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MR. PORTER'S SPEECH.

[CONCLUDED.]

On resuming his remarks the following day, Mr. PORTER said: I am quite sensible of and grateful to the Senate for the indulgence which it extended to me yesterday, and I feel that the best return I can make for its kindness is to condense as much as possible what I have further to say on the question now under consideration. In the observations I had the honor to offer to the Senate yesterday, I touched on all the arguments offered by the Senator from Missouri which related to our power to expunge, save that which he based on a precedent drawn from a former proceeding of this body. Sir, I am free to confess, when the gentleman read the resolution which, by its language, affirms such a power, I never was more struck with astonishment in my life, and it was under the influence of an irresistible curiosity that I asked the Senator the question I did, and not from the intention of interrupting the train of his remarks. He rebuked me for the interruption justly, but gently, and I acquiesced in it. But, sir, when the honorable Senator further told me to beware resting the matter on so small a point, "or I might be blown up," I felt prepared to join issue with him, and to show him that the point is by no means a small one. On the contrary, the inquiry suggested a principle on which the whole value of the case, as a precedent, depends.

If the Senate, in the instance relied on, had determined they possessed the power to expunge from their journal an entry made on it, we should then have had the question submitted, whether any example set by others could authorize us to surrender our clear and conscientious convictions of constitutional obligation. But the case, sir, does not impose any such necessity. What, sir, is its history? It is this: On the last day of a session of Congress, in the year 1806, a petition, or memorial, was presented from certain persons, then under conviction for offences committed against the laws of the United States. This memorial reflected strongly on the conduct of the Chief Magistrate, and its tenor was entered on the minutes. How long after the entry was made we do not know, but not many hours after, and on the same day in which the petition had been received, a motion was made and carried to expunge it from the journal. This motion prevailed. The confusion and hurry which always attend the transaction of business on the last night Congress sits, accounts fully for the inaccuracy of expression used in the resolution, as there was no journal until the entries made during the day were read over and sanctioned by the approbation of the Senate. Until that approbation is given, the acts of the Secretary are no more than minutes of proceedings, over which the body has complete control; just as in the same manner, the entries of a clerk of a court made during the day are subject to the revision and correction of the judge when read the following morning. Had not the Senate been about to adjourn that night, the measure was entirely gratuitous, as the correction could have been made at the commencement of the next day's sitting, when the minutes prepared by the Secretary were read over. It did not, however, sit, and it is probable this method of getting rid of the obnoxious matter was preferred, as it was a period when party run high, and the step taken by the petitioners well calculated to excite the passions which belong to such times. Be this, however, as it may, it is obvious that whatever form the majority chose to give their resolution, their power over the matter was undisputed.

I see, sir, some gentlemen dissent to this position. I consider it, however, perfectly sound. It cannot be, it is not true, that the secretary of a Legislature or the clerk of a court has the right to place any matter he pleases on the minutes of the proceedings, and that neither the judges in the one case, nor the legislative body in the other, have the power to expunge from them what is improperly placed there. It cannot be, it is not true that, if errors are committed by either, they must remain and cannot be corrected; all practice and all reason are opposed to such a doctrine. But this control over the proceedings, before the journal of the clerk or secretary is made up and sanctioned, is totally different from the right claimed here to change or deface the record after it is complete. The court, during its term, may correct any error into which it

has fallen. Its minutes are under its control for the same time. But was it ever heard, that it could, at a succeeding one, change, erase from, or add to the record of its proceedings of a former session? Never, sir. And so, sir, in reason, and on the true principles of the Constitution, is the power of this body limited. Its record, once made, becomes sacred; it is the property of the People, was intended for their protection, and you have no right to deface it.

The Senator from Missouri was well aware of this objection to the precedent cited by him, and he endeavored skillfully to evade it by saying that at all events we could not deny that it was a complete answer to our argument, which assumed the constitutional duty of this House to record all its proceedings. Here, said he, was a proceeding, and a proceeding not recorded. Sir, this is quite plausible, but on a close examination, it offers no real difficulty. The question presented in the instance referred to was precisely that we have been debating for nearly two months or more this session; and that is, the right of this body to reject a petition. We who were in the minority on the abolition memorials, and who contended for their rejection, urged that we had a right to refuse to consider them, and to deny them any place on our journals. Had we then known of this precedent we should have quoted it in support of the position we assumed, for, by erasing the memorial from the minutes, the then Senate declared that they were under no constitutional obligation to receive it, nor to permit any record of it to be preserved. Well, sir, I think the Senate decided correctly in the case to which I have alluded; but the honorable Senator and those who voted with him to receive the petitions will no doubt consider the decision of the Senate of 1806 erroneous. If erroneous, it is no authority. If, on the contrary, it was a sound opinion, it establishes what I assert to be the true doctrine namely, that the Senate have a right to refuse a petition, and are under no obligation to record it. The case cited, therefore, does in no respect conflict with the principles for which we who oppose this resolution contend. All that is decided by it is, that the rejection of a petition is not such a proceeding as should be placed on the journals. But, Mr. President, did it go the whole length for which the honorable Senator introduced it, I could not permit in a case of this kind that it should control my actions. In constitutional questions, we are not permitted to surrender our conscience to authority. It ought to have no guide but reason. The precedent in itself contains nothing to challenge approbation. It was done in haste. We have no evidence there was any such debate on it the last night of the session. It was passed by a small majority in a very thin Senate. It was a complete party vote, in high party times. To make such a proceeding decisive of a question of this magnitude, would be to place the Constitution of the country at the mercy of every faction which by turns may get possession of a majority in Congress.

I have already said, Mr. President, that I do not consider it made the slightest difference in the question before us, whether the resolution of the Senate, which it is proposed to expunge, was constitutional or otherwise. In my judgment the obligation imposed on us to keep a record of it is precisely the same, be its character what it may. The Constitution makes no distinction; and where it does not distinguish, we cannot. But as I do not agree with the Senator from Missouri that the Senate, in the instance alluded to, either did injustice to the President, or improperly exercised the powers vested in it, I beg leave to make a few observations on the leading proposition, by which this charge of injustice and assumption of power was supposed to be established. We exercised, it is said, on the occasion complained of, judicial not legislative power, and we condemned the President of the United States when he was not accused, and we did so without even hearing his defence.

If all this be true, "the head and front of our offending" is certainly very considerable; but I apprehend it requires no very great ability to show that it has no foundation whatever. We did not, sir, on the occasion alluded to, exercise judicial power, and, therefore, we neither tried nor condemned the President.

Although the legislative, executive, and judicial powers conferred by the Constitution of the United States on the Senate be in theory distinct, yet cases are constantly arising in which the action of the body in its several capacities is imperiously demanded on the very same matter. This is inevitable; for as the powers conferred extend to the person who acts as well as the thing which is acted on, it is impossible, in legislating on the one, or in sitting in judgment on the other, to avoid deciding on matters which are common to both. The exercise of ju-

dicial authority in one aspect presents an exception to this principle. In the investigation which belongs to it, a prominent and controlling inquiry is as to the intention with which they act was committed. An examination of this kind can only be gone into by the Senate when sitting as a court of impeachment, but with this single exception, I maintain that this body, in its legislative and in its executive capacity, can go into an investigation of the legality of acts, and their tendency, just as freely as if no judicial authority was conferred on it. Were it otherwise its legislative power would be most injuriously abridged, and the executive portion could not be beneficially exercised. Indeed, it is only necessary to have the contrary principle established, and the Chief Magistrate would get a power in his hands which would enable him effectually to put a stop to all legislation on matters in regard to which he thought proper to resort to the exercise of Executive authority. But, if I understand the Constitution rightly, it was not intended the legislative functions of this body should be placed under the control of any other branch of the Government. My reading of it is, that in the use of them it is not more confined in its sphere, nor less free in its action, than the House of Representatives.

See, Mr. President, to what consequences the contrary doctrine would lead. Congress is almost constantly passing laws which require the exercise of Executive authority to carry them into effect; the President construes them according to his judgment, and executes them. The Legislature take the matter into consideration; they think he has assumed a power which the law did not confer, and the exercise of which is injurious to the public interests. A bill is introduced to correct the evil. Is the Senate estopped from acting on it, because, forsooth, it is compelled to look into the construction given by the President of the law, and finds that it differs in opinion from him? Can it extend no remedy for the mischief because he has done wrong?

In an early period of the federal legislation, an act was passed authorizing the President of the United States to remove from the public lands persons who had settled there without permission. It was intended to operate on that class of persons vulgarly but emphatically called squatters. In the year 1806 (I think) Mr. Jefferson enforced this law against a possession which Edward Livingston had of a portion of the batture in front of the city of New Orleans. To this property Mr. L. asserted title under a grant of the French Government to the society of Jesuits. His right was contested by the city of New Orleans, and by proprietors of the lots in front of the river, holding under the same grant. It is not necessary to say, if it were easy to do so, which had the better title; it is enough to state that the property did not belong to the United States, and that the act of removal, however good the motives of the President, and I do not impeach them, was most illegal, and in its operation oppressive in the extreme. An action was brought against Mr. Jefferson for this act, and the cause dismissed for want of jurisdiction in the court, on the ground that the trespass was committed in Louisiana, and the trespasser lived in Virginia. Now I ask, sir, if Mr. Livingston had applied, as well he might, to Congress for compensation for the great pecuniary losses which he sustained by this act of the President, could the Senate not have acted on the bill for affording relief, because it must necessarily have decided that the President had done an act, in the language of the resolution of the Senate, "not conferred by the constitution and laws, but in derogation of both?"

If gentlemen on the other side say it could not have acted on such a bill, because it must have decided on a matter which might thereafter come before it on an impeachment for the act. I leave the correctness of the answer to be decided by the American people without any comment of mine. And if their answer be that it could have constitutionally passed such a law, I inquire what difference there is between deciding that an act of the President was contrary to law, and giving relief for it, and making a declaration to the same effect in the shape of a resolution?

The contest between the present Chief Magistrate and the Bank of the United States is nearer to our own times, and offers an example equally illustrative of the ground I assume. By its charter, the United States engaged to place with it in despoite the public moneys. The President thought he had the power to withdraw them whenever he pleased, and without any cause save his own pleasure. The Senate think differently; and without stopping to inquire which party is right, I ask, could not a bill have been constitutionally passed here to compel them to be replaced, because, in our opinion, they had been illegally, and consequently, unconstitutionally re-

moved? I suppose it will hardly be contended it could not. If it could, have we not the power to declare the illegality, by a resolution, in the hope that it will induce the chief Magistrate to reconsider his act and restore the deposits? It requires sharper optics than mine, Mr. President, to see the difference.

We need not stop here, sir. Let us follow this matter into the exercise of the executive power which the Constitution has conferred on us. Individuals, while holding high offices are sometimes nominated to the Senate for others. The manner in which they have discharged their duties in the place filled by them is often and of necessity a matter of rigid and severe inquiry. Acts have to be sifted and examined, and a judgment formed on them, to enable us to decide whether it is proper to give our consent to the nominee occupying a high station. The investigation must, therefore, be often carried to actions which, if committed with a bad motive, might subject the officer to impeachment. Such a case, sir, has occurred, and our authority and bounden duty to go into such inquiries have never, as I know, been questioned, although it is manifest the same matters, in relation to the same person, may come before us in a judicial capacity.

Sir, this limitation, which now, for the first time in our history, is attempted to be placed on the legislative power of the Senate, is a pregnant sign of the prevailing notions of the day. The duties which this body has to perform, in the capacity in which it passed this resolution, are just as important and as sacred as those belonging to it in its judicial or executive character. With the opinions entertained by its members, they could not, without sacrificing their conscience at the shrines of ease and expediency, have refrained from the declaration they made in relation to the conduct of the Executive in removing the deposits. That measure filled them with a profound, and, I will add, a just alarm. In their view of the matter, they saw a great assumption of power on the part of the Chief Magistrate, and they could not be blind to the fact, that the tendency of public opinion was, and, I am sorry to say, still is, to surrender all authority into the hands of the Executive: to look to him, and to him only, as an index which is to point to what is useful and what is honorable in policy & in legislation. Had they consulted their own convenience, their course was plain; it was to bow to the storm, and trust that, when a man less popular man was at the head of the Government, the healthy action of all its several departments would be restored. But they took lessons from a purer source, and, I trust, a higher wisdom. Experience had taught them that in free Governments dangerous precedents, are always set by popular men; because it is they and they only who can create a delusion which will permit them to be set. They knew with what fatal effect this example would be cited in after times as a justification of still greater stretches of authority, and they determined, at all hazards, to resist it to the utmost of their ability. For one, sir, I rejoice that they did so; the gratitude of their country awaits them; and posterity will do that justice to their acts and their motives which party spirit now refuses to award to them. Far too humble myself to connect history with my name, I fondly indulge the hope that the position I occupied at that moment will attach me in some degree to it, as one of those who stood manfully in the breach in the unequal battle which was fought for the Constitution. I desire no higher praise, and would ask no prouder epitaph to be engraven on my tomb.

We have been required, sir, in this debate to *toe the mark*; and the hope has been expressed that, after having denounced the President during the session of 1834, stigmatized his conduct, and misrepresented his actions, we will not now take shelter under the defence that we did not mean to impute bad motives to his acts, and merely intended to express an abstract opinion on the lawfulness of his acts. This hope, Mr. President, so far as I am concerned, I am fully prepared to gratify. I am ready to come up to the line I advanced to then, and defend it. And I say, sir, that, during the whole of that debate, I do not recollect any charge of corruption or intentional violation of the Constitution charged on the President of the United States. His acts, removing the deposits and displacing the Secretary of the Treasury, were denounced it is true, and in strong terms; the unlawful assumption of authority was exposed in every point of view in which it was susceptible, and the pernicious tendency of the precedent set was painted in vivid colors. This is my recollection of the debate, sir. I do not pretend to say that, in the heat of it, expressions of another kind may not have casually dropped, but such was its general tenor, and I have no remembrance of its being carried further. As to my own

opinions I can speak with great exactness, for I think now of the whole matter precisely as I thought then. I did not then believe, and I do not now believe, that the Chief Magistrate was impelled by any corrupt motive, or that he thought, when committing those acts we found fault with, that he was violating the Constitution and laws; and the little I said on the subject, for I was then a new member here, distinctly expressed this conviction.

But, sir, I considered the conduct of the President wrong. I believed that neither the Constitution nor the law authorized him to interfere as he did with the public Treasury, and so thinking I did not hesitate to say so, and sustain my opinions by my vote. The thought never crossed my mind that I was prejudging his case, if he had been impeached; nor can I now see the slightest reason for alleging that I did. And I cannot help, sir, remarking that they who press such an idea pay a poor compliment to the President when they contend that whoever differs with him in opinion as to the legality of his acts, necessarily ascribe to him bad motives for them; and decide the question of guilt, which we would have to try if we were in the exercise of our judicial functions.

But, sir, when the Senator from Missouri was about to bring forward this motion for expunging, I marvel he did not carry his attention to another resolution which is to be found on the journals of the Senate, and which, according to the doctrines he labors to establish, is in as great a degree a violation of the Constitution as that selected by him. I allude to that passed by this body in relation to the late Postmaster General (Mr. Barry,) at the close of the session of 1834. That the Senate may see the perfect analogy between the two cases, I shall bring them in juxtaposition. That which relates to the President is in these words:

"Resolved, That the President, in the late executive proceedings in relation to the revenue, has assumed upon himself authority and power not conferred by the Constitution and Laws, but in derogation of both."

That which regarded Mr. Barry is as follows:

"Resolved, That it is proved and admitted that large sums of money have been borrowed at different banks by the Post Master General in order to make up the deficiency in the means of carrying on the business of the Post Office Department, without authority given by any law of Congress; and that, as Congress alone possesses the power to borrow money on the credit of the United States, all such contracts for loans by the Post Master are illegal and void."

Now, sir, I cannot see any the slightest difference between these cases, and I defy the most subtle intellect to show how they can be distinguished from each other. And, sir, on examining the vote given on that case, we do not find it was a party vote. Far from it; it was the unanimous voice of the Senate, and the vote of the Senator from Missouri stands recorded among the number. Well, sir, may I not ask if it was a violation of the Constitution of the United States to vote that Gen. Jackson had exercised a power not conferred on him by law, was it not an equal violation of it to vote that Mr. Barry had acted contrary to law? Do the names make any difference? Or is it that the action which is constitutional in regard to a Postmaster General becomes a heinous offence when committed against one clothed with the power and upheld by the popularity of the President of the United States? I trust not. But still it is left to gentlemen who are now prepared to expunge this resolution because it prejudices Gen. Jackson, to explain why they voted for that against Mr. Barry, which equally prejudged him. They must also explain why they leave the latter resolution untouched on the journals, and expunge the former. Is it because they voted for that against the Postmaster that it is sacred? or has slow repentance not yet reached them? Sir, it has been said that the most ignorant man may ask a question which the wisest cannot answer; and I apprehend they will find themselves pretty much in that condition in relation to these interrogatories.

The Senator from Missouri, however, who takes time by the forelock, has anticipated this objection, and has given his explanation. He says the vote was forced on him, and, finding himself compelled to act in this unconstitutional way, he conceived that he was in no respect sanctioning the course which the Senate pursued; that a negative vote would have admitted the jurisdiction just as much as an affirmative one. Without in the slightest respect impugning the sincerity of this declaration, and giving it full effect, I must still remark that though it may sustain the consistency of the Senator, it still leaves the precedent in all its original force, as the construction of laws, or the deductions to be made from the acts of legislative bodies, can be in no respect affected by the declarations of individual members of their views or motives in concurring in them. And I must also say, that I should think that it is a very good reason to vote against a resolution or law, that I believe it to be unconstitutional,

But be this as it may, it only explains the vote of the Senator, and we have the sanction of all the rest of his friends for the constitutionality of our proceeding. And at all events it is no justification for permitting the resolution in regard to Mr. Barry to remain, and expunging that relating to the President. If either is to be effaced from our journal I hope both will. If justice requires this act, let it be extended to the memory of him who has passed hence to another and better world, as well as to him who remains among us. Let the bounty of the honorable Senator extend to all similarly situated. I trust he will recollect, "That the same sun which shines upon a Court

Hides not his visage from the cottage."

I think, Mr. President, I have shown that the Constitution of the country will be violated if we adopt the resolution of the honorable Senator, and I hope I have satisfactorily answered the principal reasons presented by him in support of it.

The remaining portion of the honorable Senator's speech was devoted to two subjects: a panegyric on General Jackson, and a vituperation of the late Bank of the United States. The relevancy of either or both these matters to the question now before us, he will excuse me for saying is not exactly seen by me, and I might well pass them by; but a few observations before I close, on some of the topics he advanced, will, I trust, be pardoned.

And first, sir, as to the praises which the Senator has dealt out with such an overflowing hand to the President, I have to say that I find no fault with them. They proceed, no doubt from the strong partiality which the gentleman from Missouri feels for their object, and his friendship, and the modes he takes to manifest it, are matters entirely personal to himself. It would be the less excusable in me to complain of this failing, as it is one which I share largely in myself. In spite of every thing I can do, sir, I find the utmost difficulty in seeing faults in those to whom I am attached. My self love gets interested in sustaining them in my own opinion, and it is dexterous in palliating their weaknesses, and magnifying their virtues. With the perfect consciousness of this tendency of my own nature, I can make great allowance for what I consider the extravagant praise which the Senator has bestowed on the present Chief Magistrate. But, after making all concessions of this kind, I cannot help thinking the gentleman from Missouri has pushed the matter a little too far; that he has even stretched beyond its due extent the old maxim,

"Lay it on thick, and some will stick."

It is, perhaps, rash in me to say so. Sir, the honorable Senator is skilled in matters of this kind, but I just submit to him whether he did not set all the laws of probability (at least) at defiance, when he said that "General Jackson had rendered more benefit to mankind than all the politicians that ever existed."

(Mr. Benton here said he had been misunderstood; that he said "all the hack politicians who had ever lived.") Mr. Porter continued. If, sir, the Senator so limited his remark, I do not gainsay it. On the contrary, it has my entire assent. There is no class of men for whom I have a more thorough contempt—no, sir, not my contempt, they are not worthy of it—there are no men for whom I have a more intense pity, than I have for those who come under the denomination of hack politicians. They are a miserable race generally, lost to all honor, truth, and patriotism, who sell themselves for office, and when they obtain it, use place and station to plunder more successfully the People they have deceived. With such men, sir, I would not compare Gen. Jackson for a moment; but, sir, I think, on reflection, the Senator from Missouri will see that I was not mistaken, and that, in the warmth of his eulogium, he did carry his comparison to the extent I have stated. Such are my notes of his speech. [Here Mr. Benton said the Senator from Louisiana might so understand his remarks.] Well, sir, with that permission, I proceed to comment on the compliment paid to the President; and, looking back, I find that Solon was a politician, Aristides was a politician, Pericles was a politician, Cicero was a politician, John Hampden (a name never to be mentioned in a temple of freedom without reverence and gratitude) was a politician; Lord Chatham was a politician; John Hancock, Benjamin Franklin, and Thomas Jefferson were politicians. And sir, with these names come a crowd of recollections which force me to think that Solon, and Aristides, and Pericles, and Cicero, and John Hampden, and Lord Chatham, and Hancock, and Jefferson, and Franklin, taken altogether, have rendered just as much service to mankind as Gen. Jackson, and a little more.

Sir, in making these remarks, I am not to be understood as wishing to detract from the reputation of the President. He has many qualities I respect, and he has rendered important services to his country. No one, sir,