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Twenty-seventh Congress,
SECOND SESSION.

HOUSE OF REPRESENTATIVES.

TUESDAY, Aug. 30, 1842.

Mr. BOTTS called for the reading of the message to day received from the President.

THE PROTEST.

The Speaker laid before the House the following message, in writing, from the President of the United States:

WASHINGTON, Aug. 30, 1842.

To the House of Representatives:
By the Constitution of the United States it is provided that "every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it to that House in which it shall have originated, who shall enter the objections at large upon the Journal, and proceed to re-consider."

In strict compliance with the positive obligation thus imposed upon me by the Constitution, not having been able to bring myself to approve a bill which originated in the House of Representatives, entitled, "An act to provide revenue from imports, and to change and modify existing laws imposing duties on imports and for other purposes," I returned the same to the House with my objections to its becoming a law. These objections, which had entirely satisfied my own mind of the great im- policy, if not the unconstitutionality, of the measure, were presented in the most respectful, and even deferential terms. I would not have been so far forgetful of what was due from one department of the Government to another, as to have intentionally employed, in my official intercourse with the House, any language that could be, in the slightest degree, offensive to those to whom it was addressed. If in assigning my objections to the bill, I had so far forgotten what was due to the House of Representatives as to impugn its motives in passing the bill, I should owe not only to that House, but to the country my most profound apology. Such departures from propriety is, however, not complained of in any proceeding which the House has adopted. It has, on the contrary, been expressly made a subject of remark, and almost of complaint, that the language in which my dissent was couched was studiously guarded and cautious.

Such being the character of the official communication in question, I confess I was totally unprepared for the course which has been pursued in regard to it. In the exercise of the power to regulate its own proceedings, the House, for the first time, it is believed, in the history of the Government, thought proper to refer the Message to a Select committee of its own body, for the purpose (as my respect to the House would have compelled me to infer) of deliberately weighing the objections urged against the bill by the Executive, with a view to its own judgment upon the question of the final adoption or rejection of the measure.

Of the temper and feelings in relation to myself of some of the members selected for the performance of this duty, I have nothing to say. That was a matter entirely within the discretion of the House of Representatives. But that committee, taking a different view of its duty from that which I should have supposed had led to its creation, instead of confining itself to the objections urged against the bill, availed itself of the occasion formally to arraign the motives of the President for others of his acts since his induction into office. In the absence of all proof, and as I am bound to declare, against all law or precedent in parliamentary proceedings, and, at the same time, in a manner which it would be difficult to reconcile with a comity hitherto sacredly observed in the intercourse between independent and coordinate departments of the Govern- ment, it has assailed my whole official conduct without a shadow of a pretext for such assault, and, stopping short of impeachment, has charged me never- theless, with offences declared to deserve impeachment. Had the extraor- dinary report which the committee thus made to the House been permitted to remain without the sanction of the latter, I should not have uttered a regret or complaint upon the subject. But, unac- companied as it is by any particle of testimony to support the charges it contains, without a deliberate exami-

nation, almost without any discussion, the House of Representatives has been pleased to adopt it as its own, and there- by, to become my accusers before the country and before the world. The high character of such an accuser, the gravity of the charges which have been made, and the judgment pronounced against me by the adoption of the report upon a distinct and separate vote of the House, leave me no alternative but to enter my solemn protest against the pro- ceeding, as unjust to myself as a man, as an invasion of my constitutional powers as Chief Magistrate of the American People, and as a violation, in my person, of rights secured to every citizen by the laws and the Constitution.

That Constitution has entrusted to the House of Representatives the sole power of impeachment. Such impeachment is required, at all times, to be tried before the most august tribunal known to our institutions. The Senate of the United States, composed of the Representatives of the sovereignty of the States, is converted into a hall of justice, and in order to ensure the strictest observance of the rules of evidence and of legal procedure, the Chief Justice of the United States, the highest judicial functionary of the land, is required to preside over its deliberations. In the presence of such judi- cial authority the voice of faction is to be silent, and the sentence of guilt or inno- cence is pronounced under the most solemn sanctions of religion, of honor, and of law. To such a tribunal does the Constitution authorize the House of Representatives to carry up its accusa- tions against any chief of the Execu- tive Department whom it may believe to be guilty of high crimes and misdemeanors. Before that tribunal the accused is confronted with his accusers, and may demand the privilege which the justice of the common law secures to the hum- blest citizen, of a full, patient, and im- partial inquiry, into the facts, upon the testimony of the witnesses, rigidly ex- amined, and deposing in the face of day. If such a proceeding had been adopted towards me, unjust as I should have certainly regarded it, I should, I trust, have met with a becoming constancy a trial as painful as it would have been undeserved. I would have manifested, by a profound submission to the laws of my country, my perfect faith in her justice; and, relying on the purity of my motives, and the rectitude of my conduct, should have looked forward with confi- dence to a triumphant refutation in the presence of that country, and by the solemn judgment of such a tribunal, not only of whatever charges might have been formally preferred against me, but of all the calumnies of which I have hitherto been the unresisting victim. As it is, I have been accused without evi- dence, and condemned without a hear- ing. As far as such proceedings can accomplish it, I am deprived of public confidence in the administration of the Govern- ment, and denied even the boast of a good name—a name transmitted to me from a patriot father, prized as my proudest inheritance, and carefully preserved for those who are to come after me, as the most precious of all earthly possessions.

I am not only subjected to imputations affecting my character as an individual, but am charged with offences against the country, so grave and so heinous as to deserve public disgrace and disfranchisement. I am charged with violating pledges which I never gave; and, because I execute what I believe to be the law, with usurping powers not conferred by law; and, above all, with using the powers conferred upon the President by the Constitution for corrupt motives and for unwarrantable ends. And these charges are made without any particle of evidence to sustain them, and, as I solemnly affirm, without any foundation in truth.

Why is a proceeding of this sort adopted at this time? Is the occasion for it found in the fact, that having been elected to the second office under the Constitution by the free and voluntary suffrages of the people, I have succeeded to the first, according to the express provisions of the fundamental law of the same People? It is true that the suc- cession of the Vice President to the Chief Magistracy has never occurred before, and that all prudent and patriot- ic minds have looked on this new trial of the wisdom and stability of our in- stitutions with somewhat anxious concern. I have been made to feel too sensibly the difficulties of my unprece- dented position not to know all that is intended to be conveyed in the reproach cast upon a President without a party. But I found myself placed in this re- sponsible station by no usurpation or contrivance of my own. I was called to it, under Providence, by the Supreme law of the land, and the deliberately declared will of the people. It is by them, the people, that I have been clothed with the high powers which they have seen fit to confide to their Chief Magistrate, and been charged with the solemn responsibility under which those powers are to be exercised. It is to them I hold myself answerable, as a moral agent, for a free and conscientious discharge of the duties which they have imposed upon me. It is not as an individual merely that I am now called upon to resist the encroachment of un- constitutional power. I represent the

Executive authority of the People of the United States; and it is in their name, whose mere agent and servant I am, and whose will I declared their fundamental law, I dare not, even were I inclined, to disobey, that I protest against every attempt to break down the undoubted constitutional power of this department with a solemn amendment of that fundamental law.

I am determined to uphold the Con- stitution in this, as in other respects, to the utmost of my ability, and in defiance of all personal consequences. What may happen to an individual is of little importance; but the constitution of the country, or any of its great and clear principles and provisions, is too sacred to be surrendered, under any circum- stances whatever, by those who are charged with its protection and defence. Least of all should he be held guiltless, who, placed at the head of one of the great departments of the Government, should shrink from the exercise of its unquestionable authority on the most important occasions, and should consent without a struggle, to efface all the barriers so carefully created by the People to control and circumscribe the powers confided to their various agents. It may be desirable, as the majority of the House of Representatives has declared it is, that no such checks upon the will of the Legislature should be suffered to continue. This is a matter for the People and States to decide; but, until they shall have decided it, I shall feel myself bound to execute, without fear or favor, the law as it has been written by our predecessors.

I protest against this whole proceed- ing of the House of Representatives, as *ex parte* and *extra judicial*. I protest against it, as a supervisory of the common right of all citizens to be condemned only upon a fair and impartial trial, accord- ing to law and evidence before the country; I protest against it as destruc- tive of all the comity of intercourse be- tween the Departments of this Govern- ment, and destined sooner or later, to lead to conflict fatal to the peace of the country and the integrity of the Con- stitution. I protest against it in the name of that Constitution which is not only my own shield of protection and defence, but that of every American citizen. I protest against it in the name of the people, by whom will I stand where I do, and by whose authority I exercise the power which I am charged with having usurped, and to whom I am responsible for a firm and faithful dis- charge, according to my own convic- tions of duty, of the high stewardship confided to me by them. I protest against it in the name of all regulated liberty, and all limited Government, as a proceeding tending to the utter destruction of the checks and balances of the Constitution, and the accumulating in the hands of the House of Repre- sentatives, or a bare majority of Congress for the time being, an uncontrolled and des- potic power. And I respectfully ask that this, my Protest, may be entered upon the Journal of the House of Repre- sentatives, as a solemn and formal declaration, for all time to come, of the injustice and unconstitutionality of such a proceeding.

JOHN TYLER

The reading of the message having been concluded,

Mr. BOTTS obtained the floor; but yielded it at the request of

Mr. ADAMS, who asked it but for a minute or two. He said there seemed to be an expectation on the part of some gentlemen that he should propose to the House some measure suitable to be adopted on the present occasion. Mr. A. knew of no reason for such an expecta- tion but the fact that he had been the mover of the resolution for the appoint- ment of the committee which had made the report referred to in the message, had been appointed by the Speaker chairman of the committee, and that the report against which the President of the United States had sent to the House such a multitude of protests was written by him. So far as it had been so written, Mr. A. held himself respon- sible to the House, to the country, to the world, and to posterity; and, so far as he was the author of the report, he held himself responsible to the Presi- dent also; the President should hear from him elsewhere than here on that subject (Some laughter, and cries of "Hear that! will he fight him?")

Mr. A. went on to say that it was be- cause the report had been adopted by the House, and not because it had been written by him, that the President had sent such a bundle of protests and there- fore Mr. A. felt no necessity or obliga- tion upon himself to propose what mea- sure the House ought to adopt for the vindication of its own dignity and honor; and perhaps, from considerations of delicacy, he was the very last man in the House who should propose any mea- sure under the circumstances.

Mr. BOTTS now resumed the floor. But for the remarks which had just fallen from the gentleman from Massa- chusetts, he should hold that he owed an apology to the House and to the country for being the first to move on this occasion. As the oldest member of the House, the most experienced the wisest, apart from the other circum- stances of the case, the venerable gen- tleman from Massachusetts was certain-

ly the most fit member to point out the course which it became the House to pursue, in order to vindicate its honor thus assailed; and Mr. B. wished to state that under this impression he had personally indicated to that gentleman the propriety of such a movement on his part, but he had declined to act from motives of delicacy, to which he had himself just alluded.

As a member of the select committee which had made the report, as a member of the House, and as the Representa- tive of a portion of the free People of this country, he felt called upon to vindicate the honor and independence which belonged to the Representatives of the American People.

If he understood the message which had been read at the clerk's table, it de- clared that the action of the House in adopting the report of the select com- mittee was without precedent in our parliamentary history. Now it seemed that on this occasion, the President's memory must have been in some degree treacherous. Another and a very mem- orable case of the like kind had occur- red, and one in which the President had himself taken an important part; and Mr. B. proposed to measure out to him the very same he had meted out to the then President of the United States.

A resolution had been adopted, accord- ing to which Congress was to adjourn at two o'clock to-morrow afternoon, and there was therefore, no time left for a protracted debate on this matter; nor was there any need of it; because he meant, by permission of the Chair, to introduce an authority on the right of that House to adopt the resolutions of the report, which the President, in all his insolence to the People's repre- sentatives, DARE not question.

In 1834 the Senate had adopted cer- tain resolutions condemning the course of President Jackson in the removal of the deposits from the Bank of United States into the State Banks. In conse- quence of this movement on the part of the Senate, President Jackson sent to that body a protest against the right of the Senate to express any opinion cen- suring his public course; and what made the case then stronger than the present case, was, that the Senate constituted the jury by whom he was to be tried should any impeachment be brought against him. The Senate, after a long, elabo- rate discussion of the whole matter, and the most eloquent and overpowering torrent of debate that ever was listened to in this country, adopted the three following resolutions:

1. Resolved, That while the Senate is and ever will be ready to receive from the President all such messages and communications as the Constitution and laws and the usual course of business authorize him to transmit to it, yet it cannot recognize any right in him to make a formal protest against votes and proceedings of the Senate, declaring such votes and proceedings to be illegal and unconstitutional, and requesting the Senate to enter such protest on its Journal.

On this resolution the yeas and nays were taken, and it was adopted by a vote of 27 to 16; and among the record- ed votes in its favor stood the names of John Tyler, now acting President of the United States, and Daniel Webster, now his Prime Minister.

The second resolution was as fol- lows:

2. Resolved, That the aforesaid protest is a breach of the privileges of the Senate, and that it be not entered on the Journal.

The same vote, numerically, was given in favor of this resolution; and among the yeas stood the name of John Tyler, now acting President of the United States, and of Daniel Webster, now his Prime Minister.

The third resolution read as follows: 3. Resolved, That the President of the United States has no right to send a protest to the Senate against any of its proceedings.

And in sanction of this resolution also the record showed the names of the same John Tyler and Daniel Webster.

Mr. B. went on to say that it was not often that he was driven to the necessity of adopting the sentiments others in- stead of giving expression to his own; he was in the habit of thinking, of speaking, and of acting for himself; but, on this occasion, he should adopt a few extracts of the speech of a gentleman whom, whatever opinion he might hold con- cerning certain parts of his public course, he never had hesitated to admit to be the ablest of jurists and the soundest of con- stitutional lawyers. Never were words more applicable to the very case now before the House. This masterly speech (of Mr. WEBSTER) would be found in the 10th volume of Gales and Seaton's Con- gressional Debates, page 670:

"Mr. President, I know not who wrote this protest. [Nor do I know, said Mr. Botts, who wrote this. I am very sure John Tyler never did. (A voice, "Those words are not there age they? they are your own.") Yes, I am astonished, as well at the want of knowledge which it displays of constitutional law, as of the high and dangerous pretensions which it puts forth. Neither branch of the Legislature can express censure upon the President's conduct! Suppose, sir, that we should see him enlisting troops,

and raising an army; can we, or should we say nothing, and do nothing? Sup- pose he were to declare war against a foreign Power, and put the army and the fleet in action; are we still to be silent? Suppose we should see him borrowing money on the credit of the United States; are we yet to wait for impeachment?— Indeed, sir, in regard to this borrowing money on the credit of the United States, I wish to call the attention of the Senate not only to what might happen, but to what has actually happened. We are informed that the Post Office Department, a department over which the President claims the same control as over the rest, has actually borrowed near half a million of money on the credit of the United States."

The protest, as I have already said, contends that neither the Senate nor the House of Representatives can express its opinions on the conduct of the Presi- dent, except in some form connected with impeachment; so that if the power of impeachment did not exist, these two Houses, though they be representative bodies, though one of them be filled by the immediate Representatives of the People, though they be constituted like other popular and Representative bodies, could not utter a syllable, although they saw the Executive either trampling on their own rights and privileges, or grasping at absolute authority and dominion over the liberties of the country! Sir, I hardly know how to speak of such claims of im- punity for Executive encroachment. I am amazed that any American citizen should draw up a paper containing such lofty pretensions; pretensions which would have been met with scorn, in England, at any time since the revolution of 1688. A man who should stand up, in either House of the British Par- liament, to maintain that the House could not, by vote or resolution, main- tain its own rights and privileges, would make even the tory benches hang their heads for very shame. There was, in- deed, a time when such proceedings were not allowed. Some of the kings of the Stuart race would not tolerate them. A signal instance of royal displeasure with the proceedings of Parliament oc- curred in the reign of James the First.— The House of commons spoke in some oc- casion, of its own undoubted rights; and privileges! The King thereupon sent them a letter, declaring that he would not allow that they had any undoubted rights; but that what they enjoyed they might hold by his own royal grace and permission. Sir Edward Coke and Mr. Granville were not satisfied with this title to their privileges; and, under their lead, the House entered on its journals a resolution asserting its privileges, as its own undoubted right, and manifesting a determination to maintain them as such. This, says the historian, so enraged his majesty that he sent for the Journal, had it brought into the council and there, in the presence of the great officers of state, tore out the offensive resolution with his own royal hand. He then dissolved Par- liament, and sent its most refractory members to the Tower. I have no fear, certainly, sir, that this English example will be followed on this occasion, to its full extent; nor would I insinuate that any thing outrageous has been thought of, or intended, except outrageous pre- tensions; but such pretensions I must im- pute to the author of this protest, whoever that author be.

"When this and the other House shall lose the freedom of speech and debate; when they shall surrender the rights of publicly and freely canvassing all the important measures of the Executive; when they shall not be allowed to maintain their own authority and their own pri- vileges, by vote, declaration or resolution, they will be no longer free Representa- tives of a free people, but slaves them- selves, and fit instruments to make slaves of others."

"The protest, Mr. President, concedes what it doubtless regards as a liberal right of discussion to the People them- selves. But its language, even in ac- knowledging this right of the People to discuss the conduct of their servants, is qualified and peculiar. The free people of the United States, it declares, have an undoubted right to discuss the official conduct of the President, in such language and form as they may think proper, 'subject only to the restraints of truth and justice.' But, then, who is to be the judge of this truth and justice? Are the People to judge for themselves, or are others to judge for them? The protest is here speaking of political rights, and not moral rights, and if restraints are im- posed on political rights, it must follow, of course, that others are to decide, when- ever the case arises, whether these re- straints have been violated. It is strange that the writer of the protest did not per- ceive that, by using this language, he was pushing the President into a direct avowal of the doctrines of 1798. The text of the protest and the text of the ob- noxious act of that year are nearly iden- tical.

"But, sir, if the People have a right to discuss the official conduct of the Exe- cutive, so have their Representatives.— We have been taught to regard a Repre- sentative of the People as a sentinel on the watch-tower of liberty? Is he to be deaf, though sounds of peril fill the air? Is he to be dumb, while a thousand duties impel him to raise the cry of alarm!

Is he, not rather to catch the lowest whis- per which breathes intention or purpose of encroachment on the public liberties, and to give his voice breath and utter- ance at the first appearance of danger? Is not his eye to traverse the whole hori- zon, with the keen and eager vision of an unhooded hawk, detecting, through all disguises, every enemy advancing, in any form, towards the citadel which he guards.

"Sir, this watchfulness for public lib- erty, this duty of foreseeing danger and proclaiming it, this promptitude and boldness in resisting attacks on the Con- stitution from any quarter, this defence of established landmarks, this fearless resistance of whatever would transcend or remove them, all belong to the repre- sentative character, are interwoven with its very nature, and of which it cannot be deprived without converting an ac- tive, intelligent, faithful agent of the people into an unresisting and passive instrument of power. A representative body which gives up these rights and duties, gives itself up. It is a repre- sentative body no longer. It has broken the tie between itself and its constitu- ents, and henceforth is fit only to be regarded as an inert, self-sacrificed mass, from which all appropriate principle of vitality has departed forever.

"I have thus endeavored to vindicate the right of the Senate to pass the res- olution of the 25th of March, notwith- standing the denial of the right in the protest.

"But there are other sentiments and opinions expressed in the protest, of the very highest importance, and which demand nothing else than our utmost at- tention.

"The first object of a free people is the preservation of their liberty; and liberty is only to be preserved by main- taining constitutional restraints and just divisions of political power. Nothing is more deceptive or more dangerous than the pretence of a desire to sim- plify government. The simplest govern- ments are despotisms; the next sim- plest, limited monarchies; but all re- publican, all governments of law, must impose numerous limitations and qual- ifications of authority, and give many positive and many qualified rights. In other words, they must be subject to rule and regulation. This is the very es- sence of free political institutions. The spirit of liberty is, indeed, a bold & fear- less spirit; but it is also a sharp-sighted spirit; it is a cautious, sagacious, dis- criminating, far-seeing intelligence; it is jealous of encroachment, jealous of power, jealous of man. It demands checks, it seeks for guards, it insists on securities; it entrenches itself behind strong defences, and fortifies, with all possible care, against the assaults of ambition and passion. It does not trust the amiable weaknesses of human nature, and therefore it will not permit power to overstep its prescribed limits, though benevolence, good intent, and patriotic purposes along with it. Nei- ther does it satisfy itself with flashy and temporary resistance to illegal author- ity. Far otherwise. It seeks for dura- tion and permanence. It looks before and after; and, building on experience of ages which are past, it labors dili- gently for ages to come. This is the nature of constitutional liberty, if we will rightly understand and preserve it. Every free Government is necessarily complicated, because all such Govern- ments establish restraints, as well on the power of Government itself as on that of individuals. If we will abolish the distinction of branches, and have but one branch; if we will then ordain that the legislator shall himself be that judge; and if we will place Executive power in the same hands, we may readi- ly simplify Government. But a separa- tion of departments, so far as practi- cable, and the preservation of clear lines of division between them, is the funda- mental idea in the creation of all our constitutions; and, doubtless, the con- tinuance of regulated liberty depends on maintaining these boundaries."

A separate question was ordered on each resolution, and the yeas and nays were ordered; and on the first resolu- tion the vote resulted as follows:

Yeas 87—nays 46

So the first resolution was adopted.

On the second resolution the vote stood as follows:

Yeas 86—nays 48

So the second resolution was adopted;

On the third resolution the vote stood as follows:

Yeas 86—nays 53.

So the third resolution was adopted;

The question on the fourth resolution was then taken and the vote resulted as follows:

Yeas 62—nays 69.

So the fourth resolution was rejected.

UNREWARDED FAITH.

"You take a great deal more trouble than you need with your little crops, nigger. There ain't gon' to be any frost. Besides, you should trust in Providence." "Providence!" answered Cuff, passion- ately. "I trust to him last season, mas- sa, an' he freeze all my taters. I won't hab nothin' to do wid him agin!"

The Florida war has been ended again.