



"Ours are the Plans of fair delightful Peace,
"Unwarp'd by Party Rage to live like Brothers."

VOL. I.

TUESDAY, APRIL 15, 1800.

No. 26.

The Senate of the United States
VERSUS
WILLIAM DUANE.

The Enquiry instituted in the Senate with respect to the Philadelphia Aurora, and its Editor, having assumed rather a serious aspect, we think it necessary to state the circumstances of the case more particularly than we have yet done, by giving the original Report of the Committee of Privileges which introduced the Resolutions first given in the Register; together with an account of the subsequent proceedings had on this business.

In the Senate of the U. States.
March 14, 1800.

THE Committee of Privileges, to whom it was referred by a resolution of the Senate of the 8th instant, to consider and report—what measures it would be proper to adopt in relation to a publication in the newspaper, printed in the city of Philadelphia, on Wednesday morning, the 10th of February last, called the General Advertiser, or Aurora, have had the same under investigation, and have agreed to report, as the result of their deliberations, that it would be proper for the Senate to adopt the following resolutions, viz.

WHEREAS, on the 19th day of February, now last past, the Senate of the United States being in Session in the City of Philadelphia, the following publication was made in the newspaper printed in the said city of Philadelphia, called the General Advertiser or Aurora, viz.

"In our paper of the 27th ultimo, we noticed the introduction of a measure into the Senate of the United States, by Mr. Ross, calculated to influence and affect the approaching presidential election, and to frustrate, in a particular manner, the wishes and interests of the people of the commonwealth of Pennsylvania."

"We this day lay before the public a copy of that bill as it has passed the Senate."

"Some curious facts are connected with this measure, and the people of the union at large are immediately, and the people of this State immediately interested to consider the movements, the modes of operation, and the effects."

"We noticed, a few days ago, the caucuses, or secret consultations, held in the Senate chamber. An attempt was made in an evening paper to give a counteraction (for these people are admirable at the system of intrigue) to the developments of the Aurora, and to call those meetings Jacobinical; we most cordially assent to the Jacobinism of these meetings; they were in the perfect spirit of a Jacobinical Conclave."

"The plain facts we stated, are, however, unquestionable; but we have additional information, to give on the subject of those meetings. We stated, that the intrigues for the presidential election were among the objects. We now state it as a fact that cannot be disputed upon fair ground, that the bill we this day present, was discussed at the caucus on Wednesday evening last."

"It is worthy of remark how this bill grew into existence."

"The opponents of independence and Republican Government, who supported Mr. Ross in the contest against Governor M'Kean, are well known by the insinuation, the slander, & the falsehood of the measures they pursued, and it is well known that they are all devoted to the federal party which we dissected on Monday. Mr. Ross proposed this bill in the federal Senate, (how consistently with the decency of his friends will be seen) a committee of five was appointed to prepare a bill on this subject; on this committee, Mr. Pinckney, of South-Carolina, was appointed. On Thursday morning last (the caucus held the preceding evening) Mr. Ross informed Mr. Pinckney, that the committee had drawn up a bill on the subject, when in fact, Mr. Pinckney had never been consulted on the subject, though a member of the committee! The bill was introduced and passed as below!

"On this occasion, it may not be impertinent to introduce an anecdote, which will illustrate the nature of caucuses, and show that our popular government may, in the hands of a faction, be as completely corrupted, as the French constitution

has been, by the self-created councils.

"In the summer Session of 1798, when federal thunder and violence were beheld from the pestiferous lungs of more than one despotic minion, a caucus was held at the house of Mr. Bingham, in this city. It was composed of Members of the Senate, and there were present seventeen members. The Senate consisting of thirty-two members; this number was of course a majority, and the session was a full one."

"Prior to deliberation on the measures of war, navy, army, democratic proscription, &c. &c. it was proposed and agreed to, that all the members present should solemnly pledge themselves to act firmly upon the measures to be agreed upon by the majority of the persons present at the caucus."

"The measures were perfectly in the high tone of that extraordinary session. But upon a division of the caucus, it was found they were divided nine against eight. This majority, however, held the minority to their engagement, and the whole seventeen voted in Senate upon all the measures discussed at the caucus."

"Thus it is seen, that a secret, self-appointed meeting of seventeen persons dictated laws to the United States, and not only that nine of that seventeen had the full command and power over the consciences and votes of the other eight, but that nine possessed, by the turpitude of the eight, actually all the power which the constitution declares shall be vested in the majority only."

"In other words, a minority of nine members of the Senate ruled the other twenty-three members."

"It is easily conceivable, as in the recent changes in France, that this spirit of caucusing, may be conducted in progression down to two or three persons; thus, three leading characters may agree to act upon measures approved by any one of them; these three may add two others, and they would be a majority of five; and those adding four others would be a majority of nine; and this nine possess all the power of a majority of twenty-three!"

"Yet such is the way we are treated, by those who call themselves Federalists."

"The following bill is an offspring of this spirit of faction secretly working; and it will be found to be in perfect accord with the outrageous proceedings of the same party in our State Legislature, who are bent on depriving this state of its share in an election that may involve the fate of the country and posterity."

[Then follow the resolutions already given.]

In consequence of a copy of the above proceedings being served on the Editor of the Aurora, he wrote the following letter:

To the Vice-President of the U. States.

"Sir,
"A copy of the Proceedings of the Senate, in relation to a publication in 'The Aurora,' and ascribing guilt to me in that publication—a breach of their Privileges—has been left at my Office. It is with pleasure I observe, the justice of the Senate provides, as the Constitution prescribes, that I shall have an opportunity of making any proper defence; for the conduct which has been imputed to me; and as such defence will necessarily involve points of law, as well as of fact, I pray you, Sir, to submit to the Senate of the United States, a respectful request on my behalf, that I may be heard by Counsel, and have process awarded to compel the attendance of witnesses in my behalf.
I am, Sir,
With perfect respect,
"WILLIAM DUANE."
Aurora Office, Mar. 24.

Some debate took place on this letter: and at 12 o'clock the Editor appeared before the Senate, when the President of the Senate (conformably to the rules of proceeding previously agreed upon) addressed him as follows:

"William Duane,
"You stand charged by the Senate of the U. States, as Editor of the newspaper called The General Advertiser, or Aurora, of having published in the same on the 19th of February now last past, false, scandalous, defamatory and malicious assertions and pretended information respecting the said Senate and Committee of the Senate and their proceedings, tending to defame the Se-

nate of the U. States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the U. States, and therein to have been guilty of a high breach of the privileges of this house."

Then the Secretary read the resolutions of the Senate passed the 8th instant, with the introductory report (above inserted) after which the President added,

"Have you any thing to say in excuse or extenuation for said publication?"

To which the Editor replied as follows:

"Mr. President,
"Unpractised in legal forms, and dubious in this case—but willing to do every thing that is consistent with propriety, I must solicit the consideration of the Senate. I am dubious of the jurisdiction of the Senate, and the novelty of this case renders it more incumbent on me to be cautious how I commit the rights of others, by any error arising from ignorance in me."

"I am willing to answer all questions that may be properly put to me. I am not so weak as to persist in error, if I have committed any. On the contrary, I am willing to make every proper explanation, where I am satisfied of error. One error in the charge I have already rectified. As for the rest, I know not that the Senate can, according to the Constitution, take cognizance of it. In this I may be mistaken; but I have had advice. On other points, I believe I can prove, by evidence, the facts; but I am doubtful of the regularity of the present form. I will cheerfully go as far in answering every question as the nature of the case requires, and my honour permits; but, as the Constitution declares, that no man shall be compelled to answer where he may be accused, I conceive it prudent to advise with men conversant in legal forms, who may guard me against any deficiency of mine in legal knowledge. My personal considerations in this case are nothing; but the rights and liberties of my country and fellow-citizens, are every thing—I cannot surrender, nor betray them. I am willing to answer, through my Counsel, all questions; and am advised by them, to request of this honourable Senate that Counsel may be heard for me, and the rest of the prayer of my letter of this day."

The Editor was then directed to retire. Whereupon, a member rose and desired to know, before Mr. Duane left the chamber, whether he meant that his Counsel should appear with him, or without him.

Mr. Duane answered, This question is new to me: it has not been a subject of consideration, and I shall take advice upon it.

Mr. Duane then retired; and, after considerable debate, the Senate came to the following resolutions:

"Resolved, That William Duane having appeared at the bar of the Senate, and requested to be heard by Counsel on the charge against him for a breach of Privileges of the Senate, he be allowed the assistance of Counsel, while personally attending at the bar of the Senate, who may be heard in denial of any facts charged against said Duane, or in excuse or extenuation of his offence."

"Resolved, That a copy of the foregoing resolution be sent to William Duane, and that at the same time he be ordered to attend at the bar of this house, at 12 o'clock on Wednesday next."

On the 26th, Mr. Duane sent the following letters to the Senate:

To the President of the Senate.

"Sir,
"I beg of you to lay before the Senate, this acknowledgment of my having received an authenticated copy of their resolutions on Monday last, in my case. Copies of those resolutions I transmitted to Messrs Dallas and Cooper, my intended Counsel, soliciting their professional aid; a copy of my letter is inclosed, marked A. Their answers I have also the pleasure to inclose, marked B and C. I find myself, in consequence of these answers, deprived of all professional assistance, under the restrictions which the Senate have thought fit to adopt; I therefore think myself bound, by the most sacred duties, to decline any further voluntary attendance upon that

* The error here alluded to, it is supposed, is the assertion that Mr. Pinckney, though one of the committee named to prepare a bill prescribing the mode of deciding disputed elections of President and Vice-President of the U. States, was never consulted in the drawing of the bill; in which assertion, a day or two after it was made, he acknowledged in his paper he had been mistaken.

body, and leave them to pursue such measures in this case as in their wisdom they may deem meet.

I am, Sir,
With perfect respect,
"WILLIAM DUANE."

To A. J. Dallas, Esq:

"Sir,
"I inclose you a copy of the resolution of the Senate passed yesterday, and must request you would favour me, by appearing with Mr. Cooper, as my Counsel, to-morrow, at 12 o'clock. You know that it was not from a conviction of their possessing constitutional authority to order my attendance, that I appeared yesterday; but from a sense of delicacy towards this branch of the Legislature, which would not permit me to carry an appearance of disrespect towards them, even when they were acting under error."

"I fear the resolution inclosed will prevent me from deriving all the benefit from your assistance which I had a right to expect from your acknowledged abilities, and the justice of my cause.
I am, Sir, &c.
"WM. DUANE."
Aurora Office, Mar. 25.

A similar letter was sent to Mr. Cooper.

Mr. Dallas's Reply.

"Sir,
"As it is my general rule to render professional services whenever they are required, I think it proper to state explicitly, the reason of a departure from that rule, in the case now depending before the Senate of the U. States."

"The Senate having, as I understand, charged you with the publication of a libel, proceeded, without hearing you, or notifying you of the charge, to decide that you were the Editor of the publication; that the publication was false, malicious, &c. and that it amounted to a breach of the Legislative Privileges of the Body. Before, however, any punishment shall be inflicted, or any sentence pronounced, the Senate has been pleased to summon you to the bar; and, upon your application, to allow you the assistance of Counsel, who may be heard in denial of any facts charged against you, or in excuse, or in extenuation of your offence."

"Though I mean not to question the wisdom and justice of the Senate, in any part of the proceeding, I cannot consent to act as Counsel under so limited an authority."

"For you will at once perceive, that it excludes any enquiry into the jurisdiction of the Senate to take cognizance of offences of the nature imputed to you, as well as any justification of the obnoxious publication, by proving the truth of the facts which it contains. As to the rest, I cannot suppose that either you, or your Counsel, would find it practicable to deny the existence of any fact, which the Senate has already (doubtless upon sufficient evidence) examined and established; and the language of excuse, or extenuation, must always proceed with better grace, and more advantage, from the penitent offender, than from a professional advocate."

"Under these circumstances, I do not think that I could render you any service by accompanying you to the bar of the Senate; while I conceive, that I should feel the situation degrading to the profession, as well as to myself.
I am, Sir,
Your most obedient humble servant,
"A. J. DALLAS."
Philadelphia, Mar. 25.

Mr. Cooper's Answer.

"Sir,
"I have every inclination to render service to you and to your cause; but I will not degrade myself by submitting to appear before the Senate with their gag in my mouth. The resolution you have transmitted to me, precludes all hope of my doing any good to you or the public, or any credit to myself, by complying with your request."

"I heard sufficient of the debate yesterday, to understand (before I saw your letter) that the intent and meaning of the resolution, is to preclude all argument on the jurisdiction of the Senate, and all proof that might be offered in justification of the assertions complained of. Indeed, I do not much wonder at the latter precaution; for I cannot help thinking, from the evidences you stated to me, that had we been allowed to have given proof of the facts in justification, the public would have been well instructed in the doctrine and practice of CAUCUSES, from the very best and most unexceptionable authority."

"But, to appear before a Tribunal, which in a new and most important case has pre-judged the material questions between you—which, in the capacity of accuser, has claimed a right to dictate the mode of defence to the person accused—which has forbidden us to enter upon what I cannot but regard as the unspeakable part of your vindication, and left you no ground to take worth contending for—which, as a Tribunal in this country, of unknown, unprecedented, and undefined authority, will hear no objection to its jurisdiction, and admit no proof of the facts it controverts. Under such circumstances, to attend at the bar of that Tribunal, an Advocate interdicted from defence, a tame and manacled Assiant, might serve, indeed, to excite a malignant smile among the Enemies of Liberty, but would certainly tend to disgrace your cause and my character."

"I cannot think you will be able to procure any professional assistance on such strange and unusual terms; nor can I see of what use any professional assistance could be to you, under the restrictions which the Senate have thought fit to impose; nor do I see (if you appear before them unattended by legal friends) with what prudence or propriety you can reply one word to any question they may chafe to put. Where rights are undefined, and power is unlimited—where the freedom of the press is actually attacked, under whatever intention of curbing its licentiousness, the melancholy period cannot be far distant, when the citizen will be converted into a SUBJECT.
I am, Sir, your friend and servant,
"THOMAS COOPER."
Philadelphia, Mar. 25.

The above letters having been referred to the Committee of Privileges, they reported two resolutions, the first declaring, "that as William Duane, in contempt of the Senate, has refused to attend at their bar, pursuant to notification, the Sergeant at Arms be empowered, by a Warrant signed by the President of the Senate, to take the body of the said Duane into custody, and him safely keep for the further order of the Senate."

The other resolution contained the form of the Warrant to be issued.

The first resolution was carried 16 votes to 11.

A motion was then made to postpone the farther consideration of the second resolution; which being negatived, another was made to strike out from the latter part of the form of the Warrant, the words commanding all marshals, deputy marshals and all other persons to be aiding, &c. This motion was also negatived, 19 to 10.

After Mr. Marshall had spoke at considerable length against the resolution, declaring it unconstitutional, the question was taken, without any reply being made, and it was carried 18 to 11. [Messrs. Bloodworth and Franklin both voted against these resolutions.]

Form of the Warrant
FOR THE
Apprehension of William Duane.

United States, D.
the 27th day of March, 1800.

WHEREAS the Senate of the U. States, on the 18th day of March, 1800, then being in session in the city of Philadelphia, did resolve, that a publication in the General Advertiser, or Aurora, a newspaper printed in the said city of Philadelphia, on Wednesday the 19th day of February, the last past, contained assertions and pretended information respecting the Senate and Committee of the Senate, and their proceedings, which were false, defamatory, scandalous and malicious, tending to defame the Senate of the U. States; and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the U. States: and that the said publication was a high breach of the privileges of the House.

And whereas the Senate did then further resolve and order, that the said William Duane, resident in said city, and editor of said newspaper, should appear at the bar of the House on Monday the 24th day of March inst. that he might there have opportunity to make any proper defence for his conduct in publishing the aforesaid false, defamatory, scandalous and malicious assertions and pretended information.

And whereas the said William Duane did appear, on said day, at the bar of the House, pursuant to the said order, and requested Counsel, and the Senate, by their resolution of the 24th day of March inst. Resolved, that William Duane having appeared at the bar of the Senate, and requested to be heard by Counsel on the charge against him for a breach of Privileges of the Senate, he be allowed the assistance of Counsel while personally attending at the bar of the Senate, who might be heard in denial of any facts charged against said Duane, or in excuse or extenuation of his offence, and that the said William Duane should attend at the bar of the Senate on Wednesday the next, at 12 o'clock, of which the said Duane had due notice.

And whereas the said William Duane, in contempt of the said last mentioned order, did neglect and refuse to appear at the bar of the said Senate, at the time specified therein, and the Senate of the U. States, on the 27th day of March inst. did therefore resolve that the said William Duane was guilty of a contempt of said order and of the Senate, and that for the said contempt the said William Duane should be taken into custody of the Sergeant at Arms attending the Senate, to be kept for their further orders. All which appears by the Journals of the Senate of the U. States, now in session in the city of Philadelphia.

These are therefore to require you, James Mathers, Sergeant at Arms for the Senate of the U. States, forthwith to take into your custody, the body of the said William Duane,