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BY G. W. CALLAHAN. CAMBRIDGE, Md.---SATURDAY, APRIL 26, 1834. WHOLE NO. 513.

TERMS:

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Senate, Thursday, April 17, 1834.

Several messages were received from the President of the United States, by Mr. Donelson, his Private Secretary; among them the following

PROTEST:

To the Senate of the United States:

It appears by the published journal of the Senate, that on the 26th of December last, a resolution was offered by a member of the Senate, which, after a protracted debate was, on the 28th day of March last, modified by the mover and passed by the votes of twenty-six Senators out of forty-six,* who were present and voted in the following words, viz:

"*Resolved*, That the President, in the late Executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both."

Having had the honor, through the voluntary suffrages of the American people, to fill the office of President of the United States during the period which may be presumed to have been referred to in this resolution, it is sufficiently evident that the censure it inflicts was intended for myself. Without notice, unheard and untried, I thus find myself charged on the records of the Senate, and in a form hitherto unknown in our history, with the high crime of violating the laws and constitution of my country.

It can seldom be necessary for any Department of the Government, when assailed in conversation, or debate, or by the strictures of the press or of popular assemblies, to step out of its ordinary path for the purpose of vindicating its conduct, or of pointing out any irregularity or injustice in the manner of the attack. But when the Chief Executive Magistrate is, by one of the most important branches of the Government, in its official capacity, in a public manner, and by its recorded sentence, but without precedent, competent authority, or just cause, declared guilty of a breach of the laws and constitution, it is due to his station, to public opinion, and to a proper self-respect, that the officer thus denounced should promptly expose the wrong which has been done.

In the present case, moreover, there is even a stronger necessity for such a vindication. By an express provision of the constitution, before the President of the United States can enter on the execution of his office, he is required to take an oath or affirmation in the following words:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States; and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

The duty of defending, so far as in him lies, the integrity of the constitution, would indeed have resulted from the very nature of his office; but by thus expressing it in the official oath or affirmation, which, in this respect, differs from that of every other functionary, the founders of our Republic have attested their sense of its importance, and have given to it a peculiar solemnity and force. Bound to the performance of this duty by the oath I have taken, by the strongest obligations of gratitude to the American people, and by the ties which unite my every earthly interest with the welfare and glory of my country; and perfectly convinced that the discussion and passage of the above mentioned resolution were not only unauthorized by the constitution, but in many respects repugnant to its provisions and subversive of the rights secured by it to other co-ordinate departments, I deem it an imperative duty to maintain the supremacy of that sacred instrument, and the immunities of the department intrusted to my care, by all means consistent with my own lawful powers, with the rights of others, and with the genius of our civil institutions. To this end, I have caused this, my *solemn protest* against the aforesaid proceedings, to be placed on the files of the Executive Department, and to be transmitted to the Senate.

It is alike due to the subject, the Senate, and the people, that the views which I have taken of the proceedings referred to, and which compel me to regard them in the light that has been mentioned, should be exhibited at length, and with the freedom and firmness which are required by an occasion so unprecedented and peculiar.

Under the constitution of the United States, the powers and functions of the various departments of the Federal Government, and their responsibilities for violation or neglect of duty, are clearly defined or result by necessary inference. The Legislative power, subject to the qualified negative of the President, is vested in the Congress of the United States, composed of the Senate and House of Representatives. The Executive power is vested exclusively in the President, except, that, in the conclusion of treaties and in certain appointments to office, he is to act with the advice and consent of the Senate. The Judicial power is vested exclusively in the Supreme and other Courts of the United States, except in cases of impeachment, for which purpose the accusatory power is vested in the House of Representatives, and that of hearing and determining in the Senate. But although for the special purposes which have been mentioned, there is an occasional intermixture of the powers of the different departments, yet, with these exceptions, each of the three great departments is independent of the other in its sphere of action; and when it deviates from that sphere is not responsible to the others, further than it is expressly made so in the constitution. In every other respect, each of them is the co-equal of the other two, and all are the servants of the American people, without power or right to control or censure each other in the service of their common superior, save only in the manner and to the degree which that superior has prescribed.

The responsibilities of the President are numerous and weighty. He is liable to impeachment for high crimes and misdemeanors, and on due conviction, to removal from office, and perpetual disqualification; and notwithstanding such conviction, he may also be indicted and punished according to law. He is also liable to the private action of any party who may have been injured by his illegal mandates or instructions, in the same manner and to the same extent as the humblest functionary. In addition to the responsibilities which may thus be enforced by impeachment, criminal prosecution, or suit at law, he is also accountable at the bar of public opinion, for every act of his administration. Subject only to the restraints of Truth and Justice, the free People of the United States have the undoubted right, as individuals or collectively, orally or in writing, at such times, and in such language and form as they may think proper, to discuss his official conduct, and to express and promulgate their opinions concerning it. Indirectly, also, his conduct may come under review in either branch of the Legislature, or in the Senate when acting in its Executive capacity, and so far as the executive or legislative proceedings of these bodies may require it, it may be examined by them. These are believed to be the proper and only modes in which the President of the United States is to be held accountable for his official conduct.

Tested by these principles, the resolution of the Senate is wholly unauthorised by the constitution, and in derogation of its entire spirit. It assumes that a single branch of the Legislative Department may for the purposes of a public censure, and without any view to legislation or impeachment, take up, consider, and decide upon, the official acts of the Executive. But in no part of the constitution is the President subjected to any such responsibility; and in no part of that instrument is any such power conferred on either branch of the Legislature.

The justice of these conclusions will be illustrated and confirmed by a brief analysis of the powers of the Senate, and a comparison of their recent proceedings with those powers.

The high functions assigned by the constitution to the Senate, are in their nature either Legislative, Executive or judicial. It is only in the exercise of its judicial powers, when sitting as a Court of trial of Impeachments, that the Senate is expressly authorized and necessarily required to consider and decide upon the conduct of the President, or any other public officer. Indirectly however, as has already been suggested, it may frequently be called on to perform that office. Cases may occur in the course of its Legislative or Executive proceedings, in which it may be indispensable to the proper exercise of its powers, that it should inquire into, and decide upon, the conduct of the President or other public officers; and in every such case, its constitutional right to do so is cheerfully conceded. But to authorise the Senate to enter on such a task in its Legislative or Executive capacity, the inquiry must actually grow out of and tend to some Legislative or Executive action, and the decision when expressed must take the form of some appropriate Legislative or Executive act.

The resolution in question was introduced, discussed and passed, not as a joint, but as a separate resolution. It asserts no Legislative power, proposes no Legislative action and neither possesses the form nor any of the attributes of a Legislative measure.—It does not appear to have been entertained or passed, with any view or expectation of its issuing in a law or joint resolution, or in the repeal of any law or joint resolution, or in any other Legislative action.

Whilst wanting both the form and substance of a Legislative measure, it is equally manifest, that the resolution was not justified by any of the executive powers conferred on the Senate. These powers relate exclusively to the consideration of treaties and nominations to office; and they are exercised in secret session, and with closed doors. This resolution does not apply to any treaty or nomination, and was passed in a public session.

Nor does this proceeding in any way belong to that class of incidental resolutions which relate to the officers of the Senate, to their chamber, and other appertenances, or to subjects of order, and other matters of the like nature—in all which either House may lawfully proceed without any co-operation with the other, or with the president.

On the contrary the whole phraseology and sense of the resolution seem to be judicial. Its essence, true character, and only practical effect, are to be found in the conduct which it charges upon the President, and in the judgment which it pronounces on that conduct. The resolution, therefore, though discussed and adopted by the Senate in its legislative capacity, is, in its office, and in all its characteristics, essentially judicial.

That the Senate possesses a high judicial power, and that instances may occur in which the President of the United States will be amenable to it, is undeniable. But under the provisions of the constitution, it would seem to be equally plain that neither the President nor any other officer can be rightfully subjected to the operation of the judicial power of the Senate, except in cases and under the forms prescribed by the constitution.

The constitution declares that "the President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors"—that the House of Representatives "shall have the sole power of impeachment"—that the Senate "shall have the sole power to try all impeachments"—that "when sitting for that purpose, they shall be on oath or affirmation"—that "when the President of the United States is tried, the Chief Justice shall preside"—that "no person shall be convicted without the concurrence of two-thirds of the members present"—and that judgment shall not extend further than to remove from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States."

The resolution above quoted, charges in substance that in certain proceedings relating to the public revenue, the President has usurped authority and power not conferred upon him by the constitution and laws, and that in doing so he violated both. Any such act constitutes a high crime—one of the highest indeed, which the president can commit—a crime which justly exposes him to impeachment by the House of Representatives, and upon due conviction, to removal from office, and to the complete and immutable disfranchisement prescribed by the constitution.

The resolution, then, was in substance an impeachment of the President; and in its passage amounts to a declaration by a majority of the Senate, that he is guilty of an impeachable offence. And as such it is spread upon the journals of the Senate—published to the nation and to the world—made a part of our enduring archives—and incorporated in the History of the age. The punishment of removal from office and future disqualification, does not it is true, follow this decision; nor would it have followed the like decision, if the regular form of proceeding had been pursued, because the requisite number did not concur in the result. But the moral influence of a solemn declaration, by a majority of the Senate, that the accused is guilty of the offence charged upon him, has been as effectually secured, as if the like declaration had been made upon an impeachment expressed in the same terms. Indeed, a greater practical effect has been gained, because the votes given for the resolution though not sufficient to authorise a judgment of guilty on an impeachment, were numerous enough to carry that resolution.

That the resolution does not expressly alledge that the assumption of power and authority, which it condemns, was intentional and corrupt is no answer to the preceding view of its character and effect. The act thus condemned, necessarily implies volition and design in the individual to whom it is imputed, and being unlawful in its character, the legal conclusion is, that it was prompted by improper motives, and committed with an unlawful intent. The charge is not of a mistake in the exercise of supposed powers, but of the assumption of powers not conferred by the constitution and laws, but in derogation of both, and nothing is suggested to excuse or palliate the turpitude of the act. In the absence of any such excuse, or palliation, there is only room for one inference; and that is, that the intent was unlawful and corrupt. Besides, the resolution not only contains no mitigating suggestion, but on the contrary, it holds up the act complained of as justly obnoxious to censure and reprobation: and thus as distinctly stamps it with impurity of motive, as if the strongest epithets had been used.

The President of the United States, therefore, has been, by a majority of his constitutional triers, accused and found guilty of an impeachable offence; but in no part of this proceeding have the directions of the constitution been observed.

The impeachment, instead of being preferred and prosecuted by the House of Representatives, originated in the Senate, and was prosecuted without the aid or concurrence of the other House. The oath or affirmation prescribed by the constitution, was not taken by the Senators; the Chief Justice did not preside; no notice of the charge was given to the accused; and no opportunity afforded him to respond to the accusation, to meet his accusers face to face, to cross examine the witnesses, to procure counteracting testimony, or to be heard in his defence.—The safe-guards and formalities which the constitution has connected with the power of impeachment, were doubtless supposed by the framers of that instrument to be essential to the protection of the public servant, to the attainment of justice, and to the order, impartiality and dignity of the procedure. These safe-guards and formalities were not only practically disregarded, in the commencement and conduct of these proceedings, but in their result, I find myself convicted, by less than two-thirds of the members present, of an impeachable offence.

In vain may it be alleged in the defence of this proceeding that the form of the resolution is not that of an impeachment, or of a judgment thereupon; that the punishment prescribed in the constitution does not follow its adoption, or that in this case no impeachment is to be expected from the House of Representatives. It is because it did not assume the form of an impeachment, that it is the more palpably repugnant to the constitution; for it is through that form only that the President is judicially responsible to the Senate; and though neither removal from office nor future disqualification ensues, yet it is not to be presumed that the framers of the constitution considered either or both of those results, as constituting the whole of the punishment they prescribed. The judgment of *guilty* by the highest tribunal in the Union; the stigma it would inflict on the offender, his family and fame; and the perpetual record on the journal, handing down to future generations the story of his disgrace; were doubtless regarded by them as the bitterest portions, if not the very essence, of that punishment. So far, therefore, as some of its most material parts are concerned, the passage, recording, and promulgation of the resolution, are an attempt to bring them on the President, in a manner unauthorised by the constitution. To shield him and other officers who are liable to impeachment, from consequences so momentous, except when really merited by official delinquences, the constitution has most carefully guarded the whole process of impeachment. A majority of the House of Representatives, must think the officer guilty, before he can be charged. Two-thirds of the Senate must pronounce him guilty, or he is deemed to be innocent. Forty-six Senators appear by the journal to have been present when the vote on the resolution was taken. If, after all the solemnities of an impeachment, thirty of those Senators had voted that the President was guilty, yet would he have been acquitted; but by the mode of proceeding adopted in the present case, a lasting record of conviction has been entered up by the votes of twenty-six Senators, without impeachment or trial; whilst the constitution expressly declares that to the entry of such a judgment an accusation by the House of Representatives, a trial by the Senate, and a concurrence of two-thirds in the vote of guilty, shall be indispensable prerequisites.

Whether or not an impeachment was to be expected from the House of Representatives, was a point on which the Senate had no constitutional right to speculate, and in respect to which, even had it possessed the spirit of prophecy, its anticipations would have furnished no just ground for the procedure.

Admitting that there was reason to believe that a violation of the constitution and laws had been actually committed by the President, still it was the duty of the Senate, as his sole constitutional judges, to wait for an impeachment until the other House should think proper to prefer it. The members of the Senate could have no right to infer that no impeachment was intended. On the contrary, every legal and rational presumption on their part ought to have been, that if there was good reason to believe him guilty of an impeachable offence, the House of Representatives would perform its constitutional duty, by arraigning the offender before the justice of his country. The contrary presumption would involve an implication derogatory to the integrity and honor of the Representatives of the people. But suppose the suspicion thus implied were actually entertained, and for good cause, how can it justify the assumption by the Senate of powers not conferred by the constitution?

It is only necessary to look at the condition in which the Senate and the President have been placed by this proceeding to perceive its utter incompatibility with the provisions and the spirit of the constitution, and with the plainest dictates of humanity and justice.

If the House of Representatives shall be of opinion that there is just ground for the censure pronounced upon the President, then will it be the solemn duty of that House to prefer the proper accusation, and to cause him to be brought to trial by the constitutional tribunal. But in what condition would he find that tribunal? A majority of its members have already considered the case, and have not only formed but expressed a deliberate judgment upon its merits. It is the policy of our benign system of jurisprudence, to secure in all criminal proceedings, and even in the most trivial litigations, a fair, unprejudiced and impartial trial. And surely it cannot be less important that such a trial should be secured to the highest officer of the Government.

The constitution makes the House of Representatives the exclusive judges, in the first instance, of the question, whether the President has committed an impeachable offence. A majority of the Senate, whose interference with this preliminary question, has, for the best of all reasons, been studiously excluded, anticipate the action of the House of Representatives, assume not only the function which belongs exclusively to that body, but convert themselves into accusers, witnesses, counsel and judges, and prejudge the whole case. Thus presenting the appalling spectacle, in a free state, of judges going through a labored preparation for an impartial hearing and decision, by a previous *ex parte* investigation and sentence against the supposed offender.

There is no more settled axiom in that government whence we derived the model of this part of our constitution, than that "the Lords cannot impeach any to themselves, nor join in the accusation, *because they are judges.*" Independently of the general reasons on which this rule is founded, its propriety and importance are greatly increased by the nature of the impeaching power. The power of arraigning the high officers of Government, before a tribunal whose sentence may expel them from their seats and blind them as infamous, is eminently a popular remedy—a remedy designed to be employed for the protection of private right and public liberty, against the abuses of injustice and the encroachments of arbitrary power. But the framers of the constitution were also undoubtedly aware, that this formidable instrument had been, and might be abused: and that from its very nature, an impeachment for high crimes and misdemeanors, whatever might be its result, would in most cases be accompanied by so much of dishonor and reproach, solicitude and suffering, as to make the power of preferring it, one of the highest solemnity and importance. It was due to both these considerations, that the impeaching power should be lodged in the hands of those who, from the mode of their election and the tenure of their offices, would most accurately express the popular will, and at the same time be most directly and speedily amenable to the people.

The theory of these wise and benignant intentions is in the present case, effectually defeated by the proceedings of the Senate. The members of that body represent, not the people, but the States; and though they are undoubtedly responsible to the States, yet, from their extended term of service, the effect of that responsibility, during the whole period of that term, must very much depend upon their own impressions of its obligatory force. When a body, thus constituted, expresses beforehand its opinion in a particular case, and thus indirectly invites a prosecution, it not only assumes a power intended for wise reasons to be confined to others, but shields the latter from that exclusive and personal responsibility under which it was intended to be exercised, and reverses the whole scheme of this part of the constitution.

Such would be some of the objections to this procedure, even if it were admitted that there is just ground for imputing to the President the offences charged in the resolution. But, if, on the other hand, the House of Representatives shall be of opinion that there is no reason for charging them upon him, and shall therefore deem it improper to prefer an impeachment, then will the violation of privilege as it respects that House, of justice as it regards the President, and of the constitution, as it relates to both, be only the more conspicuous and impressive.

The constitutional mode of procedure on an impeachment has not only been wholly disregarded, but some of the first principles of natural right and enlightened jurisprudence, have been violated in the very form of the resolution. It carefully abstains from averring in *which* of "the late proceedings in relation to the public revenue, the President has assumed upon himself authority and power not conferred by the constitution and laws." It carefully abstains from specifying *what laws or what parts* of the constitution have been violated. Why was not the certainty of the offence—"the nature and cause of the accusation"—set out in the manner required in the constitution, before even the humblest individual, for the smallest crime, can be exposed to condemnation? Such a specification was due to the accused, that he might direct his defence to the real points of attack; to the people, that they might clearly understand in what particulars their institutions had been violated; and to the truth and certainty of our public annals. As the record now stands, whilst the resolution plainly charges upon the President at least one act of usurpation in "the late Executive proceedings in relation to the public revenue," and is so framed that those Senators who believe that one such act, and only one, had been committed, could assent to it, its language is yet broad enough to include several such acts; and so it may have been regarded by some of those who voted for it. But though the accusation is thus comprehensive in the censures it implies, there is no such certainty of time, place, or circumstance as to exhibit the particular conclusion of fact or law which induced any one Senator to vote for it. And it may well have happened, that whilst one Senator believed that some particular act embraced in the resolution, was an arbitrary and unconstitutional assumption of power, others of the majority may have deemed that very act both constitutional and expedient, or if not expedient, yet still within the pale of the constitution. And thus a majority of the Senators may have been enabled to concur, in a vague and undefined accusation, that the President, in the course of "the late Executive proceedings in relation to the public revenue," had violated the constitution and laws; whilst, if a separate vote had been taken in respect to each particular act, included within the general terms, the accusers of the President might, on any such vote, have been found in the minority.

Still further to exemplify this feature of the proceeding, it is important to be remarked, that the resolution, as originally offered to the Senate, specified, with adequate precision, certain acts of the President, which it denounced as a violation of the constitution and laws; and that it was not until the very close of the debate, and when, perhaps, it was apprehended that a majority might not sustain the specific accusation contained in it, that the resolution was so modified as to assume its present form. A more striking illustration of the soundness and necessity of the rules which forbid vague and indefinite generalities, and require a reasonable certainty in all judicial allegations, and a more glaring instance of the violation of those rules, has seldom been exhibited.

In this view of the resolution it must certainly be regarded, not as a vindication of any particular provision of the law or the constitution, but simply as an official rebuke or condemnatory sentence, too general and indefinite to be easily repelled, but yet sufficiently precise to bring into discredit the conduct and motives of the Executive. But whatever it may have been intended to accomplish, it is obvious that the vague, general, and abstract form of the resolution, is in perfect keeping with those other departures from first principles and settled improvements in jurisprudence, so properly the boast of free countries in modern times. And it is not too much to say, of the whole of these proceedings, that if they shall be approved and sustained by an intelligent people, then will that great contest with arbitrary power, which had established its statutes, in bills of rights, in sacred charters, and in constitutions of Government, the right of every citizen, to a notice before trial, to a hearing before conviction, and to an impartial tribunal for deciding on the charge, have been waged in vain.

If the resolution had been left in its original form, it is not to be presumed that it could ever have received the assent of a majority of the Senate, for the acts therein specified as violations of the constitution and laws were clearly within the limits of the Executive authority. They are the "dismissing the late Secretary of the Treasury, because he would not, contrary to his sense of his own duty, remove the money of the U. States in deposite with the Bank of the United States and its branches, in conformity with the President's opinion; and appointing his successor to effect such removal—which has been done." But as no other specification has been substituted, and as these were the Executive proceedings in relation to the public revenue," principally referred to in the course of the discussion, they will doubtless be generally regarded as the acts intended to be denounced as "an assumption of authority and power not conferred by the

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*YEAS—Messrs. Bibb, Black, Calhoun, Clay, Clayton, Ewing, Frelinghuysen, Kent, Knight, Leigh, Mangum, Naudain, Poindexter, Porter, Prentiss, Preston, Robins, Silsbee, Smith, Southard, Sprague, Swift, Tomlinson, Tyler, Waggaman, Webster, 26.

NAYS—Messrs. Benton, Brown, Forsyth, Grundy, Hendricks, Hill, Kane, King, of Ala., King, of Ga., Linn, McKean, Moor, Morris, Robinson, Shepley, Tallmadge, Tipton, White, Wilkins, Wright, 20.