SPEECH

OF

MR. CLAY, OF KENTUCKY,

ON THE

RESOLUTION TO EXPUNGE A PART OF THE JOURNAL FOR THE SESSION OF 1833-1834.

DELIVERED IN

THE SENATE OF THE UNITED STATES,

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EXPUNGING RESOLUTION.

SENATE, MONDAY, JANUARY 16, 1837.

Mr. Clay rose and said that, considering that he was the mover of the resolution of March, 1834, and the consequent relation in which he stood to the majority of the Senate by whose vote it was adopted, he had felt it to be his duty to say something on this expunging resolution; and he had always intended to do so when he should be persuaded that there existed a settled purpose of pressing it to a final decision. But it had been so taken up and put down at the last session—taken up one day, when a speech was prepared for delivery, and put down when it was pronounced, that he had really doubted whether there existed any serious intention of ever putting it to the vote. At the very close of the last session, it will be recollected that the resolution came up, and in several quarters of the Senate a disposition was manifested to come to a definite decision. On that occasion he had offered to waive his right to address the Senate, and silently to vote upon the resolution; but it was again laid upon the table, and laid there forever, as the country supposed, and as he believed. It is, however, now revived; and, sundry changes having taken place in the members of this body, it would seem that the present design is to bring the resolution to an absolute conclusion.

I have not risen (continued Mr. Clay) to repeat, at full length, the argument by which the friends of the resolution of March, 1834, sustained it. That argument is before the world, was unanswered at the time, and is unanswerable. And I here, in my place, in the presence of my country and of my GOD, after the fullest consideration and deliberation of which my mind is capable, re-assert my solemn conviction of the truth of every proposition contained in that resolution. But, whilst it is not my intention to commit such an infliction upon the Senate as that would be of retracing the whole ground of argument formerly occupied, I desire to lay before it, at this time, a brief and true state of the case. Before the fatal step is taken of giving to the expunging resolution the sanction of the American Senate, I wish, by presenting a faithful outline of the real questions involved in the resolution of 1834, to make a last, even if it is to be an ineffectual, appeal

to the sober judgments of the Senators. I begin by re-asserting the truth of that resolution.

Our British ancestors understood perfectly well the immense importance of the money-power in a representative Government. It is the great lever by which the Crown is touched, and made to conform its administration to the interests of the kingdom and the will of the people. Deprive Parliament of the power of freely granting or withholding supplies, and surrender to the King the purse of the nation, he instantly becomes an absolute monarch. Whatever may be the form of government, elective or hereditary, democratic or despotic, that person who commands the force of the nation, and at the same time has uncontrolled possession of the purse of the nation, has absolute power, whatever may be the official name by which he is called.

Our immediate ancestors, profiting by the lessons on civil liberty which had been taught in the country from which we sprung, endeavored to encircle around the public purse, in the hands of Congress, every possible security against the intrusion of the Executive. With this view, Congress alone is invested, by the Constitution, with the power to lay and *collect* the taxes. When collected, not a cent is to be drawn from the public Treasury, but in virtue of an act of Congress. And, among the first acts of this Government, was the passage of a law establishing the Treasury Department, for the safe-keeping and the legal and regular disbursement of the money so collected. By that act a Secretary of the Treasury is placed at the head of the Department; and, varying in this respect from all the other Departments, he is to report, not to the President, but directly to Congress, and is liable to be called to give information in person before Congress. It is impossible to examine dispassionately that act, without coming to the conclusion that he is emphatically the agent of Congress in performing the duties assigned by the Constitution to Congress. The act further provides that a Treasurer shall be appointed to receive and keep the public money, and none can be drawn from his custody but under the authority of a law, and in virtue of a warrant drawn by the Secretary of the Treasury, countersigned by the Comptroller, and recorded by the Register. Only when such a warrant is presented can the Treasurer lawfully pay one dollar from the public purse. Why was the concurrence of these four officers required in disbursements of the public money? Was it not for greater security? Was it not intended that each, exercising a separate and independent will, should be a check upon every other? Was it not the purpose of the law to consider each of these four officers, acting in his proper sphere, not as a mere automaton, but as an intellectual, intelligent, and responsible person, bound to observe the law, and to stop the warrant, or stop the money, if the authority of the law were wanting?

Thus stood the Treasury from 1789 to 1816. During that long time no President had ever attempted to interfere with the custody of the public purse. It remained where the law placed it, undisturbed, and every Chief Magistrate, including the Father of his Country, respected the law.

In 1816 an act passed to establish the late Bank of the United States for the term of twenty years; and, by the 16th section of the act, it is enacted "that the deposites of the money of the United States in places in which the said bank and the branches thereof may be established, shall be made in said bank or branches thereof, unless *the Secretary of the Treasury shall* at any time otherwise *order* and *direct;* in which case, the Secretary of the Treasury shall immediately *lay before Congress,* if in session, and, if not,

immediately after the commencement of the next session, *the reasons* of such order or direction."

Thus it is perfectly manifest, from the express words of the law, that the power to make any order or direction for the removal of the public deposites is confined to the Secretary alone, to the absolute exclusion of the President, and all the world besides. And the law, proceeding upon the established principle that the Secretary of the Treasury, in all that concerns the public purse, acts as the direct agent of Congress, requires, in the event of *his* ordering or directing a removal of the deposites, that he shall immediately lay his reasons therefor before whom? The President? No; before Congress.

So stood the public Treasury and the public deposites from the year 1816 to September, 1833. In all that period of seventeen years, running through or into four several Administrations of the Government, the law had its uninterrupted operation,—no Chief Magistrate having assumed upon himself the power of diverting the public purse from its lawful custody, or of substituting his will for that of the officer to whose care it was exclusively entrusted.

In the session of Congress of 1832-'3 an inquiry had been instituted by the House of Representatives into the condition of the Bank of the United States. It resulted in a conviction of its entire safety, and a declaration by the House, made only a short time before the adjournment of Congress on the 4th of March, 1833, that the public deposites were perfectly secure. This declaration was probably made in consequence of suspicions then afloat of a design on the part of the Executive to remove the deposites. These suspicions were denied by the press friendly to the Administration. Nevertheless, the members had scarcely reached their respective homes before measures were commenced by the Executive to effect a removal of the deposites from that very place of safety which it was among the last acts of the House to declare existed in the Bank of the United States.

In prosecution of this design, Mr. McLane, the Secretary of the Treasury, who was decidedly opposed to such a measure, was promoted to the Department of State, and Mr. Duane was appointed to succeed him. But Mr. Duane was equally convinced with his predecessor that he was forbidden by every consideration of duty to execute the power with which the law had entrusted the Secretary of the Treasury, and refused to remove the deposites; whereupon he was dismissed from office, a new Secretary of the Treasury was appointed, and, in September, 1833, by the command of the President, the measure was finally accomplished. That it was the President's act was never denied, but proclaimed, boasted, defended. It fell upon the country like a thunderbolt, agitating the Union from one extremity to the other. The stoutest adherents of the Administration were alarmed; and all thinking men, not blinded by party prejudice, beheld in the act a bold and dangerous exercise of power; and no human sagacity can now foresee the tremendous consequences which will ensue. The measure was adopted not long before the approaching session of Congress; and, as the concurrence of both branches might be necessary to compel a restoration of the deposites, the object was to take the chance of a possible division between them, and thereby defeat the restoration.

And where did the President find the power for this most extraordinary act? It has been seen that the Constitution, jealous of all Executive interference with the Treasury of the nation, has confided it to the exclusive

care of Congress, by every precautionary guard, from the first imposition of the taxes to the final disbursement of the public money.

It has been seen that the language of the sixteenth section of the law of 1816 is express and free from all ambiguity; and that the Secretary of the Treasury is the sole and exclusive depository of the authority which it confers.

Those who maintain the power of the President have to support it against the positive language of the Constitution, against the explicit words of the statute, and against the genius and theory of all our institutions.

And how do they surmount these insuperable obstacles? By a series of far-fetched implications, which, if every one of them were as true as they are believed to be incorrect or perverted, would stop far short of maintaining the power which was exercised.

The first of these implied powers is, that of dismissal, which is claimed for the President. Of all the questioned powers ever exercised by this Government, this is the most questionable. From the first Congress down to the present Administration, it had never been examined. It was carried, then, in the Senate by the casting vote of the Vice President. And those who, at that day, argued in behalf of the power, contended for it upon conditions which have been utterly disregarded by the present Chief Magistrate. The power of dismissal is nowhere in the Constitution granted, in express terms, to the President. It is not a necessary incident to any granted power; and the friends of the power have never been able to agree among themselves as to the precise part of the Constitution from which it springs.

But, if the power of dismissal was as incontestible as it is justly controvertible, we utterly deny the consequences deduced from it. The argument is, that the President has, by implication, the power of dismissal. From this first implication another is drawn, and that is, that the President has the power to control the officer, whom he may dismiss, in the discharge of his duties, in all cases whatever; and that this power of control is so comprehensive as to include even the case of a specific duty expressly assigned by law to the designated officer.

Now, we deny these results from the dismissing power. That power, if it exists, can draw after it only a right of general superintendence. It cannot authorize the President to substitute his will to the will of the officer charged with the performance of official duties. Above all, it cannot justify such a substitution in a case where the law, as in the present instance, assigns to a designated officer exclusively the performance of a particular duty, and commands him to report not to the President, but to Congress, in a case regarding the public purse of the nation, committed to the exclusive control of Congress.

Such a consequence as that which I am contesting would concentrate in the hands of one man the entire Executive power of the nation, uncontrolled and unchecked.

It would be utterly destructive of all official responsibility. Instead of each officer being responsible, in his own separate sphere, for his official acts, he would shelter himself behind the orders of the President. And what tribunal, in Heaven above or on earth below, could render judgment against any officer for an act, however atrocious, performed by the express command of the President, which, according to the argument, he was absolutely bound to obey?

Whilst all official responsibility would be utterly annihilated in subordi-

nate officers, there would be no practical or available responsibility in the President himself.

But the case has been supposed, of a necessity for the removal of the deposites, and a refusal of the Secretary of the Treasury to remove them; and it is triumphantly asked if, in such a case, the President may not remove him, and command the deed to be done. That is an extreme case, which may be met by another. Suppose the President, without any necessity, orders the removal from a place of safety to a place of hazard? If there be danger that a Secretary may neglect his duty, there is equal danger that a President may abuse his authority. Infallibility is not a human attribute. And there is more security for the Public in holding the Secretary of the Treasury to the strict performance of an official duty specially assigned to *him*, under all his official responsibility, than to allow the President to wrest the work from his hands, annihilate his responsibility, and stand himself practically irresponsible. It is far better that millions should be lost by the neglect of a Secretary of the Treasury, than to establish the monstrous principle that all the checks and balances of the Executive Government shall be broken down, the whole power absorbed by one man, and his will become the supreme rule. The argument which I am combatting places the whole Treasury of the nation at the mercy of the Executive. It is in vain to talk of appropriations by law, and the formalities of warrants upon the Treasury. Assuming the argument to be correct, what is to prevent the execution of an order from the President to the Secretary of the Treasury to issue a warrant without the sanction of a previous legal appropriation, to the Comptroller to countersign it, to the Register to register it, and to the Treasurer to pay it? What becomes of that quadruple security which the precaution of the law provided? Instead of four substantive and independent wills, acting under legal obligations, all are merged in the Executive vortex.

But there was, in point of fact, no cause, none whatever, for the measure. Every fiscal consideration (and no other had the Secretary or the President a right to entertain) required the deposites to be left undisturbed in the place of perfect safety where by law they were. We told you so at the time. We asserted that the charges of insecurity and insolvency of the bank were without the slightest foundation. And time, that great arbiter of human controversies, has confirmed all that we said. The bank, from documents submitted to Congress by the Secretary of the Treasury at the present session, appears to be able not only to return every dollar of the stock held in its capital by the Public, but an addition of eleven per cent. beyond it.

Those who defend the Executive act, have to maintain not only that the President may assume upon himself the discharge of a duty specially assigned to the Secretary of the Treasury, but that he may remove that officer, arbitrarily, and without any cause, because he refused to remove the public deposites without cause.

My mind conducts me to a totally different conclusion. I think, I solemnly believe, that the President "assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both," in the language of the resolution. I believed then in the truth of the resolution; and I now in my place, and under all my responsibility, reavow my unshaken conviction of it.

But it has been contended on this occasion, as it was in the debate which preceded the adoption of the resolution of 1834, that the Senate has no

right to express the truth on any question which, by possibility, may become a subject of impeachment. It is manifest that if it may, there is no more usual or appropriate form in which it may be done than that of resolutions, joint or separate, orders, or bills. In no other mode can the collective sense of the body be expressed. But *Senators* maintain that, no matter what may be the Executive encroachment upon the joint powers of the two Houses, or the separate authority of the Senate, it is bound to stand mute, and not breathe one word of complaint or remonstrance. According to the argument, the greater the violation of the Constitution or the law, the greater the incompetency of the Senate to express any opinion upon it! Further, that this incompetency is not confined to the acts of the President only, but extends to those of every officer who is liable to impeachment under the Constitution. Is this possible? Can it be true? Contrary to all the laws of Nature, is the Senate the only being which has no power of self-preservation—no right to complain or to remonstrate against attacks upon its very existence?

The argument is, that the Senate, being the constitutional tribunal to try all impeachments, is thereby precluded from the exercise of the right to express any opinion upon any official malfeasance, except when acting in its judicial character.

If this disqualification exist, it applies to all impeachable officers, and ought to have protected the late Postmaster General against the resolution, unanimously adopted by the Senate, declaring that he had borrowed money contrary to law. And it would disable the Senate from considering that Treasury order which has formed such a prominent subject of its deliberations during the present session.

And how do Senators maintain this obligation of the Senate to remain silent and behold itself stript, one by one, of all its constitutional powers, without resistance, and without murmur? Is it imposed by the language of the Constitution? Has any part of that instrument been pointed to which expressly enjoins it? No, no, not a syllable. But it is attempted to be deduced by another far-fetched implication. Because the Senate is the body which is to try impeachments, therefore *it is inferred* the Senate can express no opinion on any matter which may form the subject of impeachment. The Constitution does not say so. That is undeniable; but Senators think so.

The Senate acts in three characters: Legislative, Executive, and Judicial; and their importance is in the order enumerated. By far the most important of the three is its legislative. In that, almost every day that it has been in session from 1789 to the present time, some legislative business has been transacted; whilst, in its judicial character, it has not sat more than three or four times in that whole period.

Why should the judicial function limit and restrain the legislative function of the Senate, more than the legislative should the judicial? If the degree of importance of the two should decide which ought to impose the restraint, in cases of conflict between them, none can doubt which it should be.

But if the argument is sound, how is it possible for the Senate to perform its legislative duties? An act in violation of the Constitution or laws is committed by the President or a subordinate Executive officer, and it becomes necessary to correct it by the passage of a law. The very act of the President in question was under a law to which the Senate had given its concurrence. According to the argument, the correcting law cannot originate in the Senate, because it would have to pass in judgment upon that act. Nay,

more, it cannot originate in the House and be sent to the Senate, for the same reason of incompetency in the Senate to pass upon it. Suppose the bill contained a preamble reciting the unconstitutional or illegal act, to which the legislative corrective is applied, according to the argument, the Senate must not think of passing it. Pushed to its legitimate consequence, the argument requires the House of Representatives itself cautiously to abstain from the expression of any opinion upon an Executive act, except when it is acting as the grand inquest of the nation, and considering articles of impeachment.

Assuming that the argument is well founded, the Senate is equally restrained from expressing any opinion which would imply the innocence or the guilt of an impeachable officer, unless it be maintained that it is lawful to express praise and approbation, but not censure or difference of opinion. Instances have occurred in our past history, (the case of the British minister, Jackson, was a memorable one,) and many others may arise in our future progress, when, in reference to foreign Powers, it may be important for Congress to approve what has been done by the Executive, to present a firm and united front, and to pledge the country to stand by and support him. May it not do that? If the Senate dare not entertain and express any opinion upon an Executive measure, how do those who support this expunging resolution justify the acquittal of the President which it proclaims?

No Senator believed in 1834 that, whether the President merited impeachment or not, he ever would be impeached. In point of fact he has not been, and we have every reason to suppose that he never will be impeached. Was the majority of the Senate, in a case where it believed the Constitution and laws to have been violated, and the liberties of the People to be endangered, to remain silent, and to refrain from proclaiming the truth, because, against all human probability, the President might be impeached by a majority of his political friends in the House of Representatives?

If an impeachment had been actually voted by the House of Representatives, there is nothing in the Constitution which enjoins silence on the part of the Senate. In such a case, it would have been a matter of propriety for the consideration of each Senator to avoid the expression of any opinion on a matter upon which, as a sworn judge, he would be called to act.

Hitherto I have considered the question on the supposition that the resolution of March, 1834, implied such guilt in the President that he would have been liable to conviction on a trial by impeachment before the Senate of the United States. But the resolution, in fact, imported no such guilt. It simply affirmed that he had "assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both." It imputed no criminal motives. It did not profess to penetrate into the heart of the President. According to the phraseology of the resolution, the exceptionable act might have been performed with the purest and most patriotic intention. The resolution neither affirmed his innocence, nor pronounced his guilt. It amounts, then, say his friends on this floor, to nothing. Not so. If the Constitution be trampled upon, and the laws be violated, the injury may be equally great whether it has been done with good or bad intentions. There may be a difference to the officer, none to the country. The country, as all experience demonstrates, has most reason to apprehend those encroachments which take place on plausible pretexts, and with good intentions.

I put it, Mr. President, to the calm and deliberate consideration of the majority of the Senate, are you ready to pronounce, in the face of this enlightened community, for all time to come, and whoever may happen to be the President, that the Senate dare not, in language the most inoffensive and respectful, remonstrate against any Executive usurpation, whatever may be its degree of danger?

For one, I will not, I cannot. I believe the resolution of March, 1834, to have been true; and that it was competent to the Senate to proclaim the truth. And I solemnly believe that the Senate would have been culpably neglectful of its duty to itself, to the Constitution, and to the country, if it had not announced the truth.

But let me suppose that in all this I am mistaken; that the act of the President to which exception was made was in conformity with the spirit of our free institutions and the language of our Constitution and laws; and that, whether it was or not, the Senate of 1834 had no authority to pass judgment upon it; what right has the Senate of 1837, a component part of another Congress, to pronounce judgment upon its predecessor? How can you who venture to impute to those who have gone before you an unconstitutional proceeding escape a similar imputation? What part of the Constitution communicates to you any authority to arraign and try your predecessors? In what article is contained your power to expunge what they have done? And may not the precedent lead to a perpetual circle of defacement and restoration of the transactions of the Senate as consigned to the public records?

Are you not only destitute of all authority, but positively forbidden to do what the expunging resolution proposes? The injunction of the Constitution to keep a journal of our proceedings is clear, express and emphatic. It is free from all ambiguity: no sophistry can pervert the explicit language of the instrument; no artful device can elude the force of the obligation which it imposes. If it were possible to make more manifest the duty which it requires to be performed, that was done by the able and eloquent speeches, at the last session, of the Senators from Virginia and Louisiana, (Messrs. Leigh and Porter,) and at this of my colleague. I shall not repeat the argument. But I would ask, if there were no constitutional requirements to keep a journal, what constitutional right has the Senate of this Congress to pass in judgment upon the Senate of another Congress, and to expunge from its journal a deliberate act there recorded? Can an unconstitutional act of that Senate, supposing it to be so, justify you in performing another unconstitutional act?

But in lieu of any argument upon the point from me, I beg leave to cite for the consideration of the Senate two precedents: one drawn from the reign of the most despotic monarch in modern Europe, under the most despotic minister that ever bore sway over any people; and the other from the purest fountain of democracy in this country. I quote from the interesting life of the Cardinal Richelieu, written by that most admirable and popular author, Mr. James. The Duke of Orleans, the brother of Louis the 13th, had been goaded into rebellion by the wary Richelieu. The King issued a decree declaring all the supporters of the Duke guilty of high treason, and a copy of it was despatched to the Parliament of Paris, with an order to register it at once. The Parliament demurred, and proceeded to what was called un arret de partage. "Richelieu, however, could bear no contradiction in the course which he had laid down for himself;" [How strong a resemblance

does that feature of his character bear to one of an illustrious individual whom I will not further describe !] "and hurrying back to Paris with the King, he sent, in the monarch's name, a command for the members of the Parliament to present themselves at the Louvre in a body and *on foot*. He was obeyed immediately; and the King receiving them with great haughtiness, the Keeper of the Seals made them a speech, in which he declared that they had no authority to deliberate upon affairs of State; that the business of private individuals they might discuss, but that the will of the monarch in other matters they were alone called upon to register. *The King then tore with his own hands the page of the register on which the arrat de partage had been inscribed, and punished with suspension from their functions several of the members of the various courts composing the Parliament of Paris.*" How repeated acts of the exercise of arbitrary power are likely to subdue the spirit of liberty, and to render callous the public sensibility and the fate which awaits us, if we had not been recently unhappily taught in this country, we may learn from the same author. "The finances of the State were exhausted, new impositions were devised, and a number of new offices created and sold. Against the last named abuse the Parliament ventured to remonstrate; but the Government of the Cardinal had for its first principle despotism, and the refractory members were punished, some with exile, some with suspension of their functions. All were forced to comply with his will; and the Parliament, unable to resist, yielded, step by step, to his exactions."

The other precedent is supplied by the archives of the democracy of Pennsylvania in 1816, when it was genuine and unmixed with any other ingredient.

The provisions of the Constitution of the United States and of Pennsylvania, in regard to the obligation to keep a journal, are substantially the same. That of the United States requires that "each House shall keep a journal of its proceedings, and from time to time publish the same, except such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of the members present, be entered on the journal." And that of Pennsylvania is, "each House shall keep a journal of its proceedings, and publish them weekly, except such parts as require secrecy; and the yeas and nays of the members, on any question, shall, at the desire of any two of them, be entered on the journals." Whatever inviolability, therefore, is attached to a journal, kept in conformity with the one Constitution, must be equally stamped on that kept under the other. On the 10th February, 1816, in the House of Representatives of Pennsylvania, "the Speaker informed the House that a constitutional question being involved in a decision by him yesterday, on a motion to expunge certain proceedings from the journal, he was desirous of having the opinion of the House on that decision, viz. that a majority can expunge from the journal any proceedings *in which the yeas and nays have not been called.*" Whereupon Mr. Holgate and Mr. Smith appealed from said decision; and on the question, is the Speaker right in his decision ? the members present voted as follows: yeas three, nays seventy-eight. Among the latter are to be found the two Senators now representing in this body the State of Pennsylvania. On the same day a motion was made by one of them (Mr. BUCHANAN) and Mr. Kelly, and read as follows: "*Resolved*, That in the opinion of this House no part of the journals of the House can be expunged even by *unanimous* consent."

The Senate observes that the question arose in a case where the yeas and nays had not been called. Even in such a case there were but four members out of eighty-two that thought it was competent to the House to expunge. Had the yeas and nays been called and recorded, as they were on the resolution of March, 1834, there would not have been a solitary vote in the House of Representatives of Pennsylvania in support of the power of expunging. And if you can expunge the resolution, why may you not expunge also the recorded yeas and nays attached to it?

But, if the matter of expunction be contrary to the truth of the case, reproachful for its base subserviency, derogatory from the just and necessary powers of the Senate, and repugnant to the Constitution of the United States, the manner in which it is proposed to accomplish this dark deed is also highly exceptionable. The expunging resolution, which is to blot out or enshroud the four or five lines in which the resolution of 1834 stands recorded, or rather the recitals by which it is preceded, are spun out into a thread of enormous length. It runs, whereas, and whereas, and whereas, and whereas, and whereas, &c. into a formidable array of nine several whereases. One who should have the courage to begin to read them, unaware of what was to be their termination, would think that at the end of such a tremendous display he must find the very devil. It is like a kite or a comet, except that the order of Nature is inverted, and the tail, instead of being behind, is before the body to which it is appended.

I shall not trespass on the Senate by inquiring into the truth of all the assertions of fact and of principle contained in these recitals. It would not be difficult to expose them all, and to show that not one of them has more than a colorable foundation. It is asserted by one of them that the President was put upon his trial, and condemned, unheard, by the Senate in 1834. Was that true? Was it a trial? Can the majority now assert, upon their oaths, and in their consciences, that there was any trial or condemnation? During the warmth of debate, Senators might endeavor to persuade themselves and the Public that the proceeding of 1834 was, in its effects and consequences, a trial, and would be a condemnation of the President; but now, after the lapse of near three years, when the excitement arising from an animated discussion has passed away, it is marvellous that any one should be prepared to assert that an expression of the opinion of the Senate upon the character of an Executive act was an arraignment, trial, and conviction of the President of the United States!

Another fact, asserted in one of these recitals, is, that the resolution of 1834, in either of the forms in which it was originally presented or subsequently modified prior to the final shape which it assumed when adopted, would have been rejected by a majority of the Senate. What evidence is there in support of this assertion? None. It is, I verily believe, directly contrary to the fact. In either of the modifications of the resolution, I have not a doubt that it would have passed! They were all made in that spirit of accommodation by which the mover of the resolution has ever regulated his conduct as a member of a deliberative body. In not one single instance did he understand from any Senator at whose request he made the modification, that, without it, he would vote against the resolution. How, then, can even the Senators who were of the minority of 1834, undertake to make the assertion in question? How can the new Senators, who have come here since, pledge themselves to the fact asserted in the recital of which they could not have had any conusance? But all the members of the majority—the veterans and the raw recruits—the six years men and the six weeks men

—are required to concur in this most unfounded assertion, as I believe it to be. I submit it to one of the latter (looking towards Mr. Dana, from Maine, here by a temporary appointment from the Executive,) whether, instead of inundating the Senate with a torrent of fulsome and revolting adulation poured on the President, it would not be wiser and more patriotic to illustrate the brief period of his Senatorial existence by some great measure fraught with general benefit to the whole Union? Or, if he will not or cannot elevate himself to a view of the interests of the entire country, whether he had not better dedicate his time to an investigation into the cause of an alien jurisdiction being still exercised over a large part of the territory of the State which he represents? And why the American carrying trade to the British colonies, in which his State was so deeply interested, has been lost by a most improvident and bungling arrangement?

Mr. President, what patriotic purpose is to be accomplished by this expunging resolution? What new honor or fresh laurels will it win for our common country? Is the power of the Senate so vast that it ought to be circumscribed, and that of the President so restricted that it ought to be extended? What power has the Senate? None separately. It can only act jointly with the other House, or jointly with the Executive. And although the theory of the Constitution supposes, when consulted by him, it may freely give an affirmative or negative response, according to the practice, as it *now* exists, it has lost the faculty of pronouncing the negative monosyllable. When the Senate expresses its deliberate judgment, in the form of resolution, that resolution has no compulsory force, but appeals only to the dispassionate intelligence, the calm reason, and the sober judgment of the community. The Senate has no army, no navy, no patronage, no lucrative offices, nor glittering honors to bestow. Around us there is no swarm of greedy expectants, rendering us homage, anticipating our wishes, and ready to execute our commands.

How is it with the President? Is he powerless? He is felt from one extremity to the other of this vast Republic. By means of principles which he has introduced, and innovations which he has made in our institutions, alas! but too much countenanced by Congress and a confiding People, he exercises uncontrolled the power of the State. In one hand he holds the purse, and in the other brandishes the sword of the country. Myriads of dependents and partisans, scattered over the land, are ever ready to sing hosannas to him, and to laud to the skies whatever he does. He has swept over the Government, during the last eight years, like a tropical tornado. Every department exhibits traces of the ravages of the storm. Take, as one example, the Bank of the United States. No institution could have been more popular with the People, with Congress, and with State Legislatures. None ever better fulfilled the great purposes of its establishment. But it unfortunately incurred the displeasure of the President; he spoke, and the bank lies prostrate. And those who were loudest in its praise are now loudest in its condemnation. What object of his ambition is unsatisfied? When disabled from age any longer to hold the sceptre of power, he designates his successor, and transmits it to his favorite! What more does he want? Must we blot, deface, and mutilate the records of the country to punish the presumptuousness of expressing an opinion contrary to his own? What patriotic purpose is to be accomplished by this expunging resolution? Can you make that not to be which has been? Can you eradicate from memory and from history the fact that in March, 1834, a majority of the Senate

of the United States passed the resolution which excites your enmity? Is it your vain and wicked object to arrogate to yourselves that power of annihilating the past, which has been denied to Omnipotence itself? Do you intend to thrust your hands into our hearts, and to pluck out the deeply-rooted convictions which are there? Or is it your design merely to stigmatize us? YOU cannot stigmatize US.

Ne'er yet did base dishonor blur our name.

Standing securely upon our conscious rectitude, and bearing aloft the shield of the Constitution of our country, your puny efforts are impotent, and we defy all your power. Put the majority of 1834 in one scale, and that by which this expunging resolution is to be carried in the other, and let truth and justice, in Heaven above, and on Earth below, and liberty and patrictism decide the preponderance.

What patriotic purpose is to be accomplished by this expunging resolution? Is it to appease the wrath, and to heal the wounded pride of the Chief Magistrate? If he be really the hero that his friends represent him, he must despise all mean condescension, all grovelling sycophancy, all self-degradation and self-abasement. He would reject, with scorn and contempt, as unworthy of his fame, your black scratches and your baby lines in the fair records of his country. Black lines! Black lines! Sir, I hope the Secretary of the Senate will preserve the pen with which he may inscribe them, and present it to that Senator of the majority whom he may select, as a proud trophy, to be transmitted to his descendants. And hereafter, when we shall lose the forms of our free institutions, all that now remains to us, some future American monarch, in gratitude to those by whose means he has been enabled, upon the ruins of civil liberty, to erect a throne, and to commemorate especially this expunging resolution, may institute a new order of Knighthood, and confer on it the appropriate name of The Knights of the Black Lines.

But why should I detain the Senate, or needlessly waste my breath in fruitless exertions. The decree has gone forth. It is one of urgency, too. The deed is to be done—that foul deed, which, like the blood-stained hands of the guilty Macbeth, all Ocean's waters will never wash out. Proceed, then, to the noble work which lies before you, and like other skilful executioners, do it quickly. And when you have perpetrated it, go home to the People, and tell them what glorious honors you have achieved for our common country. Tell them that you have extinguished one of the brightest and purest lights that ever burnt at the altar of civil liberty. Tell them that you have silenced one of the noblest batteries that ever thundered in defence of the Constitution, and bravely spiked the cannon. Tell them that, henceforward, no matter what daring or outrageous act any President may perform, you have forever hermetically sealed the mouth of the Senate. Tell them that he may fearlessly assume what powers he pleases, snatch from its lawful custody the public purse, command a military detachment to enter the Halls of the Capitol, overawe Congress, trample down the Constitution, and raze every bulwark of freedom; but that the Senate must stand mute, in silent submission, and not dare to raise its opposing voice. That it must wait until a House of Representatives, humbled and subdued like itself, and a majority of it composed of the partisans of the President, shall prefer articles of impeachment. Tell them, finally, that you have restored the glorious doctrine of passive obedience and non-resistance. And, if the People do not pour out their indignation and imprecations, I have yet to learn the character of American freeman.