

Phillipsborough Recorder.

UNION, THE CONSTITUTION, AND THE LAWS—THE GUARDIANS OF OUR LIBERTY.

Vol. XVIII. FRIDAY, MARCH 10, 1837. No. 860.

Mr. McKean's Letter

TO THE LEGISLATURE OF PENNSYLVANIA.

San. Louis Democrat, Speaker of the House of Representatives of the Commonwealth of Pennsylvania.

Sir:—Please to lay before the honorable House of Representatives, over which you preside, the accompanying letter from me, addressed to that body; and oblige your obedient servant,

SAMUEL MCKEAN.

Washington City, February 10, 1837.

Communication from Samuel McKean, Member in Congress, expressing his sentiments on the resolutions adopted by the Senate of the United States for expunging any part of their journal is unconstitutional.

Communications from the House of Representatives of the Commonwealth of Pennsylvania.

During a late period of extreme bodily suffering, from which I am but partially recovered, I received a letter from your proceeding officer, covering a copy of a resolution passed by your body, affirming that the passage of a resolution by the Senate of the United States, censuring the conduct of the President of the United States for a removal of the deposits, was unjust, inexpedient, and unjust, and that the expurgation from the journals of the Senate of the said resolution is, in the opinion of this House, a most salutary and constitutional redress for an unconstitutional attack on the character of the President of the United States; and that the Speaker of the House of Representatives be directed to forward a copy of the foregoing resolution to the President of the United States, and also one copy to each of the Senators from Pennsylvania in the Senate of the United States.

As I was providentially prevented from participating in the recent deliberations and decision of the Senate in reference to the subject matter of your resolution, it would now seem to be due to myself, and respectful to the House of Representatives, that I should state freely and frankly my true position in relation to that exciting subject; trusting that those honorable feelings which pervade my own breast, in ascribing opposite views to these measures, will be reciprocated by the House of Representatives; for though I may have been sometimes charged with levity, I am not conscious of having often been suspected of political timidity.

I am well aware that, by those who try to keep pace with the changes of the times, I am classed with those monotonous politicians who are rewarded by them merely as the monuments of times past and things which have existed. But, even in this obdurate character, I trust I may, without appearing arrogant, claim for myself one small merit, and, though it may have been denied to me in the estimation of my nature the power to change with the facility and frequency of some, nevertheless I may run no great risk in promising, when once well changed, I will probably stay changed as long as my gentleman. It has been an essential part of my life, the observance of which I have found salutary and profitable; to observe and shun the errors of the great men rather than labor to acquire imaginary excellence or supposed virtues, and have found it to be not less in accordance with inclination than the dictates of duty, to employ the best means within my power to ascertain my relation to the great mass of social intelligence which surrounds me. It is superfluous to say that my humble mind and limited means denied to me those shining embellishments which decorate externally him who descends learnedly on what he is pleased to call the abstract science of Government and Diplomacy. Mine have been but the unaided exertions of naive reflection, and long hours consumed in this human Government are but necessary to minor evils, corrected only because they are designed to correct unnecessary and greater evils, and become intolerable when the exercise of power is carried beyond its legitimate end.

When in the aggregate were what they are, or ought to be, I conclude the institution of Governments would never have been found necessary.

But men, seeing the defects and foibles of others, and conscious of their own, have relinquished a portion of primary and individual rights to secure more permanently the interest and happiness of all. Hence Governments can only derive their just powers from the consent of the governed, and the sound maxim, that all political power is inherent in the people, is not more sound and true than that the people also possess the inherent right and power to delegate, under prescribed fundamental rules, their inherent political powers for general beneficial purposes. Ours is justly called a government of the people, yet in ours the people have, for great and wise purposes, delegated and consented to a system,

which, if the public interest required it, has power over all that is valuable and dear in life, and even over life itself; and if it be attempted by a fraction or portion of the people to resume as a primary right the exercise of powers thus delegated, it is subversive of the public peace and safety, an offence against society, disorganizing and revolutionary. Hence I adopt for myself the best and plainest definition of the term "government," as applicable to our own uncontrollable exercise of appropriate powers, for the time being, or delegated period.

I understand the resolution of the House of Representatives to aver, unqualifiedly, that the expurgation from the journals of the Senate of the resolution of the 28th of March, 1834, censuring the conduct of the President of the United States in relation to the deposits, is unconstitutional.

Gentlemen, after the most intense investigation and painful anxiety to know the truth, could I have arrived at the same conclusion that you have, it would have greatly relieved my mind, and then I might have voted without the appearance of inconsistency, to expunge and blot it out, for the Senate journals of those times ought to show that I was opposed to the resolution of the 28th of March, 1834, and in favor of admitting on the journals of the Senate the President's protest against it. I was confident at the time that the passage of that resolution was imprudent, calculated to do no good, and might do much harm. I declared so then, and have never for a moment held a contrary opinion since, and have always been ready to vote for a proposition reversing that resolution, and had prepared a proposition to "repeal, rescind, reverse and annul" it, which, if health had permitted, I would have offered as a substitute for the expunging resolution which passed the Senate on the 16th of January last.

But with due deference to the opinion of others, and not questioning the motives of any, it is my deliberate and most solemn conviction that the Senate cannot expunge any portion of its previous journals without a clear violation of that clause of the Constitution which expressly directs that "each House shall keep a journal of its proceedings, and from time to time publish the same."

True, it has been said, by way of extenuation, that the expunging resolutions prescribed by the Virginia Legislature do not propose to actually destroy journals, but only to draw black lines around and write certain opprobrious words across the offensive resolution, "but the word must be expunged." This, in my mind, presented the subject in its most exceptionable form, for at the same time the constitutional power to blot out and destroy the journals was evasively given up. Senators were asked to play off fantastical pranks by drawing black lines, which seemed to be more becoming the amusement of volatile boys than the grave deliberations of a Senate.

I would infinitely rather have met the question manfully, and vote at once to blot out, expunge, and literally destroy the journal. For long as I have been accustomed to venerate and respect the "ancient dominion" (Virginia,) her men and her principles, I am not quite ready to adopt implicitly her adroit and refined notions how to infringe, and not to violate the fundamental law of the country.

This anti-expunging doctrine is by no means new to me; it is an old and very familiar acquaintance, and received my special attention and embraces more than twenty years ago, and has not been expunged from my memory, or diminished in my affections from that day to the present.

The Constitution of our own State (Pennsylvania) has the same provision as that contained in the Constitution of the United States, and reads thus: "Each House shall keep a journal of its proceedings, and publish the same weekly." This I have always held to be intentionally mandatory and directory, as strongly and clearly so as the import of language could make it, admitting of no construction, no cavil, no doubt; too clear to be illustrated by the power of argument, and too plain to be obscured by the refinement of sophistry. And so it has been held, and so decided by the proper and competent tribunals of Pennsylvania. My opinion has been long settled, and my actions governed accordingly, that, under the Constitutions of the United States and the State of Pennsylvania, the journal of each preceding day is made the exclusive and absolute property of the people, over which the Legislature has no further control, more than it has over the Constitution itself, and possesses no more power to deface, efface, erase, blot out, expunge, add to, or diminish from one sentence, line, or syllable, than it has to alter the Constitution, or to burn, or otherwise destroy, the entire journal from the commencement of the Government to the present time. The reasons

for this constitutional injunction are to my mind as clear and forcible as the language in which it is expressed. The great and good men who penned that sacred instrument seem to have purposely guarded this point with peculiar language and care. "Each House shall keep a journal of its proceedings, and publish the same." And here the duties and power of the Legislature in reference to the journal cease; and this record shall thence remain sacred and inviolate, a perpetual and abiding evidence of the wisdom or folly, pure or impure motives, of the representatives of the people. How is it possible to prove the validity or genuineness of the results of legislation, such as laws, resolutions, and the other numerous duties incidental to legislative authority, except by referring to the written or original journal? Fundamental laws are designed as well to check, circumscribe, control, and govern majorities, as to protect and defend the rights of minorities; and had I not a right under the Constitution to claim and expect that protection against the arbitrary exercise of power to destroy the evidence on which I might hereafter wish to rely, to prove as well the principle as the fact, that I did oppose, and was right in opposing, the censorious resolution of the 28th of March, 1834? It is matter of complaint that a political party majority of the Senate at that time acted hastily. Would it not be wisdom in the adverse majority now to eschew and profit by, rather than to waste, their incautious example?

But it is said that the resolution of the 28th of March, 1834, is unconstitutional, and therefore ought to be expunged.—That is a question about which great and good men may honestly differ, and upon which it is not necessary to my present purpose to volunteer an opinion. Admitting it, however, for the sake of argument, to be unconstitutional, can it be amended by doing another unconstitutional act, by way of retaliation? Or where do we find the power to correct one unconstitutional act by another unconstitutional act? The object of the Constitution in directing that a journal shall be kept, could not be only to preserve the wise and virtuous acts of legislators; it also intended that their unwise and vicious transactions should be alike accessible to the public scrutiny and investigation; then, if the condemnatory resolution be unconstitutional, let its effects be blunted and annulled by an adverse expression of the Senate, placed on the journal, and let the objectionable resolution remain as the Constitution intended, an abiding testimony against its authors and supporters.

We need apprehend no positive evils in legislation, resulting from political minorities. Those only can abuse power, who are in the possession of power.

And we ought to be exceedingly cautious how we establish doubtful precedents in times of high party excitement; for though we may have numerical power now to expunge, blot out, and destroy, we ought not to forget that those who come after us may have a majority differing from us in sentiment, and, with our fatal example before them, may expunge us, and blot out our proceedings. Indeed, the first fluctuation which may give an adverse senatorial majority to the present, I anticipate an effort will be made to restore the journal which was mutilated on the 16th day of January, 1837; and thus the fatal error commenced, where is it to end?

We exhibit, at the present time, an exquisite refinement upon party rancor, which, to my mind, reflects no credit on our country, and the causes of which, at this particular period, may well occupy the serious thoughts of the statesman and patriot.

What have our eyes seen and our ears heard in the short space of three years? The highest functionaries of our Government, mutually charging upon each other, in official form, the corrupt violation of the sacred charter of our liberties. I claim for myself no superiority over, nor plead exception from, the common imperfections of our nature, and am as much disposed as ever to listen kindly to the suggestions of experienced friends, and will go proper and reasonable lengths to support party; but for no pretended expediency can I consent to lay violent hands on the Constitution.

The resolution of the House of Representatives, I presume, was originally designed as instructions for me to vote for the expunging resolution, and as such it would be entitled to and would have received my most respectful consideration; for I trust no gentleman holds in higher estimation the opinions of his Legislature than I do the opinions of mine, and I shall always be happy to find my opinions accord with theirs; but it is due to candor for me to state here that I recognise the force and obligation of legislative instructions, with some exceptions and qualifications, which it is not necessary for me at present to go into.

The doctrine of instruction means something or it means nothing; we must adopt it as paramount or indispensable, or we must give it a place among other occurrences, to be estimated according to time and circumstances. It will not satisfy an honest and intelligent public for us to hold instructions to be sacred and binding only when they answer our purpose, and reject instructions as useless when they operate against our views and interest. The Legislature of Pennsylvania, in choosing her Senators in Congress, do not act in separate bodies as Senate and House of Representatives, but meet in convention and vote conjointly, and a bare majority of the members voting is sufficient to elect.

How, then, does this matter stand, as regards the Pennsylvania Senators in Congress?

In 1835, two years ago, resolutions were proposed in the Legislature of Pennsylvania, instructing her Senators to vote to expunge from the journals of the Senate the resolution of the 28th of March, 1834, which were under consideration at different times, but never passed, and were finally permitted to sleep quietly.

About the same time expunging resolutions from the State of Georgia, transmitted to the Legislature of Pennsylvania, were indefinitely postponed; and this, too, at a time when both branches of the Legislature of Pennsylvania were decidedly friendly to the present Chief Magistrate of the Union. Now, if this proves any thing, it proves that the Legislature of Pennsylvania, at that time strongly Jacksonian, were at least disinclined to countenance or sanction the expunging doctrine; and what next? Why, during the session of 1836, about one year ago, the House of Representatives of Pennsylvania passed a resolution, through all the parliamentary forms, instructing her Senators in Congress, by name, to vote against the Virginia, or any similar, expunging resolution, by a vote of sixty-four to twenty-five, majority thirty-nine; it was not acted on by the Senate; but from the well known sentiments of that body, then and now, it is reasonable to suppose it would have added to the majority of the House of Representatives. But be that as it may, you will observe that the majority in the House, who voted to instruct their Senators in Congress to vote against expunging, is decidedly greater than the whole number of Senators, and as large, if not a larger majority of both Houses, than either of the present Pennsylvania Senators in Congress had received in joint ballot. Such is the true relation in which the Pennsylvania Senate stood in reference to legislative instructions on the 16th of January last. Now, if I am correct, and a reference to your journals will test it, it clearly follows that, for all practical purposes, the Pennsylvania Senators stood essentially instructed to vote against expunging, at the time it passed the Senate of the United States.

I state these facts at this time only to show that, in the plainest supposable case, we meet many difficulties at every step, in carrying out consistently the practical operations of the doctrine of implicit and unconditional obedience to legislative instructions.

But I must not forget that I have said that the anti-expunging doctrine has been long since asserted, and settled by the proper and competent tribunal of Pennsylvania; and as it devolves on me, I will now produce the proof. The origin of the case is not to be found of record, because it was informal, and grew out of a desultory and incidental debate on the 19th of February, 1816, upon the suggestion of a member to expunge from the journals of a previous day certain matters which he thought were irrelevant and unimportant. The Speaker gave it as his opinion that a majority of the House might order to be expunged from the journal proceedings on which the yeas and nays had not been called. This opinion was controverted and repelled by the most talented and experienced members of the House; and declared to be clearly unconstitutional, and of dangerous precedence and tendency. It was contended that if the House asserted the right to judge in one case what it might expunge from the journal, it followed that it had the same right to judge in all cases, and the journal would not longer be safe and inviolable, as was designed by the Constitution, but would be subjected to the political caprice of the majorities of each succeeding session, and the fluctuating and occasional majorities of each succeeding day.

The constitutional power to expunge any portion of the journal on any pretext whatever, even by the unanimous consent of the House, was utterly repudiated and denied, and the matter rested for that day. Being a new member of the House at that time, and anxious to understand my duties, the subject made a deep impres-

sion on my mind, which has never been forgotten or effaced.

On the next day, precisely twenty-one years ago this very day, see journal of the House of Representatives of Pennsylvania, page 359. "February 10, 1816, the Speaker informed the House that a constitutional question being involved in a decision by him yesterday, on a motion to expunge certain proceedings from the journals, he was desirous of having the opinion of the House on that decision," viz. "That a majority can expunge any proceedings from the journals on which the yeas and nays have not been called."

Whereupon, Mr. Holgate and Mr. Smith appealed from said decision.

And on the question "Is the Speaker right in his decision?"

The members present voted as follows, viz.

Yeas—Messrs. J. Anderson, J. Bucher, and Dechert—3

Nays—Messrs. Allshouse, Alter, S. Anderson, Baird, Black, Boyd, Brodhead, Buchanan, C. Bucher, Clarke, Cochran, Conyngham, Coon, Denison, Dysart, Edwards, Eicheberger, Goodhart, Haldeman, Hallowell, Hamilton, Hart, Herrington, Hibshman, Hesser, Hilliard, Holgate, Houtenstein, Humphrey, Hutchison, Jenks, Kelley, King, Kittera, Kryder, Lewis, Lightner, Livingston, MacLay, Marlin, Martin, McClure, M'Euon, M'Kean, M'Kibbin, Menough, Middleworth, Miller, Morgan, Morton, Mosher, Norbury, Plomer, Powell, Ralston, Read, Rhoads, Raker, Roberts, Robinson, Rowland, Sawyer, Scott, T. Sellers, Shaffer, Smith, Stewart, Stroman, Sutherland, Tryon, Vance, J. Wallace, P. Wallace, J. J. Wallis, Weston, White, Wind, and Wynkoop—78.

I am aware that my humble name, recorded above with the majority against the opinion of the Speaker, who was my personal and political friend, adds but little to the weight of authority, but it will also be seen that many of the distinguished men of our State of that and the present day voted on the same side. How many of them have since changed, I know not; but one thing I know—the Constitution is yet the same. Such was, at that time, the almost unanimous opinion of the House of Representatives of Pennsylvania, on the simple and abstract question of constitutional power, unincumbered and unconnected with any party consideration or extraneous excitement to swerve the mind from its honest purpose, and the House recorded its solemn decision, 78 to 3, that a majority had no power, under the Constitution, to expunge any portion of its journals; and their decision, made in 1816, is diametrically opposed to the doctrine asserted by the House in 1837, viz. that it is constitutional to expunge the journals. And does not the Pennsylvania House of Representatives of 1837 possess as much power over the journals of their predecessors of 1816, as the Senate of the United States in 1837 possesses over the journals of their predecessors of 1834? Now, I respectfully ask the House of Representatives whether they claim the constitutional right and power to take from the archives the manuscript journal of 1816, and expunge the proceedings to which I refer, and thereby deprive me of the only evidence I have to prove that I am now stating correctly what then occurred, and that my present opinions are consistent with the sentiments which I then avowed.

But this is not all. There will be found on the journal of the same day, February 10th, 1816, page 361, the following, viz.

"A motion was made by Mr. BRICHANAN and T. KELLY, and read as follows: Resolved, That, in the opinion of this House, no part of the journals can be expunged, even by unanimous consent."

This resolution covers the whole ground. The remedy is as broad as the malady, and "the word was expunge." There was no diversity of opinion as to its proper meaning; and if the word expunge had five hundred different applications, they are all met by the resolution and proceedings of the House just referred to, as both assert that the journal cannot be expunged.

Time passes away and men change; but principles and truth are eternal. And I still hope that those good old Pennsylvania doctrines, asserted and acted on in the days when the venerable Madison commanded the Constitution, and the patriot Snyder stood at the helm of the ship Pennsylvania, may yet survive, and, like the coat of Hunks, again become fashionable and valuable.

I wholly repudiate the sickly idea harped on by those who assume to be the keepers of his reputation, that the existence on the journals of the resolution of the 28th of March, 1834, has tarnished the character of the Chief Magistrate, and therefore it must be expunged.