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SENATE OF THE UNITED STATES.

CASE OF JOHN SMITH.

[*Mr. Harper's Speech continued.*]

I come next to that of Peter Taylor, and here I feel myself greatly reliev-ed, in being able to absolve him from the guilt of wilful false swearing. His character is said to be fair, and for ought we know it is so. We are far from a wish to impeach it. But we shall show that in some of the minute circumstances which he relates, and which are adduced as grounds of suspicion against Mr. Smith, he probably mistakes; and that the others are satisfactorily explained.

In ascertaining what degree of credit is due to an honest witness, especially in relating after a considerable lapse of time minute facts, which derive their complexion from circumstances apparently trivial; it is proper, in the first place, to consider his education and habits of life, and to enquire how far they have a tendency to produce that accuracy and precision of conception and language, whereon the weight of such testimony almost wholly depends. Apply this rule to Peter Taylor. Admit him to be perfectly honest in his intentions. But we find him to be an illiterate labourer, sometimes employed as a menial servant. Such a man is likely enough to have a distinct perception, and an accurate recollection, of such facts as he is accustomed to observe. But when he speaks of things out of the usual tract of his business, his thoughts and his observation; when he attempts, at such a distance of time, to relate very minute facts, in which he could not have taken any interest at the time; I ask if we can implicitly rely on the clearness of his comprehension, or the exactness of his memory? Is it not highly probable that he may have misconceived at the time, or forgotten since, some of those circumstances, apparently minute, on which the character of the whole transaction frequently depends?

But if, in addition to this general reasoning, it should appear that the witness has, in relating other parts of this transaction, committed several mistakes, will it not be admitted that his recollection is too confused or imperfect, to command our confidence or influence our decisions? This is the case with Peter Taylor. In his testimony taken at Richmond, from which the part now used against Mr. Smith is extracted, he relates that in October 1806 Blannerhassett on their return from Kentucky, pressed him to join Col. Burr's expedition; and that he consented to go, provided he might take his wife and family, to which Blannerhassett did not consent. On his cross-examination he states, that his wife died in the September preceding. He also relates, in his direct testimony, that when the party left Blannerhassett's island, he saw Dudley Woodbridge on the bank. And it is proved by Woodbridge himself, and by Morris B. Beklnap, that Woodbridge was at that time in bed, and was not on the bank at any time during that night. These are small mistakes, but they prove that Taylor's recollection of minute circumstances, such as those which he details concerning Mr. Smith, cannot be relied on.

The first of these circumstances is, that Mr. Smith, on being informed that he was a servant of Blannerhassett, asked him to go up stairs. This at first view might have a suspicious appearance, as if Mr. Smith wished to make or receive some communications which required privacy. But when we learn that Mr. Smith had his office up stairs, where he usually wrote, and that he wished to write a letter by Taylor, the mystery vanishes, and the circumstance stands fully explained.

But he wrote a letter to Col. Burr. No doubt, Mr. President, a letter from Mr. Smith to Col. Burr, at that time, has in itself a suspicious appearance. But we are made acquainted with the contents of the letter, and the suspicion disappears. Instead of being a criminal correspondence, concerning an enterprise in which they were mutually engaged, it is a letter informing Col. Burr of the suspicions afloat concerning his plans and movements, and requesting an explanation, for Smith's own satisfaction. Nothing could be more natural than such a step, on the part of Mr. Smith. Col. Burr had long been his acquaintance and friend, and recently his guest. He could not therefore be indifferent, either on Col. Burr's account or his own, to the reports in circulation. These reports were founded on mysterious circumstances, which Mr. Smith supposed could be satisfactorily explained; and he wrote to obtain this explanation. No conduct could be more rational or more commendable. It was kind and candid towards his friend, and cautious towards himself.

The answer which he obtained was well calculated to quiet his alarms. His original letter is not in our power, but we have produced a copy of it. The answer, however, in the hand writing of Col. Burr, is now in my hand. This letter is no after thought; no subsequent contrivance for exhibition; for Mr. Broadwell has proved that he saw it delivered to Mr. Smith from the post office. Let it be attentively read; let the situation of Col. Burr and of Mr. Smith at that time be considered; and then let gentlemen candidly declare, whether they think that Mr. Smith, after receiving that letter, could regard Col. Burr in any other light, than that of an honorable man, indignantly repelling unfounded and injurious suspicions? [Here Mr. Harper produced the original letter, the hand writing and authenticity of which were recognised by several of the Senators.]

But Mr. Smith enquired anxiously about the news, in the part of the country from which Peter Taylor had come. And what more natural, what more usual, than to enquire the news, especially in a time of alarm and apprehension? The operations of col. Burr were the subject of general conversation, and had excited no small alarm. The plot, whatever it was, appeared to thicken about Blannerhassett's island. Of course every one felt anxious to know what was going on at that place, & in its neighborhood. This circumstance then is of no moment, & the letter, the only ground of suspicion, being fully explained, every thing is explained, except the last fact stated by Taylor, on which I will now bestow some attention.

Taylor states that Mr. Smith offered him something to drink, and "charged him not to go to any tavern, lest the people should be sifting him with their questions." Sift him about what? Did Smith then suppose that Blannerhassett's gardener and servant was possessed of the secrets of the conspiracy which might be sifted out of him? Is it credible that so gross and absurd an idea could be entertained, by a man of his understanding? Had he used precautions to prevent Blannerhassett himself from being sifted, there would have been some sense in it: but to suppose him afraid of the gardner's being sifted, about things which if he knew them himself he must have been satisfied that the gardener could not know, is to impute to him more folly then those who charge him with a principal participation in col. Burr's designs, would be willing to admit.

Will it be said that Smith was afraid of the gardener's being sifted, about the public occurrences in the island and its neighborhood, which a person in his situation might be supposed to know? I answer, why should he be so afraid? As those circumstances were notorious, the gardener could do no harm by telling them; and they would speedily be known at Cincinnati, whether he told them or not.

It is therefore impossible to suppose that Smith's wish to keep Peter Taylor away from the taverns, if he really had such a wish, proceeded from any fear of disclosures which Taylor might make. It is much more probable that Taylor, whose recollection we have already found to be very imperfect, or to whom these little cirsumstances could not then have appeared to be of any importance, has fallen into a mistake in relating them, than that John Smith did so foolish a thing. He might indeed caution Taylor not to go to a tavern; for fear that he should get engaged in drinking, and delay his time: a thing which he knew was very likely to happen, to a man in Taylor's situation: & it is possible that in order to keep him away, he endeavored to alarm about something that might happen to him at the tavern. This matter, floating confusedly in Taylor's brain, has at last assumed the form of this story about sifting, which has found its way into his testimony and is now adduced to fix a charge of treason on John Smith.

And it is not a little surprising, if we are implicitly to believe Peter Taylor, that Mr. Smith, after having taken so much pains to keep him away from the taverns, for fear of his being sifted, should immediately have sent him to one, to get is horse fed; thus exposing him, for the value of a gallon of oats, to the very danger from which he had just appeared so anxious to guard him. "He then shewed me, says Taylor, a tavern, & told me to go, to get my horse fed by the hostler, but not to go into the house." Does not this prove that if Smith wished to keep Taylor out of the taverns, it was to preserve him from the temptation to get drunk and lose his time, and not to keep him out of the way of questions? Had the latter been his object, would he have sent this man to a tavern at all? Would he not have had the horse fed in his own stable, or sent him to the tavern by his own servant?

I here dismiss the story of Peter Taylor, Mr. President; presuming to believe that the only fact of any moment, the letter, is satisfactorily cleared up by the letter itself, and col. Burr's answer; and that the other slight and trivial circumstances of suspicion are fully explained, or resolved into the confusedness and inaccuracy of Taylor's recollection. Certainly facts so doubtful in themselves, so inconsiderable, so capable of being misunderstood by the witness, ought not to have any weight, in such a case as this.

The testimony of major John Riddle comes next to be considered, in which he states that Mr. Smith told him, that he knew more of col. Burr's plans than any other person in the state of Ohio, except one. Smith no doubt did at that time suppose that he knew a great deal about Burr's plans, for he had then received the letter in which Burr affects to explain them. It is not therefore surprising that he should make this remark to major Riddle; but as major Riddle was, at the time of this communication, the commander of a body of militia, stationed on the Ohio to oppose Burr's progress, it would have been most surprising if Smith, having a knowledge of Burr's real plan, had selected this officer as a person to whom to boast of it. This consideration discloses the true nature of Smith's communication to major Riddle. He believed that he knew Burr's plans, and that they were innocent. He therefore told major Riddle so: But had he really known them to be criminal, this officer was one of the last persons in the world, to whom he would have disclosed his knowledge. Thus this casual communication to major Riddle, which the malicious industry of Mr. Smith's enemies has hunted up and adduced as a proof of his guilt, appears to be a most convincing proof of his innocence.

But Mr. Smith also told Riddle "that if Burr succeeded, he would prefer living at Cincinnatia to Philadelphia or New York, on account of business." Succeeded in what? Why in the innocent plans, which Smith had just before told Riddle that he understood better than any person in Ohio, but one. These plans, as explained by col. Burr to Smith, were to form a strong and numerous settlement on the Washita, and in case of a Spanish war to invade Mexico, under the authority of the government. And Mr. Smith, without more aid from the imagination than men usually obtain in such cases, might have brought himself to believe that in case these plans should succeed, they would give rise to a vast trade between the country on the Ohio and the new settlement or conquests; that Cincinnati would become the centre of this trade, and that he, by reason of his connections and situation, would be able to obtain a large share in it. This might have been an airy speculation, but it was certainly an innocent one; for it is manifest that the plans on the success of which it was bottomed were innocent plans. Such Smith at that time supposed Burr's plans to be; or he would not have made his knowledge of them a subject of conversation with major Riddle.

That major Riddle himself viewed the matter in this light, is evident from his conduct. He was stationed on the river, with the command of a detachment of militia, and had orders from his superior officer, Gen. Gano, to collect as much information as possible, respecting col. Burr's plans and associates, and to report to his general. Of this we are informed by a deposition of general Gano himself; who also states that major Riddle did report to him, but made no mention of this conversation with Mr. Smith, nor alluded to Mr. S. in any manner. This conversation, therefore, must have been on the whole of such a nature, or accompanied by such circumstances, as to make it appear perfectly innocent to major Riddle; who, otherwise, must have communicated it as matter of suspicion at least to his commander. Had we enjoyed the opportunity of cross examining major Riddle, these circumstances, and the rest of the conversation, would no doubt have been recalled to his recollection, and fully explained by him. In an exparte deposition they have been forgotten, or omitted as unimportant. An additional and very striking example of the importance of the privilege of being confronted with the witnesses against us, and of the danger of admitting any species of exparte testimony.

I come now Mr. President to the testimony of Col. James Taylor, who represents Mr. Smith as having, in a a conversation with him and others at Cincinnati, expressed opinions favorable to a separation of the union.

It is to be recollected that Dr. Sellman, the brother-in-law of col. Taylor, and a warm friend of the present administration, was also present at this conversation. This clearly appears from Dr. Sellman's deposition of Feb. 15th, 1808, compared with the testimony of Col. Taylor. Doctor Sellman has stated this conversation with great accuracy; and he represents Mr. Smith as having not even expressed an opinion, much less a wish, that the union would be dissolved, but merely as having repeated the opinions of a writer under the signature of the Querist, who had advocated a separation. Dr. Sellman tells us that there were five or six persons present, none of whom however he names, except Mr. Smith and Col. Taylor. Let us take his own words "After attending some time to the conversation, I noticed a reference was occasionally made to a publication or publications in the Marietta paper. For some time I was at a loss to determine whether those gentlemen were expressing their own opinions, or those contained in that publication: for I was not present at the commencement of the conversation, tho' it did appear to me to be a detail of the opinions set forth in that publication. As it is now impressed on my mind, I believe, to more fully satisfy myself I asked a question. Nor can I perfectly remember whether I intended the question particularly for Mr. Smith, or for both the gentlemen; but I believe it was intended for Mr. Smith. "Do you expect or apprehend an early separation of the union? To which Mr. Smith replied, "Not in my life time, and I hope, or pray to God, I may never live to see it, whether it takes place sooner or later." This declaration being perfectly satisfactory to me, I paid little or no attention to the conversation, and afterwards, I believe soon afterwards, left the place. I did not hear Mr. Smith or any person present advocate a separation of the union, nor have I ever before or since that time heard Mr. Smith advocate a separation of the union."

Thus then we see Mr. President, that these two witnesses, men of equally fair and respectable character, and equal intelligence, differ entirely in their manner of understanding this conversation, in which they both took a part. Col. Taylor understands Mr. Smith to have advocated a separation, and Dr. Sellman declares that he did not advocate it, but merely repeated the arguments of the Querist, and expressed his hope that a separation might never take place, and that if it did, he might not live to see it. Now let me ask whether this contradiction between two witnesses equally entitled to credit, does not leave the matter at least in doubt? Do not the scales hang in equilibrium? And in this state of doubt, can you decide in the affirmative? Does not the matter remain precisely as if there were no proof on either side; and can you decide affirmatively, in the absence of proof? Is it not a fair and rational as well as a legal presumption, that a man is innocent, till his guilt appears; and can you say that Mr. Smith's guilt appears, when the only witness against him is contradicted by a witness of equal credit?

But I go further, Mr. President. I contend that every presumption derived from the nature of the case, and the circumstances and situation of the parties, is in favor of the statement made by Dr. Sellman.

In the first place it appears, that Dr. Sellman's attention was particularly drawn to the subject, and that he asked a question for the express purpose of ascertaining, whether those gentlemen spoke their own sentiments, or merely repeated those of the writer. It is not therefore at all probable that he would forget or so widely mistake a fact, to which his attention was so strongly attracted. Had Mr. Smith advocated a separation, as is now supposed by Col. Taylor, Dr. Sellman could not possibly have been in doubt on the subject, and his question would have been useless and silly.

Secondly we find Dr. Sellman very accurate and positive in his recollection of Mr. Smith's answer. It is impossible to suppose him mistaken, in a point which interested him so much, and must have made so strong an impression on his mind. This answer of Mr. Smith is utterly inconsistent with the statement of Col. Taylor: for it is incredible that after having advocated a separation to col. Taylor and gen. Findley, he should immediately and in their presence deprecate it to Dr. Sellman as a misfortune, which he hoped, if it must befal us, he should not live to see.

Thirdly, as Dr. Sellman was warmly opposed to a separation, it is most certain that his attention must have been very strongly arrested, and indeed his indignation excited, by such a conversation as col. Taylor attributes to Mr Smith; which could not have escaped his attention, or so soon have been effaced from his memory.

It appears in the fourth place that there were several other persons present at this conversation. Dr. Sellman says five or six, though he does not name any of them. Col. Taylor says that Gen. Findley was present. Now let me ask, if such sentiments had been expressed, in such a company, by a man holding Mr. Smith's situation in the government, would they not have attracted great attention, and given rise to much conversation? Would not the matter, in all probability, have come to the ears of some of those persons in Cincinnati who have been so active and persevering in collecting testimony against Mr. Smith? And would not some of those who heard this conversation, beside Col. Taylor, have been called on to testify?

Again. Why should Mr. Smith, on this occasion alone, have made himself the advocate of dismemberment? Had he been disposed to preach this doctrine, in the hope of making converts, would he have confined his exertions to this one time and place? There is no evidence or even accusation of his having broached the subject any where else; and if he had done so, it could hardly have escaped notice. Had he been a promoter of separation, would he have addressed himself solely to those persons whom he must have known to be most averse from it; or would he not have chosen for his hearers the weak and ignorant, who were most likely to be affected by the usual arguments in favor of such a measure?

All these difficulties are reconciled by supposing, with Dr Sellman, that Mr. Smith merely repeated, without approbation, the opinions of the Querist; and that Col. Taylor misunderstood him as stating his own opinions and wishes. He might even have gone further, and have expressed an opinion or apprehension of his own, that the union would one day separate. That such a speculative opinion, or rather fear, is entertained by many among us, who most ardently deprecate the event, is notorious. And we find, from Gen. Carberry's testimony, that Col. Taylor himself is of this number. He told Gen. Carberry that he thought the union would separate in twenty years; and Gen. Carberry