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SPEECH OF

MR. GOUVERNEUR MORRIS,

In the Senate of the United States, on the resolution for *directing the Secretary of the Senate to give an attested copy of the proceedings relating to the nomination & appointment of William Marbury and others, as justices of the peace in the territory of Columbia.*

MR. PRESIDENT,

WHEN I first rose in this debate, I felt & expressed much doubt; but the better reason appeared in favor of the resolution, I had determined to vote for it. At present my opinion is clear and decided---The conviction has been produced by the arguments of those who oppose the resolution. These contain the most monstrous system of tyranny that ever, I believe, was brought before a national assembly. Permit me to notice a few of the strange positions which we hava just heard.

It has been said by a gentleman from Georgia on my right, (Gen. Jackson) that an extract from our Executive Journal should not be given to a suitor in one of our courts, because it may contain matter to support an impeachment against the President, which impeachment is to be tried before us; and therefore we, being judges, should not also become parties, by furnishing evidence.—— And yet the same gentleman has told us, that upon the demand of the other House, (who according to him have a right to demand every thing) we are bound to furnish this very evidence, if they require it, for the purpose of bringing & maintaining an impeachment. Thus we must withhold from a fellow citizen the evidence needful to support his right, because it may furnish ground for impeachment, although no question of impeachment exist. This too it seems, is required by the impartiality which we should preserve as Judges, before whom such possible impeachment may be tried; but where there is a question of impeachment, and where we are in effect the judges, then, forsooth, on the demand of the other House, we are bound to furnish that evidence which we are bound now to withhold.

We have been told, that the executive officers are all dependent on the Chief, and act under his derections; that therefore his dignity is implicated in their acts.--And consequently the conduct of these agents must not be questioned, lest his dignity be impaired. What broader shield can be interposed to shelter the agents of executive authority? How can they be more confessedly guarded against all investigation?

We are further told, that a condemnation of these agents must affect the dignity of our First Magistrate.--- Must it indeed? And is therefore no prosecution to be made; is no condemnation to take place? This is indeed the golden chain let down from Jove to bind the earth in vassalage. And what becomes of our President's dignity under this strange doctrine. A subordinate agent abuses his trust, violates his duty, and is guilty of malpractice; he is arraigned; and because the culprit is convicted & condemned, is the dignity of Government therefore violated?

We have been told that a Treaty when proclaimed by the President is the supreme law, and that the previous assent of the Senate cannot be enquired into. Gracious God! And is it come this, that the Proclamations of our President shall be the supreme law of the land? That we must submit to it without enquiry? And how is this monstrous doctrine supported? Why we are told that because it is not proper in the case of a common Statute to examine the Journals of the two Houses for the purpose of knowing whether the assent of each was given, therefore we must not examine the executive Journal of the Senate to know whether two thirds of the members present advised and consented to the ratification of a Treaty. But are these cases at all similar? The law is signed by the President of the United States, the President of the Senate, and the Speaker of the House. It contains therefore the best evidence in the nature of things, that the full assent required by the Constitution has been given. But is this the case with a treaty? No. The evidence of the consent of this Senate appears only by extract from their minutes, made out by their Secretary. And shall this preclude the enquiry whether in effect that assent was given which your Secretary has certified?

We have been told by gentlemen, who seem to know all the merits of the case which is before the court, that the dignity of the President is involved in it. For my own part I know nothing of the case, neither do I wish to know, for I have no authority to try it. But the gentlemen say the dignity of the President is involved, and that we are in duty bound to protect his dignity. But how?---What have the petitioners asked?--- They have asked the evidence of a fact. And how are we to protect the President's dignity? By withholding that evidence. And are gentlemen then of opinion that a disclosure of facts will impair the dignity of our First Magistrate? Sir, I have no such apprehension. I trust that our President has acted properly, and that a full enquiry into facts must redound to his honour. Those who offer this resolution, seem to think otherwise. But I ask, are they prepared by their vote to declare that injurious opinion? Is there a gentleman in this Senate who, when the yeas and nays are called, will record his opinion, that, the dignity of our President can only be preserved by withholding the evidence of facts?

We have been told, Sir, by an honorable member from Kentucky (Mr Breckenridge) that a right to examine implies a right to correct and controul. This proposition has been frequently advanced on different occasions. I never noticed it, because it appeared to carry with itself sufficient evidence of its falacy; but since it is now again produced, it may be well to give it one moment's notice. A right to examine whether we agree to a certain resolution, implies, it seems, a right to controul our conduct. It may be a question, in an insurance cause, whether damages was sustained by a violent wind at sea. Does the examination into that fact imply a right to command the winds and the seas? Does the enquiry whether a ship has perished in the storm, imply the right to correct and controul the Almighty ruler of storms?

We have been told by the member last up, from Georgia, that the evidence asked for by the petitioners is useless, because, although the Senate may have approved of them as officers, upon the President's nomination, yet it was in the discretion of the President to make or omit the appointment, which alone could confer a right. That gentleman seems to be perfectly acquainted with the cause which is depending. He knows precisely what proof is needful for the prosecutor; and deeming that which he asks for to be insufficient, thinks proper to refuse it.

It appears to me, sir, that this Senate is not the proper tribunal, either to examine the merits of the cause, or the validity and weights of evidences. These are the proper subjects of enquiry elsewhere. If we adopt the gentleman's reasoning, however, we prejudge the cause; and I shall be glad to know, if this practice be adopted, what case can exist in which a like refusal may not be made. A client is advised by his counsel to apply to us for evidence in our power, as needful to support his rights—We refuse, because, in our opinion, that evidence is not alone sufficient.

But the same gentleman has told us he would not establish any general precedent. He would always judge of the particular circumstance; and under the particular circumstances of this case, he would withhold the evidence asked for. But will not this establish a general precedent? How are precedents established? Is it usual for judges to make decisions for the special purpose of becoming precedents; No such thing. They give judgment in a case which comes before them, and that judgment becomes a precedent for subsequent cases turning upon the same principle. I shall be glad to know then, how a distinction is hereafter to be taken between this and other cases. Here is a suit pending in a court of justice, and one of the parties applies for a piece of evidence which he is advised is material to establish his right—you refuse it. When in another cause, another party shall apply, on what ground will you grant that which you now refuse? Will you again prejudge the cause, and give them the proof because you deem it sufficient to carry the cause.

Mr. President, one word more on that unity of the Executive which the gentleman last up is so much attached to. Although I have already spoken longer than I intended, I must pray one moment's attention. That honorable gentleman thinks there should be a perfect unity in the executive power. The division of it is inconsistent with his ideas of good government, & therefore, he would admit of no enquiry as to the facts which may have happened in the course of Executive volition, but give full credit to the commissions & proclamations of the President.—— These ideas, sir, consist well with monarchic institution. Our sovereign lord the king, is indeed possessed of the fulness of executive power, and may exercise it at his pleasure; but as to our sovereign lord the President, the case is widely different. The American Constitution has given to this Senate a wholesome check upon his sovereign will. But according to the doctrine which gentlemen now advance, this check is nugatory. Neither the people, nor the courts shall question his commissions nor his proclamations. His commissions, it seems, confer compleat authority; his proclamations are the supreme law; he may form what leagues he pleases with foreign powers, and when he shall proclaim them, we are held to implicit obedience. To these doctrines, sir, I take leave to enter my dissent. I hope that when the rights of American citizens are invaded, not only the Supreme Court of the United States, but the County Court of the most remote district will dare to examine, to judge, and to redress. I hope this Senate will never, by an admission of such base and slavish doctrines, surrender the authorities conferred on them by our Constitution. I hope they will ever be ready to aid the cause of freedom and justice---and in this hope, I shall give my vote for the resolution on your table.

TO ALL WHOM IT MAY CONCERN:

NOTICE is hereby given, that at the Superior Court to be held for the District of Mero, in the State of Tennessee, on the 10th of May next, I shall move the said Court for an order of survey to correct an error or fraud committed by reversing the courses and surveying a tract of 3840 acres of land for me and in my name contrary to the location, in the county of Davidson and State aforesaid, and on Stone's River.

JOHN MEDEARIS.

Wake County, N. C. March 15th, 1803.

LANCASTER, (Penn.) Feb. 5.

COURT OF IMPEACHMENT

JUDGE ADDISON'S CASE.

Comprehensive sketch of the testimony on the second article.

(Continued)

CROSS EXAMINED.

Lucas said that he did not leave the bench in consequence of any personal fear, but of a combination of causes---but believed, if he had not desisted, that coersive measures would have been taken.

By Judge Addison.

The gentleman said that he offered me the paper containing his proposed address, and that I did not receive it. Will he say that he offered me the paper before I made my determination to consider the court adjourned, so far as it regarded me?—There is a former affidavit of Mr. Lucas, which may refresh his memory in this particular.

Mr. Lucas said, he did not recollect; he said he had not *no reason* to put it on a different situation, but if it was the case, he was willing it should be so.

Question by Judge Addison.

What was the subject of my charge to the grand jury at that time?

Answer. I thought it was a very proper charge.

Question by the same. Was it not a very long one, and every word of it relative to the duties of a grand jurri?

Answer. It was, but I did not believe that every thing that related to the business of a grand jury, was contained in it.

Question. Was your prepared address intended to take notice of any fault or error in my charge to the jury?

Answer. There was no kind of criticism in my charge.

Question. Was it to supply my omission?

Answer. I thought that although what you had said was very proper, yet that you had omitted to say some things which I thought might be necessary.

Did those omissions relate to any act incumbent to be done at that time by the grand jury?

Mr. Whitehill, *one of the Judges of the Court of Impeachment*, here said, without being asked, that *he did not see* that those questions related to the case.

Mr. Lucas said that his intended address did not immediately apply to any particular case---but generally to the duties of grand juries. "We often say to a *jury* what he knows very well."

Question by Judge Addison. Did you not publish that charge, and is not this the charge which I hold in my hand. [Here Mr. Addison presented a newspaper which contained Mr. Lucas's prepared address:—and to this part of the testimony we earnestly call the attention of every friend to impartial justice. for it will appear that the address which Mr. Lucas attempted to deliver was totally extraneous as to any business before the court in June 1801,]—that the address of Mr. Addison at that time contained no extraneous matter;—that it related solely to the immediate duties to a grand jury;—that the prepared address of Lucas was in answer to one delivered by judge Addison in December 1800, and that his attempt to deliver it at this time, was a studied insult, and the result of a cool and deliberate scheme to outrage the feelings of judge Addison, and to lead inevitably to the consequences which have followed. Let it therefore be fully impressed on the public mind that the address which Lucas attempted to deliver had nothing to