

PRESIDENT AND SENATE.

THE REPUBLICAN VIEW OF THE PENDING CONTROVERSY.

Senator Edmunds's Speech on His Resolution Condemning the Attorney-General.

FOR REFUSING TO TRANSMIT PAPERS CALLED FOR.

A Specious and Plausible Argument, but One That Will Not Stand.

WASHINGTON, March 9.—Senator Edmunds's speech on his resolution condemning the Attorney-General for refusing to transmit papers called for by the Judiciary Committee, was heard in the Senate to-day.

The Chair laid before the Senate a letter from the Postmaster-General transmitting in response to a recent Senate resolution information as to mail service on the Pacific and other railroads; also a letter from the Secretary of the Treasury transmitting a letter from the Chief Justice of the Court of Claims, asking an appropriation of \$4000 for printing and binding expenses of that court.

Mr. Conger reported favorably from the Committee on Commerce a bill authorizing the Central Missouri Railway Company to construct a railroad bridge across the Mississippi river at or near Alton, Ill. The bill was read a third time and passed.

Under the head of unfinished business, the Senate took up the resolution reported by Senator Edmunds from the Judiciary Committee. These resolutions, among other things, condemn the Attorney-General for refusing to transmit to the Senate papers called for by the Senate, and declare that refusal to be a violation by the Attorney-General of official duty, and subversive of the fundamental principles of government and good administration.

The resolutions also condemn the discharge from the government service of ex-Union soldiers.

As the resolutions were read by the chief clerk, the most absolute silence prevailed on the floor and in the galleries. The galleries were crowded to apparent discomfort, many persons being compelled to stand. This was notably true of the reserved galleries, to which admission is only permitted by cards from Senators, many gentlemen and not a few ladies, being early in attendance, failing to find vacant seats.

Senator Edmunds began his remarks in a rather low tone, but his voice soon acquired its usual full, clear, ringing volume. He said the calm and orderly administration of a constitutional government is a subject in which the Senate and the House of Representatives and the President and people are equally interested and for which they are all, in their respective stations and places, equally responsible.

It was in support of that calm and orderly constitutional exercise of the functions of government that he now addressed himself to these resolutions. It has been, he said, at least forty years since any occasion of this kind has arisen between the Executive Department of the government and the Senate, and when a little more than forty years ago a similar, but not the same question, arose, it had then been a long time since any such question had engaged public attention.

The instances in which they have been evinced, the slightest reluctance on the part either of the executive or the heads of departments to respond to the calls of either house of Congress, or of the committees, for papers in the possession either of the executive or of the departments have been very few indeed. Sometimes, in the case of political fever, as it might be called, there has been evinced, wide years apart, a reluctance and hesitancy on the part of the executive or the heads of departments to do this thing, and then that storm being over, the orderly administration of constitutional government went on as before.

And either house of Congress, on its request or demand, as the case might be, and the committees of either house could, without direct and positive authority to send for persons and papers, always obtain from the departments on their mere request anything they found necessary for the proper discharge of their duties. Now, again, after almost half a century, the Senate found itself confronted by the refusal of the head of the Department of Justice to transmit copies of official papers and documents relating not to persons, but to things; relating not to officers, but to the office, or the department. In order that the Senate might perfectly understand how the question stood, he caused to be read the statutes relating to the tenure of office and recess suspensions. (Sections 1767 and 1768.)

Mr. Edmunds himself read portions of the statutes creating the Department of Justice, prescribing the functions and duties of its head and providing for the appointment of substitutes by the Attorney-General, which substitutes are responsible to the Attorney-General. Under these provisions, he continued, the Attorney-General has made regulations for the control and guidance of his subordinates.

Mr. Edmunds continued, and so far as we yet know faithfully performed his duties. On the 7th day of July, 1885, the President of the United States, under the authority of section 1768, Revised Statutes, suspended this gentleman, and on the same day, pursuant to the same statute, he designated John D. Burnett of Alabama to perform the duties of the suspended officer.

The Senate met on the first Monday of December, and on the 14th of that month the President sent in the nomination of Mr. Burnett.

Senator Edmunds caused to be read the letters of suspension and the message of nomination, as well as the resolution of the Senate calling for the papers in the case, and the Attorney-General's reply.

Senate Dustin was the United States District Attorney for Alabama, and the proposition was that he should be removed. Senator Edmunds contended that had the Senate been a jury, it would have been its duty to find out how Dustin had administered his office.

Senator Edmunds said that in spite of sundry misstatements in the public press and by the President and by the minority of the Judiciary Committee, the case, as it stands, is that the President has asked the Senate to consent to the removal of Dustin and the appointment of Burnett. Besides, it was not for the President to determine what papers were relevant; that was discretionary with the Senate.

Senator Edmunds did not think the warmest administration man would say that it was any part of the duty of the President or head of a department to determine whether official information in the department which was required by either House of Congress was to be furnished or withheld, according to the opinion of the officer that they would or would not be useful to them in their deliberations.

The papers called for in this case were papers filed in the department, and the law made the Attorney-General, and not the President, the custodian of those papers, and required him to preserve them. Every paper addressed to the officer exercising the official function of suspension, upon that topic, must be an official paper, no matter how vile or false it may be.

It did not belong to the President or Attorney-General, but to the officer in his character as an officer. The Attorney-General gave no hint that any part of the papers called for were private or unofficial, or even confidential papers. Official papers were called for, and such papers only were spoken of in the response. But the papers were refused because they would not only give the facts, but would enable us to understand the reasons of the President for exercising his official act; therefore, the proposition was that the Senate, being called on in the exercise of its jurisdiction to judge of the official conduct of Dustin—the President having already been called on, within his jurisdiction, to pronounce a judgment on a similar question about the same man, the Senate could not have the papers, because if it did they would disclose the reasons which the President acted on.

"If that," said Senator Edmunds, "is not a proposition which would stagger the credulity and amaze the understanding of any intelligent man in a government of law or in a government of reason, I am quite unable to comprehend what would be."

All the operations of the government, Senator Edmunds continued, "were executive, and had it come to this, because the President was the chief executive officer of the government Congress could know nothing as to the facts and circumstances relating to the execution of the laws, because, if they did, they might be able to comprehend the motives and reasons of the President in carrying out the laws. Why, such a statement was shocking—yet that was the logic of this whole thing. The jurisdiction of Congress was infinitely broader than that of the President. His was executive power. Congress made the laws, and when the constitution commands him to give Congress information on the state of the Union," it says he "shall do," had reference to the universal power of knowledge of the two houses of Congress in respect to every operation of the government and every one of its officers.

That is the "state of the Union." The state of the Union is made up of "every drop in the bucket" of the execution of every law and the performance of every officer under the law. There was no one thing, no one subject, that represented the "state of the Union." It was the condition of the government, and every part of it, not only its legislative part, but all which the President could communicate no information without impeachment, for the constitution had declared that the two houses were to regulate themselves—but he was to give to Congress, and was positively commanded to do so, and when the constitution commands him to give Congress information on the state of the Union, and that is because Congress was entitled to have it every time they called for it, and he violated a positive command of the constitution when, on a constitutional call in the regular way he omitted to do it.

That was the reason why, since the beginning of the government, when either house is seeking for information, supposed that there might be as question as to the propriety of an undue disclosure of some confidential fact which they were entitled to know had usually left it to the President to send the information just then and not at his judgment, and so he (Senator Edmunds) mentioned that either house of Congress has a right to know everything that was in the Executive Departments of the government. He would state the extreme case possible, and that was either house calling on the President for information, as to the disbursement of the contingent fund for the payment of the expenses of foreign intercourse, which was ordinarily called a secret service fund.

There the money of the people was appropriated under the law, which said that a voucher of the President of the United States should be evidence to the accounting officers of the Treasury that the money had been properly expended, while in the State Department the real vouchers remained which showed for what the money had been expended. Now, then, suppose some President two or three years ago, when we appropriated \$100,000 or \$200,000 for the contingent expenses of the department just preceding an election should have turned into the Treasury a lump voucher for the whole amount. Suppose at the next meeting of the Senate and House of Representatives they should be of the opinion that the security of good government, and as a guard against any corruption or improper use of that money, it was necessary to know what became of it, would it be within the power of the Secretary of State or the President of the United States to say no? If so, we had better be extremely careful hereafter as to how much money we put into the contingent fund for foreign intercourse. The improvement in public methods, so far as we had yet gone, would seem to be chiefly and most conspicuously the suppression and concealment of public papers within the best intentions, undoubtedly, but Senator Edmunds would repeat that for the first time in forty years or more, so far as he had been able to discover, had either house of Congress failed to get the information it had asked for from the public departments of the government. Why, in respect to this very instance, which illustrated the importance of standing up for the right of good government, when this resolution was sent to the Attorney-General there was pending in another branch of Congress a bill providing for a deficiency of about \$185,000 in the Department of Justice for fees of

jurors and witnesses, and a letter was there, without doubt, and the letter of the Attorney-General's stating there must be added for this current fiscal year, ending the 31st of June next, a year covering twelve months of purely Democratic control, a deficiency of \$185,000. If the case of Dustin was fairly illustrative of the circumstances of all the district-attorneys and marshals of the United States—everything that went to make up the autonomy of the administration of justice—then we have drawn in the question, what has become of the money that was appropriated at the regular session to carry on the administration of justice, through the Department of Justice, in the United States? Dustin was one of the persons who were to draw upon that fund. In that district he was the very person whose agency, more than that of any other man, would go to an economical or extravagant, a just or an unjust, expenditure of the public money. Could we not know anything about it? Take the other sixty or seventy districts in the United States. If it were denied to us as to D. J. it must be denied as to Donahoe, and as to Henry, (the Marshal of Vermont), and every other marshal and every other district attorney. What, then, were we to do? If we had passed the resolution while we were acting in a legislative way—as if there were any difference in powers of the Senate, whether sitting with open or with closed doors—it would not be necessary to suspend, and applied it to all the districts of the United States. If the Attorney-General and the President were right now, they would be right then, in saying "No; we can give you no information, because if we do, you may be able to know the reasons why so many of these marshals and district attorneys have been suspended, and that is purely within the province of the President of the United States."

That was the logic of our good friends, the minority of the committee, and their good friend, and all, the President of the United States, who, with a courage certainly not to be envied, had just made a preliminary report to the report of the minority committee before the Senate had even considered it. Was it possible to carry out the government in that way? He (Senator Edmunds) thought not so far as the constitutional relations between the two houses of Congress and the Executive Department of the government and the respective rights to information or the denial of it depended upon whether one house or the other was acting at the time of its call with its doors closed. Why, there were no two bodies here, there were no two jurisdictions. The Senate was one. Here was about to be a man, who celebrated Senator from a Southern State who, on a similar occasion in an executive session concerning the Panama mission—Senator Hayne of South Carolina—discussing a resolution which it was proposed the Senate should adopt for the purpose of getting possession of all the facts relating to an assembly of Congress on South American and Central American States and the United States. Some very zealous friends of the President apparently opposing the resolution, said: "However gentlemen may be enamored of this new doctrine of confidence in the President, and every part of it, comprehend on which the Senate ought to act in fulfilling their constitutional duty of giving advice to the President. If men are to act by faith and not by knowledge, we have no business to be here." He (Mr. Edmunds) thought so, too. Knowledge was denied, and if the Senate acted in the direction that the Attorney-General and the President desired it to act in putting through these 643 or 650 removals and appointments by faith and not by knowledge, then he agreed with Senator Hayne "that we have no business to be here."

In 1835 President Jackson removed a Surveyor-General, a man named Wirt, as he had the right to do. He had not "suspended" him; there was no law for suspension. He appointed to fill the vacancy a man named Williamson. The Senate called on the President for papers and information regarding the removal of Wirt. The President replied in a three-line message, saying in substance that he had the right to do so, and that he had no business to be here. He had no business to be here, but he was going to stop now—that he had removed Mr. Wirt, as he had a right to do, and the reason was none of the Senate's business. The Senate next day, without a division, rejected Mr. Wirt's removal, and the very message in which the President said he would not tell anything about what Wirt had been doing, he took particular pains to say that Williamson was one of the best qualified and most valuable personages he had ever known. That was the end of the matter, and the Senate on the subject of papers about appointments. Down to that time every species of information touching foreign affairs, of the most delicate character—touching the operations of the army—touching every part of the administration that belonged to the President, and to the President just as exclusively as did the power of removal or suspension, President Jackson, like all his predecessors, and like all his successors, until today, felt bound to give to both houses of Congress.

The President in his supplementary minority report to the deliberations of the Senate had stated, with a fulness of rhetoric, which was as charming as it was untrue, that the President of the United States and the practice under which they had now for many years fallen into a state of innocent drudgery. If that were true, it ought to be one of the missions of the President in discharging the duty that the constitution imposes upon him to take that state of drudgery (if he might use a shorter and humbler phrase) and, as he was sworn to, put it into faithful execution. But was the state in disrepute? The Committee on the Judiciary from the time of the passage of the act, and he might state, also, for all time, as he had learned from examination of papers in the Secretary's office, had been in the habit in respect to appointments of calling upon the Attorney-General for all the information that he had and when it came to the law respecting removals, as well as appointments, of calling for everything regarding the proposed removal of the President, Gen. Grant came in down to the present time the committee had had a regular practice that it had pursued, without exception, of never acting upon a removal (unless some member had personal knowledge which made them necessary) without calling upon the department of the government for information in his possession. The minority of the committee said that no such spectacle as the Judiciary Committee was now presenting to an astonished world and an astonished and injured President and Attorney-General had been presented in the Democratic time—let us see," said Senator Edmunds; "on the

4th of March, 1879, the Democrats had a majority of this body. Their Committee on the Judiciary was Mr. Thurman (chairman, Mr. Mr. McDoull of Indiana, Mr. Bayard of Delaware (present Secretary of State), Mr. Grant of Arkansas (present Attorney-General), Mr. Lamar of Mississippi (present Secretary of the Interior), Judge Davis of Illinois and Messrs. Edmunds, Cullough and Carpenter.

Referring to the committee's letter-book, Senator Edmunds said: "do not know but that it is private and confidential, but I will take the liberty of reading it (laughter) even if it gets to the ears of the Attorney-General and the President of the United States." Senator Edmunds then read a copy of a letter from Senator Thurman, as chairman of the committee, to the Attorney-General, dated March 24, 1879, calling for the removal of Mr. Grant as Secretary of the Interior, and department concerning the following nomination, together with any suggestion you may be pleased to note."

"On the 7th of April," continued Senator Edmunds, "there came in a horse of a different color—the same kind of an animal that we have here now. [Laughter.] Accordingly, on that day, this letter was written to the Attorney-General."

The Attorney-General of the United States: Sir—Under the direction of the Judiciary Committee of the Senate, I have the honor to request that you will communicate to the committee any papers or information in your possession touching the question of the propriety of the removal (emphatically Mr. Edmunds) of Michael Shafter, Chief Justice of the Supreme Court of the Territory of Utah, and the appointment of David T. Corbin to the office. Very respectfully, your obedient servant,

ALLEN G. THURMAN, Chairman.

Allen for the Democracy of those days. [Laughter.] Think, Mr. President, of the infatuation, the unparliamentary, the usurpation of that number of five Senators of the United States of the Democratic party, assisting a Republican Attorney-General, and a Republican President with the insulting and impudent inquiry as to papers and information touching a suspended officer whose successor was nominated to accomplish his removal, and yet those men were, in their day—in these times—among the headlines of the Democratic journals. [Laughter.] There was Thurman. He might be put out. [Renewed laughter.] The greatest Democrat in the United States, (applause in the galleries), and the best one, and the noblest one, and the bravest one, for he had the courage not long ago in your State, sir, to denounce the Democratic frauds at the ballot box, and there was 'Jo' McDonald, a name familiar in the West as in the East as the embodiment of upright Democratic pluck and constitutional law; and there was Senator Garland, whom we all know here, and the Democratic side of the Senate, all and running over with constitutional and status and reported law—knowing his rights as a Senator, as a member of the committee, and knowing his duties, and Senator Lamar, and then all the rest of us on this side, joining in what the present President of the United States, sir, called an impertinent innovation of his rights in asking for papers. Mr. President, if I were going to be rhetorical, I should say just there, 'Oo shame, where is thy blush?' But that was not the only instance," Senator Edmunds said, "the same Chair and on many occasions had called for the same class of information and got it."

In conclusion, it did not seem to Senator Edmunds that the Senate could fail to get papers on the ground that the statute on the subject had become obsolete or gone into a state of innocuous disuse. The President himself had sent the Senate 643 nominations under that law; 643 nominations made under that law; the law was still in force.

Senator Pugh obtained the floor, and the Senate went into executive session and soon adjourned.

The House.

The House to-day passed a bill requiring the railroad companies to pay the cost of surveying their lands and to take out patents therefor.

The response of the Secretary of the Navy to the Boutelle resolutions concerning the removal of inscriptions at the Norfolk navy yard, was referred to the Committee on Naval Affairs.

Mr. Latham (Ky.) from the Committee on Public Buildings and Grounds, reported back the Senate bill to provide for the ascertainment of the market value of certain property in Chicago, and authorizing the Secretary of the Treasury to sell and convey such property. House calendar.

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Mr. Eldridge (Mich.) from the Committee on Pensions, reported a bill granting pensions to the soldiers and sailors of the Mexican war. Committee of the whole.

On behalf of the Committee on Labor, Mr. James (N. Y.) called up the bill to prohibit any officer, servant or agent of the government to hire or contract out the prisoners incarcerated for violating laws of the United States government. The bill was passed—yeas, 249; nays, 8.

The House then went into committee of the whole, Mr. Townsend of Illinois in the chair, on the Indian appropriation bill.

Mr. Wellborn (Tex.) briefly ran over the appropriations made by the bill and compared them with those made for the current year, summing up with the statement that the pending bill carried \$5,502,862, as against \$5,777,451 appropriated for the current year. Pending discussion the committee rose and the House adjourned.

The Hennepin Canal.

WASHINGTON, March 9.—The Secretary of War to-day transmitted to the House reports of Chief Engineers Newton and Maj. Handbury of the Engineer Corps, in reference to surveys for the Hennepin Canal. Maj. Handbury recommends what is known as the Marais de Oser route. He estimates the cost of the canal by this route at \$5,814,257, or about \$1,000,000 less than by the other route surveyed. This estimate is exclusive of the cost of the "Dixons feeder," which is common to all the routes, and which will cost \$1,664,117. Maj. Handbury says the Marais de Oser route is better, cheaper and affords a better regulated supply of water than the other route surveyed. Gen. Newton adheres, however, to his previous recommendation of the Rock Island route, and says it offers the greatest commercial advantages.

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