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THE SENATORS FROM SOUTH CAROLINA.

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FEBRUARY 28, 1902.—Ordered to be printed.

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Mr. BURROWS, from the Committee on Privileges and Elections, submitted the following

REPORT, WITH VIEWS OF THE MINORITY.

[To accompany Senate Res. No. 135.]

The Committee on Privileges and Elections, in obedience to the following order of the Senate, viz:

FEBRUARY 22, 1902.

*Ordered*, That the two Senators from the State of South Carolina be declared in contempt of the Senate on account of the altercation and personal encounter between them this day in open session, and that the matter be referred to the Committee on Privileges and Elections with instructions to report what action shall be taken by the Senate in regard thereto,

beg leave to report that they have considered the matter so referred to the committee and find that on the 22d day of February, instant, while the Senate was in open session and engaged in the consideration of H. R. 5833, being a bill temporarily to provide revenue for the Philippine Islands, and for other purposes, the Senators from the State of South Carolina became involved in a personal controversy resulting in a serious breach of the privileges of the Senate.

The committee can not better present the circumstances leading up to the commission of the offense than by quoting from the official record the report of the proceedings.

The senior Senator from South Carolina while addressing the Senate, in the course of his remarks said:

But the Senator from Wisconsin yesterday took occasion to make a special plea of indictment and accusation against Mr. Bryan, the leader of the Democratic party in its last two national contests, because he had aided and possibly influenced enough votes to obtain the ratification of the treaty. I have already pointed out what might have happened after the ratification, which would have been entirely honorable and so high and noble and pure in comparison with what we have done that anyone who voted for that treaty, even my friend, the Senator from Colorado [Mr. Teller], who for a time was pretty badly tainted with imperialism and who has now got well and is sound and sane and in his right mind [laughter]—

Mr. Teller rose.

Mr. TILLMAN. I hope the Senator will not take my little pleasantry as anything more than an attempt to relieve him of the accusation of my friend, yesterday, who convicted him of inconsistency.

Mr. TELLER. I only want to say that if I ever was tainted in the slightest degree with imperialism I am glad to know that I have recovered from that condition.

Mr. TILLMAN. But with all Mr. Bryan's influence—and it was very great, because it was recognized then that he would be the nominee of his party—he did not and could not persuade enough men here to give the necessary votes. After every man whom Mr. Bryan could influence had been influenced and counted, you still lacked votes, and you knew it. You know how you got them.

Mr. SPOONER. How did we get them?

Mr. TILLMAN. I say you know how you got them.

Mr. SPOONER. I do not know how we got them. I do not know that any man voted for that treaty except in obedience to his convictions. Does the Senator know any different?

Mr. TILLMAN. I only know that in a court the Senator would convict on circumstantial evidence some men.

Mr. SPOONER. Does the Senator impeach any Senator? Let him name him. I do not impeach any Senator, nor do I know any ground for impeaching any.

Mr. TILLMAN. I have reason to believe from the circumstantial evidence and from things that have been told to me in confidence by men on the other side that improper influences were used.

Mr. SPOONER. Name the man. That is due to the country, and due to the man whom you suspect, and by innuendo charge. Who was it? Let him answer for himself if he is still a member of this body.

Mr. TILLMAN. Whom do you mean? I can not name the man who gave me the information.

Mr. SPOONER. Whoever you mean.

Mr. TILLMAN. I can not give the name of the man who gave me the information, because he gave it to me in confidence.

Mr. SPOONER. Oh, in confidence. A man who would impeach another in confidence is a coward. [Applause in the galleries.]

Mr. TILLMAN. Cowardice in that case does not rest on my shoulders.

Mr. SPOONER. The Senator turned to me. If the Senator knows of any member of this body who voted under corrupt influences for that treaty, name him.

Mr. TILLMAN. I can not prove it.

Mr. SPOONER. Well, I would not say it.

Mr. TILLMAN. But I can prove this—

Mr. SPOONER. I would not say it.

Mr. TILLMAN. I can prove this: That the patronage of a State has been given to a Democrat who voted for the treaty.

Mr. SPOONER. What State?

Mr. TILLMAN. South Carolina.

Mr. SPOONER. Fight it out with your colleague.

Mr. TILLMAN. I am ready.

Mr. SPOONER. Yes, I am ready and he is ready.

Mr. TILLMAN. Let him—

Mr. SPOONER. He is not here—

Mr. TILLMAN. He has not shown his readiness.

Mr. SPOONER. But he will be.

The PRESIDENT pro tempore. The occupants of the galleries must remember that any marks of approbation or disapproval are not permitted under the rules of the Senate, and if there is a violation of the rule the Chair will be obliged to have the galleries cleared.

Mr. TILLMAN. I will state that after having made a speech in this body two weeks before, replete with cogent arguments and eloquence, against the ratification of the treaty, and after having told us in confidence that he would not vote for it, he did; and since then he has been adopted by the Republican caucus and put upon committees as a member of that party, and has controlled the patronage in South Carolina. I did not expect to bring this in in this way, but I do not dodge or flinch from any responsibility anywhere. I simply know what I believe.

Mr. SPOONER. You simply believe what you do not know.

Mr. TILLMAN. And I have been told, as I told you, in confidence, by men on that side, of the transaction.

At the conclusion of the Senator's remarks the junior Senator from South Carolina, being recognized by the Chair, addressing the Senate, said:

Mr. McLAURIN, of South Carolina. Mr. President, I rise to a question of personal privilege. During my absence a few moments ago from the Senate Chamber, in attendance upon the Committee on Indian Affairs, the gentleman who has just taken his seat, the Senator who has just taken his seat, said that improper influences had

been used in changing the vote of somebody on the treaty, and then went on later and said that it applied to the Senator from South Carolina, who had been given the patronage in that State. I think I get the sense of the controversy.

I desire to state, Mr. President—I would not use as strong language as I intend to had I not, soon after the Senate met, replied to these insinuations and said that they were untrue—I now say that that statement is a willful, malicious, and deliberate lie.

At the conclusion of the Senator's remarks the following note by the reporter appears in the Record:

[At this point Mr. Tilman advanced to Mr. McLaurin, of South Carolina, and the two Senators met in a personal encounter, when they were separated by Mr. Layton, the acting assistant doorkeeper, assisted by several Senators sitting near.]

Further proceedings were had, as follows:

Mr. GALLINGER. Mr. President, I ask that the doors be closed.

The PRESIDENT pro tempore. The Senate will be in order. Senators will please resume their seats.

Mr. PRITCHARD. Mr. President, if the Senator from South Carolina has concluded—

Mr. McLAURIN, of South Carolina. Mr. President, I will now proceed with my remarks, which were so unceremoniously interrupted—

Mr. TELLER. Mr. President, I call the Senator from South Carolina to order.

Mr. McLAURIN, of South Carolina. Which one of the Senators?

Mr. TELLER. This one, and the other one, too, for that matter.

Mr. FORAKER. Mr. President, I move that the Senate go into executive session.

The PRESIDENT pro tempore. The Senator from Ohio moves that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After two hours and twenty minutes the doors were reopened.

Thereupon the following proceedings were had—

#### PROCEEDING FOR CONTEMPT.

During the consideration of executive business, and while the doors were closed, the injunction and seal of secrecy was removed from the following proceedings:

Mr. Foraker submitted the following order:

"Ordered, That the two Senators from the State of South Carolina be declared in contempt of the Senate on account of the altercation and personal encounter between them this day in open session, and that the matter be referred to the Committee on Privileges and Elections with instructions to report what action shall be taken by the Senate in regard thereto."

The Senate proceeded by unanimous consent to consider the said order.

Pending debate,

On motion by Mr. Teller that the doors be opened,

It was determined in the negative—yeas 18, nays 44.

The yeas and nays being, on motion of Mr. Lodge, desired by one-fifth of the Senators present.

Those who voted in the affirmative are: Messrs. Bacon, Bate, Berry, Blackburn, Carmack, Clay, Cockrell, Gibson, McEnery, Martin, Patterson, Rawlins, Simmons, Spooner, Taliaferro, Teller, Turner, and Wellington—18.

Those who voted in the negative are: Messrs. Aldrich, Allison, Bard, Burnham, Burrows, Burton, Clark of Wyoming, Cullom, Deboe, Dietrich, Dillingham, Doliver, Elkins, Fairbanks, Foraker, Foster of Washington, Frye, Gallinger, Gamble, Hanna, Hansbrough, Hawley, Hoar, Kean, Kearns, Kittredge, Lodge, McComas, McMillan, Mallory, Mason, Millard, Mitchell, Nelson, Perkins, Platt of Connecticut, Pritchard, Proctor, Quarles, Scott, Simon, Stewart, Warren, and Wetmore—44.

So the motion of Mr. Teller was not agreed to.

On motion of Mr. Foraker, and the same having been seconded,

The Senate proceeded to the consideration of secret legislative business.

On the question to agree to the order submitted by Mr. Foraker,

Mr. Bacon demanded a division of the question; and

On the question to agree to the first branch thereof, as follows:

"That the two Senators from the State of South Carolina be declared in contempt of the Senate on account of the altercation and personal encounter between them this day in open session"—

It was determined in the affirmative—yeas 61, nays 0.

The yeas and nays being, on motion of Mr. Hoar, desired by one-fifth of the Senators present,

Those who voted in the affirmative are: Messrs. Aldrich, Allison, Bacon, Bard, Bate, Blackburn, Burnham, Burrows, Burton, Carmack, Clark of Wyoming, Clay, Cockrell, Cullom, Deboe, Depew, Dietrich, Dillingham, Dolliver, Dubois, Elkins, Fairbanks, Foraker, Foster of Washington, Frye, Gallinger, Gamble, Gibson, Hanna, Hansbrough, Hawley, Hoar, Kean, Kearns, Kittredge, Lodge, McComas, McEnery, McMillan, Mallory, Martin, Millard, Mitchell, Nelson, Patterson, Perkins, Platt of Connecticut, Pritchard, Proctor, Quarles, Rawlins, Scott, Simmons, Simon, Spooner, Stewart, Taliaferro, Turner, Warren, Wellington, and Wetmore—61.

None voted in the negative.

So the first branch of the order was agreed to.

The second branch of the order was then agreed to.

Subsequently the Senator from Kentucky, Mr. Blackburn, submitted the following motion:

Mr. BLACKBURN. I move that the two Senators from South Carolina shall now be given the floor and be recognized by the Chair in order that they may in their own way proceed to purge themselves of the charge of contempt of which they have been adjudged guilty by the Senate.

Mr. SPOONER and others. That is right.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Kentucky [Mr. Blackburn].

The motion was agreed to.

Thereupon the senior Senator from South Carolina made the following statement:

Mr. TILLMAN. Mr. President, I have always esteemed it a high honor and privilege to be a member of this body. I had never had any legislative experience when I came here, and my previous service as governor of South Carolina for four years had unfitted me in a measure to enter this august assembly with that dignity and regard—proper regard, I will say—for its traditions and habits and rules that is desirable.

I have been here seven years. I have in that time learned to judge men with a little more catholicity of spirit than I did when I came here. I have found a great many people here in whose personal integrity and honor and regard for their obligations as gentlemen I have implicit confidence; but I have seen so much of partisanship, I have seen so much of what I consider slavish submission to party domination, that I confess I have felt somewhat at a loss how to judge men who in one aspect appeared to be so high and clean and honorable and in another appeared more or less despicable. I say this because of the fact that one of the Senators has seen fit to allude to some matters that occurred in the debate this morning.

I now want to say that, so far as any action of mine has caused any Senator here, or the Senate as a body, or the people of the United States to feel that I have been derelict and have not shown that courtesy and proper observance of the rules of this body, I regret it; I apologize for it. I was ready to do that two minutes after I had acted; but under the provocation, which was known of all of you, I could not have acted otherwise than I did; and while I apologize to the Senate and am sorry that it has occurred, I have nothing more to say.

The junior Senator from South Carolina immediately followed and declared as follows:

Mr. McLaurin, of South Carolina. Mr. President, I did not realize that I was in contempt of the Senate, nor do I think now, if my words are read in the Record, that I was, but, at the same time, as the Senate has ruled that I am in contempt of this honorable body, I beg leave to apologize.

I desire to say, Mr. President, that I have been very sorely and severely tried. I was in attendance on the Committee on Indian Affairs when I received a message from a friend in the Senate that my presence was needed here.

The history of the vote on the Spanish treaty is known to all of you. There have been statements made in newspapers and insinuations that I had been influenced by improper motives in connection with my vote on that treaty. Knowing in my own soul, and knowing that God in heaven also knows that it was false, when I was told that it was centered down to me, I was so outraged by what I considered a most brutal assault upon my honor as a man, and especially in view of the fact that in the beginning of the session, after the action of my party associates, I made a most careful and deliberate statement explaining all these matters, I did not feel as a man that I

could ever hold my head up again if I did not resent it in the place where it was delivered, in the strongest and most forcible terms that I could employ.

With that, Mr. President, I am done, except I have this to say: If there is any more talk of that kind or any more—

Mr. PATTERSON. I beg the Senator to refrain.

Mr. McLAURIN of South Carolina. I will refrain, Mr. President.

We thus present to the Senate the entire record bearing upon this unfortunate occurrence, and no examination or investigation by your committee could possibly throw any additional light upon the transaction which occurred in open session, and in the presence of the membership of this body. That the conduct of the two Senators was an infringement of the privileges of the Senate, a violation of its rules and derogatory to its high character, tending to bring the body itself into public contempt, can not be questioned or denied. Indeed, the Senate by a unanimous vote has already placed on record its condemnation of the Senators by declaring both guilty of contempt.

The majority of the committee are of the opinion that the legal effect of adjudging these Senators in contempt of the Senate was to suspend their functions as Senators, and that such a punishment for disorderly behavior is clearly within the power of the Senate, but the conclusion they have reached makes it unnecessary to discuss this question.

The offenses committed by the two Senators were not, in the opinion of a majority of the committee, of equal gravity. The charge made by Mr. Tillman had been once before in the Senate specifically denied in parliamentary language by Mr. McLaurin. The offense charged against Mr. McLaurin was among the most reprehensible a Senator could commit. He could not ignore it or fail to refute it and hope to be longer respected as either a man or a Senator.

Mr. McLaurin did not commence the encounter, but only stood in his place at his desk, where he was speaking, and resisted the attack that was made upon him.

In other words, his offense was confined to the use of unparliamentary language, for which he had unusual provocation.

Nevertheless, his offense was a violation of the rules of the Senate of so serious a character that in the opinion of the committee it should be condemned.

In the case of Mr. Tillman, the record shows that the altercation was commenced by the charge he made against Mr. McLaurin. Such a charge is inexcusable, except in connection with a resolution to investigate. Mr. Tillman not only made the charge without any avowal of a purpose to investigate, but also disclaiming knowledge of evidence to establish the offense, and this he did after the charge had been specifically and unqualifiedly denied by Mr. McLaurin.

Such a charge under any circumstances would be resented by any man worthy to be a Senator; but made as it was in this instance, its offensiveness was greatly intensified, and the result must have been foreseen by Mr. Tillman if he took any thought, as he should, of the consequences of his statements. This feature of his offense, coupled with the fact that he also commenced the encounter by quitting his seat some distance away from Mr. McLaurin, and, rushing violently upon him, struck him in the face, makes the case one of such exceptional misbehavior that a majority of the committee are of the opinion that his offense was of much greater gravity than that of Mr. McLaurin.

The penalty of a censure by the Senate, in the nature of things, must vary in actual severity in proportion to the public sense of the

gravity of the offense of which the offender has been adjudged guilty. Therefore, notwithstanding the fact that, in the opinion of a majority of the committee, there is a difference in the gravity of the offenses under consideration, your committee are of the opinion that public good and the dignity of the Senate will be alike best promoted and protected, so far as this particular case is concerned, by imposing upon each Senator, by formal vote, the censure of the Senate for the offense by him committed; and, therefore, the committee recommends the adoption of the following resolution:

“*Resolved*, That it is the judgment of the Senate that the Senators from South Carolina, Benjamin R. Tillman and John L. McLaurin, for disorderly behavior and flagrant violation of the rules of the Senate during the open session of the Senate on the 22nd day of February, instant, deserve the censure of the Senate, and they are hereby so censured for their breach of the privileges and dignity of this body, and from and after the adoption of this resolution the order adjudging them in contempt of the Senate shall be no longer in force and effect.”

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We dissent from so much of the report of the committee as asserts the power of the Senate to suspend a Senator, and thus deprive a State of its vote, and so much as describes the offenses of the Senators as of different gravity; but we approve the resolution reported.

J. W. BAILEY,  
E. W. PETTUS,  
JO. C. S. BLACKBURN,  
FRED T. DUBOIS,  
MURPHY J. FOSTER,

*Members of the Committee on Privileges and Elections*

## VIEWS OF THE MINORITY.

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The undersigned minority of the committee agree with the statement of the facts given in the report of the majority, but disagree to the punishment proposed by the majority. The junior Senator from South Carolina is guilty of unparliamentary language. The senior Senator of South Carolina is guilty of physical violence. Neither in the statutes of any State nor in the common opinion of mankind are these two offenses the same.

If the Senate is to retain the respect of the country, it must retain its own self-respect. This can not be done by lightly passing over the grave offenses it has suffered.

The lightest form of punishment is a reprimand or a censure. It is this latter which the majority of the committee proposes to inflict for two offenses differing in character and gravity.

The minority of the committee are of the opinion that this punishment is inadequate and that to ignore the difference between the offenses is unjust.

The minority of the committee is of opinion that the suspension of the two offending Senators from their Senatorial privileges heretofore inflicted should now be formally adjudged and continued for different periods of time.

And so the minority of the committee submit their views.

By the second clause of the fifth section of the first article of the Constitution "each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member."

On its face this clause means that by a majority vote each House may determine its rules and punish its members for disorderly behavior, but that to expel a member the concurrence of two-thirds is required.

Its history proves this to be the right construction. The Committee on Detail reported the clause thus: "Each House may determine the rules of its proceedings, may punish its members for disorderly behavior, and may expel a member." Madison thought that the power of expelling a member should not be left to a mere majority, and moved to insert the words "with the concurrence of two-thirds" between "may" and "expel." Gouveneur Morris thought that the power ought to remain with a majority, but the convention adopted Madison's amendment, and thus the section as amended was approved. (Meigs's Growth of the Constitution, 92.)

Story (1 Story on Const., sec. 837) emphasizes the necessity of each House having power to make the rules of its own proceedings, say that—

This power would be nugatory unless it was coupled with a power to punish for disorderly behavior or disobedience to those rules. \* \* \* The power to expel

for very aggravated misconduct was also indispensable. \* \* \* But such a power so summary \* \* \* it was foreseen might be exerted for mere purposes of faction or party \* \* \* and it has therefore been wisely guarded by the restriction that there shall be a concurrence of two-thirds of the members to justify an expulsion.

Since punishment for disorderly behavior may be inflicted by a majority vote in the Senate, what sorts of punishment may be imposed upon a Senator?

In *Kilbourn v. Thompson* (103 U. S., 189) Justice Miller says:

We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be for refusal to obey some rule on that subject made by the House for the preservation of order.

Later in *In re Chapman* (166 U. S., 668) Chief Justice Fuller says of the Senate:

It necessarily possesses the inherent power of self-protection. (Ib., 671.) Congress could not divest itself or either of its Houses of the essential and inherent power to punish for contempt in cases to which the power of either House extended.

While the Supreme Court has said that it does not concede that the Houses of Congress possess the general power of punishing for contempt analogous to that exercised by courts of justice, it has admitted that there are cases in which the Houses of Congress have such power of punishing for contempt, and points out the source of this power.

In *Kilbourn v. Thompson* (103 U. S., 201) the court said:

We may perhaps find some aid \* \* \* if we can find out its source, and fortunately in this there is no difficulty, for, while the framers of the Constitution did not adopt the law and custom of the English Parliament as a whole, *they did incorporate such parts of it and with it such privileges of Parliament as they thought proper to be applied to the two Houses of Congress.*

Among these privileges, says the court, is the right to make rules and to punish members for disorderly behavior. The Senate has not like power with Parliament in punishing citizens for contempt, but it has like power with Parliament in punishing Senators for contempt or for any disorderly behavior or for certain like offenses. Like Parliament, it may imprison or expel a member for offenses. "The suspension of members from the service of the house is another form of punishment." (Mays's Parliamentary Practice, 53.) This author gives instances of suspension in the seventeenth century, and shows the frequent suspension of members under a standing order of the House of Commons passed February 23, 1880.

Says Cushing, section 280:

Members may also be suspended, by way of punishment, from their functions as such either in whole or in part or for a limited time. This is a sentence of a milder character than expulsion.

During the suspension [says Cushing, section 627] the electors are deprived of the services of their representative without power to supply his place, but the rights of the electors are no more infringed by this proceeding than by an exercise of the power to imprison.

The Senate may punish the Senators from South Carolina by fine, by reprimand, by imprisonment, by suspension by a majority vote, or by expulsion with the concurrence of two-thirds of its members.

The offense is well stated in the majority report. It is not grave enough for expulsion. A reprimand would be too slight a punishment. The Senate, by a yea and nay vote, has unanimously resolved that said Senators are in contempt. A reprimand is in effect only a more formal reiteration of that vote. It is not sufficiently severe upon consideration of the facts.



We agree that the junior Senator from South Carolina, John L. McLaurin, should be suspended from his functions as Senator for five days, and that the senior Senator from South Carolina, Benjamin R. Tillman, be suspended from his functions as a Senator for twenty days, the time of suspension to be reckoned from the date of the adoption of such a resolution by the Senate.

As we have said, there is a grave difference between the offenses of the two Senators. This difference has not been overstated by the chairman and the members of the committee who agree with him upon this point.

The objection that no punishment should deprive a sovereign State of its votes in the Senate fails when we consider the rights of all the States, and above all the right and the duty of the Senate of the United States to punish adequately a grave offense.

L. E. McCOMAS.

ALBERT J. BEVERIDGE.

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I concur in all of the foregoing views except as to the punishment of the junior Senator from South Carolina. It is my opinion that the punishment he has already suffered is adequate to his offense. I make no recommendation as to the punishment to be imposed on the senior Senator from South Carolina.

J. C. PRITCHARD.

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