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## Congressional Debate.

### MR. MERCER'S SPEECH,

ON JOHN ANDERSON'S CASE.

Mr. *Mercer* rose immediately after Mr. Tucker, and addressed the house in substance as follows:

If the honorable gentleman who just sat down felt it necessary to terminate his argument abruptly, rather than consume the time of the House, much more does it become me, sir, at this late hour of the day, to apologize for detaining you one moment longer.

Nor should I offer any observations on the subject of the present debate, if I were not induced to sustain the authority of the House, upon grounds somewhat different from those which have been already occupied by the gentlemen who have preceded me.

The resolutions on your table, Mr. Speaker, involve the decision of three distinct propositions. Has this house the power to punish contempts? Is the act charged upon the prisoner a contempt? Have the proceedings of the House been such as to warrant his farther prosecution?

Does this House derive from the constitution the power of punishing a contempt? My honorable colleague, who just preceded me, in a spirit of accommodation I have no doubt, has proposed to introduce a bill to punish by law an attempt to bribe a member of Congress. If the power of punishing such an act is comprehended among the privileges of this house, the wisdom of any such law may well be questioned. Were the contemplated law restricted to a description of that species of contempt to which our consideration is now turned, it would not lead to the inference that this House recognized no other. And if, to obviate this difficulty, a complete enumeration were attempted of every possible insult to the privileges, rights, and dignity of this house, the proposed law would be swelled to the size of the largest volume on your table. It may also be doubted whether a right which this house does not derive from the constitution can be created or protected by an act of ordinary legislation. Those gentlemen who are desirous for a law to define the privileges of this house and to provide for punishing the contempt of them, admit their existence, as well as the power of this house to punish their violation, by the mode of reasoning which they have adopted.

Before I enquire into the origin of this power, allow me to disavow every feeling which could militate against the most deliberate and impartial exercise of my judgment. I cannot but deplore the unhappy situation of the prisoner, whose head is bleached by the snows of many winters, and who, if really guilty of the attrocious act imputed to him, is an object of still greater commiseration, as his turpitude is without the extenuation of youth or inexperience.

Sir, said Mr. M. I never beheld a criminal arraigned at the bar of justice, without this feeling, nor have I found it difficult to obey the legal injunction to believe the innocence of the accused, until he has been heard in his defence and judicially convicted.

This maxim of Christian charity is comprehended in that admirable system of practical wisdom, which has been repeatedly referred to in this discussion; a system matured by the experience of ages, adopted by the universal assent of the people of the United States, and denominated the common law.

It is to this system that I resort for the authority of this house to punish a contempt; to define the act to be punished; to determine the mode of proceeding against the accused; and, if guilty, to ascertain the quality, and measure the extent of his punishment.

And I do so, not because the common law confers these powers on this house, but because it discloses that written constitution from which we derive them.

Sir, there is not an entire article, not a solitary section, scarcely a line of that instrument, which can be correctly understood, or practically enforced, without a recurrence to this law.

If you desire to know the import of an English word, you turn to the lexicographer of England: for a phrase of statutory law you consult the statute which contains it, and the precedents by which it has been expounded. The terms of the common law must be, also, defined by a recurrence to the law itself, comprised in the treatises, and illustrated by the history of the nation from whom we derived it.

The constitution not only uses the terms and phrases of this law, but expresly recognizes its existence. The seventh article of the amendments provides, that "in suits at common law, where the value of the controversy shall exceed twenty dollars, the right of *trial by jury* shall be preserved: and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the *rules of the common law*; of that law which gentlemen have asserted to have no existence under this government, and against which the honorable member from New-York would inspire us with apprehension and alarm.

That honorable member, in his late impressive address, admitted that the two houses of the British parliament possess the power to punish contempts; that the lex parliamentaria, or usages of parliament, is a part of the common law, although he denies a similar authority to the House of Representatives and Senate, the two branches of the Congress of the United States.

Universal consent has applied the maxims of this law to the protection of all our state and federal courts, and why should it be denied to this house? What are we, said Mr. M. and how acting at this moment? As a court, of which you, Sir, are the presiding, and we the associate judges. The original of the British parliament, the ancient Wittenagemotte, was a court, and one of its branches is the highest judicial tribunal in England. Both houses of Congress have powers strictly judicial in their nature and application. If a federal or state court, consisting of a single judge, is invested, by common law construction, with authority to punish contempts of its authority and dignity, this assembly of judges may constitutionally exercise the same authority. That constitution which confers on the representatives of this nation the power of legislation, and denominates this body a House of Representatives, clothes it with the common law attributes appertaining to its office and its title.

Sir, said Mr. M. why this indignation against the common law? Our forefathers defended it, in the old world, against Norman invasion, ecclesiastical fraud, and royal encroachment. They brought it hither; they planted it; and we have flourished beneath its shelter.

The common law! Had I the tongue of Henry, I would pourtray to you its excellence. He who implored the convention of Virginia to reject this constitution because it did not expressly adopt this law in all its maxims; the most eloquent champion that American liberty ever drew to her support, regarded this constitution which he had not tried, with suspicion, and the law under which he had lived with confidence and affection.

*The doctrine which I advance, in relation to* this constitutional question, is congenial with the purest American feeling. The common law is that which gave me birth. It is the law of every state of this widely extended union. On its broad and solid basis rest the free constitutions of these states, as well as that noble structure which is committed to our care.

Sir, this law was not that of my remote progenitors. Erin's green turf, and the brown heath of Caledonia, although my eye never beheld them, are, I acknowledge, dear to any heart. This feeling is not inexplicable. Who is so base as to hear an insinuation against his father's name and not feel the life blood mount to his cheek? Sir, this feeling binds us, not only to our ancestors, but to the land which gave them birth; it flows from the same fountain with that stronger sentiment which binds us to our own natal soil. It is not at war with the impulse of general benevolence, or callous to the merits of other nations. I can turn my eye across that channel along which my fancy has just conducted me, and exclaim, in the language of the sweetest bard of Ireland—

Gay, sprightly land of social mirth and ease,
Pleased with thyself, whom all the world can please!

How altered is this scene! Sir, the tear of pity must start from every eye at the sufferings of a misguided, much oppressed, but gallant nation.

Do we look for the monuments of our own history no farther back than the glorious era of '76? Are we ashamed of the atchievements of our British ancestors, that we have begun to contemn their laws? Who can speak or think of freedom without recollecting the name of Locke, of Hampden, and of Sydney?

Sir, I beg pardon for this digression. It was forced from me by the cloud which I thought I saw gathering on the brow of the House when I referred to the common law as the expositor of the American constitution.

The Colonists of Great Britain brought their laws with them to America. Their new lot was beset with difficulties and dangers. The savage lurked in his covert. The forest was to be opened to the light of cultivation. It was not a time, sir, to sit down in order to deliberate and to change their laws. Had they possessed the leisure, they had not the inclination to innovate upon the established customs and usages of their forefathers. Those emigrants who united with them, from other countries, took the laws as they found them: and, if so inclined, they had not the power to change them.

These laws, and the habits of thinking, from which they sprung, and on which the laws themselves re-acted, were incorporated with every political institution which they founded. The parliament of England, and the courts of Westminster, were the models of their legislative assemblies, and of their judicial tribunals. Their constitution, their powers, their forms of proceeding, and their rules of decision, were sometimes prescribed by their laws, but generally left to implication, from the great fountain of practical wisdom—the common law of England.

I appeal to my colleagues, if this constitution had been formed contemporaneously with that of Virginia, would not the same power to punish contempts attach to the House of Representatives and Senate of the United States, as unquestionably belongs to the corresponding branches of the General Assembly, the House of Delegates and Senate of Virginia? From the form of the Speaker's chair to the power of expelling a member, the character and authority of the House of Delegates is derived, without any express constitutional provision, from the House of Commons, the archetype of the popular branch of every state legislature, as it is of this house.

The force of the argument, which this analogy furnishes, is not impaired by the consideration, that the federal constitution is of more recent structure. It is the *act of the people of the United States*, as itself proclaims; and, referring expressly to the common law, in one of its articles, unintelligibly throughout, except by the aid of that law, we have a right to resort to its maxims in the present enquiry. If this power is essential to the House of Commons, so it must be presumed that the people of these states regarded it to be, and so must we consider it in relation to the two Houses of this Legislature.

It has been urged, that many extravagant doctrines would arise from this source of constructive authority. Where, it is asked, shall this House stop in its use? The revolution of 1776 answers this question. It necessarily lopped off the regal and aristocratical branches of this law. This limitation of the common law relieves the rule of construction, for which I contend, from all that could alarm our fears. It is founded, I am inclined to believe, in judicial decisions, throughout the United States. By the unanimous judgment of the General Court, the highest tribunal of Virginia, the principle has been extended so far, as to authorize a defendant, indicted for a libel at common law, to give the truth in evidence. This House derives, therefore, from the common law, no privileges which it ought not to possess.

One of my colleagues has contended that all the privileges of this House are expressly enumerated by the 6th section of the 1st article of the constitution, and restricted to exemption from arrest, in certain specified cases; and from responsibility elsewhere for any speech or debate in the House. And hence, with great apparent plausibility, he infers, that the House possesses no other privilege, and has authority, to punish no other contempts, except such as are committed *in violation of these*. In answer to this argument, it has already been contended by the honorable member who last addressed the House, that this clause of the constitution may be justly regarded as the result of that extreme caution which induced the convention to insert in it what might otherwise have been inferred; a caution which is discernable in other parts of this instrument. To the illustration which he has furnished, many others may be added; as, for example, the very first article of the amendments. The greater part of these are designed to serve the purpose of a bill of rights, for which so many opponents of the constitution had most zealously contended. It cannot be presumed, that, if this amendment had not been made a part of the constitution, Congress would have prohibited the free exercise of religion; have abridged the freedom of speech; or obstructed the right of the people peaceably to assemble and to petition for a redress of grievances. I am, however, led involuntarily to another explanation of the expediency of expressly incorporating in the constitution the two privileges to which my colleague has referred; an explanation which is in strict harmony with all the views that I have taken of the general power of this House to punish contempts of its privileges. Every other privilege of this House, except those which are enumerated, will be found to be consistent with the obvious and equal rights of the people. The enumerated privileges are limitations of those rights, and, but for the express grant of them by the people, it might have been doubted whether the character of our republican institutions did not forbid their exercise. In fine, these enumerated privileges protect the members of this House, against the common and dearest rights of the citizen—the rights of property and reputation. The privileges for which I contend, would protect the House from their injuries, from fraud, violence and justice.

It cannot be justly inferred, therefore, that the enumeration of these privileges excludes the constitutional exercise of all others. The constitution which had sought to enumerate these, must have been satisfied with general terms of vague signification, or proceeded to an enumeration of particulars, which no constitution ever did attempt to embrace. If it is admitted, and it seems to be generally conceded, that the House has power to punish contempts committed against its peace and dignity within this Hall; then the object of the supposed enumeration totally fails, and, with it, this pretended limitation to the authority of the House, to punish contempts wherever they may be committed.

I will not unnecessarily consume the time of the House, in endeavoring to prove, that an attempt to corrupt one of its members, while engaged in the discharge of his duties, is a contempt of its authority and dignity. The honorable member from Georgia, in an early stage of this debate, and the gentlemen who have since followed him, have completely occupied this ground; nor has it been contended by any of our opponents, that such would not be a contempt of the House of Commons. I hasten, therefore, to enquire, whether this House has proceeded legally in the arrest of the prisoner?

The honorable member from New Hampshire, will, on examination, perceive, that the warrant for the arrest, is not, as he contended, a general warrant. It describes the prisoner by name.

But, it has been urged, with more apparent force, that it is unsustained by any oath or affirmation; and therefore, in violation of the 4th art. of the amendments to the constitution, which provides that no warrant shall issue but upon probable cause supported by such evidence. The constitution certainly supposes the judge who issues the warrant, not to be, himself, personally cognizant of the fact, on which it is grounded. He may issue a warrant on "*probable* cause, supported by oath." It is certain, conviction of the truth of the fact must supersede the necessity of any oath: to say nothing of the absurdity, to which such a doctrine might lead. A judge is assaulted and beat as he enters the court, in which he is about to sit alone. Will it be contended that he shall first make oath of the fact, and then issue his warrant for the apprehension of the offender? In this case the witness is a member of the house by whom the warrant is issued—A judge, in whose presence the alleged fact occurred. The warrant itself is issued on the signature of the Speaker, but by the order of the house, whose act it is, and therefore the act also of the member, on whose information the warrant was issued.

Before I close my remarks, I cannot forbear noticing an observation of the honorable mover of the resolutions on your table, upon the precedents which have been so aptly and forcibly adduced, to sustain the authority of the house to punish the particular contempt which, has given rise to this debate.

It has been contended, sir, that precedents are dangerous to liberty: that they favor the inroads of power upon the rights of the people.

Such, I must confess, sir, is not my doctrine. It has been correctly said, by a profound judge, and an able civilian, that the multiplicity of laws constitutes the security of the citizen. So, sir, does the multitude of precedents which sanctioned by usage, operate with the force of law.

Precedents established in good times, stay, in disastrous days, the rage of faction, and the hand of tyranny—a Pharos erected on the margin of a stormy sea, by the light of which the mariner may anchor or steer his bark in safety.

The case of Randall, in 1796, to which the honorable member from Georgia called the attention of the House, forcibly as he had used it, was entitled to yet higher respect, from a consideration which had not occurred to him. The honorable member stated that it had arisen, before the formation of parties in our public councils. He has certainly mistaken the history of the day. I was then but a boy, and am perhaps older than the honorable member. I may be allowed to remind him of facts which had an important bearing in support of this precedent. Does the honorable member recollect nothing of the controversy of the assumpsit of the state debts, the first Bank of the United States, the ratification of the British treaty, nothing of the attempt to impeach Alexander Hamilton; nothing of those angry passions which in those days shook the administration of Washington to its foundation? [Mr. Forsyth explained. He referred, he said, to the division of parties by their present names.]

Mr. Mercer proceeded: a member whispers to me, that they were called federalists and anti-federalists. This denomination, sir, was applied at an earlier day than that of which I now speak. The title of *democrats* succeeded to that of anti-federalist, and republican to this again. Yes, said Mr. Mercer, the federalists allowed themselves to be outwitted in yielding the popular title to their opponents: a prominent cause, I have no doubt, of their ultimate discomfiture.

I have not called the attention of the House to this topic in order to revive unpleasant recollections, but for a more legitimate and useful purpose. Even in the times of party dissention, and political animosity, 78 members voted in support of that authority of this House, which is now questioned, and 17 only against it: while the majority were equally divided between the two rival parties.

A precedent, entitled to higher confidence, could not be adduced. It is a precedent, too, directly in point; establishing not only the general authority of the House, to punish contempts, but a contempt of the same species with that which has occasioned this debate.

### MR. SPENCER'S SPEECH.

Mr. *Spencer*, of N. York, observed, that in submitting the resolutions which had been read, his object was to procure a decision of the House on the abstract question of its right to proceed in the case of col. Anderson. He had offered them in this stage of proceedings, because no opportunity had yet been given to take the sense of the House, and with a view also of preventing the influence of those feelings which the demerits of the case might excite, in producing a decision that calm and deliberate reason might not sanction. It was more consistent, also, with the dignity of the House, that we should retrace its proceedings, if they were wrong, from our own impulse, rather than be compelled to do so on the motion of the accused or his counsel.

Mr. S. unquivocally condemned the conduct of the accused; and his indignation at the enormity of the offence, had, he confessed, carried him too far in endeavoring to punish it. The only apology I have to offer, said Mr. S. is to be found in that universal burst of feelings which spread through the house on the disclosure of the base transaction. But time for reflection has succeeded to the impetuousity of