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SENATE OF THE UNITED STATES.

CASE OF JOHN SMITH.

[*Mr. Harper's Speech concluded.*]

The next circumstance alleged against Mr. Smith, as evidence of a connection with Col. Burr, is the visit which he paid to Frankfort, in Kentucky, in the autumn of 1806. This has been supposed to be a visit to Col. Burr; but the testimony which we have adduced shews most satisfactorily, that it was a journey on public business. To this point our evidence is full and complete. Mr. Smith, then contractor for the army, was called on for very large supplies, on account of the additional force called to the Sabine. He found, on enquiry from his agents in Kentucky, whose depositions we have produced, and who are proved to be men of character, that purchases could be made there on very advantageous terms, for cash. He was not in cash, and therefore resolved to try whether he could sell or discount bills on Philadelphia. The best prospect of making this operation to advantage, and indeed the only prospect of making it at all, was with the insurance company at Lexington, which acts as a bank and exchange office. He accordingly went to Lexington for that purpose. On his arrival there he heard, for the first time, as is fully proved, that Col. Burr was on his trial at Frankfort, where most of the directors of this insurance company were, attending the trial. He then resolved to go to Frankfort, for the purpose of sounding them on the business. He arrived there in the evening, and stopt at a tavern, where he soon learned that Col. Burr also lodged. In the course of the evening he paid a short complimentary visit to Col. Burr, saw some of the directors, learned from them that his object of selling or discounting bills could not be accomplished, and early next morning set out on his return home. All these facts are satisfactorily proved. I will not recapitulate the testimony, which is fresh in the recollection of the honorable members. But I ask what is there criminal or suspicious in this transaction? Surely it would be a waste of time to employ it in the refutation of such a charge.

The next point to which I am to call the attention of this honorable House, is the bill drawn by Col. Burr on Mr. Smith, in favor of lieutenant Jackson. The drawing of this bill is adduced as proof of connection between Col. Burr and Mr. Smith. It admits of most satisfactory explanation, in two different ways.

In the first place it is notorious that col. Burr, in order to increase the number & the confidence of his partizans, was in the habit of representing himself as being connected with and supported by many persons, whose name he supposed would add some credit and weight to his enterprise, & who are known to have opposed his schemes, instead of being engaged in them. Of this the case of Com. Truxton is a striking instance. In this case we find that col. Burr was very desirous of engaging Mr. Jackson in his enterprize. Jackson was reluctant and and doubtful. Mr. Smith was a man note and consequence whose name of might well be supposed to have much influence on the mind of a youth like Jackson; and to draw a bill on him, for an object connected with the enterprize, was an indirect but very significant mode of telling Jackson that he was engaged. To artifices of this kind we know that this unhappy man had constant recourse. He no doubt sometimes deceived himself; but he very often attempted to deceive others, in hopes of drawing them into these schemes, which have plunged him into irretreviable ruin.

Secondly we know that col. Burr, when he set out from Cincinnati on his journey down the river, left a sum of money in the hands of Mr. Smith. This is proved to be usual with persons travelling in that country, and may have been done by col. Burr from motives of convenience, or with a view of giving himself the appearance of a connection with Mr Smith, by drawing on him. But it was done. The money was in Mr. Smith's hands. Col. Burr had drawn for it, in favor of Belknap, and he could not have known that Belknap's bill had been accepted, or would be so, before Jackson's should be presented. He had drawn in favor of Belknap, for his own use. He might therefore well have supposed that the money was still in Mr. Smith's hands, and that he had a right to draw for it.

But in whatever way we account for his drawing this bill, it was his own act; an act which he had no right to do, beyond the money left by him in Mr. Smith's hands. To bring this act home to Mr. Smith, and make it evidence against him, it must be shewn that he had given Col. Burr authority to draw. In other words, had agreed to supply him with funds. Drawing the bill is nothing more than a declaration by Col. Burr; and this declaration cannot affect Mr. Smith, unless he authorised it previously, or confirmed it afterwards by paying the bill. Col. Burr drew a bill on me for 1,500 dolls. which I had not authorised, and declined to accept. Because Col. Burr thought fit to take this step, am I therefore to be considered as engaged in his schemes? Surely his mere declaration cannot be allowed to criminate Mr. Smith. If it could, how extensively would the principle operate! How many of the best men in the country would be implicated!

There is another circumstance which strongly confirms the view which we give of this subject. When Col. Burr directed Jackson to call on Smith with the bill, he does not tell him to apply to Smith for any information concerning his plans. On this subject he referred him solely to Gen. Tupper. So says Jackson expressly. But why to Tupper rather than Smith? Smith was a much more important man than Tupper, and if engaged in the scheme was quite as capable of giving information. He would have given it much sooner too, for Tupper lived at Marietta, and Smith at Cincinnati; where Jackson in his journey up the river would first arrive. Why then, I say, direct the application to Tupper, rather than to Smith? Sir, the reason is obvious. Col. Burr, though he might have been willing to insinuate, by drawing the bill, that Mr. Smith was engaged, knew very well that he was not; and that if he should direct Jackson to call on him for information, it would lead to a detection. This fact alone proves, more strongly than a thousand witnesses, the innocence of Mr. Smith. Witnesses may misunderstand forget or prevaricate; but facts like this lay open the hearts of men, let us into their inmost thoughts, and speak a language which we can neither misunderstand nor disbelieve.

As to the bill drawn by Col. Burr on Mr. Smith, in favor of Belknap, which Mr. Smith paid, and which forms the next head of accusation, I beg leave to recal to the Senate the testimony of Gen. Carberry. He states that some time before the date of this bill, Mr. Smith informed him that Col. Burr, finding it inconvenient to carry his money with him, when he went down the Ohio, left it at Cincinnati in the care of Mr. Smith; a circumstance which the same witness proves to be usual, with persons travelling in that country, and on which it is impossible to lay any stress: for every body must admit that had the money been left for any improper purpose, Mr. Smith would have kept the knowledge of it to himself, instead of communicating it as he did to General Carberry. The bill drawn in favor of Belknap, and paid, might of itself, standing alone, furnish some ground of suspicion against Mr. Smith, as tending to shew that he was in the habit of supplying Col. Burr with funds: but when it comes to be connected with the deposit of money, which is proved by Gen. Carberry, it is completely explained. For nothing was more natural than that Col. Burr, having left his money with Mr. Smith, should direct it to be paid to a person to whom he owed it, or who was to employ it for his benefit.

I come now, Mr. President, to the seeming contradiction between the statement of Mr. Smith, and the testimony taken at Richmond on the trial of Col. Burr, upon which I understand that some stress is laid. I say the "seeming contradiction," because I feel confident of being able to shew clearly, that no real contradiction exists.

Mr. Smith, in his deposition before Matthew Nimmo, states that Colonel Burr early in September, 1806, spoke of the settlement of his Washita lands. By the testimony given at Richmond in the trial of Col. Burr, by Lynch, from whom those lands were purchased, it appears that the contract was not made with Col. Burr till after the time when Mr. Smith states this conversation to have taken place. Hence it is inferred that Col. Burr could not have spoken to Mr. Smith of his Washita lands.

But it is forgotten that col. Burr was in the habit of speaking of these lands as his, and of his intention of settling them, long before the period assigned by Mr. Smith for this conversation? This appears from the testimony of commodore Truxton, delivered at Richmond on the same trial. He states that in the summer of 1806, before col. Burr set out for the western country, he spoke of *his* Washita lands, and of his plan of settlement. This he did either because he had then made an informal contract for those lands, and therefore considered them as his, though the formal contract of sale was not then made; or because he had then contrived this disguise for his projects, and merely made use of it to cover his real design, from Smith and others with whom he thus conversed. In either case he would speak of the land as belonging to him. Indeed this whole argument against Mr. Smith rests on the idea, that col. Burr cannot be supposed to have said any thing that was not true. Mr. Smith states that col. Burr spoke of *his* Washita lands, at a time when those lands in fact were not his. Therefore Mr. Smith must have stated an untruth. I believe that gentlemen will not, on reflection, find this argument very solid.

One more point Mr. President, and I shall conclude an argument, by which I fear this hon. body has been, as I certainly have, very much fatigued.

It is said that there exists a strong similarity between the deposition of Elias Glover, and the statement made by Mr. Smith himself on oath; from whence it is inferred that the deposition must be true. I must confess that I have not been able to discover this similarity; but if it really exist, it may be easily accounted for. Mr. Smith's statement was sworn to before Nimmo, on the 6th of January 1807. Nimmo, it appears, kept a copy, for on the next day he certifies a paper as being a true copy of the deposition sworn to before him by Mr. Smith. This he could not have done, unless he had kept a copy, with which to compare this paper. On the 2d of February following, Glover made his deposition, before the same Matthew Nimmo. Now we know that Nimmo was the confidential friend and adviser of Glover; & we may very easily conceive that before Glover prepared his deposition, he had been indulged by his friend with a perusal of the copy of Smith's, and that to give the greater air of truth to his tale, he imitated the language as much as he could, and followed the statement of facts, as far as would suit his purpose.

Again. It is very probable that Nimmo wrote the deposition of Glover; and that having Smith's deposition on the same subject fresh in his recollection, he fell insensibly into the use of the same phrases. This is known frequently to happen. Or the resemblance may be merely accidental. And surely a resemblance between some phrases of these two depositions, which may have proceeded from accident, or from design in Nimmo or Glover, is very weak ground for inferring the truth of facts, so utterly improbable as those stated by Glover, and so strongly contradicted by the great mass of testimony which we have produced; among which are the declarations of Glover himself, and the oath of his friend and confederate M'Farland.

Having now Mr. President reviewed all the grounds on which the charge against Mr. Smith is rested; having, as I presume to hope, satisfactorily explained all the objections which have been urged against him; and presented all the facts fairly, and as clearly as was in my power, to the view of this honorable House; I am far from intending to trouble it with any arguments of mine on the subject. The enlightened individuals who compose it are much more capable than me of drawing the proper inferences from the testimony which has been laid before them, and on which they have bestowed a most patient and laborious attention: and to their judgment I cheerfully, and I may be permitted to say confidently, submit the cause of my client. They will doubtless bear in mind, that in this cause is involved his honor, dearer to him than property or even than life; and that in pronouncing their decision they are to be guided by testimony, and not by conjecture; by the light of truth, and not by the dark and deceptive glimmerings of suspicion—FINIS.

Portland, August 25.

SPIRIT OF THE TIMES.

Although it was positively asserted in the Portland Gazette, that TEN *persons only dissented from the proceedings in Town-Meeting, more than* TEN TIMES TEN *persons have subscribed the following address;*

TO THOMAS JEFFERSON, Esq.

PRESIDENT OF THE U. STATES OF AMERICA.

Sir,

The subscribers, inhabitants of the town of Portland, in the county of Cumberland and district of Maine, beg leave to assure the political guide and guardian of our beloved country, of our entire confidence in the wisdom and prudent policy of the measures of his administration, and of our willing acquiescence and cordial co-operation in them. We cheerfully submit to the privations occasioned by necessary restrictions on foreign commerce, and rejoice in the sacrifice which continues the peace and independence of America, averts the calamities of war from her shores, and preserves the state from the resistless malestrom of European ambition, whose fatal gorge has whelmed the nations. We sincerely reprobate the murmurings which have reached the ear of the Executive from several maritime towns in the commonwealth of Massachusetts, tending to excite in the people a spirit of repining and distrust, to destroy their merited confidence in their rulers, and to encourage disregard and disobedience of the laws. Believing that the public safety and honor and the prosperity of the citizens are the desire and endeavor of the government; we feel assured, whenever the state of foreign relations may justify the measure, and not sooner, that the people will be relieved of the constraints to which their civil obligations require their patient submission.

Be pleased, Sir, to receive assurances of our respectful consideration and reverential love.

Portland, Aug. 16, 1808.

☞ Those citizens who wish to add their names to the above address, are informed that it will be lodged in the Post-office, until Saturday next, for that purpose.

Communicated for the Argus.

The inhabitants of Pittston in the district of Maine, were warned to assemble in town meeting, on Monday, the 22d of August inst. by order of the Selectmen of said town, at the instigation of the federalists, "*to see if the town will petition to the President of the U. S. to take off part, or the whole of the embargo, and to act on all matters that may legally come before said meeting.*"

The federal phalanx was formed in full array; many republicans also attended—and thus a full meeting was convened; and having deliberately considered the article proposed in the warrant, a large majority are decidedly of opinion, that such address, at the present crisis, would be injudicious, and highly improper.

Viewing with concern and deep regret, the peculiar situation of the country, arising from the contests in Europe, and the violent and malignant opposition to our national government, by some of our fellow-citizens, as well as by aliens, we the said inhabitants of Pittston avail ourselves of the present occasion to briefly express our sentiments, *by the following resolves.*

Resolved, As the opinion of the inhabitants of Pittston, that to address the President of the U. S. to suspend the operation of the laws imposing an embargo, (under the existing circumstances of our foreign relations) might be considered by the belligerent powers of Europe, an acquiescence in their oppressive decrees and orders in Council; and should the President comply with such request, our national distress would be vastly increased by the loss of property, and the horrors of a bloody and destructive war.

Resolved, That we consider the British orders and French decrees the real cause of the embarrassed situation of American commerce; and to submit to them, would be a surrender of our rights and independence, a purchase of national infamy for commercial gain, without even a prospect of securing the mercenary object, resulting from such degradation.

Resolved, That we have entire confidence in the ability and patriotism of the general government, in the measures adopted and pursued by it; and until a substitute for those measures can be shewn, which will better secure and promote the honor and interests of the U. States, our confidence in them will remain undiminished—the intrigues and cabals of partizans of this, or any foreign nations to the contrary notwithstanding.

Resolved, That we will support with our property and our lives the fundamental principles of our republican government, and the laws made in uniformity thereto by our impartial and patriotic administration; and we will resist the arrangements and intrigues practised by a party, who under the fallacious plea of removing the Embargo are making appeals to the avarice and the basest passions of men, for the real (though not acknowledged) purpose of effecting a political change in our national and state governments.

The above resolutions passed by a large majority.

To the Selectmen of the town of Boston.

GENTLEMEN,

We have received your letter inviting us to call a meeting of the inhabitants of this town, for the purpose of concurring with your town, in a petition to the President for a "suspension of the embargo in whole or in part; or that the President would convene Congress as early as possible, for the purpose of taking the subject into consideration." We deferred returning an answer till this time, because we thought we had reason to believe, that there would be found ten of our own freeholders, knowing our sentiments, and differing from us, who, by signifying their desire in writing, would make it our duty to call such a meeting. We can delay no longer a civility which is due to our fellow citizens of the respectable town of Boston. We will therefore, with that friendly freedom which becomes citizens whose interests are the same, expose the reasons and sentiments, which forbid us to act in our official capacity according to your proposal.

We are far from disagreeing with you on the constitutional right of the citizens "in an orderly and peaceable manner, to assemble to consult on the public good," and present addresses, petitions and remonstrances. But we think a wise people will be cautious of making a frequent use of this privilege. While the right of suffrage remains intire, and the people possess the freedom of frequent elections, it is obvious there cannot be such occasion for petitioning, as under governments where the people have a less "*essential share.*" Of the propriety of exciting others to petition, you have doubtless considered.

We are highly pleased, and must heartily concur with the general sentiments in the first part of the petition of Boston, expressive of a sense of patriotism and "respect for the constituted authorities of our country," and "the indispensible necessity of supporting, at all times, the laws enacted by the government of our choice," with their "readiness to make any personal sacrifices, and endure any privations which the public welfare may require." It prides us, that under sentiments truly honorable and magnanimous like these, our fellow citizens of Boston "have refrained from expressing the wishes they most sensibly feel for the removal of the embargo." Indeed were not the embargo a measure "which the public good required," not only the citizens of Boston but of every other town, would have just cause to petition—to remonstrate. That the embarrassments consequential on the arrestation of a prosperous trade by the embargo, or rather by the extraordinary conduct of belligerent nations, which caused the embargo, are sensi-