of feeling opens the mind to jealousies and suspicions; and the transition of this feeling is extremely easy and natural from the author, and his known associates, to persons, who are merely objects of these jealousies and suspicions. This happens to be the unfortunate lot of all, who ever happened to repose a mistaken confidence in Burr. That this is the peculiar misfortune of Mr. Smith at the present, moment can any gentleman doubt, who will take an impartial review of the whole evidence and proceeding in the case? When we see gentlemen of the most discerning minds, and the most amiable and merciful dispositions on all other occasions, with the best intentions, in this distort the rules of evidence, and resort to trivial, inconsistent and unnatural incidents, as evidences of guilt, without pretending to name or describe, in what the criminal act consists; how can the phenomenon be accounted for but from the influence of this patriotic, but misguided, sensibility? I really fear, that this laudable but dangerous sensibility has too much influence on the Senate at this moment for the purposes of justice and of truth. In this state of mind, sir, it peculiarly becomes the justice and circumspection of the Senate, to guard against the influence of trivial incidents and suspicious circumstances. We ought to recollect the peculiar force and applicability of the quotation of the gentleman from Connecticut (Mr. Hillhouse.)

"*Trifles light as air,*
"*Are to the jealous confirmation*
"*strong*
"*As proofs of holy writ.*"

We ought to recollect that the question before us, is not as to the existence, the extent or the wickedness of Burr's plans; but whether Mr. Smith participated in them or not. No gentleman feels more detestation for the conspiracy than myself, nor would do more to detect and punish its author and all his associates; but I should revolt at the idea of an indiscriminate punishment, involving both innocent and guilty; and how can the just discrimination be made, but by evidence? Evidence interpreted by rules long settled and approved. Ought not the Senate to be particularly circumspect lest, by departing therefrom, innocence might become the victim of an incautious sensibility? Again, sir, the popular feeling and opinion are known to be directed with peculiar earnestness and force against all the participators in this abominable conspiracy; and particularly against Mr. Smith, upon the presumption of his being one of them. Is it not to be feared, sir, that this circumstance has given an importance to some of the incidents relied upon against him, which they do not intrinsically merit, when tested by the ordinary rules of evidence? Under these circumstances are not Mr. Smith's chances for justice, *for sheer justice,* materially lessened? Does it not require more than an usual effort of the mind to incur the responsibility attached to the attestation of his innocence? It certainly does sir; and I am now acting with a full knowledge and under a deep impression of that responsibility. But, sir, when the alternative is presented whether I shall incur the responsibility, or violate my conscience, by acting against my conviction of right, I cannot hesitate a moment in the choice to be made. I must follow the honest conviction of my own judgement, and although that may be and probably is a fallable standard; it is the best that God & nature have bestowed on me, and it shall be implicitly and sacredly obeyed under any circumstances, in which it is possible to place me. I know too that the people of the United States, are just and liberal, and that they themselves would regret that the innocent should be numbered with the guilty by too complaisant a respect for their feelings; particularly when they reflect, that in this particular case, they have not the whole evidence before them, and of course cannot form the most accurate estimate of its bearings and effects. Gentlemen, sir, have thought proper to make professions, of their impressions in Mr. Smith's favor, until he was accused; to obviate, I presume the idea of their being influenced by any feelings personally hostile to him. I verily believe they are not, I readily admit that if feelings have been too much intermingled in this enquiry, they have been of a public and not of a personal nature. I have not been much in the habit of appealing to the motives which actuate my public conduct. I have been willing that it should be the test of its own responsibility. It is the only criterion by which I ever wish to be judged; but upon this occasion I might observe; that my prepossessions in relation to Mr. Smith, have not been of the character described by others. The circumstance of his becoming a public contractor whilst Senator, opened my mind much more to suspicion, than it would otherwise have been. It is also known that his general course of political conduct was not such as I generally approved; my prepossessions therefore were not favorable to Mr. Smith; and if I had contented myself to act under their influence, there is no doubt as to the course I should now take: but I felt myself imperiously called upon to act under a more sacred influence; a sacred obligation to truth and justice. I have conscientiously obeyed it; and the result is, a conviction that Mr. Smith is not guilty of the crime imputed to him; I shall therefore disregard these prepossessions. Again, sir, are we not to look at the effects of the sentence we are called upon to pronounce? If the effects of the sentence were merely to deprive Mr. Smith of his seat in this Senate, it would be a matter of little moment. Gentlemen often voluntarily deprive themselves of that honor, but if we compulsively deprive Mr. Smith of his seat, we disrobe him also of his reputation and his honor. The effects of the sentence will not stop here; it will have an unavoidable influence on the standing and character of his family. Are we to be told, sir, that our feelings respecting his family are to be blunted, and that we must give a loose to our suspicions and jealousies against him alone? Are we to be told that his own former good character must not be brought into consideration, to counteract the inferences from trivial incidents, surmises and suspicions? When has it been, sir, that in questions of guilt or innocence, former good character has been excluded from all consideration in weighing circumstances? Why was it that col. Taylor reminded us that Mr. Smith was always esteemed "*a friendly, worthy and benevolent man,*" *and his family amiable and respectable?* It was, sir, from a conscientiousness in him that those circumstances were important, and ought to be taken into serious consideration in forming a correct estimate of circumstances related by himself. Against positive evidence, I admit that the circumstance ought not to be regarded, although it would afford matter of serious regret; but against episodes, questionable incidents, surmises, and suspicions, it ought to be weighed; and if weighed in the scales of justice, would outweigh them altogether. What was it which has entitled Col. Taylor's testimony to the peculiar character of candor and circumspection? It was his voluntarily mentioning this circumstance more than any other? And are the Senate about to disrespect the very caution and admonition which has called forth in his favor so much of their just applause? We are bound, sir, by every principle of justice and propriety to reflect, impartially to reflect, upon the awful effects of the sentence we are called upon to pronounce. We ought to reflect that Mr. Smith himself is an object of suspicion merely, not of ascertained guilt—that his family is amiable, innocent and not suspected—we ought deeply to reflect, that the blow meditated against merely suspected guilt, will necessarily strike deep into the bosom of amiable and unsuspected innocence. If, in the opinions I have expressed, and the vote I am about to give upon this occasion, I shall disappoint the expectations of my friends in this body, gentlemen whose friendship I highly value, and whose opinions I highly respect; if I shall disappoint the expectations of the people at large; if indeed, I shall disappoint my own original expectations and feelings, I shall enjoy the pleasing consolation of reflecting that I have been influenced solely by an honest conviction produced by the best attention I was able to bestow on the subject. It will be some consolation also to me, to reflect, that I am giving one strong instance of demonstration to the world, that I set too high a value upon the reputation and honor of a fellow citizen, to sacrifice them upon the unhallowed altars of prejudice, suspicion, expediency or popularity, under any circumstances, however imperious and responsible. If a single act of participation in Burr's conspiracy had been proved against Mr. Smith, I would not hesitate to pronounce him guilty, although it would be in obedience to a painful and reluctant duty; but to pronounce him guilty of that abominable crime, when I believe him innocent, is an operation too harsh for my mind to perform. It revolts at the very suggestion. No consideration on earth could induce me to make the assertion.

ALGIERS.

The following document, reported about the close of last session, has hitherto escaped attention in the mass of documents:

Department of State, April 12.

Sir,

As the documents in this office did not enable me fully to answer the queries contained in the letters written by you, as chairman of the committee to whom were referred the messages of the President of the U. States of the 9th and 15th of Feb. relative to the rupture and to the amicable settlement with the Dey of Algiers, I have delayed my reply to them, under the daily hope of receiving such communications from Col. Lear, our consul general at Algiers, as would enable me to give you the information you ask for: but as yet I have received none. As further delay, however, may be inconvenient to the committee, I have the honor to state that our payments to Algiers are of two kinds:

1. That stipulated by treaty, viz. 12,000 sequins, equal to 21,600 dollars, made annually in naval stores.
2. Those made in conformity with what is called *usage* at Algiers, by which it is understood that we are bound. These are,
   1. The present on the presentation of a consul, $ 20,000
   2. The biennial presents to the officers of government, estimated at, 17,000
   3. Incidental and contingent presents, as well on the promotion of the principal officers of the Dey and Regency, as for the attainment of any important object. Of these no estimate can be made.

As these presents are made in cash, or in articles procured at Algiers for the occasion, and as colonel Lear has been furnished with the means of making them, it is believed that they have been regularly made: but of this there is no positive information, as the accounts have not been received.

Various causes have occasionally delayed the payment of the annuity in naval stores.

Some of these will readily suggest themselves to the committee. It may be proper here to state that the loss on the payment made in this way is from 50 to 100 per ct. as the estimate of the stores is made by the officers of the Algerine government, without any reference to their cost. Hence our agent has been instructed to use his efforts to obtain the substitution of a cash payment for that of naval stores: and to enable him the more