John Calup

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Speech of Mr. Benton,

OF MISSOURI.

IN SENATE.

March 18, 1836.

[CONTINUED.]

Mr. B. then remarked upon the passages which he had read from the Senate and House journals. He said that they established every point which was material to be made out in support of his motion; they established the right to expunge, and the duty to expunge, in such a case as is now presented in the proceedings against President Jackson. The memorials which were presented in the Senate and in the House of Representatives, contained criminal charges against President Jefferson. They went to criminate him as a conniver at a violation of the laws, and to stigmatize him for bad faith to those who had been his dupes. The petitions were in duplicate, and were presented simultaneously in the two Houses. In the House of Representatives they were instantly met by a resolve denying their truth, declaring them to be improper matter to be presented to the House, and ordering them to be returned to the petitioners. In the Senate they were first ordered to be returned, but no reason assigned; they were then ordered to be expunged from it, and were expunged in the most effectual and irrecoverable manner. They were dropped from the volume. The very pages which contained them were dropped and omitted. For the journal being still in loose sheets, the sheets which contained the obnoxious proceedings were left out of the bound volume, and thus all trace of their existence disappeared. It is only by looking to the minutes and the journal of the House of Representatives, that we can find out what these petitions were. Such is the case of 1806. It is a complete and perfect precedent for the case of 1836. The memorials were attacks upon Mr. Jefferson. They contained impeachable matter against him. They charged him with connivance and secret participation in the unlawful, disastrous, and tragical expedition of Miranda. The charge which they contained had filled all the opposition newspapers of the day, and had been used for every purpose of party warfare against him. To get these criminal charges on the journals, was the next object. In the Senate, and in the House of Representatives, they were pressed by the political enemies of Mr. Jefferson, and so far as they received support or countenance, it was from the ranks of the opposition. So of the proceeding against President Jackson. They are attacks upon him. They charge him with violating the laws and the constitution. They go to criminate and to stigmatize him. The charges which they exhibit were universally circulated in the opposition newspapers, and they were presented in the Senate. The Bank of the United States had formally accused the President, and all the publications of the day, periodical, diurnal, and what not, that espoused the cause of the Bank, were filled with the charges. Party warfare had used them to the uttermost in the fall elections of 1833, but that was not sufficient with same party spirit, and the same party,—the Bank federal party, which in 1806, wish'd to have its charge against President Jefferson transferred from the newspapers to the journal of Congress, there to be transmitted to posterity as a part of the legislative history of the country,—that same spirit, and that same party has wished to do the same thing with the accusations against President Jackson. The Congress of 1806, both House and Senate, met this unconstitutional attempt as it deserved. The House refused the memorial, and voted it to be unsustained by evidence, and reprehensible in its character; the Senate ordered the whole proceeding, and every trace and letter of it, to be expunged from the journal. It is to no purpose, Mr. President, that any one may attempt to draw a distinction where there is no difference. It is to no purpose that any one may attempt to draw a distinction between expunging at the same session, and at a subsequent one. There is no difference between the cases. The right to expunge rests upon the right to keep the journal clear of what ought never to be upon it. It rests upon the right to purify it from any thing improper, which in advertence, mistake, or the injustice, virulence, and fury of party spirit may have put upon it. To this purification there is no limit of time, either in law or in morals. It is not a case for a statute of limitations. Thus, from its very nature the purification of the journal is to be effected when it can be; and that always implies a time posterior to the wrong; and in the case of faction, it implies a time posterior to the downfall of the faction. The precedent of 1806 meets the objection of 1836. It meets it full and fair in the face. The objection is, that the Senate is bound to preserve its proceedings; that it must write down all its proceedings in the journal; and then preserve them forever; never altering, changing, or effacing one word, one letter, one iota, one tittle, of the sacred work, from the moment it is done to the end of time. This is the objection; and it has been repeated rather too often to be itself changed or altered to avoid the overpowering authority of the precedent of 1806. And this, sir, is my answer to the Senator from Louisiana, (Mr. Porter.) I tell him the expunging was not only at the same session, but on the same day that the proceeding took place.

I could here drop this head of my argument, but it seems that something has occurred in our own history on which gentlemen rely, either to justify themselves, or to criminate their opponents; I allude to the case of Mr. Barry who was condemned for a violation of the laws by the unanimous vote of the Senate: This was done at the same session, and a few months later, than the President was condemned. Both parties voted for that condemnation of Mr Barry; and it is argued this must sanction the proceeding against the President, or involve in an inconsistency those who voted for that condemnation, without objection, and now object to the proceeding in the case of the President. Not as the fact, or the consequence. The proceeding against Mr. Barry was objected to, and that in the very first stages of it, upon the same ground on which we now stand in the case of the President, and the vote which was given by me and my friends, was a vote forced upon us by the majority of the Senate, and being so forced upon us, was given, as we believed, according to the truth and the fact. I well recollect that vote, and the conversation among ourselves to which it gave rise. Some thought we should vote against it, on the ground that the proceeding was unconstitutional; and that a vote in its favor would commit us on the that point; others, of whom I was one, objected to the negative vote, because it would be against evidence, and would subject us to the imputation of voting as partizans, and not as Senators, and because a negative vote admitted the jurisdiction, just as much as an affirmative one. Upon these grounds, and because the majority had the power, and enforced it, to compel a vote, we took the alternative, which truth seemed to require, and acted upon the same principle in both cases, that of Mr. Barry and that of President Jackson, voting according to what we believed to be the fact in each case. But let no one delude himself with the notion that the proceeding against Mr. Barry was not objected to! Let no one suppose that the difference in rank, has made a different one in the opinions held in the two cases! The proceeding against Mr. Barry was objected to, and fully and unequivocally in open debate, and upon all the grounds assumed afterwards in the case of President Jackson. Here is the proof, taken from the debate, of February 10, 1831, and preserved in the congressional history of that period. The debate was on the adoption of a resolution, of criminative aspect, concerning the examination of witnesses as to the causes of their removal by the Postmaster General from office, and the speaker the same that now addresses you.

Mr. BENTON then rose and said that he did not appear on the floor for the purpose of joining in the debate, nor to express any opinion on the truth of the allegations so violently urged against the Postmaster General. He had no opinion on the matter, and did not wish to have one, except it was that presumptive opinion of innocent which the laws awarded to all that were accused, and which the pure and elevated character of Mr. Barry so eminently claims. If impeached, it might be his duty to sit in judgment upon him,—or, if he had an opinion in the case, to retire from the judgment seat; as he could neither reconcile it to the dictates of his conscience, nor the rights of the accused, to take the oath of a judge, with a preconceived opinion in his bosom, to be dropped out as soon as the forms would permit. He rose, he repeated, not to accuse or to absolve Mr. Barry, but to express his opinion of the character of the proceeding which was carrying on against him, and to intimate an idea of what might be proper to be done hereafter in regard to it. He then affirmed, that he looked upon the whole proceeding, from its first inception to that moment, as one of eminent impropriety, compromising the judicial purity of the Senate on one hand, and invading the privileges of the House of Representatives on the other. The Senate, under the constitution, tries impeachments—the House of Representatives prefers them. Each has its assigned part to act, and it is an invasion of privilege for either to assume the part of the other. If the tenth part of the matter so furiously urged against Mr. Barry was true, or even founded in probability, he might come before the Senate for trial; and it would be a horrid mockery of judicial forms for his future judges to take the lead now in the case of accusation, and to excite, promote, foment, and instigate charges against him. To the House of Representatives belonged that painful part of the business; and the present proceedings in the Senate must appear to them as an invasion of their privileges, and an implied censure upon their negligence. It did seem to him that the House of Representatives might take notice of the proceeding, and feel itself bound to vindicate its rights; and the two Houses thus be brought into serious collision. To avoid these consequences, as well as to escape a compromise of the judicial character of the Senate, he was decidedly of opinion that the debate and the proceeding should terminate immediately. This would save the further evils to the Senate itself, which might ensue. As to the past—the proceedings already had—he declared that he thought them a fit subject for that operation which had been performed upon the record of Wilkes's expulsion from the British House of commons,—upon the record of the Yazoo fraud—and upon the record of the Massachusetts General Assembly, which declared it to be unbecoming the character of a moral and religious people to rejoice in the victories of their country. He declared it to be his deliberate opinion, that the history of the whole proceeding against Mr. Barry should be expunged from the journals was the most appropriate means in the power of the Senate to restore its own injured character,—to make atonement to the invaded privileges and insulted feelings of the House of Representatives; and, what, perhaps, was still more important, to prevent this evil example,—this horrid combination of the accusing and trying functions,—being drawn into precedent in future times, when the party in power, and predominant in the Senate, might want the spoils of a victim. If the American Cato, the venerable Macon, was here, it would be his part to become the guardian of the honor and dignity of the Senate; in his absence, that high duty might devolve, at an appropriate time, upon some aged Senator. If none such undertook it, might become his part to consider how far their places ought to be supplied by a less worthy and a less efficient member."

This, sir, is what I said in the case of Mr. Barry in the month of February, 1831,—just five years ago, and full three years before the proceeding against President Jackson. I took ground for him as promptly, as unequivocally, as I took it for President Jackson. I took the same ground for him that took for the President. Gentlemen will, therefore, see how far they have been correct in supposing that we have been inconsistent, or inattentive, or unjust, and how far we have been detected in keeping two measures for meeting out justice to different ranks. They may see also how far my voice has been prophetic in warning the Senate against the dangers of an evil example, which might be drawn into precedent at a future time, when the party in power, and predominant in the Senate might pant for the spoils of an illustrious victim!

After this preliminary view of the rights and power of the Senate over its journal, and in vindication of its authority to expunge by total obliteration, and consequently to expunge by an order instead of an erasure, Mr. B. came to the merits of the question, and said the view which he proposed to take of the proceedings against President Jackson required him to proceed to the fountain head and original source of this extraordinary process. It did not originate in the Senate of the United States, but in the Bank of the United States!—and all that the Senate has done has been to copy the proceedings of which that institution was the author. A statement so material as this, continued Mr. B., and which goes to exhibit the Senate, of the United States as following the lead of the Bank of the United States in the condemnation of the President, cannot be made without evidence at hand to support it. No assertion of such a thing should be made, except as an introduction to the proof. Fully aware of this, it is my intention to economize words—to dispense with assertion—and to proceed directly to the evidence. With this object, and without adverting at present to a mass of secondary evidence in the Bank gazettees of the autumn 1833. I have recourse at once to a publication issuing directly from the Bank—a pamphlet of 50 pages, issued by the Board of Directors on Tuesday the 3d day of December, 1833.—This was the same day on which the President of the United States delivered his annual message to Congress, and the day on which it was known every where that he would deliver it. On that day the President of the Bank of the United States sat at the head of his Board of Directors; and taking cognizance of the imputed delinquencies of President Jackson, they proceeded to try and condemn him for a violation of the laws and constitution of his country—to denounce him for a despot, tyrant and usurper—to assimilate him to counterfeiters—to load him with every odious and every infamous epithet—to indicate his impeachment to Congress—to argue at great length to prove him guilty—to order 5,000 copies of the argument and proceedings to be printed, and a copy to be furnished to each member of the Senate and House of Representatives. As a member of the Senate I had the honor to receive one of these pamphlets, the only favor I ever received from that institution, and for which I hope to show myself mindful by the use which I make of it. It is from that pamphlet that I now quote; and I shall first read the order from its adoption and publication to show the authenticity of its origin, the gravity of its character, and the formality with which the Board of Directors, sitting as a high court of justice, took cognizance of the imputed offences of the President, pronounced him guilty, and promulgated their sentence to the world.

"BANK OF THE UNITED STATES, }
Tuesday, Dec. 3, 1833. }

"At an adjourned meeting of the Board of Directors held this evening, present, Nicholas Biddle, President, Messrs. Willing, Eyre, Bevan, White, Sergeant, Fisher Lippincott, Chauncey, Newkirk, Macalester, Lewis, Holmes Gilpin, Sullivan and Wager.

Mr. Chauncey, from the special committee appointed on the 24th September, presented the following report, which was read.

"Whereupon Mr. Chauncey moved the following resolution:

"*Resolved*, That the said report, with accompanying resolution, be adopted.

"Upon this motion the yeas and nays were called for, when it was carried by a vote of 12 to 3, as follows:

"Yeas—Messrs. Willing, Eyre, Bevan, White, Sergeant, Fisher, Lippincott, Chauncey, Newkirk, Lewis, Holmes, and Biddle—12.

"Nays—Messrs. Gilpin, Sullivan, and Wager—3.

"On motion it was resolved, that 5000 copies of the said report be printed for the use of the stockholders of the Bank."

"Extract from the minutes.

"S. JAUDON, *Cashier*."

Mr. B. then read the following extracts from the report, thus adopted by the board:

"The committee to whom was referred, on the 24th of September, a paper signed 'Andrew Jackson,' purporting to have been read to a cabinet on the 18th, and also another paper signed 'H D Gilpin, John T. Sullivan, Peter Wager, and Hugh McElderry,' bearing date 19th of Aug. 1833, with instructions to consider the same, and report to the board whether any, and what steps may be necessary, on the part of the board, in consequence of the publication of the said letter and report, beg leave to state, that they have carefully examined these papers, and will now proceed to state the result of their reflections in regard to them."

* * * "Of the paper itself, and of the individual who has signed it, the committee find it difficult to speak with the plainness by which alone such a document, from a source, should be described, without wounding their own self-respect, and violating the consideration which all America[illegible] must feel for the Chief Magistracy of their country. Subduing, however, their feelings and their language down to that respectful tone which is due to the *office*, they will proceed to examine the history of this measure, (removal of the deposites,) its character, and the pretexts offered in palliation of it." * *

* "It would appear from its contents, and from other sources of information, that the President had a meeting of what is called the cabinet, on Wednesday, the 18th of September, and there read this paper. Finding that it made no impression on the majority of persons assembled, the subject was postponed, and in the meantime the document was put into the newspapers. It was obviously published for two reasons. The first was to influence the members of the cabinet, by bringing to bear upon their immediate decision the first public impression excited by misrepresentations, which the objects of them could not refuse in time; the second was, by the same excitement, to affect the approaching elections in Pennsylvania, Maryland, and New Jersey." * * * * "The indelicacy of the form of these proceedings corresponds well with the substance of them, which is equally in violation of the rights of the Bank and the laws of the country."

"That the Secretary of the Treasury, and the Secretary of the Treasury alone, has the power to remove them, (the deposites,) that officer being specially designated to perform that specific duty, and the President of the United States being, by the clearest implication, forbidden to interfere."

"The whole structure of the Treasury shows, that the design of Congress was to make the Secretary as independent as possible of the President. The other Secretaries are merely executive officers; but the Secretary of the Treasury, the guardian of the public revenue; and although, according to the general scheme of appointment, he is nominated by the President to the Senate, yet he is in fact the officer of Congress, and not the officer of the President."

* * * * * * *

"It is manifest that this removal of the deposites is not made by the order of the Secretary of the Treasury. It is a perversion of language so to describe it. On the contrary, the reverse is openly avowed. The Secretary of the Treasury refused to remove them, believing, as his published letter declares, that the removal was "unnecessary, unwise, vindictive arbitrary and unjust.' He was then dismissed because he would not remove them, and another was appointed because he would remove them. Now this is a palpable violation of the charter. The Bank and Congress agree upon certain terms, which no one can change but a particular officer, who, although necessarily nominated to the Senate by the President, was designated by the Bank and Congress as the umpire between them. Both Congress and the Bank have a right to the free, and honest, and impartial judgment of that officer, whoever he may be—the Bank, because the removal may injure its interests; the Congress, because the removal may greatly incommode and distress their constituents. In this case they are deprived of it by the unlawful interference of the President, who 'assumes the responsibility,' which, being interpreted, means, usurps the power of the Secretary. To make this usurpation more evident, his own language contradicts the very power which he asserts." * *

* * "But a judicial investigation of his charges is precisely what he dreaded. The more summary and illegal invasion of the powers of others, seems to have more attraction than the legitimate exercise of his own." "But the wrong done to the pecuniary interests of the Bank sinks into more insignificence when compared with the deeper injury inflicted on the country, by this usurpation of all the powers of the Government" * * * "Certainly, since the foundation of this Government, nothing has ever been done which more deeply wounds the spirit of our free institutions. It, in fact, resolves itself into this, that whenever the laws prescribe certain duties to an officer, if that officer, acting under the sanctions of his official oath and private character, refuses to violate that law, the President of the United States may dismiss him, and appoint another; and if he too should prove to be a 'refractory subordinate,' to continue his removals until he at last discovers in the descending scale of degradation, some irresponsible individual fit to be the tool of his designs. Unhappily, there are never wanting men who will think as he superiors wish them to think—men who regard more the compensation than the duties of their office—men to whom daily bread is a sufficient consolation for daily shame" * * * * "At this moment the whole revenue of this country is at the disposal, the absolute, uncontrolled disposal of the President of the United States.—The laws declare that the public funds shall be placed in the Bank of the United States, unless the Secretary of the Treasury forbids it. The Secretary of the Treasury will not forbid it. The President dismisses him, and appoints somebody that will. So the laws declare that no money shall be drawn from the Treasury, except on warrants for appropriations made by law. If the Treasurer refuses to draw his warrant for any disbursement, the President may dismiss him, and appoint some more pliable agent, who will not hesitate to gratify his patron." * * * * * * "The power is asserted in a tone fitter for the East, than for any country claiming to be governed by laws." * * * * * * "At this moment the process of evading the laws is in full practice. By the constitution of the United States, no money shall be drawn from the Treasury, but in consequence of an appropriation made by law. But there has been a usurpation of transferring funds from one branch of the Bank of the United States to another, or one State bank to another, when the public service required disbursements at remote places. This transfer draft has been abused," &c. * * * * * "The committee (of the Bank) willingly *leave* to the Congress of the United States the *assertion* of their own constitutional power, and the *vindication* of the *principles* of our *Government*, against the most *violent assault* they have ever yet encountered, and will now confine themselves to the more limited purpose of showing that the *reasons* assigned for the measure are as *unfounded* as the object itself is illegal.'

When Mr. B. had read thus far, he stopped, closed the pamphlet, and said that he had arrived at the point whether the Bank divided the criminal from the civil proceedings against the President, and consigning him to Congress for trial, proceeded to the violation of the laws and constitution, it proceeded to make out its own case for damage for the loss of the deposites, and to adopt a resolve to claim redress for that injury. The argument in the whole pamphlet is pertinent to the motion now before the Senate, as showing the relation between the proceedings of the Bank and the peoceedings of the Senate against the President, and how closely the latter, arguments and all, were copied from the former. The whole pamphlet was pertinent to his motion, and it ought to be printed and preserved among the public documents, as a part of the history of the case; but time forbid him to read any more; and having arrived at the point where the Bank turned over the President to Congress for criminal prosecution; and where the Senate took it up, he went on to say: The three resolves which I have read, though varied in their forms, are all intended to accomplish what the Bank indicated when it vouchsafed "to leave to the Congress of the United States the assertion of their own constitutional power, and the vindication of the principles of our Government, against the most violent assault they had ever encountered;" and the first of these was accompanied by another resolve which pursued the civil branch of the subject which the Bank had reserved to itself; namely, to show that the reasons assigned for the removal of the deposites were "unsatisfactory and insufficient," unfounded as the object itself is illegal. Thus the proceedings in the Senate and in the Bank, were identical; and, what is too obvious and striking to escape observation, the very form of commencing the work against the President, and the precise material upon which the work was commenced, was the same in both bodies. The Bank commenced it process, and took for the foundation of its proceedings, a certain paper, signed Andrew Jackson, and purporting to have been read to what was called a cabinet, on the 18th day of September, in the year 1833. So of the proceedings in the Senate. It takes for its commencement, and for its foundation, the same identical paper, and, in every essential phrase, describes and calls for it in the same words. Our journal of that period, at page 40, and for Wednesday the 11th of December, 1833—just nine days after the promulgation of the Bank proceedings—exhibits an entry in these word:

"The following motion, submitted by Mr. Clay, was considered;

Resolved, That the President of the United States be requested to communicate to the Senate a copy of the paper which has been published, and which purports to have been read by him to the heads of the Executive Department, dated the 18th day of September last, relating to the removal of the deposites of the public money from the Bank of the United States and its officers."

This call was adopted by the Senate. The President was requested to furnish the paper described; and upon his declining to do so, the Senate of the United States proceeded, as the Bank of the United States had previously done, to use the copy of the paper as found in the columns of the Globe.

Upon the contents of this paper two distinct resolutions were submitted by a Senator from Kentucky, Mr. Clay, one criminal, the other civil. The criminal resolution has been read. It stands at the head of the three resolves quoted in the preamble to the resolutions which I have offered, and follows not only the charges and the specifications which the Bank had preferred against the President, but uses the very words which that institution had used. The civil resolution offered at the same time is not inserted in the preamble, because the expunging process is not proposed to reach it; but it is necessary to read it by way of identifying the proceedings of the Bank and of the Senate, and to show how faithfully the Senate took up the cause of the Bank. This is it:

"*Resolved*, That the reasons assigned by the Secretary of the Treasury for the removal of the money of the United States deposited in the Bank of the United States and its branches, communicated to Congress on the 3d day of December, 1833, are unsatisfactory and insufficient."

The reasons assigned for the removal were voted by the Bank to be unfounded; by the Senate, they were voted to be unsatisfactory and insufficient, showing the exact division of the subject in the Senate to be what it was in the Bank, and expressed in the same phrases.

The Bank refers the paper which was read to what was called a cabinet, to one of its committees, to report "what steps are necessary to be taken on the part of the board." They report two steps; first, to vindicate the constitution and laws from the most violent assault they had ever encountered, which being interpreted, signified to impeach him; and such was the language of the Bank Gazette and a member actually named, who was to move the impeachment; secondly, to assert its own right to redress for the injury of removing the deposites. Both these steps were pursued in the Senate; only for want of a regular impeachment, preferred by the House of Representatives, the Senate took it up irregularly, as indicated by the Bank.

I do not detain the Senate, Mr. President to make any remark upon the unparralleled and almost incredible audacity of this moneyed institution which, erecting itself into a co-ordinate branch of the Federal Government, and assuming a political, judicial, and moral supremacy over the Presidents of the United States, takes cognizance of his imputed offences: refers his conduct to one of its committees, as to a grand jury, receives a report arraigning him for a public crime as well as for a private injury, adopts it in both aspects, and adjudges him guilty of the crime, while it demands redress for the injury, with the unceremonious indifference and perfect self complacency which belongs to the conduct of an established constitutional tribunal. Nor do I comment upon the significant intimation for an impeachment which their high mightiness, the serene directors of this moneyed corporation, so distinctly holds out to Congress. Nor shall I dwell upon the coincidence that the Bank proceeding against the President should have made its appearances in Philadelphia contemporaneously with the assembling of Congress in this city. All these circumstances, and many others, will naturally attract the attention, and excite the reflections of the people. My purpose at present is quite different. It is to show that the Bank of the United States is the original author of all the proceedings against the President, and that what has been done in this chamber, is nothing but a copy of what had first been done at the board of directors in the city of Philadelphia. The extracts I have given are sufficent for the present, and I shall only refer, at this time, in confirmation of them, to the columns of the Bank Gazettes at that period—the meetings got up by the Bank, to condemn the President—the committees and memorials sent here—the purchase by the Bank of 800,000 copies of the speeches made against the President—its effort to distress and alarm the country; and the palpable line which is still drawn in the Legislatures of all the States, between the friends of the Bank and the friends of the President, wherever expunging resolutions are brought forward.

These are sufficient to prove that the Bank from first to last, took charge of this proceeding against the President; that she originated it, followed it here, nursed and cheerished it adopted all that was done and now opposes the expunging resolutions in the different Seates, with such fidelity that the list of votes, except in Tennessee, and some individual exceptions in the other States, shows the question of expunging to be a mere Bank question, to be lost or carried as the Bank, party predominate, or not, in the Legislature.

Mr. B. then took up his expurgatory resolution, and said that he had digested his motion, for the sake of a more convenient and intelligible presentation of his subject, into a series of distinct propositions, covering the whole ground of the case, yet separating the parts so that a distinct consideration, and a distinct vote, may be taken on each distinct point.

1. The first proposition which I submit assumes the cardinal position, that the proceeding against President Jackson was for impeachable offence; and that being conducted without the forms of an impeachment, it was, by consequence, irregular, illegal, unconstitutional, and subversive of the fundamental principles of law and justice.

The stress of this proposition lies in the position, that the offence charged upon the President was impeachable; and to maintain this position, I shall show, first, what it is that constitutes an impeachable offence under our constitution; and next, what the offence is that the President was charged with.

By section 4, article 2, of the constitution, the President may be impeached:

1. For treason;
2. For bribery;
3. For other high crimes;
4. For misdemeanors.

Here are four classes of offences for which impeachment lies; two of them well defined by common and constitutional law; and two of them resting, not upon strict legal definitions, but rather upon the general acceptation of terms, and the moral sense of the community. Treason and bribery have their precise definitions; other high crimes and misdemeanors have their import, but have not been legally defined, so as to include all cases which may fall under their heads. They were evidently adopted by the framers of the constitution, on purpose to include all the unknown and all the possible cases of malfeasance in office which should amount either to a high offence, or to a petty offence, and for which the officer might deserve actual punishment at common law, or a mere removal from that particular office, or a general disqualification to hold any office whatever. A crime is a great offence; a misdemeanor is a petty offence. A high crime is always understood to be some great offence against the State or the public; a misdemeanor is some petty offence in office, consisting of any kind of misbehaviour, or ill behaviour. So say the books. It would be sufficient for my argument, to show, that the offence charged upon President Jackson by the Senate of 1833, '34, was one of those petty offences growing out of misbehaviour, or ill behaviour in office which constitutes a misdemeanor; for even that would be impeachable, and would sustain my position, that the President was adjudged guilty of an impeachable offence. But I will not wrong the Senators who passed that judgment upon him, so far as to lower their charge to the petty offence, which constitutes a mere misdemeanor. I will not undertake to deprive them of their excuse, or justification, for alarming and agitating the country as they then did, and denouncing President Jackson with the violence then exhibited, by reducing the offence with which they charged him, to the mere misdemeanour which amounts to misdemeanor. But, I will take the charge in its natural import, and according to the understanding of it then manifested by gentlemen in all their speeches; and according to these, I say that President Jackson was charged with a great, heinous, and daring offence; and being so charged, was impeachably charged, not with a petty misdemeanor, but with a high crime.

How was he charged? The record answers that he was charged, *first*, with assuming the exercise of a power over the Treasury of the United States, not granted to him by the constitution and laws, and dangerous to the liberties of the people; *because he dismissed Mr. Duane from the Treasury Department, and appointed Mr. Taney to it. Secondly*, with assuming the exercise of a power over the Treasury of the United States, not granted to him by the constitution and laws, and dangerous to the liberties of the people; *because he took upon himself the responsibility of removing the deposites from the Bank of the United States*; and *thirdly* with *assuming* upon himself authority and power, not *conferred* by the constitution and laws, but in *derogation* of both; *because of the late executive proceedings in relation to the revenue*. These were the charges; and how much soever the specifications were again and again changed, and finally all dropt, yet the charge itself remained the same, and wears its meaning plainly on its face, that of *usurping* power and authority, and *violating* the laws and constitution of the land. This is the plain meaning of the charge in every instance of its three-fold repetition, and so was understood and expressed by every speaker, who constantly applied the terms of usurper and violator of the laws and constitution, and rummaged history to find in the lives of the most odious of tyrants, acts of usurpation and of lawless violence, sufficiently infamous, wicked, and dangerous, to exemplify the conduct which they charged upon the President.

The precise words in the resolve adopted, fully charges the violation, and that twice over. To assume power not conferred by the laws and constitution, is to violate the laws and the constitution; to do an act in derogation of both, is in the President, a violation of both. The legislative power may derogate from a law, that is to say, can repeal and take away a part of it; but it cannot derogate from the President. The President can neither derogate from the common law, nor from statute law, nor from the constitution. He has no repealing power over them; by consequence to derogate from them, is to violate them.

Mr. B. well recollected that some of the gentlemen in opposition called the President's conduct *a gross abuse of a power*. Be it so. The smallest abuse of power is a misbehavior in office, and a misdemeanor, for which the officer may be impeached; a gross abuse of power is a high crime, for which impeachment also lies. The charge then still continues impeachable, whether qualified as a gross abuse of power, or charged as a direct violation of law.

The charge then, stript of its thin disguise, taken in its obvious sense, and put into the words proclaimed by every speaker, is a charge of usurpation of power and authority, and of violation of the laws and constitution. I do not make a separate head of the usurpation here charged, because it is merely subsidiary in its reference, and explanatory in its import, of the main charge more distinctly expressed. To usurp power and authority, is seize upon power and authority without right or law; to violate the laws and constitution, is to do the same thing; so that all the charges substantially end in one, that of violating the laws and the constitution. Is this a petty offence, or a great crime? It is sufficient for my argument that it should be a petty offence; but truth and justice will qualify it as a great crime. In a country of law, the violation of law is always a crime. In the mere citizen it is criminal;—in the common magistrate, it is heinous,—in the chief officer of a republic, it is atrocious and parricidal. In a President of the United States, bound by his oath, not only to preserve, protect, and defend the constitution, but to cause all others faithfully to execute the laws, the violation of the laws and constitution, involving as it does perjury to his conscience, treachery to his trust, danger to the country, and evil example to all, becomes an offence of the greatest magnitude, inferior only in turpitude and mischief to high treason itself. In republics the greatest jealousy is felt at assumptious of power beyond the law, and the more exalted the magistrate, the more eminent the citizen,—who commits that offence, no matter how strong the necessity, or how slight the consequence, the voice of offended justice is sure to be heard. Why was Cicero banished from Rome? Not for putting Lentulus and Cethegus to death,—for these parricides deserved to die a thousand deaths! but, because, in ordering Roman citizens to be strangled, the Consul had assumed the exercise of a power not granted to him by the constitution and the laws of Rome. What was the cause of that immortal contest in Athens,—that contest for the crown, not of royalty, but of honor and patriotism? Not that Demosthenes did not deserve to wear it, but that Ctesiphon had transcended the law in causing it to be conferred upon him. These were excusable, or venial violations of law; yet their commission agitated the great republics of antiquity, and their memory, at the end of two thousand years, and in a new hemisphere, is fresh in the recollection of every reader. But why quote examples? Why go to foreign countries?

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