

Wilmington Gazette



PUBLISHED WEEKLY BY ALLMAND HALL

Three Dollars per Annum.]

THURSDAY, FEBRUARY 26, 1861.

[Vol. V.—No. 216.]

Congress of the United States.

HOUSE OF REPRESENTATIVES.
Wednesday, January 31.
SEDITION LAW.

House in committee, Mr. Morris in the chair. The resolution reported by the committee was, that it would be expedient to renew the law in addition to the act for the punishment of certain crimes against the United States.

Mr. Platt, chairman of the committee, explained the reasons of the committee for proposing a resolution for its continuation. The only arguments that could be adduced against it were, as to the constitutionality and as to the expediency of the measure. That it was constitutional, he contended could be well and plainly proved, without entering into the question upon the grounds and proofs exhibited at the period of the original passage of the bill, from the decision in its favour, after a lengthy examination in both houses of congress, and its adoption into a law. Added to this was the solemn decision and concurrence of the judiciary.

After these deliberate decisions in favor of it, to doubt the constitutionality of this law, would be absurd. To those who took every occasion to show their opposition to the government, and were accustomed to vilify the conduct of its warmest adherents, this law must be obnoxious, and those who considered the government a blessing and worthy the protection of a free people, must approve of the provisions of this law, as one of the most valuable institutions in its support.

As to the expediency of the measure, the committee thought it was a wholesome and ameliorating interpretation of the common law, established to assist the government upon the most fair and equitable principle. On the one hand, the right of the government in support of itself, is established; on the other that right of protection is established, as not to injure in the least, the honest and well-intending individual, but to afford him the means of exculpating himself, although engaged in scrutinizing measures of the administration of the government; for unless it can be made evident to a court and jury that the thing written was done with a false and malicious intention, the precaution is useless. He saw nothing in this law, notwithstanding all that had been said about it, which an honest man ought to fear. No government in the world demanded the public confidence more than ours, when well administered; and should a government be brought into popular disrepute with impunity, through the false and malicious writings of those who peacefully enjoy its blessings? He trusted not.

The house had been told on a former occasion, that the sun of federalism was about to set; he confessed that he viewed with horror the awful night that would follow. But notwithstanding that, which he possessed a seat in that house, he thought himself bound to legislate in favour of measures, to support the government, which the people had honoured by their choice. This reverse of things should never give him from measures which it became his duty upon the most solemn conviction to adopt, since no injury could result but to those whose wifely and habitual slander opposed it by falsehood. For his part he was not afraid of the new order of things; he had nothing to fear from the existence of this law.

To those who believe the rules of common law of force and effect in the United States, this law must be truly gratifying. By the common law two practices are established, which this law most effectually removed by its ameliorating provisions. First, the common law rejected the evidence of truth in cases of libels. Secondly, the court had an unlimited authority to ascertain the penalty. By this law the truth must be given in evidence, and the penalty is ascertained. He trusted that whilst the liberty of speech and of the press (privileges to be prized above all others) were made secure, the house would see the propriety of preventing the unlimited abuse of this blessing, so injurious to the preservation of social order, an abuse which was to be judged as to its extent, by an impartial jury—a privilege by which are secured to every individual, and to the government, equal rights.

Mr. Davis said the gentleman from New-York and himself had at different feelings as to the manner of deciding the constitutionality of the law, as they had of its utility. Had the decisions of the courts been made with a little moderation and solemnity that usually attend judicial decisions, he might answer that there had been proceedings in the courts of the United States, calculated to establish the constitutionality of that law, as far as the opinions of the judges went. For he must acknowledge that the judges had the power of deciding the constitutionality of a law on which they were to act. But he denied that those deliberate decisions had been made under law that ought to establish it as a constitutional law with the judges generally. Even in Great-Britain, where we are too apt to look for example, he believed such hasty adjudications could not be found. He was acquainted with English books and could not then recollect any case where the accused had been summoned, indicted before the grand jury, and tried by the venire or petit-jury, in the space of a few hours or one day at most, more especially where the accused had made affidavit, that he had material witnesses absent, as had been the case in two trials under this session law, one at Philadelphia—the other in Richmond Virginia. If those were decisions that had riveted the constitutionality of the law in the mind of the gentleman from New-York, he had taken slippery ground, from which he could be easily driven. But a judge of the United States having determined the law to be constitutional, did not bring conviction on his mind. He still entertained the same opinion he had formerly entertained, & he believed it would be difficult to persuade the American people that the law was either constitutional or expedient. The gentleman from New-York says there is nothing in the law an honest man should object to. Why then does a honest man take the other side? We are not found of having our good deeds made public, and of ceasing our good deeds. Now let the public judge who are the honest men; that gentleman said

his political associates, or myself and those who usually vote with me. We are willing to submit our actions to public scrutiny and to rise or fall by public opinion. If that gentleman and his friends intend to act honestly, why do they wish this law to hide their actions? Why lay the hands of power on the lips of the people, who ought to have the right of examining their political right of conduct and approving or condemning it? Whilst they boast of honesty, why skulk in darkness and shelter behind the sedition law? In my opinion this neither argues honesty, nor is ominous of good; at all events this is the true difference between the parties in this house. That gentleman and his friends form a party who wish to conceal this public conduct from the prying eyes of the public, and who say if you see you shall not speak; myself and my political associates, are willing to spread our actions before the tribunal of the people, and to be judged by them. Now let the world judge who are the honest men; we, who expose our actions to public view, and say to them judge and approve, or condemn us for our deeds; or those who say be silent; we are above you; if you open your lips the penalty of the law shall be inflicted on you.

We are told by the gentleman from New-York, there is to be a new order of things. I believe there will be. It looks as if we should burn all the old papers and begin anew.

What are gentlemen not contented with the sedition law to protect them, do they want a wall of fire around them?

This law has been in force two years and what has been its effects? A few printers, and a few miserable newspaper scribblers have fallen victims to it, and it disgusted a large portion of the American people who have loaded your table with petitions praying for the repeal of the obnoxious law, and why will you again excite the public mind by reviving a law so foreign to their feelings and hateful to their sights? Will gentlemen never yield their party views to the public voice, and drop a law that has produced so much discontent.

If this law had been good and constitutional and but a few people had been dissatisfied with it, there would be some excuse for continuing it; but the very reverse is the fact. I am not afraid of the law, I am not afraid I shall be subject to its operation, for in my opinion the administration, when it is presented in the fairest forms of truth, will afford sufficient ground for all my animadversions. I can turn to pages, and lay my finger on paragraphs which will authorize me to say more than I wish to say.

The gentleman from New-York says, they have been told, the sun of federalism would shortly set. I on a former occasion did say so, and I again repeat it; this very law, if it has ever done any good, was in this way. I believe it has hastened the dissolution of the federal union in each of controlling public opinion as it was intended. The opposite effect has been produced; men have stood up to their opinions, though they were forbid to speak. Your own weapons have been turned against you, you find the public mind acting strongly against you, though they dare not speak.

The gentleman from New-York says that those who consider government an evil will vote against this law. I consider good government a blessing, and am willing to let the people examine freely and fairly the faults of government. Those who wish to make it a curse, wish also to conduct it out of the light of those immediately interested in its operations. This hidden way of conducting the concerns of the nation will never be pleasing to the free people of America. Already very many of them are opposed to the administration, and while you conduct their important concerns out of their light they will be jealous, and withdraw their affections from any administration that thrust the light.

Mr. Randolph said, when he first considered this report, he viewed it merely as the fulfilment of an obligation which the committee thought imposed upon them by the house, and he had supposed, that it would have been suffered to remain on the table without any intention of being called up.

He would not entertain a view of the unconstitutionality of the law. How strongly forever the gentleman supposed that question to have been decided by the congress who passed the law; he would tell that gentleman and all his adherents that he had a still higher tribunal to appeal to, one higher than they could produce; he meant the American people. Their voice was more powerful than that of those courts and this President, to whom the gentleman referred. The will of the people had been fairly and fully expressed upon this subject, and notwithstanding all inferior decision, this ought, and this ultimately must be attended to; the people would be heard. He would ask gentlemen whether it was expedient, at this time, for the house to show the contempt of the opinions of the people; whether it was prudent to insult their understanding in a manner so appreciated by them as this law, and at a period when they have so evidently declared that their rights shall be no longer infringed? The moment in which the measure was renewed, reminded him of the spirit which actuated the fallen angel, as related by the great poet of the English language; when he could no longer be victorious, he would evince his revenge.

The legislature of the State which he had the honor to represent, Mr. Randolph said, had given instructions to her representatives and senators in congress, to oppose, by every effort in their power, any attempt that might be made to renew this monstrous and destructive act. From which were he not even convinced of its unconstitutionality of which he could not entertain a doubt, he felt himself particularly bound to express the opinion of that State, and to give his strongest opposition to the law, in its several clauses. Were he to act otherwise, he really ought to humble himself in dust and ashes before an insulted and indignant people, for the perpetration of an act so inimical to their instructions, as well as to all the feelings and good sense of the American people.

Mr. Griswold said, it would be well for the committee to attend to the whole of the law. The

gentleman said, that all the old writings were destroyed, and we must begin anew.

[Mr. Davis explained that he said it seemed as though the old papers were to be burnt up and that we should begin anew.]

Mr. Griswold then hoped from a due examination of this law, this would be one part he would wish to preserve from destruction. Surely the indignations made against the whole law could not be of force; some of its parts were certainly unobjectionable. The first part provided a punishment against unlawful combinations to oppose the national government. It is possible said Mr. Griswold, the gentleman may think such persons ought not to be punished, but I do, & in my opinion, the preservation of this provision is essential to our very existence.

Another part is against persons who rise in insurrection, and those who encourage it by counselling and abetting it. That such acts should be punished appears to me a self-evident proposition, whatever the gentleman might think of it, yet he thinks the law ought not to be renewed. Surely a moment's consideration must prove that such persons ought to be punished, and that their punishment ought not to be left to the unmitigated discretion of the court as by common law, but should be defined by a statute.

But the most essential opposition appears to be against that part where libelling the government is made an offence and punishable. That this part should be opposed by a gentleman whose orderly conduct removes him beyond the fear of the penalty, he was much surprised. What is the effect of this provision? It is that if any person should publish untruths against the government, with an intent to bring it into disrepute, such offender should be punished. Is there any gentleman in the committee who wishes to publish falsehoods, and malicious falsehoods? He trusted not; and if not, why should gentlemen be unwilling to make the willful offence, punishable by statute? There could be no ground for alarm, since the penalty was only intended to affect the publication of falsehoods. Falsehoods tended to much evil; any, they were evil in themselves, and it was necessary to punish them, in order to preserve to the government its merited popularity. The provision was exceedingly important, and he thought the ideas of his friend from New-York, must have considerable weight with the committee.

It was a well known fact, that at common law the truth cannot be given in evidence; it was equally well known, that the punishment for crimes was left undefined and at the will, he had almost said, the arbitrary will of the court. He did not think it right to leave this power in the hands of the court, nor did he think it right to stifle the testimony of truth in behalf of the accused. He did not believe it to be the wish of the house or of the administration to suppress truth if the government acted in such a manner as not to bear the test of truth, it certainly merited animadversion, and with severity. To continue the right of giving truth in evidence, and to keep the power of prescribing a punishment with the legislature, he hoped the law would be re-enacted.

As a constitutional question, he thought no doubt could now exist, whatever might have been entertained before the question was settled on its present principles. The judiciary had decided it to be a law effectually within the constitution. There might be some other quorum to which gentlemen would wish to appeal; perhaps they might be better satisfied by appealing to the people, but he could not be. He believed the decision to be made in a constitutional mode, and was desirous of giving it his decided support.

Mr. Nicholson said, had he been a member of the house at the time when this bill passed, he should have most assuredly given his opinion that it was unconstitutional & inexpedient, & all that he had heard or seen since that period in the various examinations it had undergone, did not contribute to create a doubt in his mind upon the accuracy of that decision. It had ever been his opinion that a virtuous administration, whose actions flowed from good motives, required not the aid of a statute to defend it from the attacks of slander. The abuse of the power conferred by the people, and not its constitutional use, could alone tear the shafts of reproach, and power thus used merited no better fate.

These, Mr. Nicholson said, were his ideas at the period when the bill passed. If its inexpediency was so evident to him at that period, how much more so must it appear at the present time? In order to call this to the view of the committee he would bring to their remembrance the prolegations which had taken place under it during the two years of its existence, from which he could make it plainly appear that the administration of this law was extremely objectionable.

The first fact he noticed was the arraignment, trial and conviction of a member of the house, who was committed under the care of a levee keeper, to an unwholesome and loathsome dungeon, and the treatment of that member whilst in confinement, in all of which were evinced a party spirit highly unworthy the character this country ought to bear. The next was the case of a printer who was made to stand on his trial, but notwithstanding he pleaded the necessity of producing evidence, which he stated to be material to his defence, time was refused him to procure their attendance. He needed not expatiate, he presumed on the rights of every man to demand, when brought before a tribunal of justice, time to produce witnesses material for his defence, or of the duty of the court to grant every opportunity to afford the means of defence; they were too evident to be opposed. Another instance was that of a trial proceeding, wherein important testimony was asked, but refused, because the person required to give the evidence, was a high officer of the government. The act was told by the judge that he had no right to that testimony.

Another fact had occurred in testimony, stated to be material to the defence, but because it was at a distance, time was refused to produce it, and the trial and judgment proceeded without it.

Another and more fatal instance was that of a printer who died in prison, where he lay confined under the law. From a view of all these cases, Mr.

N. said he must conclude that the administration of this law was extremely objectionable. Although many of these persons were foreigners, yet they had not the less claim upon the justice of the country; it mattered not whether they came from the tropics, from the poles, or whether they first drew their breath in this country; all men possessed an equal right of demanding a free and impartial trial, and to all men alike it ought to be granted.

It was, and might be further urged, that this act was only aimed at false and malicious libels, tending to defame the government. He granted it, but who were to be the judges? the bench themselves; they perhaps might be the subjects of animadversion, but if not, were the creation of the person aggrieved. By them the materiality of testimony which ought to go to the jury was to be judged, and therefore the principle that the truth must be given in evidence was but of little importance, if that truth was not suffered to appear.

The gentleman from Connecticut had adduced parts of this law which he supposed could not be objected to. Mr. Nicholson admitted that the cases of insurrection and unlawful combination against the government ought to be provided for, and if the gentleman had proposed a resolution for the continuance of those parts, he would not have objected. No, the objectionable part was that which the people of the country had said, ought not to have been enacted—that part which lifts every investigation into the affairs of government. It was certainly true, that the existence of this law forbade enquiry into the affairs of government, for who would dare scrutinize the conduct of men in power, when they apprehended that they would be afterwards handled by a court and jury so unlikely to do impartial justice to them? It must prevent men saying what they think, much less what they know.

What, he asked, had the government to fear from untruth? The publication of falsehoods must be the evidence of its own infamy, & would undoubtedly meet its due appreciation. The characters of public men, in whom the people of this country had been wont to repose confidence, need not shrink at the apprehension of the publication of falsehood.

He concluded by expressing his regret that this subject should again be called up to irritate the House; he wished not to have said anything upon so unpopular a subject, but as it had been introduced, he must inform the committee the resolution should have his most decided negative.

(To be Continued.)

MONDAY, Feb. 6, 1861.

The following motion made by Mr. Bayard has been referred to Messrs. Rutledge, Nicholas, Griswold, Macon, Bayard, Talbot, Foster, Claiborne, Orr, Davis, Morris, Champlin, Beer, Cooper, Linn, and Woods.

Resolved, That in the event of there appearing upon the counting & ascertaining of the votes given for President and Vice-President, according to the mode prescribed by the constitution, that an equal number of yeas have been given for two persons, that as soon as the same shall have been duly declared returned on the journal of this House, that the Speaker, accompanied by the members of the House, shall return to this chamber, and shall immediately proceed to choose one of the two candidates, for President; and in case, upon the first ballot, there shall not appear to be a majority of the States in favour of one of the candidates, in such case the house shall continue to ballot for a President, without interruption by other business, until it shall appear that a President is duly chosen; and if no such choice should be made upon the first day, the House shall continue to ballot as aforesaid from day to day, till a choice shall be duly made.

The committee appointed the second instant, report, in part, the following Resolution:

Resolved,

That the following rules be observed in the choice by the House of Representatives of a President of the United States, whose term is to commence on the fourth day of March next.

1st. In the event of its appearing, upon the counting and ascertaining of the votes given for President and Vice-President, according to the mode prescribed by the constitution, that no person has a constitutional majority; and the same shall have been duly declared and entered on the journals of this house, the Speaker, accompanied by the members of the House, shall return to this chamber.

2d. Seats shall be provided in this House for the President and members of the Senate; and notification of the same shall be made to the Senate.

3d. The House on their return from the Senate chamber, it being ascertained that the constitutional number of States are present, shall immediately proceed to choose one or the persons from whom the choice is to be made for President; and in case upon the first ballot there shall not appear to be a majority of the States in favour of one of them—in such case the House shall continue to ballot for a President, without interruption by other business, until it shall appear that a President is duly chosen.

4th. After commencing the balloting for President, the House shall not adjourn until a choice be made.

5th. The doors of the House shall be closed during the balloting, except against the officers of the House.

6th. In balloting, the following mode shall be observed, to wit: The representatives of the respective States shall be so seated, that the delegation of each State shall be together. The representatives of each State shall, in the first instance, ballot among themselves, in order to ascertain the vote in that State; and it shall be allowed, where deemed necessary by the delegation, to name two or more persons of the representation, to be voters of the ballots. After the vote of each State is ascertained, duplicates thereof shall be made; and in case the vote of the State be for one person, then the name of that person shall be written on each of the duplicates; and in