

Chapter CLXXXIII.¹

PREROGATIVES AS RELATED TO THE EXECUTIVE.

1. Commendation or censure of the Executive. Section 330.
 2. Executive protests against request relating to exercise of his prerogative. Section 331.
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330. The President having transmitted to the House a message reflecting on the integrity of its membership, the House declared it a breach of privilege and ordered it laid on the table.

On December 11, 1908,² Mr. James B. Perkins, of New York, offered, as involving the privilege of the House, a preamble and resolution reading as follows:

Whereas there was contained in the sundry civil appropriation bill, which passed Congress at its last session and became a law, a provision in reference to the employment of the Secret Service in the Treasury Department; and

Whereas in the message of the President of the United States to the two Houses of Congress it was stated in reference to that provision, "It is not too much to say that this amendment has been of benefit only, and could be of benefit only, to the criminal classes," and it was further stated, "The chief argument in favor of the provision was that the Congressmen did not themselves wish to be investigated by Secret Service men," and it was further stated, "But if this is not considered desirable a special exception could be made in the law, prohibiting the use of the Secret Service force in investigating Members of Congress. It would be far better to do this than to do what actually was done, and strive to prevent or at least hamper effective action against criminals by the executive branch of the Government." Now, therefore, be it

Resolved, That a committee of five Members of this House be appointed by the Speaker to consider the statements contained in the message of the President and report to the House what action, if any, should be taken in reference thereto.

The resolution was agreed to, and the Speaker appointed as members of the select committee thus authorized: Messrs. James B. Perkins, of New York; Edwin Denby, of Michigan; John W. Weeks, of Massachusetts; John Sharp Williams, of Mississippi; and James T. Lloyd, of Missouri.

On December 17, Mr. Perkins, from the select committee, reported the following preamble and resolution, with the unanimous recommendation of the committee that it be agreed to:

Whereas there was contained in the sundry civil appropriation bill which passed Congress at its last session and became a law a provision in reference to the employment of the Secret Service in the Treasury Department; and

¹Supplementary to Chapter L.

²Second session, Sixtieth Congress, Record, p. 140.

Whereas in the last annual message of the President of the United States to the two Houses of Congress it was stated in reference to that provision, "It is not too much to say that this amendment has been of benefit only, and could be of benefit only, to the criminal classes," and it was further stated, "The chief argument in favor of the provision was that the Congressmen did not themselves wish to be investigated by secret-service men," and it was further stated, "But if this is not considered desirable, a special exception could be made in the law, prohibiting the use of the secret-service force in investigating Members of Congress. It would be far better to do this than to do what actually was done, and strive to prevent, or at least to hamper, effective action against criminals by the executive branch of the Government" and

Whereas the plain meaning of the above words is that the majority of the Congressmen were in fear of being investigated by secret-service men, and that Congress as a whole was actuated by that motive in enacting the provision in question; and

Whereas your committee appointed to consider these statements of the President and to report to the House can not find in the hearings before committees nor in the records of the House or Senate any justification of this impeachment of the honor and integrity of the Congress; and

Whereas your committee would prefer, in order to make an intelligent and comprehensive report, just to the President as well as to the Congress, to have all the information which the President may have to communicate: Now, therefore, be it

Resolved, That the President be requested to transmit to the House any evidence upon which he based his statements that the "chief argument in favor of the provision was that the Congressmen did not themselves wish to be investigated by secret-service men," and also to transmit to the House any evidence connecting any Member of the House of Representatives of the Sixtieth Congress with corrupt action in his official capacity, and to inform the House whether he has instituted proceedings for the punishment of any such individual by the courts or has reported any such alleged delinquencies to the House of Representatives.

The resolution was agreed to, and in response thereto the President, on January 4, 1909,¹ transmitted to the House a message, which, after quoting the resolution in full, said:

I am wholly at a loss to understand the concluding portion of the resolution. I have made no charges of corruption against Congress nor against any Member of the present House. If I had proof of such corruption affecting any Member of the House in any matter as to which the Federal Government has jurisdiction, action would at once be brought, as was done in the cases of Senators Mitchell and Burton, and Representatives Williamson, Hermann, and Driggs, at different times since I have been President. This would simply be doing my duty in the execution and enforcement of the laws without respect to persons. But I do not regard it as within the province or the duties of the President to report to the House "alleged delinquencies" of Members, or the supposed "corrupt action" of a Member "in his official capacity." The membership of the House is by the Constitution placed within the power of the House alone. In the prosecution of criminals and the enforcement of the laws the President must resort to the courts of the United States.

In the third and fourth clauses of the preamble it is stated that the meaning of my words is that "the majority of the Congressmen are in fear of being investigated by secret-service men" and that "Congress as a whole was actuated by that motive in enacting the provision in question," and that this is an impeachment of the honor and integrity of the Congress. These statements are not, I think, in accordance with the facts. The portion of my message referred to runs as follows:

The portion of the message referred to is here set out in full and the message continues:

A careful reading of this message will show that I said nothing to warrant the statement that "the majority of the Congressmen were in fear of being investigated by the secret-service men," or "that Congress as a whole was actuated by that motive." I did not make any such

¹Journal, p. 85; Record, p. 373.

statement in this message. Moreover I have never made any such statement about Congress as a whole, nor, with a few inevitable exceptions, about the Members of Congress, in any message or article or speech. On the contrary I have always not only deprecated but vigorously resented the practice of indiscriminate attack upon Congress, and indiscriminate condemnation of all Congressmen, wise and unwise, fit and unfit, good and bad alike. No one realizes more than I the importance of cooperation between the Executive and Congress, and no one holds the authority and dignity of the Congress of the United States in higher respect than I do. I have not the slightest sympathy with the practice of judging men, for good or for ill, not on their several merits, but in a mass, as members of one particular body or one caste. To put together all men holding or who have held a particular office, whether it be the office of President, or judge, or Senator, or Member of the House of Representatives, and to class them all, without regard to their individual differences, as good or bad, seems to me utterly indefensible; and it is equally indefensible whether the good are confounded with the bad in a heated and unwarranted championship of all, or in a heated and unwarranted assault upon all. I would neither attack nor defend all executive officers in a mass, whether Presidents, governors, Cabinet officers, or officials of lower rank; nor would I attack or defend all legislative officers in a mass. The safety of free government rests very largely in the ability of the plain, every-day citizen to discriminate between those public servants who serve him well and those public servants who serve him ill. He can not thus discriminate if he is persuaded to pass judgment upon a man, not with reference to whether he is a fit or unfit public servant, but with reference to whether he is an executive or legislative officer, whether he belongs to one branch or the other of the Government.

This allegation in the resolution, therefore, must certainly be due to an entire failure to understand my message.

The message takes up the request of the House for evidence as follows:

The resolution continued: "That the President be requested to transmit to the House any evidence upon which he based his statements that 'the chief argument in favor of the provision was that the Congressmen did not themselves wish to be investigated by Secret Service men.'" This statement, which was an attack upon no one, still less upon the Congress, is sustained by the facts.

If you will turn to the Congressional Record for May 1 last, pages 5553 to 5560, inclusive, you will find the debate on this subject. Mr. Tawney of Minnesota, Mr. Smith of Iowa, Mr. Sherley of Kentucky, and Mr. Fitzgerald of New York, appear in this debate as the special champions of the provision referred to. Messrs. Parsons, Bennet, and Driscoll were the leaders of those who opposed the adoption of the amendment and upheld the right of the Government to use the most efficient means possible in order to detect criminals and to prevent and punish crime. The amendment was carried in the Committee of the Whole, where no votes of the individual members are recorded, so I am unable to discriminate by mentioning the members who voted for and the members who voted against the provision, but its passage, the Journal records was greeted with applause. I am well aware, however, that in any case of this kind many Members who have no particular knowledge of the point at issue, are content simply to follow the lead of the committee which had considered the matter, and I have no doubt that many Members of the House simply followed the lead of Messrs. Tawney and Smith, without having had the opportunity to know very much as to the rights and wrongs of the question.

I would not ordinarily attempt in this way to discriminate between Members of the House, but as objection has been taken to my language, in which I simply spoke of the action of the House as a whole, and as apparently there is a desire that I should thus discriminate, I will state that I think the responsibility rested on the Committee on Appropriations, under the lead of the Members whom I have mentioned.

Now as to the request of the Congress that I give the evidence for my statement that the chief argument in favor of the provision was that the Congressmen did not themselves wish to be investigated by Secret Service men.

The part of the Congressional Record to which I have referred above entirely supports this statement. Two distinct lines of argument were followed in the debate. One concerned the

question whether the law warranted the employment of the Secret Service in departments other than the Treasury, and this did not touch the merits of the service in the least. The other line of argument went to the merits of the service, whether lawfully or unlawfully employed, and here the chief if not the only argument used was that the service should be cut down and restricted because its members had "shadowed" or investigated members of Congress and other officers of the Government. If we examine the debate in detail it appears that most of what was urged in favor of the amendment took the form of the simple statement that the committee held that there had been a "violation of law" by the use of the Secret Service for other purposes than suppressing counterfeiting (and one or two other matters which can be disregarded), and that such language was now to be used as would effectually prevent all such "violation of law" hereafter. Mr. Tawney, for instance, says: "It was for the purpose of stopping the use of this service in every possible way by the departments of the Government that this provision was inserted;" and Mr. Smith says: "Now, that was the only way in which any limitation could be put upon the activities of the Secret Service." Mr. Fitzgerald followed in the same vein, and by far the largest part of the argument against the employment of the Secret Service was confined to the statement that it was in "violation of law." Of course such a statement is not in any way an argument in favor of the justice of the provision. It is not an argument for the provision at all. It is simply a statement of what the gentlemen making it conceive to have been the law. There was both by implication and direct statement the assertion that it was the law, and ought to be law, that the Secret Service should only be used to suppress counterfeiting; and that the law should be made more rigid than ever in this respect.

The message then discusses at length the Secret Service, and legislation affecting it, and concludes:

In conclusion, I most earnestly ask, in the name of good government and decent administration, in the name of honesty and for the purpose of bringing to justice violators of the Federal laws wherever they may be found, whether in public or private life, that the action taken by the House last year be reversed.

I also urge that the Secret Service be placed where it properly belongs, and made a bureau in the Department of Justice, as the Chief of the Secret Service has repeatedly requested; but whether this is done or not, it should be explicitly provided that the Secret Service can be used to detect and punish crime wherever it is found.

THEODORE ROOSEVELT.

The White House, *January 4, 1909.*

On January 8, 1913,¹ Mr. Perkins offered, as privileged, the following resolution:

Whereas the annual message of the President contained the following paragraph:

"Last year an amendment was incorporated in the measure provided for the Secret Service, which provided that there should be no detail from the Secret Service and no transfer therefrom. It is not too much to say that this amendment has been of benefit only, and could be of benefit only, to the criminal classes. If deliberately introduced for the purpose of diminishing the effectiveness of war against crime it could not have been better devised to this end. It forbade the practices that had been followed to a greater or less extent by the executive heads of various departments for twenty years. To these practices we owe the securing of the evidence which enabled us to drive great lotteries out of business and secure a quarter of a million of dollars in fines from their promoters. These practices have enabled us to discover some of the most outrageous frauds in connection with the theft of Government land and Government timber by great corporations and by individuals. These practices have enabled us to get some of the evidence indispensable in order to secure the conviction of the wealthiest and most formidable criminals with whom the Government has to deal, both those operating in violation of the antitrust law and others. The amendment in question was of benefit to no one excepting to these criminals, and it seriously hampers the Government in the detection of crime and the securing of justice. Moreover, it not only affects

¹Record, p. 458.

departments outside of the Treasury, but it tends to hamper the Secretary of the Treasury himself in the effort to utilize the employees of his department so as to best meet the requirements of the public service. It forbids him from preventing frauds upon the Customs Service, from investigating irregularities in branch mints and assay offices, and has seriously crippled him. It prevents the promotion of employees in the Secret Service, and this further discourages good effort. In its present form the restriction operates only to the advantage of the criminal, of the wrongdoer. The chief argument in favor of the provision was that the Congressmen did not themselves wish to be investigated by Secret Service men. Very little of such investigation has been done in the past; but it is true that the work of the Secret Service agents was partly responsible for the indictment and conviction of a Senator and a Congressman for land frauds in Oregon. I do not believe that it is in the public interest to protect criminals in any branch of the public service, and exactly as we have again and again during the past seven years prosecuted and convicted such criminals who were in the executive branch of the Government, so in my belief we should be given ample means to prosecute them if found in the legislative branch. But if this is not considered desirable a special exception could be made in the law prohibiting the use of the Secret Service force in investigating Members of the Congress. It would be far better to do this than to do what actually was done, and strive to prevent or at least to hamper effective action against criminals by the executive branch of the Government."

Understanding this language to be a reflection on the integrity of its membership, and aware of its own constitutional duty as to its membership, the House in respectful terms called on the President for any information that would justify the language of the message or assist it in its constitutional duty to purge itself of corruption.

The President in his message of January 4, denies that the paragraph of the annual message casts reflections on the integrity of the House; attributes to the House "an entire failure to understand my message;" declares that he has made no charge of corruption against any Member of this House, and by implication states that he has no proof of corruption on the part of any Member of this House.

Whether the House in its resolution of December 17, 1908 correctly interpreted the meaning of the words used by the President in his annual message, or whether it misunderstood that language, as the President implies, will be judged now and in the future according to the accepted interpretations of the English language. This House, charged only with its responsibility to the people of the United States and its obligation to transmit unimpaired to the future the representative institutions inherited from the past, and to preserve its own dignity, must insist on its own capacity to understand the import of the President's language. We consider the language of the President in his message of December 8, 1908, unjustified and without basis fact and that it constitutes a breach of the privileges of the House: Therefore be it

Resolved, That the House, in the exercise of its constitutional prerogatives, declines to consider any communication from any source which is not in its judgment respectful; and be it further

Resolved, That the special committee and the Committee of the Whole House on the state of the Union be discharged from any consideration of so much of the President's annual message as relates to the Secret Service, and is above set forth, and that the said portion of the message be laid on the table; and be it further

Resolved, That the message of the President sent to the House on January 4, 1909, being unresponsive to the inquiry of the House and constituting an invasion of the privileges of this House by questioning the motives and intelligence of Members in the exercise of their constitutional rights and functions, be laid on the table.

After extended debate, the resolution was agreed to—yeas 212, noes 36.

331. In cases where its investigations have suggested the culpability of executive officers, the Senate has by resolution submitted advice or suggestions to the Executive.

The Senate having adopted a resolution advising the Executive as to matters within the sphere of his duties, the latter in a statement to the press announced that no official recognition would be accorded it.

On February 11, 1924,¹ the Senate, after debate, by a vote of yeas 47, nays 34, agreed to the following:

Whereas the United States Senate did on January 31, 1924, by a unanimous vote adopt Senate Joint Resolution No. 54 to procure the annulment of certain leases in the naval oil reserves of the United States; and

Whereas the said resolution, among other things, declared as follows:

“Whereas it appears from evidence taken by the Committee on Public Lands and Surveys of the United States Senate that certain lease of naval reserve No. 3, in the State of Wyoming, bearing date April 7, 1922, made in form by the Government of the United States, through Albert B. Fall, Secretary of the Interior, and Edwin Denby, Secretary of the Navy, as lessor, to the Mammoth Oil Co., as lessee, and that certain contract between the Government of the United States and the Pan American Petroleum & Transport Co., dated April 25, 1922, signed by Edward C. Finney, Acting Secretary of the Interior, and Edwin Denby, Secretary of the Navy, relating, among other things, to the construction of oil tanks at Pearl Harbor, Territory of Hawaii, and that certain lease of naval reserve No. 1, in the State of California, bearing date December 11, 1922, made in form by the Government of the United States through Albert B. Fall, Secretary of the Interior, and Edwin Denby, Secretary of the Navy, as lessor, to the Pan American Petroleum Co., as lessee, were executed under circumstances indicating fraud and corruption; and

“Whereas the said leases and contract were entered into without authority on the part of the officers purporting to act in the execution of the same for the United States and in violation of the laws of Congress; and

“Whereas such leases and contract were made in defiance of the settled policy of the Government, adhered to through three successive administrations, to maintain in the ground a great reserve supply of oil adequate to the needs of the Navy in any emergency threatening the national security.”

Therefore be it

Resolved, That it is the sense of the United States Senate that the President of the United States immediately request the resignation of Edwin Denby, as Secretary of the Navy.

On motion of Mr. Joseph T. Robinson, of Arkansas, by a vote of yeas 51, nays 34, the Secretary of the Senate was directed to transmit a copy of the resolution to the President of the United States.

On February 13, 1925,² on motion of Mr. Henry Cabot Lodge, of Massachusetts, by unanimous consent, a statement issued by the President to the press was printed in the Record as follows:

No official recognition can be given to the passage of the Senate resolution relative to their opinion concerning members of the Cabinet or other officers under Executive control.

As soon as special counsel can advise me as to the legality of these leases and assemble for me the pertinent facts in the various transactions I shall take such action as seems essential for the full protection of the public interests. I shall not hesitate to call for the resignation of any official whose conduct in this matter in any way warrants such action upon my part. The dismissal of an officer of the Government, such as is involved in this case, other than by impeachment, is exclusively an Executive function. I regard this as a vital principle of our Government.

In discussing this principle Mr. Madison has well said: “It is laid down in most of the constitutions or bills of rights in the Republics of America; it is to be found in the political writings of the most celebrated civilians, and is everywhere held as essential to the preservation of liberty that the three great departments of government be kept separate and distinct.”

¹ First session Sixty-eighth Congress, Record, p. 2245.

² Record, p. 2335.

President Cleveland likewise stated the correct principle in discussing requests and demands made by the Senate upon him and upon different departments of the Government, in which he said: "They assume the right of the Senate to sit in judgment upon the exercise of my exclusive discretion and Executive function, for which I am solely responsible to the people from whom I have so lately received the sacred trust of office. My oath to support and defend the Constitution, my duty to the people who have chosen me to execute the powers of their great office and not to relinquish them, and my duty to the Chief Magistracy, which I must preserve unimpaired in all its dignity and vigor, compel me to refuse compliance with these demands."

The President is responsible to the people for his conduct relative to the retention or dismissal of public officials. I assume that responsibility, and the people may be assured that as soon as I can be advised so that I may act with entire justice to all parties concerned and fully protect the public interests I shall act.

I do not propose to sacrifice any innocent man for my own welfare, nor do I propose to retain in office any unfit man for my own welfare. I shall try to maintain the functions of the Government unimpaired, to act upon the evidence and the law as I find it, and to deal thoroughly and summarily with every kind of wrongdoing.

In the meantime such steps have been and are being taken as fully to protect the public interests.