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CONGRESS.

House of Representatives.

THURSDAY, January 5.

Debate on Mr. Randolph's motion for the appointment of a committee of enquiry into the official conduct of SAMUEL CHASE.

(Continued.)

MR. LEIB. I am by no means an enemy to enquiry, but I am not a friend to the partiality of this resolution. We are told that it is grounded on the misconduct of the circuit court in Philadelphia on the trial of Fries. If one judge of that court was guilty of misconduct, the other attending judge must have been equally guilty. The conduct complained of was the act of the court, and not of an individual judge. This resolution ought therefore to embrace both the attending judges. My opinion is that both are criminal, and ought to be brought to the bar of justice. I therefore move an amendment of the resolution by introducing the name of RICHARD PETERS, so as to embrace an enquiry into the conduct of both judges, and call for the Yeas and Nays on the amendment.

MR. J. RANDOLPH. I wish to state for the information of those gentlemen who were not in the last Congress, that the gentleman from Pennsylvania, whose statement, thus made, is the grand work of the present enquiry, did not offer any matter which tended to impeach the conduct of Mr. Peters, while there was a specific charge of misconduct brought against the other judge. In consequence of this charge I conceived it my duty to make an enquiry into the official conduct of Judge Chase. I mention this circumstance to shew that however the charge of partiality may apply to the resolution, it cannot apply to the mover.

MR. LEIB. I do not charge the mover with partiality, but the resolution with embracing one judge instead of two. Judge Peters was on the bench at the time. This outrage upon justice was the act of the court. How the conduct, therefore, of one judge shall claim investigation, while that of the other is passed over in silence, to me is mysterious. I think impartial justice calls for an investigation into the conduct of both.

MR. SMILIE said there could be no doubt that if the court were agreed, Judge Peters had been equally guilty of misconduct. On the trial of Fries, Mr. Chase presided, and Mr. Peters attended. If Judge Peters concurred in the decision, he was equally culpable.

MR. NICHOLSON. This resolution is grounded upon a statement made during the last session by a member from Pennsylvania implicating the character of one of the justices of the supreme court. Upon information thus given, my friend from Virginia has thought himself bound to bring the business before the House, that an enquiry may be made into his conduct. For myself, I will never hesitate, I care not who the person implicated may be, and however exalted his station, to give my vote for enquiring into his official conduct, when a member of this House rises in his place, and states that, in his opinion, he has been guilty of misconduct. For this reason I shall vote for the amendment; it having been stated by a member that Judge Peters was on the bench and did concur with Judge Chase.

The Yeas and Nays were taken on the amendment, which was carried in the affirmative—Yeas 79—Nays 37—as follow:

YEAS.—Messrs. Alston, junr. Alexander, Bishop, Blackledge, Boyle, Brown, Bryan, Butler, J. Campbell, Clay, Clopton, Crowninshield, Cutts, Dennis, Dickson, Early, Elliot, Elmer, Eppes, Eustis, Findley, Gillespie, Gray, Gregg, Griffin, Hanna, Hasbrouck, Hastings, Hoge, Holland, Holmes, Huger, Jackson, Jones, Kennedy, Knight, Leib, Lewis, jun. Lowndes, Lucas, M'Cord, Meriwether, R. Moore, T. Moore, Morrow, New, Newton, jun. Nicholson, Olin, Patterson, Phelps, J. Randolph, jun. T. M. Randolph, J. Rea, (of Penn.) J. Rhea, (of Tennessee,) Richards, Root, Sammons, Sandford, Seaver, Skinner, Sloan, Smilie, J. Smith, (of Virginia) Stanford, Stanton, Stephenson, Stewart, Thomas, Thompson, J. Trigg, Van Cortlandt, Van Horne, Varnum, Verplanck, M. Williams, Winn, Winston, Wynns—79.

NAYS.—Messrs. Baldwin, Bard, Bedinger, Betton, Boyd, Chamberlin, Chittenden, Claggett, Cutler, Dana, Davenport, G. Griswold, R. Griswold, Hough, Hunt, Lewis, Livingston, M'Creery, N. Mitchell, S. L. Mitchill, Mott, Palmer, Plater, Purviance, Sands, J. C. Smith, J. Smith, (of New-York,), Southard, Taggart, Tenney, Thatcher, Tibbits, A. Trigg, Van Rensselaer, Wadsworth, Whitehill, Williams—37.

MR. LOWNDES. Were I to be governed by considerations other than those resulting from a sense of duty I should vote for this resolution, as I believe it would afford the character implicated the readiest mode of vindication. But I do not feel so high a respect for the opinion of any one member, as to give up my opinion to his as to the course most proper to be pursued on this occasion. The gentleman who has offered this resolution, says that the facts on which it is founded are within his own knowledge. Let the gentleman then lay them before the House. Otherwise we shall legislate not on facts before us, but merely on the opinion of a single member on facts only known to himself. We are told that this motion is founded on the statement of an honorable gentleman from Pennsylvania.—What is that statement? That one of the counsel in the trial of Fries informed him that the judge declared the counsel had no right to argue a point of law after the mind of the court was made up. I ask if any gentleman is prepared to say that the judge was wrong. I am not prepared to say so. While too I am unwilling to detract from the respect due to the statement of the gentleman from Pennsylvania, I am equally unwilling to subscribe to his opinions. He may have misconceived the information communicated to him. It is said that it is necessary to preserve pure the streams of justice. I agree in this remark, and I say that the resolution on the table goes to destroy the independence of the judges, and of consequence to pollute the streams of justice; to make the judges the flexible tools of this House. It is impossible that under such circumstances men of talents and integrity will take seats on the bench, when their characters shall be liable to be scrutinised without any facts being previously adduced.

I think it absolutely necessary that this resolution should not pass. For if it passes, it will establish a precedent that any member may procure an investigating committee to enquire into the conduct of any executive or judicial officer merely upon his opinion unsupported by facts that such an enquiry is necessary. Suppose parties to be nearly equally divided; a member has only to propose an enquiry into the conduct of any officer to whom he may feel inimical, and thereby throw a cloud upon his character, and render him the object of suspicion. Thus do I fear that this precedent will furnish the instrument of vengeance of one party against another. The price we pay for our liberties is the existence of parties among us; but it becomes us rather to restrain than to invigorate their passions. If we establish this precedent we shall render impeachments so easy, as greatly to facilitate the means of oppression.

Mr. Lowndes concluded by saying that in this affair he threw party considerations entirely out of view. He was personally unacquainted with judge Chase, and if there was a single affidavit of his misconduct, the appointment of the committee of enquiry should have his vote; but that under the circumstances attending it, he considered the measure improper in every point of view in which he could consider it.

MR. FINDLEY observed, that tho' the abstract right of the members to move for an enquiry into the conduct of public officers in order to find whether presumptions against their character afforded ground for impeachment, was not expressly denied, yet the manner in which the opposition to the present resolution was conducted was equal to denying the right. He trusted, however, that the House would support this right, as it was one of the most important of any with which they were vested. It grew out of the power of impeachment, and it was necessary for the exercise of that power, and was justified by precedents. By the rules of the House any member has a right to have the doors shut in order to move such a resolution as he thinks proper. This has been usual in cases of impeachment in Britain, from which we derive the forms of impeachment. There it has been common to shut the doors and for a member to move for an impeachment of a public officer, and to procure the officer impeached to be taken into custody before there was time or opportunity to take any other testimony than the information stated by the member who moved the resolution, probably supported by public fame. Taking the party into custody was necessary to the circumstances of that country, and the extent of punishment which might not only affect the liberty and property, but even the life of the party found guilty. It was necessary because of the influence of the powerful nobility, who might have it in their power to stand in their defence, but as all the penalties in the power of this government to inflict by impeachment only affect the official trust and character, taking into custody is unnecessary.

He observed, that the arguments in opposition to the resolution turned chiefly on the ground of expediency and of precedent.

In his opinion it appeared not only expedient but necessary, from the notoriety of facts on which the resolution was founded; that they were publicly known and had impaired confidence in these judges, could not be denied. That it was known to Congress during the last session was acknowledged. It was not only known, but Congress acted on it. A bill was in progress before this House appointing the attendance of judges to particular districts—the members of two respectable states in which, by the bill, judge Chase was appointed to attend, objected unanimously to that appointment, because they had not confidence in him; and the facts on which the resolution is founded were stated on the floor, upon which the House altered the bill and appointed another judge to that district. This was a strong testimony that Congress believed that this open expression of want of confidence in that gentleman was justified by the facts that had been stated.

He said, that though he had not at that time a seat in the House, he had expected an enquiry to be made into the causes of this want of confidence at that time—perhaps it was prevented by the shortness of the session.

It is expedient for the character of the gentlemen and for the public good; for the gentlemen themselves, if they are innocent or have acted on justifiable ground, it is necessary that their characters may be vindicated, and confidence in their public conduct restored—it is expedient for the public good, because if the judges are guilty in the manner stated; if they have justly lost the confidence of the people and of Congress, as it appears by the transactions of last session, one of them has done, the case ought to be examined and the citizens protected, for if he was unfit for to preside on the bench for one district, he is unfit to preside in another—it is expedient, in order to secure the confidence of the citizens in the government itself.

But precedents are called for by the gentlemen opposed to the resolution, and several of them contend that such special facts should be stated as would be unexceptionable ground of impeachment, before the enquiry is gone into. A gentleman from Vermont (Mr. Elliot) who argued yesterday in favor of postponement for further information on the subject, in the same argument said, that he never would agree to the appointment of a committee of enquiry, until the charges were first stated and proved to his satisfaction. Mr. F. said he was astonished at this inconsistency. If the facts were first stated and established, appointing a committee of enquiry would be an absurdity. What would they enquire after but what they already knew? That gentleman and others, in order to defeat the resolution, gave the object of it an odious designation: they called it an inquisition and spoke of it in such terms as if it was the well known Spanish law of that name—the character of that court was too well known to the members of this House to require definition—it was sufficient to say that in it witnesses were examined without the knowledge of the party accused; that it compelled the accused to give testimony against themselves, and had authority to pass sentence of the most dreadful kind, without appeal. The gentlemen knew that no such thing was intended by the resolution. The character of the judges had been impeached in public opinion by numerous citizens of all descriptions. Congress on that account gave a decisive testimony of want of confidence in one of them. The object of the resolution was to enquire whether there was a real foundation for this want of confidence and ill fame. If Congress did not make enquiry in such cases, who was to do it? It did not by the constitution belong to any other authority—every other method of proceeding would be as ingeniously objected to as the one proposed by those who wished to prevent further proceedings in the case; denying the means of bringing forward impeachment, had the same effect as if the power of impeachment was renounced. The power of this House has been asserted to be similar to that of a grand jury—this seems to be conceded on both sides, but though it bears a resemblance, it was not strictly so, it was more extensive. Grand juries were authorized to present such indictments or such complaint or information as were submitted to them by the attorney general, or which they knew of their own knowledge. The attorney only enquires if there is probable ground for the complaint, and brings the witnesses before the jury, who examine them to establish the facts alledged—but this House has no officers authorized to make enquiry and bring forward the business in due form; therefore the House possesses both the power of the attorney-general and the grand jury, with relation to impeachment, for where a power of decision is given, all the powers necessary to carry that decision into effect are implied. The making enquiry, procuring witnesses, or other testimony, and preparing the case in due form, is the object of the resolution; and if the House does not do it in this or some other such method, there is no other agent authorised to do it.

With respect to precedents and parliamentary usage, Mr. F. said he had formerly examined many, but was not prepared to state them at this time, and did not think them necessary on this occasion. If all the examples of impeachment by the British parliament, from the reign of Henry the 8th. when parliamentary power was reduced to a mere shadow, till the present time, when the parliamentary power has been amply enlarged and established, and their proceedings become more uniform, there will be shades of difference found in all of them, arising from various circumstances; we have few precedents of our own, and of these few none of them apply to the present case. It is the constitutional duty of this House to impeach when impeachment is necessary, and of the Senate to decide on impeachment; but with respect to the manner in which each House should proceed, they are not trammelled by forms nor entangled in precedents.

There are however examples of proceedings both with the British parliament and with us, as similar to the method now proposed as the various cases would admit. With ourselves the case of the unfortunate western expedition mentioned by my colleague, Mr. Gregg, yesterday, was much more to the purpose than the gentleman from Connecticut (Mr. Griswold) was willing to admit. Mr. F. said he had the honor to be one of the committee of enquiry which sat on that subject, a great proportion of two sessions. The expedition was too late in setting out to the Indian country, they were said to have been ill provided with necessaries, and long detained for want of them, a large proportion of the army were killed or taken by the savages, and all the stores with the army lost. The citizens were discontented, and the numerous complaints were heard, but none knew with certainty whom to blame, a committee was appointed to examine witnesses and report the testimony to the House, in order to discover the party who had been to blame. Some had charged it on the commanding general, others on the secretary of war, and others on the commissary of military stores, and these last endeavored to wrest the blame from themselves on the general. It was certain that a great misfortune had happened, but it was not certain that any officer was to blame, no charge had been made to Congress against any officer, yet Congress thought proper to make an enquiry, and it was not opposed on the account of want of form, or want of precedents by any of the friends of the parties. Towards the close of the first session the committee made a concise report, referring to a great amount of testimonies. Some of the parties implicated by the report, thought themselves injured by it, and it was alledged, that other witnesses ought to be examined. Consequently at the next session the business was recommitted to the same committee, and it was near the close of the last session of that Congress, before all the witnesses were procured and examined, and the parties heard by the committee, each of the parties wrote and delivered to the committee a large book of explanations and defence. The committee reported a large wooden box full of testimony, of original letters and instructions, and the three books of explanation and defence accompanied with some observations; it was not possible for that Congress to enter on the business, and the cause being of a transient nature, and the parties who applied for the second enquiry, not wishing a disclosure of the testimony, the business was not afterwards entered on, but the mass of testimony, &c. is yet in possession of Congress. This, it is presumed, applies well in favor of the present resolution.

Gentlemen object to the resolution, because of the indelicacy of implicating the character of a judge. They seem to believe the character of a judge to be sacred and immaculate. But are not judges men? Are they not men subject to like passions and like failings as other men? Judges and other official characters voluntarily surrender a part of the rights they enjoyed in common with other citizens, in return for the honors and emoluments of office; others have a right to the privilege of trial by jury, in the decision of all charges against them, but public officers by accepting of office subject themselves under this government, to trial by impeachment; subjecting judges to impeachment, indicates unequivocally a constitutional opinion, that judges would be even more liable to transgress than other citizens, and might transgress in a more aggravated manner than mere citizens; this mode of trial, however, in this country, is become almost a harmless thing, it is deprived of more than half its terrors. It does not reach life or property, but only the official character.

Mr. F. said, he was a friend to the independence of the judges, but that all independence in all governments had its limits and its restraints. It was not provided for the aggrandizement of the judges, but for the protection of the citizens. So far as it is applicable to this purpose, it is necessary, but any further it is injurious and subjected to restraint. Under no government with which we are acquainted, are the judges rendered so independent as that of the United States. In Britain, from which we have derived the model of our judiciary, the judges were appointed during pleasure, till little more than a century ago, they were rendered independent by the revolution parliament for the security of the people against the encroachments of the monarch, and the overbearing influence of a very powerful nobility, and for this purpose it was not only salutary, but absolutely necessary; but even with that boasted independence, that judiciary is subjected to restraints and modes of correction, not provided in the federal constitution. The judges are liable to be removed from office by the vote of both houses of parliament without trial. They are liable to be removed, or their standing changed by act of parliament; that parliament on whose act their independence depends, can repeal the act, the two houses of parliament can make and unmake their kings. They are also liable by an act of attainder, not only to lose their office, but their estate, the honor of their families, and even their lives.

The judiciaries in all the states of the union are rendered less or more independent, some are appointed for shorter and some for longer periods. In New Jersey they are appointed for seven years, they were so in Pennsylvania formerly, since the revision of the constitution they are appointed during good behaviour; they are, however, subjected not only to removal by impeachment, but also by the vote of two thirds of each House for any cause which the House do not think a sufficient cause of impeachment; but in the federal government, there is no method provided for removing them for the most scandalous indiscretions, or incapacity, as even when they may unfortunately be under mental derangement, except by impeachment, which is inapplicable to official crimes and conducted with tedious forms. The power of impeaching being the only shield provided by the government, for the protection of the citizens from judicial oppression, and this House being the only constitutional organ for obtaining information of official excesses and bringing forward articles of impeachment, ought not to bind up their own hands from doing their duty, and this they will do if they reject the resolution now on the table.

But while the gentlemen consider the character of these Judges so sacred that their conduct cannot be inquired into, notwithstanding such proofs of want of confidence in them, and that as a gentleman near me from South Carolina (Mr. Lowndes,) has said, that he is afraid of impeachment, and grounds his fears on the incapacity or the unfitness of the members of this House, or because the members of this House may abuse the