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PRIVILEGED CHARACTER OF PETITIONS PRESENTED TO THE SENATE

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Mr. KING, from the Committee on the Judiciary, submitted the following

REPORT

The Committee on the Judiciary, to whom were referred, by action of the Senate on April 14, 1933 (vol. 77, Cong. Rec., p. 1714), various petitions and other papers signed by sundry citizens of the State of Louisiana, having considered the same, beg leave to submit a report thereon as follows:

On April 13, 1933, the Vice President "laid before the Senate a telegram and letter from John M. Parker, of New Orleans, La., together with two petitions of citizens of the State of Louisiana, relating to alleged acts and conduct of Hon. Huey P. Long, a Senator from the State of Louisiana, which were referred to the Committee on Privileges and Elections" (vol. 77, Cong. Rec., p. 1618). Subsequently, on April 14, 1933, the Senator from Louisiana, Mr. Long, rose to a point of personal privilege, suggesting that it was "important that the Senate should determine whether or not documents of this character sent here are privileged. If they are, we should amend our rules; if they are not, then we should take such action as is appropriate", and suggested that the matter be referred to the Committee on the Judiciary. The Senator from Arkansas, Mr. Robinson, stated that he thought that a proper suggestion and moved that "the Committee on Privileges and Elections for the present be excused from consideration of the petition, and that it be referred to the Committee on the Judiciary, the Senator having raised the question as to whether it is privileged and as to the right of the Senate to receive the petition." The motion was thereupon agreed to and the Committee on Privileges and Elections discharged and the petition referred to the Committee on the Judiciary (vol. 77, Cong. Rec., p. 1714).

The Senator from Louisiana, as shown by the Congressional Record of the 14th of April, to which reference has been made, stated that it was important that the Senate should determine whether or not documents of the character submitted by the Vice President to the Senate,

are privileged, and the motion of the Senator from Arkansas not only raised the question as to whether the petitions and documents are privileged, but also the question as to the right of the Senate to receive the same.

As the Committee on the Judiciary interprets the action of the Senate, the committee is required to determine (1) whether the telegram, letter, and petitions are privileged, and (2) the authority of the Vice President to receive and present petitions, and the right and duty of the Senate with respect to receiving petitions.

Obviously the Vice President regarded the papers referred to as a petition or memorial, or both, and referred the same to the appropriate committee.

It was within the province of the Senate to excuse the Committee on Privileges and Elections, at least temporarily, from the consideration of the telegram, letter, and petitions, and refer the same to the Committee on the Judiciary.

The first question considered is:

THE AUTHORITY OF THE VICE PRESIDENT TO RECEIVE AND PRESENT PETITIONS AND THE RIGHT AND DUTY OF SENATE WITH RESPECT TO RECEIVING PETITIONS

The first question which arises with respect to receiving petitions is who has the right to decide whether they shall be received or rejected.

Rule VII of the Senate provides that—

> After the Journal is read, the Presiding Officer shall lay before the Senate * * * communications addressed to the Senate * * *. The Presiding Officer shall then call for, in the following order:
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> The presentation of petitions and memorials * * *. All of which shall be received and disposed of in such order, unless unanimous consent shall be otherwise given.

Rule VII also provides that—

> Senators having petitions, memorials, pension bills * * * to present after the morning hour may deliver them to the Secretary of the Senate, endorsing upon them their names and the reference or disposition to be made thereof, and said petitions, memorials, and bills shall, with the approval of the Presiding Officer be entered on the Journal with the names of the Senators presenting them * * * and referred to the appropriate committees, and the Secretary of the Senate shall furnish a transcript of such entries to the Official Reporter of debates for publication in the Record.

It would seem from the proceedings appearing on page 1618 of the Record, April 13, that the telegram, letter, and petitions of citizens of the State of Louisiana, were not presented by a Senator "having petitions", etc., but were treated by the Presiding Officer as petitions or memorials, or both, addressed to the Senate; and as such, were referred to the Committee on Privileges and Elections.

Clause 5 of rule VII provides that—

> Every petition or memorial shall be signed by the petitioner or memorialist and have endorsed thereon a brief statement of its contents, and shall be presented and referred without debate * * *

Clause 4 of the same rule provides that—

> Every petition or memorial shall be referred, without putting the question, unless objection to such reference is made; in which case all motions for the reception or reference of such petition, memorial, or other paper shall be put in the

order in which the same shall be made, and shall not be open to amendment, except to add instructions.

It would seem that the presiding officer has no choice in the matter but to present to the Senate papers properly addressed and signed, when such papers are substantial in character and relate to public matters over which the Senate has jurisdiction, and that the Senate has the right to receive or reject the same on motion duly made and acted upon.

In the Senate proceedings the only instance which we have been able to find which would seem to be at variance with this statement, is to be found in a discussion of the subject by Vice President Martin Van Buren on March 17, 1834 (1st sess., 23d Cong., debates, pp. 970–978), in which he said in part:

> It (the Chair) has * * * considered it to be a portion of that duty to withhold such communications as, in the exercise of its best discretion, it considered to be so framed as to render their presentation inconsistent with the respect due to the Senate, as well as such as were, from other considerations, justly subject to the operation of the same rule. Scarcely a week passes in which communications are not received by the Chair, with a request to have them laid before the Senate, in respect to which it is apparent that their authors are suffering under mental aberrations. Communications of this sort, of which many are constantly in possession of the Chair, would, on the supposition referred to, be entitled to the disposition which is claimed for the paper under consideration.
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> But the exercise of the discretion referred to has not been confined by the Chair to papers of this description, which might justly be regarded as extreme cases. It has, on the contrary, felt it to be within the line of its duty to withhold from the Senate communications which, however high and sound the source from which they emanated, contained reflections upon the Senate, plainly derogatory to its honor. It is but a few weeks since that the Chair received, with the request to lay them before the Senate, the proceedings of a public meeting held in the city of Philadelphia, which, it was obvious, had been a very large one, and which the Chair does not doubt to have been also very respectable, in which the severest censure was denounced against this body for an act in which the present incumbent of the Chair happened to have had a particular interest. Under the influence of the sense of duty which has been expressed, the Chair did not hesitate to deliver the paper to one of the Senators from that State, with a request that it should be respectfully returned to the source from which it had come, with the information that the Chair felt it to be inconsistent with his duty to lay a paper containing such matter before the Senate.

It appears, however, that the Senate later refused to receive the paper to which the Vice President referred, by a vote of 20 yeas to 24 nays. The views expressed by Vice President Van Buren were merely expressions of opinion, and did not necessarily become a rule of the Senate.

While perhaps not germane to the question under consideration, it may not be inappropriate to refer to a few instances in the House of Representatives where questions were raised as to the duty of the Speaker regarding the disposition of petitions addressed to him.

During the first session of the Nineteenth Congress (Jour., pp. 119, 120; debates, pp. 880–883) a memorial relating to slavery was presented, and the Speaker, Mr. Taylor, explained that he did not present all memorials, for some, while respectful, were trivial. But the rule seemed to make it his duty to present such as were proper.

On February 6, 1840, the Speaker explained why he declined to present to the House, a resolution passed by the council in general assembly of the State of New Jersey, and transmitted to him by the Governor of that State with the request that he would lay it before

the Representatives of the Twenty-sixth Congress. The reason assigned for his refusal was as follows:

> Under these circumstances, I beg leave most respectfully to decline to lay these resolutions before the House over which I have the honor to preside, as virtually they seem to deny my title to the office of Speaker and the right of those who have invested me with that trust.

Speaker Philip P. Barbour, of Virginia, having laid before the House certain papers containing charges against Judge Tait, stated that, in regard to these papers, whatever might be his personal feelings, he did not think that he had a right to forbear laying them before the House. He further added that he had sometimes felt hesitation in laying before the House papers forwarded to him as Speaker; and in cases where the matter contained in them was obviously libelous, he had forborne.

The Constitution provides that each House may determine the rules of its proceedings. The Senate, therefore, has the right to prescribe such rules as it may deem proper to enable it to conduct the business which comes before it. It is conceivable that it might provide rules that would infringe upon personal liberty or be wholly inappropriate to the constitutional power with which it is invested.

It would seem, however, that the rules above referred to are entirely reasonable and within the authority of the Senate.

The first amendment to the Constitution prohibits Congress from making any law that would prohibit the right of the people to petition the Government for a redress of grievances. It would seem that if Congress may not enact a law to prohibit petitions by the people for a redress of grievances, the Senate may not prescribe a rule that would deny to individuals the right of petition for a redress of grievances; but in our opinion the Presiding Officer of the Senate would be under no obligation to receive communications or petitions not connected with or wholly irrelevant to, public matters, or governmental functions, or the duties of the Senate as defined and prescribed by the Constitution. It would seem clear, therefore, that neither the Presiding Officer nor the Senate should receive a statement, scandalous, obscene, or irrelevant, or a libelous statement against an individual whose acts or conduct were in no wise connected with or related to the Government.

PRIVILEGE ATTACHING TO PETITIONS AND PAPERS PRESENTED TO, AND RECEIVED BY, THE SENATE

It would appear from the decided cases that the courts will hold that a petition for redress of grievances presented to a legislative body by a citizen is, as to its contents and any allegations or accusations made therein, privileged upon its presentment and reception by that body. There are, however, certain limitations to be noted with respect to that privilege. It was held by the Court of Kings' Bench in the leading case of *Lake* v. *King* (1 Mod. Repts. 58), that—

> The exhibiting of the petition to the Committee of Parliament was lawful, and that no action lies for it, although the matter contained in the petition was false and scandalous, because it is in a summary course of justice, and before those who have power to examine whether it be true or false.

It was further held, upon argument by the plaintiff that the printing of the petition by the committee was not justifiable, that such printing

and delivery of copies was in the order and course of proceedings in Parliament, and that the court should take judicial notice thereof. Judgment was given for the defendant on the ground that it was the order and course of proceedings in Parliament to print and deliver copies, etc., of petitions after they were referred to committees.

In the case of *Harris* v. *Huntington* (2 Tyler (Vt.) 129), an action was brought for damages for an alleged libel against the petitioner. The claim was made that the matter alleged to be libelous was privileged. The alleged libelous matter was not printed either by the legislative body or by any other person, but it was held that the matter was privileged.

As to the immunity of persons other than the petitioner and the legislative body, the possible questions involved seem not to have been fully canvassed by the decisions in the available cases. In the case of *Wason* v. *Walter* (L.R. 4 Q.B. 73), it was held that the debates in the House of Lords on the question of receiving or rejecting a petition presented by the plaintiff making charges against a judicial officer of the Government and praying an investigation and removal of such officer, might be quoted by the defendant in his newspaper with comments thereon as to the character of the petitioner, and that such comments would not be actionable if a jury found that they were honestly made and were justified from the accurately printed reports of the debates.

To the same effect is the decision in the case of *Dunne* v. *Anderson* (3 Bing. 88). No decisions of courts, and only one expression, obiter, have been found treating of the privilege of third persons to print and publish a literal transcription of the petition itself.

There is found in the case of *Harris* v. *Huntington*, supra, at page 146, a "suggestion" by the court, following upon the paragraph embodying the decision in the case—

> that it is possible that an action might lie on such petition, if, with a malicious design to injure and defame, it were published in the public newspapers without the order of the General Assembly, as such publication would not be necessary to the occasion, nor would be within the course of proceedings in our Parliament * * *.

The case of *White* v *Nicholls et al.* ((1845) 3 How. 266), was a case of an action of libel brought by the plaintiff against the defendant to recover damages for injuries sustained by reason of the publication by the defendant, of certain defamatory statements concerning the plaintiff, in various letters addressed by the defendant to the President and to the Secretary of the Treasury requesting the removal of the plaintiff as collector of customs at Georgetown, D.C. In the course of the opinion by Daniel, J., the court discussed the nature of various privileged documents. In referring to "publications duly made in the ordinary mode of parliamentary proceedings", the court said—

> Publications duly made in the ordinary course of parliamentary proceedings have been ruled to be privileged, and therefore not actionable. (The court here discussed the case of *Lake* v. *King*.) The above case does certainly put the example of a privileged communication more broadly than it has been done by other authorities, and it seems difficult, from its very comprehensive language, to avoid the conclusion that there might be instances of privilege which could not be reached even by the clearest proof of express malice * * *. The decision of *Lake* v. *King* should rather yield to the concurring opinions of numerous and enlightened minds, resting as they do upon obvious principles of

reason and justice * * *. It is the undoubted right we know of every citizen to institute criminal prosecutions, or to exhibit criminal charges before the courts of the country; and such prosecutions are as much the regular and appropriate modes of proceeding as the petition is the appropriate proceeding before Parliament—yet it never was denied, that a prosecution with malice, and without probable cause, was just foundation of an action, though such prosecution was instituted in the appropriate court, and carried on with every formality known to the law.

The Parliament, it is said, is a court, and it is difficult to perceive how malicious and groundless prosecutions before it can be placed on a ground of greater impunity than they can occupy in another appropriate forum. The case of *Lake* v. *King*, therefore, interpreted by the known principles of the law of libel, would extend the privilege of the defendant no further than to require as to him proof of actual malice. A different interpretation would establish, as to such a case, a rule that is perfectly anomalous, and depending upon no reason which is applicable to other cases of privilege (pp. 288–290).

The Court in its opinion quotes from the case of *Cockayne* v. *Hodgkisson* (5 Car. & P., 543), where it was declared by Parke, Baron—

That every willful and unauthorized publication injurious to the character of another is a libel; but where the writer is acting on any duty legal or moral, toward the person to whom he writes, or is bound by his situation to protect the interests of such person, that which he writes under the circumstances is a privileged communication, unless the writer be actuated by malice.

The court also quotes from an English case referred to by Chancellor Kent in the second volume of his commentaries (pt. 4, p. 22), as follows:

That petitions to the King or to Parliament or to the Secretary of War, for redress of any grievance are privileged communications, and not actionable libels, provided the privilege is not abused. But if it appears that the communication was made maliciously and without probable cause, the pretext under which it was made aggravates the case and an action lies.

Mr. Odgers, in his work on Libel and Slander (6th Ed., p. 190) states, that—

A petition to Parliament is absolutely privileged, although it contain false and defamatory statements. So is a petition to a committee of either House. But a publication of such a petition to others not Members of the House is not privileged.

Mr. Newell, in his work on Slander and Libel announces the same doctrine in substantially the same words. (See Third Edition, sec. 510.)

In view of the authorities above referred to, it would seem that any matter contained in a petition for a redress of grievances would be privileged, but any person publishing any such matter would be subject to an action of libel, if the matter so published had been obtained other than through a source made available to the public, such as publication by the legislative body to which it was addressed during the course of its consideration.

PRIVILEGE AS APPLIED TO THE SENATE

With respect to the extent to which the Senate or any of its committees or any of its individual Members may publish a petition presented to it, without being subject to action, it would seem that the rule would follow somewhat the language in the case of *Lake* v. *King*, supra, namely, that such publication as takes place in the ordinary course of proceedings in that body is privileged. To what extent this will reach, will of course, be governed by the rules of the

Senate and the provisions of the Constitution, but as stated by Odgers and Newell, the publication of a petition containing false and defamatory statements by Members of the body to which it was addressed to others not members is not within the immunity attaching to it.

In the consideration of this question the nature of the right of petition for redress of grievances, and the results of too strict or too lenient an adherence to the principle of privilege, must not be ignored.

In the course of the opinion in *Harris* v. *Huntington*, supra, the court said:

> An absolute and unqualified indemnity from all responsibility in the petitioner is indispensable, from the right of petitioning the supreme power for the redress of grievances; for it would be an absurd mockery in a government to hold out this privilege to its subjects, and then punish them for the use of it.

Such a statement would seem to be based on sound reasoning and to need no elaboration. It is submitted, however, that if the legislative authority to which the petition is addressed were not to have the right to confine the matter contained in it to its own halls, unless it should think fit to do otherwise, and if the immunity attaching to the document and the petitioner were to be extended so far as to make it a cloak for the unchecked publication of abusive or calumnious statements, the "unqualified indemnity" would seem to be an "absurd mockery" in itself. The right of petition would seem to have sufficient safeguards consistent with the nature of the right, if the right to present a petition and its consideration by the body to which it is presented, are assured, and such publication made privileged as is consistent with the parliamentary course of the proceedings in connection with its consideration.

CONCLUSIONS

Your committee, after examination of the petitions and papers referred to them, found that they are scurrilous and defamatory in their nature, and fail to give any details or facts supporting the generalities found in them such as to justify action on the part of the Senate; and unless such details and facts are furnished to the Senate, there is no justification for any further consideration of the subject by the Senate. Further, your committee is of the opinion that, in view of the scurrilous and defamatory nature of these papers and the fact that the charges are unsupported by facts or details, the Senate, had it been apprized of their character, ought not to have received them, but having been received, they are clothed with a limited privilege.

In this connection, it is pertinent to note the action taken by the Committee on Privileges and Elections of this body on certain petitions and papers submitted to them, which were almost identical with those referred to this committee, and which were signed by substantially, if not identically, the same persons. That committee adopted the following resolution:

> *Resolved*, That the charges in the several complaints or petitions reported to the committee are insufficient to present any issue or question for the consideration of the committee.

O