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CONGRESS.

HOUSE OF REPRESENTATIVES.

FRIDAY, January 6.

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

(Concluded.)

Mr. HOLLAND. When I before addressed the House on this subject, I had no doubt of the charge being sufficiently explicit to found an enquiry into the conduct of the judges. My only doubt was whether it was proper to proceed without affidavit. Since yesterday I have reflected on the course pursued in similar cases; and I will state to the House the proceedings adopted in two or three cases in the legislature of which I was a member. In the year 1796 a charge was preferred against certain judges of the state of North Carolina for illegally extending their power. A committee was appointed to enquire into their conduct; the result of the enquiry was, that the judges had exiled certain persons from the state. The proceedings did not go so far as an impeachment; for the judges wrote an explanatory letter, which gave satisfaction, and they were acquitted with honor.—The other charge, to which I have alluded, was against the board of army accounts; that also was referred to a committee. The last case is the most recent. A suspicion existed that the Secretary of state had been guilty of misconduct. A letter had been received by the governor from some citizens to that effect; in consequence of which, and of other corroborating circumstances, the legislature appointed a committee of enquiry, of which I had the honor to be a member. That committee was empowered to send for persons and papers. There was no specific charge, but an impeachment was contemplated if the officer should appear to be guilty. The Secretary was brought before the committee, who examined him on oath, and reported the existence of frauds much more extensive than had been imagined; in consequence of which the land office was shut up, and the secretary notified that articles of impeachment would be exhibited against him: But the late period of the session not then admitting of a trial, it was postponed to the next General Assembly. At the succeeding Assembly the officer resigned and superseded the necessity for an impeachment. He was afterwards indicted at common law. These precedents, drawn from the proceedings of the legislature of the state which I have the honor to represent, induce me to think that the course proposed is proper, and I shall accordingly vote for the appointment of a committee of enquiry.

Mr. DENNIS. He did not rise for the purpose of entering into an investigation of the merits of the question, but principally for the purpose of stating in a few words, what appeared to be the difference between the friends and the opponents of the resolution—He had never experienced on any occasion a stronger conflict between inclination and duty than in the present instance. On the one hand he was confident that after the official conduct of the judges had been thus publicly implicated, it must be desirable to them that an investigation of the facts charged against them should take place, and it seemed to be a duty due to those gentlemen, that they should have an opportunity of being confronted with their accusers. On the other hand we owe to the laws and constitution as well as to those considerations, which must always govern in the establishment of important precedents, a paramount duty, which appeared in this case irreconcilable with the indulgence of individual considerations. The true difference between the advocates and the opponents of the resolution appeared to be this—That the one thought it a proper procedure to raise an inquisitorial committee, without any definite or assignable object, and without stating in the resolution any specific charge. The other did not demand, as it had been supposed, the production of all the evidence, in the outset of the proceeding, which might be necessary in the ulterior stages of the transaction, nor that precise and technical specification of the charges, which might be proper in articles of impeachment; but only required, that some fact should be stated, or charge alledged, as the basis on which to erect a committee. He believed to create a committee by resolution, with general inquisitorial powers, without specifying any charge or stating any reason in the resolution for the proceedings, was without precedent, and might become an engine of oppression. In order to satisfy the friends of the resolution on that, he did not wish to avoid that investigation which might be founded on proper principles, and which he believed after what has been said, is rather courted than avoided by the judges in question, he would beg leave to read in his place the form of a resolution such as he supposed ought to be the groundwork of a procedure like this.

"Whereas information hath been given to the House, by one of its members, that in a certain prosecution for treason, on the part of the United States, against a certain John Fries, pending in the circuit court of the United States in the State of Pennsylvania, Samuel Chase, one of the associate justices of the supreme court of the United States, and Richard Peters, district judge for the district of Pennsylvania, by whom the said circuit court was then holden, did inform the counsel for the prisoner, that, as the court had formed their opinion upon the point of law, and would direct the jury thereupon, the counsel for the prisoner must confine themselves to the question of fact only: And whereas, it is represented, that in consequence of such determination of the court, the counsel did refuse to address the jury on the question of fact,—and the said John Fries was found guilty of treason, and sentenced by the court to the punishment, in such case, by the laws of the United States, provided,—and was pardoned by the President of the United States."

He said, he read this by way of argument to shew the present resolution ought to be rejected, and though he would not pledge himself, to offer it himself, in case the resolution before them should be rejected, yet he would pledge himself to vote for such an one, if the gentleman from Virginia or any other member would make it. The resolution which has been read, embraces all the facts stated by the gentleman from Pennsylvania, which contains the only charge which is exhibited. But if any gentlemen possess a knowledge of any other facts or charges, let him specify them and he would be willing to vote for an extension of the powers of the committee to them also; for he did not wish to confine the enquiry to the specific charge stated by the gentleman from Pennsylvania, if other gentlemen had charges to exhibit, and would state them in the resolution. If they would specify a charge or charges of a serious nature, and give us any reason to believe them true, although originating from hearsay evidence, he would vote for the enquiry proposed—and he begged that he should be understood as objecting rather on the ground that no charge had been specified than on the ground of incompetent evidence. The vague charges verbally communicated by the gentleman from Pennsylvania, and none of which are reduced to writing, give us no grounds of procedure; not only because, if true, they constitute no cause for impeachment, but because they are not specified in the resolution.

Saturday, January 7th, 1804.

Mr. J. RANDOLPH expressed his regret that the attempt which he made yesterday, to reply to the very personal allusions of a gentleman from Connecticut (Mr. Griswold) whom he was sorry not to see in his place had, by the adjournment, proved abortive. Such was his regard for the opinions of the House, that he should always, when called upon from a respectable quarter, justify any conduct which he deemed it proper to pursue in its deliberations. He felt it due to the respect in which he held the chair and those around it, to reply to the remarks made by the gentleman from Connecticut—and this consideration alone could have induced him to offer any thing, in addition to what he had already advanced, in favor of his motion. He should, otherwise, have left the resolution to its fate. In that fate he did not feel himself personally implicated. If it should be rejected, he would be satisfied in having done his duty, and the House, he supposed, would feel equally satisfied with having discharged theirs. It was asked, where was the mover of this resolution at the time when the alleged misconduct took place? Did it not, said the gentleman, pass under their own eyes? Were not their deliberations then held on the very spot—and why had the motion slept until this day? He hoped he should be permitted to say, that it did not pass under his eye—although he knew, at the time, of the condemnation in question, he did not become acquainted with the circumstances under which it took place, until long after their occurrence. It was true that the deliberations of Congress were then held in Philadelphia, the scene of this alleged iniquity, but, with other members, he was employed in discharging his duties to his constituents;—not in witnessing, in any court, the triumph of his principles. He could not have been so employed. It would be recollected, that the information given by the gentleman from Pensylvania formed the ground work of his proceedings, and, he asked, whether it was more the duty of the mover of the resolution to have brought it forward than of every other member of the House, who was a witness of the statement made by that gentleman. This information,—of an official nature,—given by a member in his place,—of a transaction in open court,—and which it was the duty of them all to have noticed,—had been called a story related, on hearsay,—a rumour of an affair which had happened in a corner. And the House was asked, if they would take such evidence as ground of proceeding, on the dictum of any one member, however great their confidence in him might be? If he really felt that respect for the House which the gentleman from Connecticut had professed, he would not have insulted their understandings by such language. He would not have stood up as *amicus curiae*, to prevent their being precipitated into absurdity and injustice by an influential member of their body. That however was the station which the gentleman had assumed, and he hoped the duties of it would be discharged with the fidelity which they required. After clothing himself with this character, Mr. R. said, he expected to have seen him at his post—he regretted that he did not see him there, and that his duty did not permit him to withhold the observation which he was compelled to make. Whilst however the gentleman was engaged in discharging the new and important function with which he stood self-invested, he seemed cautious of replying to the masterly statement of his venerable friend from Pennsylvania,—and which he believed had remained unanswered, because it was unanswerable. It must, said Mr. R. be a subject of high gratification to us all and I congratulate the House upon it, that age has not yet dimmed the lustre of those talents which have so long presided in the councils of this country. And if the time shall come when we are to resign our understandings and place ourselves under the direction of an individual, I hope to be permitted to range myself under the banners of that tried patriot, and not under those of the gentleman from Connecticut. In the same spirit with which he challenged the confidence of the House, as a friend unwilling to see them led into error and absurdity, that gentleman had endeavored to alarm their pride, by representing the motion as a demand made upon them. It was so—it was (if he might so express it) a writ of right and not of favor—as such he demanded it—as such he urged it.—But an objection was taken that no act of misconduct had been alleged. With his friend from Maryland he would say, that a fact of the first importance had been adduced, on which he was sorry his friend had not dwelt longer. It could not receive too much attention. On a trial for life and death the jury, who were the constitutional judges, both of the law and fact, were deprived of the right of a discussion of the point of law, "what constituted treason?" The rights of the jury and of the accused were equally invaded. It was a conduct not dissimilar to this, in a case of libel, which drew forth, from the English parliament, the famous declaratory bill of Mr. Fox. Lord Mansfield had laid down the doctrine, that the jury had a right to decide, only upon the bare facts of printing and publishing, and not upon the question of guilt which was compounded of the law and the fact. This produced the declaratory act which passed a strong censure on the practices of courts—since it did not amend, or alter the law, but declared what the law was, and established the point resisted by the court, that the jury was the judge both of the fact and of the law. If then, on a question of criminal law, where the punishment was only fine and imprisonment, the conduct of a judge was deemed highly reprehensible in encroaching upon the rights of the jury, what shall we say of him who usurps those rights in a case of life and death—in a case of treason? This denial to the prisoner and the jury of the right of having the point of law discussed, seemed to be the first step towards assuming those powers in cases of treason, the exercise of which, in case of libel, had drawn down upon the English courts the censure of their parliament. Would the gentleman say this was nothing? Would he affirm that if a man were under trial for murder, the court would be justified in saying to his counsel,—you may, if you can, disprove the fact with which the prisoner stands charged, but you shall not endeavour to shew that it does not amount to the crime with which he stands charged? If you admit the killing, you shall not argue the point that such killing does not amount to murder. Would the gentleman pretend that treason is better defined than murder. What is murder? Killing with malice aforethought—can any definition be clearer? What is burglary?—breaking in during the night. What is treason? The constitution defines it; levying war against the United States, adhering to their enemies, giving them aid and comfort. But what had definitions to do with the case. Because murder was defined, had counsel ever been stopped in an attempt to shew that the killing with which their client stood charged, was not a killing with prepensive malice,—a killing which constituted murder. What was more common than to see the facts admitted, and the crime not only denied, but disproved to the satisfaction of the jury—and upon what principle shall counsel be arrested in the attempt to shew that the facts charged in an indictment for treason do not amount to such a levying of war, or an adherence or aid to such enemies, as would constitute treason.—Mr. Randolph said, that the fact mentioned by the gentleman from Pennsylvania was of a remarkable nature. He had never heard of a similar proceeding, and he rejoiced that another instance of so black a nature could not probably be furnished by any tribunal in this country.

The gentleman from Maryland (Mr. Dennis) however, had entirely abandoned the ground taken by his friend. He agreed that there is a charge of an important nature exhibited, and if it was incorporated into the resolution, and the enquiry confined to that subject only, he would vote for it. The object of the one gentleman was only to confine the enquiry, whilst that of his friend was to deny it altogether. He could not thank the gentleman for his liberality—He would have what he asked, or nothing. He would never consent to confine the enquiry. If it could not be full and free, let it be denied.

The gentleman from Maryland had, with very little dexterity, endeavored to confound the resolution of enquiry with the articles of impeachment which may follow from it, and said that if the House would consent to confine the enquiry to any particular charge he would vote for it. It was true that after articles of impeachment should have been exhibited against the accused, the House would not be permitted to prefer any new accusation, or to adduce testimony to prove any guilt, other than that which was charged in those articles. In the same manner as when a criminal was indicted, evidence would not be suffered to be brought forward to prove any act of criminality not contained in some one of the counts of the indictment. But would gentlemen persist in confounding things so entirely different, as to confine an incipient inquiry by the same rigid rules which would govern a criminal trial. It was trifling with the judgment of the House. The gentleman was eager for enquiring, but the charge must be incorporated into the resolution and the enquiry confined to a specific point, before he could be brought to consent to it. Whatever other misdemeanors might come to the knowledge of the committee, in the course of the investigation, he would not agree to have them reported to the House—and at the same time he told them of the struggle between his inclination and his sense of duty. His inclination as a friend of the accused to grant the enquiry—his duty as a member of the House and a friend of justice to refuse it. Mr. R. was sorry to find the gentleman in this awkward predicament. He regretted that it was out of his power to gratify him by narrowing the enquiry. This, his duty would not suffer him to do. He hoped, however, the strength of the gentleman's constitution would carry him through the arduous struggle in which he was involved, by his wishes on the one hand, and his principles on the other.

Whilst so much was said on the subject of precedent, he hoped he might offer a few cases to their consideration. He did not come to the House armed with precedents. Neither his health nor leisure permitted him to search for them. Gentlemen of greater industry, and who attached more importance to them than himself, had furnished him with them. For his part, he thought precedents had nothing to do with the case, but, for the sake of those who thought differently, he would shew that the course which he advocated was not destitute even of their support. Here Mr. Randolph referred to Mr. Hatsell's precedents. "On the 21st April, 1626, Mr. Glanvyle from the select committee appointed to consider of the charges against the Duke of Buckingham, reports, 'that they desire the House will resolve' *whether common fame is a ground for this House to proceed upon?*" It is resolved to consider this the next day, and precedents to be produced. After a long debate the House resolve "*that common fame is good ground of proceeding of this House*, either to enquire of here, or to transmit the complaint, if the House find cause, to the King or Lords."

Mr. Randolph begged to call the attention of the House to the opinion of a gentleman, delivered during this debate, to which he must be permitted to attach more importance than to that of the gentleman from Connecticut. When he mentioned the name of Selden, he believed he should stand justified in the opinion of the gentleman himself, and in that of his warmest admirers.—"*These cases* (said Mr. Selden) *are to be ruled by the law of parliament and not by the common or civil law.*"—Mr. Littleton says, "This is not a House for definitive judgment but for information, denunciation, or presentment, *for which common fame is sufficient.*"—Mr. Noy says—"There are two questions—1st. Whether a common fame?—2d. Whether this fame be true. We will not transmit without the first enquiry: but *without the second we may; for peradventure we cannot come by the witnesses*; as if the witnesses be in the Lords House."

Again, "on the 16th October, 1667, the House being informed '*That there have been some innovations of late in the trials of men for their lives and deaths*, and *in some particular cases restraints have been put upon juries*, the matter is referred to a committee." This case (Mr. R. said) was precisely in point. "On the 18th of November, this committee are empowered "to receive information against the lord chief justice Keeling, *for any other misdemeanors besides those concerning juries.*" Thus on a particular fact, *innovation in trials for life and death*, a committee was raised, and yet they were not confined to the examination of that single charge, but empowered to enquire generally into the misconduct of the judge. A stronger, or more pointed precedent could not be conceived.

By the constitution, Mr. Randolph said, that House was vested with the sole power of impeachment. How this power was to be exercised must depend on their discretion, and on no other law, or principle whatever: For "*these cases are not to be ruled by the common or civil law, but by the law of parliament.*" That law of parliament it remained with them to establish. It could not be matter of surprize that he, one of the leading principles of whose politics it was to support the weight of that branch of the government, and to be jealous of executive influence—it could not surprize any one, that he should exert himself in behalf of the constitutional rights of that House. When he saw the importance which was attached to precedent, he was more than ever solicitous for that, which they were then about to establish. He trusted that they would not consent to abridge the power with which the constitution had invested them—to reduce it below the standard which the English House of Commons had fixed as the measure of their own power in similar cases. A time might come when a wicked President and his flagitious ministers might so conduct themselves in office, as to make every man regret the proceedings of that day, in case they should suffer their power to sleep. The refusing to exercise it, then, would hereafter be adduced as a denial of its existence. Such might be the circumstances of the times, that no private man would dare to step forward with a specific charge against the executive. If they should deny an enquiry without a specific charge, they would do all in their power to screen such a President and such ministers at a future day. It had been remarked that, in