

IN THE MATTER OF THE REFUSAL OF AUGUSTUS
SCHELL TO PRODUCE A CERTAIN PAPER.

APRIL 6, 1860.—Ordered to be printed, and its further consideration postponed until Monday next.

Mr. COVODE, from the select committee, submitted the following

REPORT.

The select committee, of which Mr. John Covode is chairman, appointed under resolution of the House of Representatives of March 5, 1860, respectfully submit the following special report:

That, during the progress of their investigation, they have summoned as a witness Augustus Schell, collector of the port of New York, and that on the 28th ultimo, among others, the following questions were propounded to said Schell, and the following answers severally made to the same by him, to wit:

“Question. Were you connected with what was known as the New York Hotel fund prior to the election of 1856?

“Answer. I was a member of the committee which met at the New York Hotel?

“Question. Was there a fund created by the efforts of that committee?

“Answer. Yes, sir.

“Question. Have you a list of the subscribers to that fund?

“Answer. I think I have it among my papers.

“Question. Will you furnish it to the committee?

“Answer. I will.

“Question. What amount was raised by subscription?

“Answer. I cannot recollect distinctly; some \$30,000 or \$40,000.

“Question. Where was that money expended, substantially?

“Answer. In different places. Part of it was sent to Pennsylvania, and part of it was expended in New York, both the city and State; at least, I suppose so; I did not expend it myself.

“Question. When will you furnish this subscription list to the committee? Can you send for it?

“Answer. I cannot well send for it. I can get it when I return home, and will send it on next week.”

On the day following the witness again appeared before your committee, and asked leave to withdraw so much of his testimony given the day before as related to his furnishing your committee the list of subscribers to the New York Hotel fund, so called. He also submitted to your committee a written statement, which closed as follows:

"I am not certain that I have in my possession any list of the contributors of the moneys; but if I have such list, I must, on reflection, decline to produce it, feeling that such production, without the authority of the persons whose names may be connected with it, would involve a breach of the implied confidence recognized as existing in such cases."

On the 3d instant said Schell again appeared before your committee, when the following questions were propounded to him, and the following answers severally returned to the same, to wit:

"Question. The committee have given you abundance of time to reflect on this subject. They think they have the power to compel the production of that paper. What we want to know now is, whether you are going to furnish it or not.

"Answer. With all due respect to the committee, I have reflected upon it since the time of my former examination, and in my opinion the power was not given to the committee to ask for the production of a paper entirely private in its character.

"Question. The committee differ with you in opinion. They desire now to know whether you will or will not furnish that paper.

"Answer. I see no reason to change my opinion in reference to it.

"Question. You say, then, that you will not produce that paper?

"Answer. I decline to do so for the reasons I have stated, supposing it to be in my possession; I do not know even that it is, as I stated in my original examination.

"Question. You do not decline, as I understand you, to produce that paper because you were not summoned to bring it, but because of the alleged want of power in the House of Representatives to compel you to produce a private paper.

"Answer. I decline to produce it, because I think this committee have no power to order the production of it—if it is in my possession."

Your committee, regarding that paper as material to the proper investigation of the matters referred to them by this House, have concluded that it is the duty of your committee to insist upon the production of the paper by the witness, if within his possession or control. And your committee respectfully submit to this House that it is a contempt of the authority of this House on the part of the witness to refuse to answer to every material fact within his knowledge, and especially to refuse to produce a paper required by your committee. Believing that this House is clothed with power to order the party into custody, there to remain until released by the same authority, your committee recommend the adoption of the following resolution:

Resolved, That the Speaker issue his warrant, directed to the Sergeant-at-arms, commanding him (the said Sergeant-at-arms) to take into custody the body of the said Augustus Schell, and the same forthwith to bring before this House, at the bar thereof, to answer as for a contempt of the authority of this House in refusing to produce a paper when thereunto required by a committee of this House.

JOHN COVODE, *Chairman*.

A. B. OLIN.

CHAS. R. TRAIN.

MINORITY REPORT.

Mr. WINSLOW, from the select committee, submitted the following views:

The undersigned dissents from the views of the majority of the select committee.

The resolution of the House, the last in the series referred to this committee, it is true, is very large in its terms, and might seem, from a cursory examination, to impose upon the committee the very onerous duty of investigating every election held in each State of the confederacy, the money expended therein, the subscriptions made, and by whom, and for what purpose; whether such purpose and expenditure were corrupt, or otherwise.

But the undersigned submits, upon general reasoning, and upon the face of the paper, and consideration of the terms in which it concludes, that such is not the true construction, and hence not the intent of the House.

Without stopping to inquire into the propriety of attempting by law to prevent any interference with the elective franchise, by the use of money in printing, and distributing political tracts and documents; in supporting and establishing presses as vehicles for the communication of particular political opinions among the people, and of defraying the expenses of public meetings and assemblies, as practiced and pursued in every section of the country, without corrupt intent, an inquiry into which the undersigned does not choose to enter, it may well be questioned, in view of the general sentiment of the country, the peculiarity of our institutions, and the principle of free speech and a free press, whether such an attempt would be wise, proper, or expedient. Indeed, it may be doubted whether Congress has any right whatever to enact laws to punish bribery at elections in the States, or to suppress, by laws remedial or otherwise, any corrupt means or measures taken to influence them, and whether that power is not peculiarly and exclusively the legitimate duty of the several States, under the second section of the first article of the Constitution.

However this may be, still, granting it for the sake of the argument, the undersigned submits that this House has no authority to inquire into the private contributions of any person whatever towards such a purpose, unless it be first determined that such purpose was corrupt; and that such inquiry would be a wanton and improper interference with the just privileges of the citizen, subversive of the rights of the people, tending to an undue and dangerous concentration of power in the legislative branch of the government, to a derogation of

the dignity of the House, by converting it into an odious inquisition, and thus diminishing the public confidence in its action and character.

For what reason would this House institute such inquiry? Suppose the names of such subscribers reported to the House, what measures could the House be advised to take? Is it a crime to spend money, legitimately, to influence elections? What public statute would thereby be violated? Under what law could a person so accused be put to answer? And what jurisdiction has this House to institute investigations, unless in aid of legislation, which by the argument it has no authority to make, or with a view to impeachment?

That the House so thought is apparent from the order it gives, that the "names of the parties *implicated*" should be reported.

The resolution contemplates then a report only of those who have done a wrong act, that is a corrupt one, and does not authorize the report of any others. Augustus Schell was required to produce to the committee a list of the names of the persons subscribing to a fund which, it was alleged, was contributed towards defraying the expenses of an election in Pennsylvania. He declined to produce it.

The undersigned submits that he was not bound to produce it until it was first determined that the subscribers had contemplated a corrupt use of the fund, or had corruptly expended it. Until then, conceding the authority of the House, for argument, neither he nor they had committed either a wrong or a crime, nor had done any act of which this House should or can take cognizance.

To compel the witness to answer would, then, be but for the gratification of an idle curiosity, which, in the case of the House, it is not decorous to suppose; or to elicit by illegitimate means a supposed legitimate result—a doctrine which the law of no free people could justify or admit.

And it indeed would, in the opinion of the undersigned, give much plausibility to the captious, who might charge the design and scope of the whole resolution to be, to do the very act and thing it seems to deprelate, and thus subject this house to an improper and unnecessary criticism of its motives.

The undersigned might well stop here, but the importance of the subject justifies a fuller discussion.

The House of Representatives is invested with high powers, but these powers are accurately defined, and strictly limited by the Constitution, which, while it protects the House in the exercise of its constitutional function, does not the less guard and secure the rights of individual citizens and of the States.

Hence it is obvious that inquiries by the House into the act of individual citizens in the States, if made at all, must be made of objects within its jurisdiction.

It may, in the *first* place, act on individual persons, private citizens, or others, in the maintenance of its own parliamentary prerogatives; *secondly*, it may inquire into facts in order to legislate thereon; and *thirdly*, it may investigate the conduct of public officers with a view to their impeachment before the Senate.

The particular fact as to which Augustus Schell has been called to

testify, and for not responding to which, it is proposed to arraign him, has no relation to the parliamentary prerogatives of the House. No evidence exists that the money contributed through him was employed to affect corruptly its official action ; no question of the legality of the election of any of its members or officers is involved, nor indeed of *their* official conduct. Of course the inquiry proposed cannot be justified on that ground.

If it be conceded, for the argument's sake, that Congress has any power to legislate on this subject, and the assumed object of the inquiry be to assist the House in such legislation, then it is not at all material to that object to ascertain from Augustus Schell what persons contributed the money which he delivered to the Pennsylvania central committee. The fact who those subscribers are can hardly aid the committee in the preparation of a bill. It can have no possible effect in enlightening the House in the performance of any of its legislative functions, under the Constitution.

Again: if the object be to provide for the punishment of a public officer, then it must commence with suggestions of some breach of duty by such officer, and must proceed in those recognized forms which the law has sanctioned and adopted, consonant with the universal principles of justice and right. But Augustus Schell was no public officer, but a mere private citizen at the time of receiving this money ; and further, it is not suggested that he received it from any public officer. And if he, or any one of the contributors had been a public officer, what law did he violate?

This House cannot impeach, except for acts made criminal by law, as the undersigned understands the law to be now well settled. And what provision of the Constitution, of any law, statute, or act of Congress, or even of usage or custom, is there to punish the act here inquired into, even if done by a public officer? None whatever ; and if there were any such law, and the infringement of it were imputable to any public officer as cause of impeachment, he himself cannot be interrogated thereto.

No public officer of these States from the President to a village postmaster, can be required to furnish evidence whereby to be impeached.

Like all others, they are presumed to be innocent until proved guilty, and it is their undeniable right to stand upon this presumption. The House oversteps its power in calling upon a public officer to communicate to it self-accusatory matter, on which to found an impeachment before the Senate. But no public officer being concerned, and no unlawful act imputed to any public officer, in the premises, the proposed inquiry becomes an act of high-handed usurpation, and of odious violation of the personal rights of the citizen. The contributors are to be presumed to have acted from right motives—for lawful and honorable purpose. Nothing to the contrary of that has been proved or suggested.

If anything unlawful has been done by those individuals in Pennsylvania to whom the money was delivered, they, and they only, are responsible for the wrong, if any was committed. But neither they, if they unlawfully disbursed the money they received, nor still less

they who contributed the same, are amenable therefor to this House. This House is not a court, nor is it a public prosecutor. If these parties have committed a wrong, or an offence against the law of the land, they are to be tried by the law which acts with juries, and all those other safeguards which the Constitution assures to its meanest citizen.

In fine, the undersigned verily believes that except for the gratification of purposes of mere party spirit, thus to pursue those purposes is a procedure of invidious inquisition into the innocent conduct of private persons ; and, cannot, in the end, be of any advantage to one party, nor injure the other. In this point of view, it would be wholly indifferent to the undersigned, if it were not in its nature, as he believes, discreditable to the House, to the institutions, and to the reputation of the people of the United States.

But he feels himself impelled to protest against, it by the higher consideration, that it involves flagrant usurpation on the part of the House, and violation of the rights and liberties of the people, and of the whole spirit of the Constitution.

For these reasons the undersigned is of opinion that the witness is not compellable to produce the list, nor answer questions as to its contents.

WARREN WINSLOW.

I concur in all of the above report except the construction of the resolution.

J. C. ROBINSON.

