

IN THE SENATE OF THE UNITED STATES.

MAY 28, 1856.—Submitted and ordered to be printed.

Mr. PEARCE made the following

R E P O R T .

The Select Committee appointed to inquire into the circumstances attending the assault committed upon the person of the Hon. Charles Sumner, a member of the Senate, report:

That from the testimony taken by them, it appears that the Hon. Preston S. Brooks, a member of the House of Representatives from the State of South Carolina, did, on the 22d day of the present month, after the adjournment of the Senate, and while Mr. Sumner was seated at his desk in the Senate chamber, assault him with considerable violence, striking him numerous blows on and about the head with a walking stick, which cut his head and disabled him for the time being from attending to his duties in the Senate. The cause of this assault was certain language used by Mr. Sumner in debate on the Monday and Tuesday preceding, which Mr. Brooks considered libellous of the State of South Carolina, and slanderous of his near kinsman, Mr. Butler, a senator from that State, who at the time was absent from the Senate and the city.

The committee forbear to comment upon the various circumstances which preceded and attended this affair, whether of aggravation or extenuation, for reasons which will be sufficiently obvious in the latter part of the report.

They have examined the precedents which are to be found only in the proceedings of the House of Representatives—the Senate never having been called on to pronounce its judgment in a similar case. In the House of Representatives, the different opinions have, at various times, been expressed by gentlemen of great eminence and ability, among whom may be mentioned the late President of the United States, Mr. Polk, the late Judge Barbour, of the Supreme Court, and Mr. Beardsley, of New York, yet the judgment of the House has always pronounced an assault upon a member for words spoken in debate to be a violation of the privileges of the House.

The committee do not consider it necessary to discuss the question at length, but proceed to state some of the precedents, not confining them, however, to the case of assaults upon members.

In March, 1796, Mr. Baldwin, a member of the House of Representatives, presented to the House certain correspondence between

himself and General Gunn, a senator from the State of Georgia, including a challenge addressed to him by General Gunn.

These were referred to a committee, of which Mr. Madison was chairman, who reported, by their chairman, that the same was a breach of the privileges of the House, on the part of General Gunn and Mr. Frelinghuysen, a senator from New Jersey, by whom the challenge had been borne.

In May, 1828, a personal assault having been made by Mr. Russell Jarvis upon Mr. John Adams, the private secretary of the President, just after his delivering a message to the House of Representatives, and while on his way to the Senate with another message, the matter was, on complaint of the President, referred to a select committee, a majority of the committee, by Mr. McDuffie, of South Carolina, their chairman, reported that—

“Upon a view of all the circumstances, the committee are of the opinion that the assault committed by Mr. Jarvis upon the private secretary of the President, whatever may have been the causes of provocation, was an act done in contempt of the authority and dignity of this House, involving, not only a violation of its own peculiar privileges, but of the immunity which it is bound, upon every principle, to guaranty to the person selected by the President as the organ of his official communications to Congress. It is of the utmost importance that the official intercourse between the President and the legislative department should not be liable to interruption. The proceedings of Congress would not be more effectually arrested by preventing the members of either House from going to the hall of their deliberations, than they might be by preventing the President from making official communications essentially connected with the legislation of the country.”

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“The power in question grows out of the great law of self-preservation. It is, no doubt, very liable to abuse, and ought always to be exercised with great moderation. In its very nature it is not susceptible either of precise definition or precise limitation. Each particular instance of its exercise must be adapted to the emergency which calls for it. While, therefore, the committee deem it a matter of great importance to maintain the existence of this power as an essential means of vindicating the dignity and privileges of the House, they are clearly of the opinion that it ought never to be exercised except in cases of strong necessity, and that the punishment inflicted under it ought never to be carried further than shall be absolutely and imperiously required by the existing emergency.”

In 1832, the House of Representatives, after a long trial and thorough discussion of the question, voted that General Houston, by making a personal assault on Mr. Stansbery, a member of the House, for words spoken in debate, was guilty of a contempt and violation of the privileges of the House.

The committee acknowledge the force of these precedents, and adopt the reasoning quoted from Mr. McDuffie's report.

But while it is the opinion of the committee that this assault was

a breach of the privileges of the Senate, they also think that it is not within the jurisdiction of the Senate, and can only be punished by the House of Representatives of which Mr. Brooks is a member.

This opinion is in strict conformity with the recognized parliamentary law.

Hatsell in his Precedents says as follows :

“The leading principle which appears to pervade all the proceedings between the two Houses of Parliament is, that there shall subsist a perfect equality with respect to each other ; and that they shall be, in every respect, totally independent one of the other. From hence it is, that neither House can claim, much less exercise, any authority over a member of the other ; but, if there is any ground of complaint against an act of the House itself, against any individual member, or against any of the officers of either House, this complaint ought to be made to that House of Parliament where the offence is charged to be committed ; and the nature and mode of redress or punishment, if punishment is necessary, must be determined upon and inflicted by them. Indeed, any other proceeding would soon introduce disorder and confusion ; as it appears actually to have done in those instances where both Houses, claiming a power independent of each other, have exercised that power upon the same subject, but with different views and to contrary purposes.”—(3 Hatsell, 67.)

“We see, from the several precedents above cited, that neither House of Parliament can take upon themselves to redress any injury, or punish any breach of privilege offered to them by any member of the other House ; but that, in such cases, the usual mode of proceeding is, to examine into the fact, and then to lay a statement of that evidence before the House of which the person complained of is a member.”—(Ibid. 71.)

Mr. Jefferson, in the Manual of Parliamentary Practice prepared by him, lays down the following rule :

“Neither House can exercise any authority over a member or officer of the other, but should complain to the House of which he is, and leave the punishment to them.”

A brief examination of the constitutional privileges of senators and representatives will show the soundness of this rule of parliamentary law.

The Constitution provides (article 1, section 6) that “they shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same.”

But the Senate is not a court of criminal judicature, empowered to try the excepted offences. It cannot take cognizance of a breach of the peace *as such*. It cannot take any notice of it except as a breach of its privileges, and in this character it is not one of the cases in which the privilege from arrest is excepted. The Senate, therefore, for a breach of its privileges, cannot arrest a member of the House of Representatives, and *à fortiori* it cannot try and punish him. That authority devolves solely upon the House of which he is a member.

It is the opinion of the committee, therefore, that the Senate cannot proceed further in the present case than to make complaint to the House of Representatives of the assault committed by one of its members, the Hon. Preston S. Brooks, upon the Hon. Charles Sumner, a senator from the State of Massachusetts.

The committee submit herewith certain affidavits taken by them in this case, and the following resolution :

Resolved, That the above report be accepted, and that a copy thereof, and of the affidavits accompanying the same, be transmitted to the House of Representatives.

Question to Colonel Nicholson.

Will you state to the committee whether you witnessed the recent assault upon Mr. Sumner ; and if you did, state all the particulars ?

On Thursday last, the 22d of May, instant, a few moments after the adjournment of the Senate, I retired, as usual, to my desk in one of the offices of the Secretary of the Senate. After the lapse of a brief period, I returned to the Senate chamber to request the assistant doorkeeper (Mr. Holland) to have a piece of money changed for me. After seeking the doorkeeper and communicating my wish to him, I was walking down the main aisle of the chamber, when I observed the Hon. Mr. Brooks, of South Carolina, sitting at the desk of Senator Pratt. I saluted him, "How is Colonel Brooks to-day?" He responded, "Well, I thank you," and beckoning to me, he added, "Come here, Nicholson." I advanced, and placed myself in Senator Bayard's chair, near which, on my right, Major Emory, of the United States army, was standing, and with whom I had been conversing a few minutes before. Colonel Brooks remarked to me, in his usual tone of voice, and without the slightest show of inquietude, "Do you see that lady in the lobby?" Turning round, and observing a lady sitting on the lounge at a short distance from us, I said "Yes." Col. B. said, "She has been there for some time ; what does she want? Can't you manage to get her out?" Thinking that Col. B. was only indulging a momentary whim, I jocosely replied, "No ; that would be ungallant ; besides, she is very pretty." Col. B., turning round, and looking at the lady, said, "Yes, she is pretty, but I wish she would go." At this moment the changed money was brought to me by one of the pages, and almost at the same moment Major Emory inquired, "Who was that gentleman you were conversing with?" I had scarcely said, "Colonel Brooks, of South Carolina, a very clever fellow;" when observing Colonel Brooks advancing in front of and towards, as though about to speak to, Senator Sumner, who was sitting at his desk apparently engaged in writing, or with papers before him, I cannot be positive which, I involuntarily attempted to call Major Emory's attention to the fact, for I was much surprised to see a South Carolina representative in the act of approaching to speak to Senator Sumner after the speech delivered by the latter the two previous days but one, in the Senate. But before I could attract Major Emory's attention or express surprise, I saw Colonel Brooks lean on and over the desk of Senator Sumner, and seemingly say something to him,

and instantly, and while Senator Sumner was in the act of rising, Colonel Brooks struck him over the head with a dark-colored walking cane, which blow he repeated twice or three times, and with rapidity. I think several blows had been inflicted before Senator Sumner was fully in possession of his locomotion, and extricated from his desk, which was thrown over or broken from its fastenings by the efforts of the senator to extricate himself. As soon as Senator Sumner was free from the desk he moved down the narrow passage way under the impetuous drive of his adversary, with his hands uplifted as though to ward off the blows which were rained on his head with as much quickness as was possible for any man to use a cane on another whom he was intent on chastising. The scene occupied but a point of time—only long enough to raise the arm and inflict some ten or twelve blows in the most rapid succession—the cane having been broken in several pieces. All the while, Senator Sumner was holding his hands above his head, and turning and tottering, until he sank gradually on the floor near Senator Collamer's desk, in a bleeding and apparently exhausted condition. I did not hear one word, or murmur, or exclamation, from either party, until the affair was over. Such was the suddenness of the affair, the rapidity of its execution, the position of persons in the chamber, and the relative position of the chairs and desks, that, although several persons (myself among them) quickly advanced to the spot where the parties were engaged, it was not in the power of those present to have separated Colonel Brooks, or to have rescued Senator Sumner, so as to have prevented the former from accomplishing his purpose. Such was the conclusion of my judgment at the moment of the occurrence; and such it is now.

JOS. H. NICHOLSON.

WASHINGTON, *May 27, 1856.*

By Mr. Allen.—What senators were present at the time?

Senators Toombs, Pearce, and Crittenden were seated in their respective chairs just preceding the affair. During its occurrence, and towards the close of it, I observed Mr. Crittenden near the parties, evidently striving to terminate the assault. I cannot now say I observed any other senators until the affair was over.

What members of the House of Representatives were present?

The only member of the House of Representatives whom I recognized was the Hon. Mr. Keitt, of South Carolina, who approached the parties about the same time Mr. Crittenden did.

JOS. H. NICHOLSON.

Question propounded to Governor Brown of Mississippi.—Please to state to the committee the cause of the assault committed by Mr. Brooks upon Mr. Sumner, as stated to you.

Did Mr. Brooks state to you the cause of his assault upon Mr. Sumner, and the language which he addressed to Mr. Sumner just before the assault? If so, please to tell the committee what his language was, or what the cause of the assault.

On the day of the occurrence, and shortly after, I met Mr. Brooks in company with Mr. Keitt on the avenue, nearly opposite the Union

buildings; after the usual salutations, Mr. Keitt mentioned what had occurred and was proceeding to give some account of it when Mr. Brooks interposed, with this remark: "The town I suppose will be full of rumors in a few hours, and I desire my friends to understand precisely what I have done, and why I did it. Regarding the speech" (of Mr. Sumner) "as an atrocious libel on South Carolina, and a gross insult to my absent relative," (Judge Butler,) "I determined, when it was delivered, to punish him for it. To-day I approached him, after the Senate adjourned, and said to him, Mr. Sumner, I have read your speech carefully, and with as much calmness as I could be expected to read such a speech. You have libeled my State and slandered my relation, who is aged and absent, and I feel it to be my duty to punish you for it; and with that I struck him a blow across the head with my cane, and repeated it until I was satisfied. No one interposed, and I desisted simply because I had punished him to my satisfaction."

This is substantially and almost literally the statement of Mr. Brooks. The conversation then turned on other points and phases of the affair.

A. G. BROWN.