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Congress.

HOUSE OF REPRESENTATIVES.

Thursday, January 5

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

Mr. J. Randolph said, that no people were more fully impressed with the importance of preserving unpolluted the fountain of justice than the citizens of these States. With this view the constitution of the United States and of many of the States also, had rendered the magistrates who decided judicially between the State, and its offending citizens, and between man and man, more independent than those of any other country in the world, in the hope that every inducement, whether of intimidation or seduction which could cause them to swerve from the duty assigned to them might be removed. But such was the frailty of human nature, that there was no precaution by which our integrity & honor could be preserved, in case we were deficient in that duty which we owed to ourselves. In consequence, sir, said Mr. Randolph, of this unfortunate condition of man, we have been obliged, but yesterday, to prefer an accusation against a judge of the United States who has been found wanting in his duty to himself and his country. At the last session of Congress a gentleman from Pennsylvania did, in his place, (on the bill to amend the judicial system of the United States) state certain facts, in relation to the official conduct of an eminent judicial character, which I then thought, and still think, the House bound to notice. But the lateness of the session (for we had, if I mistake not, scarce a fortnight remaining) precluding all possibility of bringing the subject to any efficient result, I did not then think proper to take any steps in the business: Finding my attention however thus drawn to a consideration of the character of the officer in question, I made it my business, considering it my duty, as well to myself as those whom I represent, to investigate the charges then made and the official character of the judge, in general. The result having convinced me that there exists ground of impeachment against this officer, I demand an inquiry into his conduct, and therefore submit to the House the following resolution:

Resolved, That a committee be appointed to enquire into the official conduct of SAMUEL CHASE, one of the Associate Justices of the Supreme Court of the United States, and to report their opinion, whether the said Samuel Chase hath so acted in his judicial capacity as to require the interposition of the constitutional power of this House.

After the motion made by Mr. J. Randolph had been read from the chair,

Dr. MARCHET said before the question was taken he should be glad, from the novelty and serious nature of the proposed measure, to hear a statement by his friend from Virginia of the reasons in detail on which it was founded.

Mr. J. RANDOLPH observed, that when he was up before he had stated that the gentleman from Pennsylvania (Mr. Smilie) had in his place, at the last session of Congress, given a description of the official conduct of the officer, to whom the resolution referred, which he considered the House bound to notice. It could not be conceived that the gentleman would have laid before the House a statement, the facts of which were not supported by his own knowledge, or by evidence on which he could place the utmost reliance. He did not conceive this to be a time to decide whether the information exhibited by the gentleman from Pennsylvania was or was not correct.

At present an enquiry alone was proposed. If it should be made, it must result either that the conduct of the judge would be found to be such as not to warrant any further proceedings on the part of the House, or such as would require the interposition of that authority, which is the immediate representatives of the people, they alone possessed. If on enquiry, the committee shall be persuaded that the judge has not exceeded his duty, they will so report: If, on the contrary, they find it such as to require the interposition of the House, they will recom-

mend that course of proceeding to which the House alone is competent. With respect to the facts which had come to his knowledge, Mr. R. said, they were such as he did not wish to state—he preferred its being done by witnesses who were most competent to do it correctly.

Mr. FLEET. I am as deeply convinced as the gentleman from Virginia, that the stream of justice should be preserved pure and unobscured. I am also sensible that the judicial department ought to attach to itself a degree of independence, a great degree of independence. I am of opinion, that this House possesses no censorial power over the judicial department generally, or over any judge in particular. They have alone the power of impeaching them; and when a judge shall be charged with flagrant misconduct, and when facts are stated which shall induce them to believe those charges true, I shall be at all times prepared to carry the provisions of the constitution into effect in virtue of which great transgressors are punishable for their crimes. The basis of this resolution is, that a gentleman from Pennsylvania at the last session stated that the judge named in it, had been guilty of improper conduct. Of these charges I am uninformed, and every new member must be uninformed. It is astonishing to me that we are called upon to vote for an enquiry into the character of a judge, without any facts being adduced to shew that such an enquiry should be made. If the resolution pass in its present form, it appears to me that we shall thereby pass a vote of censure on this judge, which neither the constitution or laws authorize. If the judge be guilty, I should suppose the first step proper to be taken would be for some person aggrieved, or for members having personal knowledge, to exhibit facts on which the House may act. I can never consent, because the gentleman from Virginia, or any other gentleman, says there are facts which have come to his knowledge that induce him to think an enquiry ought to be instituted; to vote for it, while the facts are still stated, I can never give to any act which shall in this manner, without the exhibition of proof, impose censure or suspicion on a judge. This course may be perfectly parliamentary; but it strikes me as altogether unprecedented. If all, there are, until some facts are adduced, resist every attempt to impose a censure upon the conduct of any public officer.

Mr. SMILIE. If the gentleman from Vermont had commanded a little patience, he would have perceived the remarks which he has just made to have been altogether unnecessary; he would have perceived the necessity imposed upon me, by the observations of the gentleman from Virginia, of stating those facts to which that gentleman alluded. It must be seen that these proceedings contemplate the possibility of an impeachment.

It will be recollected by gentlemen who were in Congress at the last session that I was then led to give a statement of facts respecting the conduct of Judge Chase on a particular occasion. That statement was not made with a view to an impeachment. A bill had been introduced to change the districts of the circuit courts of the United States; when I discovered that Mr. Chase was assigned to the district of Pennsylvania. I felt interested in having him transferred to another district, considering that his previous conduct rendered him obnoxious to the people of that State. The circumstances I stated to the House, and was in consequence called upon to assign my reasons why Judge Chase was obnoxious to the people of Pennsylvania. This is the history of the business to fact. I am now called upon to state the facts which I mentioned on that occasion. This I shall do briefly.

A man of the name of Fries was prosecuted for treason in the State of Pennsylvania. Two of the first counsel at that bar, Mr. Lewis and Mr. Dallas, without fee or reward, undertook his defence. I mention their names to shew that there could have been no party prejudices that influenced them. When the trial came on the judge behaved in such a manner that Mr. Lewis declared he would not to degrade his profession as to plead under the circumstances imposed upon him. Mr. Dallas declared

that the rights of the bar were as well established as those of the bench; that he considered the conduct of the judge as a violation of the rights, and refused to plead. The facts were these; The judge told the jury and the counsel that the court had made up their minds on what constituted treason, that they had committed their opinion to writing, & that the counsel must therefore confine themselves to the facts in the case before the court. The counsel replied that they did not dispute the fact, but they were able to shew that they did not constitute treason. The end of the affair was, that the counsel retired from court, and the jury retired without counsel, convicted and sentenced to death.

After this the attorney general wrote to Messrs. Dallas and Lewis, requesting them to furnish their notes and opinions for the use of the President. They drew up an answer, in which they stated that the acts charged against Fries did not amount to treason, but were only sedition; and that they were so considered in the British courts. This letter was read to me by Mr. Dallas. After receiving the letter the President pardoned the man.

Mr. K. GRISWOLD. Gentlemen will acknowledge that this is a subject of great importance and delicacy. No one will doubt but that we ought to execute our duty to us to preserve the fountains of justice pure, and that we ought at the same time to treat the important character of a judge, or of any other high officer, with respect. I do not know but that this mode of procedure is warranted by precedent. But it is, it is unknown to me. As the resolution now stands, I do not think it perfectly correct. The honorable gentleman from Virginia says he is acquainted with facts that warrant the proposed enquiry. The question is whether the House ought to be governed by the opinions of any one member. We know not what these facts are; the gentleman declines stating them. I do not think, as the subject now strikes me, that the conviction of any one member of the propriety of this measure, can not warrant the interposition of the House. Instead of taking the individual opinion of a member, it ought to be stated that certain facts exist, which, if proved, will justify an impeachment. I do not know whether these facts are not incorrect, having never before contemplated, or had a suspicion that such a motion would be made.

As to the remarks of the gentleman from Pennsylvania, I do not consider them as entitled to much weight. If the facts stated by him were of his personal knowledge, they would undoubtedly merit attention. But he merely states that which he has received from others, and which amounts to nothing more than that the judge refused liberty to the counsel to argue a point of law after it was decided, and confined their argument to facts. In so doing, the judge may have erred, but it was an error of judgment, for which he cannot be impeached. No lawyer will, perhaps, say that it was not the province of the judge to decide the law, and that he has not the right to prevent counsel from arguing it after his mind is made up. But this information is not of the knowledge of the gentleman. Are we then to institute an enquiry into the conduct of a high officer of the government merely on hearsay? This has never been done under our government. In the late case of Judge Pickering, proof was furnished by the affidavits of witnesses testifying certain facts. I do not therefore consider it correct to proceed to enquire on the opinion of any gentleman. The proper course is first to have proofs which will justify ourselves to our own consciences in making the enquiry. For we ought not to touch the character of a judge, unless we are satisfied from facts that there is good reason for an investigation into his conduct. Gentlemen will not say that making an enquiry into the official conduct of a judge does not touch his character.

Gentlemen say if this committee find the conduct of the judge to have been correct, they will make a report to that effect; but it does not follow that the report will contain all the evidence adduced, and suspicion may still rest on the character of the judge, and that some

facts may not be stated, which, if stated would shew his misconduct. Whereas if the business be brought generally before the House, on the exhibition of certain facts, the public will be enabled to decide whether they warrant impeachment or even suspicion. With this view of the subject, I am of opinion, that it will be best to delay acting in this affair, until facts shall be disclosed which will justify the step now proposed to be taken. I have as high a respect for the opinion of the gentleman from Virginia as for that of any other member on this floor; but I doubt whether we can justify our votes on the opinion of any single member; facts alone ought to govern our opinions. I, therefore, for the purpose of considering the course most proper to be pursued, move a postponement of the further consideration of the motion until to-morrow.

Mr. J. RANDOLPH. Were I the personal enemy of the gentleman who is the object of this resolution, I should take precisely that course which the gentleman from Connecticut, on this occasion, seems more than half inclined to take. That gentleman wishes the resolution to lay until to-morrow, in order that he may have time to consider whether he can bring himself to refuse the enquiry altogether. He says that he cannot, or rather—for he speaks doubtfully—he thinks he cannot see the propriety of instituting an enquiry without evidence. What evidence? Nothing short of legal proof—testimony on oath. And what is the object of the resolution? To acquire that very evidence. If we had the evidence, to what purpose make enquiry? As however the evidence cannot be had without enquiry, and the gentleman will not grant the enquiry but upon the evidence, it is plain that, if we take the course which he recommends, we must go without both. Will gentlemen offer objections against enquiry which are applicable only to impeachment? If an impeachment were moved they would have a right to call for evidence. But what is the object of the present motion? Merely to enquire whether there exists evidence which will justify an impeachment. But this enquiry were told cannot be instituted on mere hearsay, although we have the declaration of a member in his place. What would be said of a grand jury who being informed by one of their body that A or B could testify to the fact of a murder being committed within their jurisdiction, should refuse an application to the court to have them summoned—and because they cannot find a bill of indictment unsupported by evidence, should reject that evidence which might be within their reach. I profess not that tenderness of conscience which has been displayed by the gentleman from Connecticut. My conscience teaches me to accuse no man wrongfully, but to deny enquiry into the official conduct of none, however exalted his station; and I had supposed from his practice that the gentleman held the same opinion. For it will be recollected that on the eve of the close of the last session, he had himself instituted an enquiry which went to impeach the conduct of some of the first officers of the government. No one on that occasion stepped in between the demand for an enquiry and those officers implicated in it? No enquiry was made, and it precluded any further proceeding on the part of the House, since the charges which had been attempted to be brought forward would not bear examination. Mr. R. concluded by calling for the yeas and nays.

Mr. GREGG said he should vote against the postponement and in favour of the resolution. The case was somewhat new, but he perceived no impropriety in giving it the same direction with all the other business originated in the House. What is this committee to be appointed for? To investigate facts, and report them to the House. Was it not most proper that gentlemen whose characters were implicated should have, in the first instance, facts stated privately before a committee, than that parts of their character should be immediately brought into view before the House? He recollected one fact not yet alluded to in debate. In 1792 after the army, under the command of General St. Clair, was defeated, great dissatisfaction arose, and

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