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CONGRESS.

HOUSE OF REPRESENTATIVES

Friday, January 2.

Mr. Elliot moved the following Resolution.

Resolved, That a committee be appointed to enquire what amendments and alterations are neceſſary in the ſeveral laws, relative to the orginization, powers, and duties, of the judicial courts of the United States; and that the ſaid committee report by bill or otherwiſe.

Mr. Elliot ſaid that he had the honor, ſome days ſince, to preſent to the Houſe, certain reſolutions of the general aſſembly of Vermont, concurring in an amendment propoſed to the conſtitution of the United States, by the ſtate of Kentucky, contemplating a material limitation of the preſent conſtitutional powers of the federal judiciary. This amendment has been adopted by ſeveral ſtates, but has alſo been rejected by ſuch a number, as completely to aſcertain the fact, that it cannot at preſent become a part of the conſtitution of the United States. Great evils certainly exiſt in conſequence of the exerciſe of the powers now legally veſted in the federal courts; and it becomes important to enquire whether thoſe evils cannot be removed by the ordinary means of legiſlation, exerciſed within the ſphere of the conſtitutional powers of Congreſs.—From the attention which he had been able to pay to the ſubject, Mr. E. ſaid, he was convinced that moſt of the grievances complained of might in this way be redreſſed; and it was to bring this important ſubject before the Houſe that he was induced to make the preſent motion, and to hope for its adoption.

The reſolution was adopted without a diviſion, and referred to Meſſrs Elliot, G. W. Campbell, Munford, Smelt, Boyle, Dwight, M. Clay, Broome and Lloyd.

Mr. Dawſon, from the committee to whom was recommitted the bill providing for the puniſhment of certain crimes againſt the United States, reported the bill with an amendment, ſtriking out the third ſection, which was referred to a Committee of the whole on Monday.

Mr. Dana obſerved, that proſecutions, he underſtood, were depending in the courts of the United States, not ariſing under any exiſting ſtatute or treaty of the United States—but proſecutions ſuſtained at common law. In four caſes warrants had been iſſued at the order of the court, the parties arreſted and held to trial. Two of theſe proſecutions were againſt printers for publications which had appeared in their papers; two againſt clerical gentlemen for words uttered by them. The charges extended to various queſtions reſpecting political conduct, morality and religion. It was a ſubject of vaſt importance whether this extenſive range ſhould be allowed to a public accuſer holding his place at the will of the executive of the United States.

At common law a libeller may be ſubjected to fine and impriſonment according to the diſcretion of the court, to which might be added the mutilation of the ears, according to the doctrine of Coke, in the Star Chamber. Security may alſo be required for good behaviour for his whole life. To the amount of fine there was no limitation.

There was alſo in theſe proſecutions involved an intereſting queſtion as to evidence. Shall the truth of the charges, once eſtabliſhed, be conſidered as concluſive evidence, however pure the intentions of the acquſed may be proved to have been? With this queſtion was connected the proviſions of a celebrated declaratory ſtatute carried through the Britiſh parliament by a diſtinguiſhed man, as implicating the point how far this ſtatute affected the common law in the United States.—There was likewiſe another queſtion, viz. whether the perſon charged with having uttered ſlanderous words ſhall have liberty to prove the truth of what he uttered.—This liberty was denied by the courts of Star Chamber in England. Such had been the fact in the caſe of Zenga in America, and in a caſe which had recently occured in one of theſe ſtates in the ſecond circuit of the United States on the trial of Croſwell.

Mr. D. concluded by obſerving that he had ſuggeſted theſe ideas as an apology for aſking that the ſubject might be examined; and then offered the following reſolution:

Reſolved, That a committee be appointed to enquire whether proſecutions at common law ſhould be ſuſtained in the courts of the United States for libellous publications or defamatory words touching perſons holding offices or places of truſt under the U. S. and whether it would not be proper, if the ſame be ſuſtained, to allow the parties proſecuted the liberty of giving the truth in evidence, and that the committee report by bill or otherwiſe.

Mr. Dana moved to refer this reſolution to a Committee of the whole.

Mr. Bidwell ſaid the object of the reſolution appeared to be merely the appointment of a committee to enquire. If the mover would ſo modify it as to obtain a diſcuſſion of the principle involved in it, he ſhould have no objection to it. It did not appear to him in order to refer a reſolution for the appointment of a ſelect committee to a Committee of the whole Houſe.

Mr. Dana inſiſted that the reſolution was clearly in order; and that it was unneceſſary to give it the form of a ſpecific propoſition, to inſure to the ſubject a full diſcuſſion in committee of the whole.

Mr. G. W. Campbell remarked that if this reſolution was refered to a Committee of the whole, the only queſtion that could be preſented to them would be the expediency of referring it to a ſelect committee to make the propoſed enquiry.—The moſt regular and proper courſe was to refer the reſolution in the firſt inſtance to a ſelect committee and afterwards to refer their report to a committee of the whole.

Mr. J. Clay ſaid that the objection made to referring this reſolution to a Committee of the whole, was that it was beſt to refer it in the firſt inſtance to a ſelect committe to ſettle the principle. But this would be to invert the uſual courſe purſued in the Houſe, which was firſt to ſettle principles in a Committee of the whole. He had underſtood that in the ſecond circuit of the U. S. proſecutions and indictments had been made at common law.—In times paſt, which he hoped would never return, a ſedition law had been paſſed.—That law gave every man accuſed the liberty of giving the truth in evidence. He underſtood, that under the common law, after an indictment was prefered, the truth was not permitted to be given in evidence; and that under this doctrine they would therefore be worſe off than under the ſedition law. He hoped the reſolution would be refered to a Committee of the whole to make the propoſed enquiry.

Mr. Bidwell agreed that a Committee of the whole was the proper place for ſettling principles. If the reſolution were ſo framed as to anſwer this purpoſe, it would have his approbation. But the only queſtion, in its preſent form, was merely the appointment of a ſelect committee to inveſtigate the ſubject, which inveſtigation would be moſt properly made in a Committee of the whole.

Mr. Quincy ſaid that the objection of his colleague ſeemed to be the word enquire. Mr. Q. thought it was moſt proper for the Houſe in Committee of the whole to determine whether it would be expedient to appoint a ſelect committee to enquire. If it ſhould be decided that no ſuch inquiry is expedient, there would be an end of the buſineſs. If a contrary deciſion were made, then a committee might be appointed to make the enquiry. The gentleman would not ſay that the reſolution did not contain a principle of vaſt importance, well worthy of inveſtigation. In his opinon it it was beſt firſt to ſettle the principle in Committee of the whole, and then inſtruct a ſelect committee on the nature of the enquiry, and the degree to which it ſhould be made.

Mr. Eppes ſaid he ſhould vote for a reference of the reſolution to the committee of the whole, although he believed it was not draughted, in ſuch a form as it ſhould be, to inſure a diſcuſſion of the principles involved in it. If he underſtood it, it would reduce the Houſe to the neceſſity of diſcuſſing the queſtion, which had been heretofore diſcuſſed, whether the paſſage of a law giving a man a right to give the truth in evidence, would abridge his rights. He could have wiſhed the gentleman from Connecticut to have ſtated a ſpecifick propoſition, ſuch as that the common law of England is not a part of the law of the United States, and that in all proſecutions it is the right of a citizen to give the truth in evidence.

Mr. Eppes ſaid he wiſhed the gentleman would go further, and offer a reſolution to enquire into the official conduct of any judge who had dared to inſtitute ſuch proſecutions as had been intimated. He would have no objection to going a ſtep further, to impeaching him and voting for his removal.

Mr. Eppes ſaid that although he ſhould vote for the reference of this reſolution, he could not but remark that it was extraordinary for the gentleman from Connecticut to make ſuch a motion. Suppoſe the gentleman were to offer a reſolution for appointing a committee to enquire whether a citizen of the United States had a right to the privilege of the habeas corpus act? Would not ſuch a propoſition be deemed moſt extraordinary? But to ſhow that he was not afraid to meet the queſtion, once already agitated in this country, he was ready to refer the preſent reſolution, as well as to enquire into the official conduct of any judge who had practiſed the doctrines mentioned by the gentleman from Connecticut.

Mr. Dana ſaid he would explain to the Houſe the reaſons which had induced him to ſubmit the reſolution in its preſent form. In the obſervations he had offered, he had avoided all alluſions to the paſt queſtions which had been agitated in this country. He did not wiſh to preſent the propoſition in its outſet, in ſuch a form, as might give offence to any part of the Houſe; but in ſuch form that the Houſe might, after a deliberate inveſtigation of the ſubject, expreſs their opinion upon it. He had ſuppoſed it would be clearly in order, in the committee of the whole, to move an amendment, declaratory of principle, inſtead of refering the enquiry to a ſelect committee, in caſe that mode ſhould be deemed moſt eligible.

Mr. G. W. Campbell did not wiſh it to be underſtood that he had any objection to the queſtion coming before the Houſe. On the contrary, if doubts exiſted of the right of the citizen in any ſtate, who was accuſed, to give the truth in evidence, he hoped the queſtion would be ſettled by the Houſe. He entertained a different opinion on this ſubject from that which had been expreſſed. In a number of the ſtates, the laws gave the individual the right of giving the truth in evidence. He had always conſidered the ſtate laws on this ſubject binding on the federal courts. This queſtion had never influenced the proceedings of the courts with which he was beſt acquainted; and if it had affected their proceedings in other ſtates, it was high time to ſettle the queſtion. The remarks which he had made did not appear to be underſtood by the gentleman from Pennſylvania. He did not conſider the ſelect committee, to whom it was propoſed to refer this reſolution, as intended to decide the principle, but to determine whether it was proper for the Houſe to diſcuſs it.—He was clearly of opinion that the reſolution ſhould not be referred to a committee of the whole. It would not be there in order to ſettle the principle, but merely to determine whether it ſhould be referred to a ſelect committee. What then would be the effect of this courſe? After the report of the ſelect committee, the committee of the whole muſt then diſcuſs the principle. It would therefore, contrary to the uſual courſe, be twice diſcuſſed inſtead of once.

Mr. Smilie wiſhed the gentleman from Connecticut would prefent a ſpecific propoſition on the ſubject, which would enable the houſe to decide on the principle, and afterwards refer it to a ſelect committee. This was a round about way of doing buſineſs. The only object of the committee of the whole would be to enquire whether it would be proper to appoint a committee to enquire; whereas if a ſpecific reſolution was offered, the principle involved in it might be decided in a committee of the whole. He truſted there was no difference of opinion on the ſubject in the Houſe.

Mr. Ely did not pretend to be well acquainted with the uſual mode of proceeding in the Houſe; but if he underſtood the object of the motion made by the gentleman from Connecticut, it was to give the committee appointed ſuch a commiſſion as the Houſe, inſtead of the mover, might wiſh. If the Houſe conſidered the motion as not exactly right, it would be in their power to give ſuch commiſſion as ſhould be moſt conſentaneous to their ideas. He thought this the moſt correct courſe. A gentleman draws up a reſolution, which, perhaps, only in part ſuggeſts the opinions of the majority; the Houſe then lay it before a committee of the whole to modify it according to their ideas. Mr. Ely thought the whole ſubject would be before a committee of the whole, and that it would be in the power of gentlemen to modify it as they pleaſed.

Mr. Eppes ſaid if he underſtood the object of the reſolution, it preſented two ſubjects for conſideration; the firſt of which was, whether the common law of England was the law of the land; and the ſecond, whether in caſes of proſecution, the accuſed may give the truth in evidence. He thought the gentleman from Connecticut might get at his object better by two ſpecific reſolutions than by the one he had propoſed; he had drawn ſuch reſolutions, and would read them by way of argument.

Mr. Eppes here read the following reſolutions:

1. *Reſolved*, That the common law of England is not a part of the law of the United States, except ſo far as it has been adopted by the laws of the United Stats, or of the individual ſtates—and that the proſecution of a perſon at common law for libel is a violation of the freedom of the preſs, and contrary to the conſtitution of the United States.

2. *Reſolved*, That in all proſecutions whether criminal or otherwiſe, it is the natural right of a citizen to give in evidence the truth.

Mr. Dana ſaid that in preparing the reſolution which he had offered, he had endeavoured to preſent it in the moſt unexceptionable form; under the impreſſion that when the ſubject was before a committee of the whole, it might be modified agreeably to the wiſhes of the majority; and where the reſolutions offered by the gentleman from Virginia might be moved as an amendment to the reſolution which he had ſubmitted. Should he agree to ſubmit theſe reſolutions in lieu of his own, he might be conſidered as agreeing with the gentleman in every word they contained: whereas it could not be expected that he could be ready haſtily to pledge himſelf on any ſpecific reſolution until he had maturely conſidered it. The gentleman from Virginia had doubtleſs fully conſidered them, and was prepared to give his vote. Without however pronouncing on the principles contained in them, he thought that at leaſt there was ſome inaccuracy in the language.

Mr. Eppes did not ſuppoſe that reſolutions haſtily drawn poſſeſſed all the profeſſional accuracy which might be given to them; and very poſſibly they did not poſſeſs all the preciſion which would have characteriſed them if drawn by the pen of the gentleman from Connecticut. But the objection of the gentleman otherwiſe was not well founded. If the reſolutions he had ſuggeſted were to be ſubmitted immediately to the deciſion of the Houſe, there might be ſome ſolid objection; but when it was known that the object was to refer them for diſcuſſion, they amounted to no more than an expreſſion of the ſentiments of the mover on the ſubject. Mr. Eppes ſaid that he religiouſly believed that the common law of England was never a part of the law of the land, and that when a man was proſecuted, he had a right to give the truth in evidence. If the gentleman perſiſted in refuſing to modify his reſolution, he would move a poſtponement for the purpoſe of introducing his own.

Mr. Speaker ſaid a motion to poſtpone had no preference over a motion to commit.

Mr. *Alexander* ſaid that the reſolution under conſideration, if not the moſt technically accurate, appeared to him the moſt proper for the adoption of the houſe. It contained two propoſitions, firſt, whether it is expedient to enquire, whether the proſecuting officers of the United States, have a right to inſtitute proſecutions for defamatory language; and ſecondly, if ſo, whether in ſuch proſecutions the truth can be given in evidence. It had been objected to becauſe it ſubmitted it to the committe of the whole to decide, whether it were expedient to appoint a ſelect committee to enquire. The gentleman from Tenneſſee was of opinion that it would not be competent to a committee of the whole to diſcuss the principles of the reſolution; but that they would be excluſively confined to a conſideration of the expediency of appoining a ſelect committee to make the enquiry. Mr. Alexander ſaid this was not his opinion. Before the committee of the whole, the whole ſubject would preſent itſelf. He added that he could conceive of a phraſeology that would not contain the obnoxious term *ſelect committee*, to wit, to make the reſolution read—whether it is not expedient to enquire, &c. &c. omitting altogether the term ſelect committee.—Would not this, however, be preſenting the ſubject in the ſame point of view? And if the committee of the whole decided that it was proper to make the enquiry, the next ſtep would be to appoint a ſelect committee.

Mr. Alexander ſaid he thought the queſtion of high importance, and the courſe propoſed very proper. It was beſt to preſent the ſubject under a general view, and not in the ſpecific form ſuggeſted by the gentleman from Virginia. He ſhould therefore vote for the reference. He declared himſelf of opinion that the accuſed had a right to give the truth in evidence; but ſaid he had not yet made up his mind, whether ſuch proſecutions could be carried on by officers of the United States.

The reference to a committee of the whole was then agreed to—Ayes 87—Noes 41—& the reſolution made the order for Tuesday next.