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Columbian Eloquence.

SPEECH OF

Mr. GOUVERNEUR MORRIS,

In the Senate of the United States, Feb. 3, on the report of the committee to whom was referred the Memorial of the Judges of the Circuit Courts of the United States.

The following is the Report of the Committee, consisting of Mr. Morris, Mr. Ross and Mr. Osborn.

"That the petitioners were judges of certain courts inferior to the supreme court, constituted by an act of the 13th of February, 1801, and duly commissioned to hold their offices during good behaviour.

"That while holding and exercising their offices, an act was passed on the 8th of March last to repeal the said act of the 13th of February, 1801, and transfer the duties of the said judges from them to others.

"That a question has arisen, whether, by reason of the premises, the said petitioners be deprived of their offices.

"That this question depending on the construction of the laws and constitution of the United States, is not properly cognizable by the Senate.

"The committee, therefore, conceive it improper either to give reasons, or express opinions; but they consider, as a question of high and serious import and believe that a speedy investigation and final decision is of great moment to the commonwealth.

"Wherefore, they submit the following resolution:

"RESOLVED, That the President of the United States be requested to cause an information in the nature of a writ *habeas corpus*, to be filed by the attorney-general against Richard Bosen, one of the said petitioners, for the purpose of deciding judicially on their claims."

Mr. Morris. I rise, Mr. President, as chairman of the committee whose report you have just had the goodness to read, for the purpose of explaining their reasons. If this were a common or an ordinary occasion, if no heats had been excited, if there were no unpleasant, no tormenting recollections, a measure so plain, so easy, so simple, would require neither argument nor persuasion. It would be adopted for its own interior evidence, and from the general sense of propriety. Unhappily, Sir, this is not the case. Serious differences of opinion have existed, and still exist on the subject with which it is connected. From these have arisen disputes, divisions, bickerings. There is not, I fear, in the minds of men, that calm impartiality which is needful to fair investigation. There remains much of prejudice, of irritability.

Before I proceed to an explanation, therefore, I find myself reduced to the painful necessity of praying gentlemen to perform a great duty to this Senate, to themselves. I must entreat them to hear with patience, coolly to consider, and then decide according to the dictates of reason and justice.

Your committee have pursued the course which appeared to be proper, not only in itself but according to the existent circumstances. Gentlemen will easily see that they might have made an elaborate report, containing a long detail of reasons to establish a favourite conclusion. And a slight knowledge of the forms of business will shew, that they might have placed that report at length on your journals. But would this have been right? Would it have tended to conciliate?—Would it have been a proper return for the unanimity with which your committee was chosen?—Surely it would not: And is it not the duty of every good citizen to heal as far as possible, the wounds of society?—To calm those irritations which disturb its repose? To remove all things which may alarm, torment, or exasperate?

We have heard, from those who are more in the confidence of our cabinet than we are, for we have no such pretensions, that there is reason to believe that this country is on the eve of war.—I hope not. I hope we shall not be visited by so great a calamity. But if this be our doom, let us prepare to meet it like men, with boldness, with unanimity. Let us banish, let us destroy every circumstance that can excite or keep alive a spirit of party. Let the proudest be informed that he will find us firm. Let us march hand and hand, like a band of brothers, in the plain road of duty, and whether it lead to victory or death we know it is the path to glory.

Mr. President, your committee have no intention, no wish to revive a discussion of points already settled. While the act of last session was in agitation we opposed it steadily, pertinaciously. But that act has become a law, and to the

authority of the law we bow submissive. While in suspense, we thought it our duty, as senators, to oppose it. But since it has been adopted, according to the forms of the constitution, we know that as citizens we are bound to obey. With these deep impressions, then, of what is due to the supreme law of our land, I shall proceed to the report of your committee, and endeavour to explain its several parts.

Gentlemen will perceive, that the question which the memorialists have submitted to our investigation is, whether the law of last session has deprived them of their office of judge.—Your committee consider this question as not being cognizable by the senate. It is not for the senate, nor the representatives, nor both combined to interpret their own acts. We are a part of the legislature. A part of the executive power is also delegated to us. If the judiciary be added it will constitute a tyranny. It is, indeed, the very definition of tyranny which has been given by those best acquainted with the subject. This senate can have no wish to arrogate power. It is too just, too wise. If a sense of propriety did not prevent, prudence alone would forbid the attempt. This body is too feeble for the exercise of so much authority. Its form, its constitution, the mode and manner of its creation and existence, the strength and structure of its members, render it incapable of sustaining a greater weight of power.

The other house, indeed, immediate representatives of the people, may do much. Borne on the heady torrent of popular opinion, they may, and they will usurp all power. This will be the first step towards military despotism.—But the senate can have no such madness. If we can persevere what the constitution has entrusted to our care, it is as much as can reasonably be expected. Nor can we preserve it but by our integrity, and by that respect which justice inspires; for "Our cloud of dignity is held from falling by the weakest wind." The second proposition of your committee is indeed a corollary from the first. They consider this question as cognizable by the judiciary alone. It is gone from us forever; and is, from the nature of things, before the judiciary, in common with all other laws. To agitate it again can produce no benefit, can tend to no useful object, can accomplish no desirable end. Our opinion, whether to affirm or to deny, can be of no avail. The other house, indeed, have given an opinion favourable to the claim. This may appear a strange assertion to gentlemen who have amused themselves with reading in newspapers what are said to be the speeches of the members; But it is not from such sources that we are to derive the opinions of a legislative body, nor do they rest on such frail authority. By recurring to the journals of the house, I find, that on the day of . . . they took up a resolution reported by the committee of the whole, purporting that the memorialists, "late judges of the circuit courts," have leave to withdraw their petition: And on this it was moved to strike out the words "late judges," &c. which motion was carried by a small majority. Now then, I say, that if not directly, yet by clear implication, by strong and necessary inference, the house have declared, that these gentlemen are still judges. That they were judges is a fact unquestionable and of public notoriety. To say, then, that they are not late judges is to say that they still hold their office, that they are now judges.

Such, then, is the opinion of the house. And they, in the plenitude of their power, may venture to express that opinion. But we may not. It does not become us to prejudge. It is neither wise to commit our authority, nor just to influence the tribunals of our country.

Your committee, Sir, have ventured to express their belief, that the question should be speedily settled. I learnt in early youth, from the volumes of professional science, that it is expedient for the commonwealth, that a speedy end should be put to litigation: And if it be important that litigation should cease between man and man, how much more important that a litigated point of public right, which interests and agitates the whole community, should be laid at

rest? And if this be important in the general course of things, is it not, under present circumstances, indispensable? And how is it to be effected?—By an exertion of legislative might?—By force?—Remember—Force will excite resistance. Such is the nature of the human heart. Free citizens revolt with disdain at the exercise of force. But judgment commands their prompt, their willing obedience. When the law is known, when it is declared by the proper tribunals, all will bow to its authority. You may then expect a full and quiet, and general submission. But while it is litigated and uncertain what the law is, differences will exist, and discord will prevail.

Is it wise to embark in great national enterprises, on the wild ocean of war, with a divided people? Can you hope for success while discontent fits brooding in the heart of our country? These judges, indeed, are not numerous; but they do not stand alone. They have relatives, friends, adherents from blood, affection, principle. Why will you wound a class of citizens numerous and respectable? Can you, while they are aggrieved, injured, insulted, expect their cordial aid, support and assistance? But to this it may be said, that these judges are but a feeble band; we can crush them and their opposition. We have the power. Yes, we have gigantic power; but shall we therefore use it with the ferocious cruelty of a giant?—We can crush them. Yes, with the vast weight of legislative force we can crush them. But is it honorable, is it magnanimous, does it become the brave?—Will it give the people a confidence in their rulers? Will it give them a confidence in themselves, who have chosen such rulers? If by an exercise of power we could even prevent an investigation of our conduct, what would be the impression on the public mind? Suspicion and discontent, deep and dangerous.

It is under these impressions, Sir, that your committee have presumed to offer the resolution on your table; and as some of the technical terms may not be familiar to every gentleman, it may be proper to state the kind of proceeding which is recommended.

The attorney general, or, as he is denominated in French idiom, the public accuser, will institute, before the proper tribunal, an inquiry by what authority these men claim to hold and exercise the office of judge. It will then be incumbent upon them, either to disclaim the office, and then there is an end of the question; or else (claiming it) to establish their right. And to do this they must prove two things: First, that the office exists: and secondly, that of right it belong to them. Failings of either, their claim is gone.

Now, Sir, it may be well to consider the decisions which may be made and their probable effect.

I take it for granted, that these gentlemen, who have asked a judicial decision, will not disclaim, and that whatever judgment may be given in the first instance, the cause will be brought up to the supreme court. If the judgment, in the last resort should be (as it probably would be) against the claim, all complaint will be quieted, and all opposition will cease. Some men, indeed, might triumph. For my own part, I should find in it great consolation—the consolation of knowing that, however wrong may have been, my own opinions, the supreme legislature of my country have done right. The pride of opinion might, indeed, be wounded; but God forbid, that from motives of pride, or from any other motive, I should hear, without deep concern, that the legislature of my country have violated that sacred charter from which they derive their authority.

But suppose an opinion different, contrary, or the very reverse (for that is also possible)—Will the judges rudely declare that you have violated the constitution, unmindful of your duty, and regardless of your oath? No.—With that decency which becomes the judicial character, that decency which upholds national dignity and inspires obedience on the public will, that decency,

the handmaid of the graces, which more adorns a magistrate than armed, aye, than royal robes, with that decency which so peculiarly befits their state and condition, they will declare what the legislature meant. They will never presume to believe, much less to declare, that you meant to violate the constitution. There will be no dangerous and hateful clashing of public authorities. They will never question the exercise of that high discretion with which you are invested. They will not deny your full supremacy. They will not examine into your motives, nor assign improper views. They will respect you so long as they preserve a due respect for themselves. They will declare, that in assigning duties to one officer, and taking them from another, you have to consult only your own convictions of what the interest or convenience of the people may require. They will modestly conclude, that you did not mean to abolish the offices which the constitution had forbidden you to abolish; and, therefore, finding that it was not your intention to abolish, they will declare that the offices still exist.

Such, Sir, would be the language of your supreme judiciary, from the high sense they entertain of their duty. And, if it were decent to suggest in this senate, that they were lost to a sense of duty, can it be believed, that a few feeble judges will dare oppose themselves to the power of the legislature?

Having thus stated, in a few words as I could, the consequences of adopting the proposed resolution, I will now take the liberty to inquire the probable result of rejecting it.

I pray gentlemen, most sincerely to consider the necessary consequence.—Will it not be said, that we are afraid to meet this feeble band upon the ground of free inquiry?—That we are afraid to contend with the weapons of reason and argument? Will you not be strongly questioned? As thus—Are you confident that the judges are wrong—and their claim unfounded? Hear them—refute them.—Are you convinced, or do you only fear they are right?—reject their request, & with the tyrant assign as a reason your sovereign will. Such must be the conclusion. From this dilemma it is not possible for you to escape. If you are right you will court inquiry, and thence it if you are wrong.

But what is still worse, you cannot shun it. These Memorialists can be heard, whether you will or no—Spite of your reluctance they can bring on an investigation. You may hide yourselves beneath the heaps of your privileges and powers; but you will be traced to your lurking place, and the strong arm of justice will drag you forth to the day. Yes, those feeble judges can bring on the inquiry, in the very face of your power—will or not will—consent or not consent—submit or not submit—the investigation which they ask can take place. Is it not better then to meet them freely, fairly? To come boldly forward like men?

Sir, I will detain you but a few minutes longer.

It appears to me essential to the dignity of the senate, that you adopt this resolution. It is more noble to meet than to avoid legal investigation; and it is not a novel practice. There was a time when the American legislature submitted their acts to judicial decision. At that time Washington presided.—Will it be said the administration was then too humble? He, indeed, was modest and unassuming; but he had an inborn dignity of soul which taught him, intuitively, to avoid vile shame and offensive pride. He, alas, is gone.—Yes, he is gone—and, Oh Heaven! viperous slander pursues him to the silent tomb, and preys upon his ashes.—Pardon me.—The name of Washington has excited recollection which fill my breast with anguish.—Well—let him be forgotten. Let us not forget what he always remembered.—Let us not forget what is due to ourselves, to our country, to posterity; that posterity to whose judgment we commit our fame, the jewel most dear to honourable minds.