// A. J. Murphy

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CONGRESS.

HOUSE OF REPRESENTATIVES.

FRIDAY, Feb. 21.

Debate on the bill from the Senate, providing for the payment of the witnesses on the trial of Samuel Chase.

In committee of the whole—Mr. GREGG in the chair.

MR. J. SMITH said, at the close of the last session, a bill providing for the payment of the witnesses on the part of the United States had gone from the House to the Senate, and been disagreed to by them. The Senate on their part, had passed a bill providing for the payment of all the witnesses, to which the House had disagreed. A conference had taken place on the disagreeing votes of the Houses, and the bill had been lost, from a want of concurrence. The consequence was, the witnesses still remain uncompensated; some of whom have sustained heavy expenses. Petitions received this session from several witnesses on the part of the prosecution, had been referred to the committee of Claims, who had reported a bill which was the same in substance with that adopted by the House the last session; the committee not considering themselves at liberty to depart from the principle then established by the House.

It was for the House to decide how long this unprofitable contest (for unprofitable it surely was to the witnesses) should be kept up. Mr. Smith said he was not disposed to go into a consideration of the question, whether the expences of an impeachment should in all cases be incurred by the government. He would barely observe that the Senate had been unanimous; and if the House should adhere to the ground they had taken, no compensation would be allowed the witnesses. He submitted it, whether under these circumstances, it were proper to keep up such a conflict. It had so happened that many of the witnesses, summoned by the accused, had been also of by the managers, and the process of summoning them had been similar on both sides. In the bill there was an omission to provide for the expenses incurred by the managers. If no other gentleman proposed an amendment, he should think it his duty to offer one, providing for these expenses. He hoped the committee would agree to the bill. Some gentlemen might think, by agreeing to it they evinced an opinion of the guilt or innocence of the accused. But such a vote could not be viewed in this light. The House had exercised their constitutional right by voting an impeachment, while the Senate had exercised the same right in acquitting the accused. The same body who had acquitted, had sent down this bill, involving their opinion that the proposed compensation to witnesses was right. Indeed he considered the bill from the Senate as a taxation of costs by the court who sat on this occasion.

MR. MACON, with the view to try the question, whether the House would agree to pay all the witnesses, moved to insert after the word *witnesses* the words—"on behalf of the United States." He said the history of this business given by the gentleman from Connecticut was correct. The accused had been acquitted by a constitutional majority, consisting of a minority of the Senate. It was not, he believed, the practice in any criminal court, of any state in the union, for witnesses summoned by the defendant, to be paid by the state. The states in many instances, pay their own witnesses, where the person accused is not convicted, but with respect to the conflict between the two Houses, he was convinced the decision of this House was correct; and that it accorded with the general usage throughout the United States. If there was an exception, he did not recollect it. It was true that one or other House must give way, or the bill would be lost. He would much rather, that it should be rejected by the disagreeing votes of the two Houses, than that it should pass as it then stood. If the Senate had offered this bill, it is equally true that the grand jury who make a bill, have refused it.—The two Houses stood on the same ground—One are the triers, and the other the hearers. If Congress agree to pay all the expences of an impeachment, the impeached may run the expences to such an amount as to prevent a trial. Why pay the expences in this case, if not in any other? Shall they be paid because this man is a judge, and not a man arraigned before a judge? When a judge is tried he deserves no more indulgence than a private individual, and though he is acquitted the acquittal is not such as to convince the nation, or any other body of men, that he is innocent. It was not that kind of acquittal which an honest man would wish. It was constitutional, but not by a majority of the Senate. Are we, under these circumstances, obliged to pay the witnesses he has chosen to summon? Believing, as he did, the man guilty, and the charges in many instances, supported, the payment of his witnesses appeared to him a very strange thing. In this, as in every other case, he was willing to yield to a constitutional decision, but he could never consent to pay the witnesses of the accused.

MR. ALSTON said the amendment went to try the question, whether the House would agree to pay all the witnesses summoned on the trial of judge Chase. Before it was made, the honourable Speaker ought to have told the House whether they could determine which witnesses were summoned on the part of the U. States, and which on the part of judge Chase. From every thing which he had seen, and he had examined all the documents on the subject, he had found no data upon which to determine what witnesses had been summoned on one side or the other, unless from the recollection of gentlemen, by which he supposed the House would not consent to be governed. When the question was before the House the last session, he had expressed his doubts whether they ought to pay the witnesses of an accused man, whether he was acquitted or convicted; but he was now convinced that until Congress passed a law, prescribing how witnesses are to be paid, they were bound to pay them. No such law had been passed. He would ask gentlemen learned in the law, whether witnesses on the part of judge Chase could demand compensation from him? Have we passed any law prescribing how much shall be paid, or how it shall be done? No such law has been passed. Mr. A. said, he thought gentlemen were carrying their prejudices too far in this instance. He had voted for five out of eight of the articles, but the Senate had acquitted him of all of them. He was contented with this decision, and so far as he was acquainted with the sentiments of those he represented, he believed they too were satisfied. It was not now a question how this principle should be settled. If a general law were brought before them, there was no doubt, but, that if a man so conducted himself as to bring himself to a trial, he should pay his own witnesses, provided such law declared how much they should be paid. The hon. Speaker had said there was not a state in the union in which the witnesses of a person indicted and acquitted were paid by the state. Mr. Alston said he believed in Virginia when a man was indicted and acquitted, he was not subjected to the payment of costs. If this were true, one state at least, and that the largest in the union, had set a different example, and if precedent were entitled to any influence, it was against the Speaker. Mr. A. said this however had no weight with him. The great objection with him was that they could not discriminate the witnesses of the U. States from those of the accused, and if they could ascertain them, there was no law prescribing how the latter should be paid by the accused.

MR. JACKSON believed Congress bound to render compensation to the witnesses on the trial of Judge Chase, on the abstract principle of justice and right, as well as from precedent and practice. The argument of the hon. Speaker militated against the inference drawn by him. He says the accused may multiply witnesses to such an extent, as to defeat a prosecution. If the proposition, however be examined in all its bearings, it will be found to operate most severely, and almost exclusively, on the man impeached by the House of Representatives; no matter for what cause, or whether he is guilty or innocent. If the House are determined to destroy him, it is only necessary to vote an impeachment, which will impose upon him a ruinous burthen. Mr. J. said he did not apply these remarks exclusively to the impeachment of Judge Chase. The Journals of the House would shew that he was in favour of his impeachment. But as he had been acquitted by the constitutional tribunal, clothed with authority to pronounce him guilty or innocent, the dernier tribunal constituted for such cases, he did not consider himself justified to say, after their decision, that he was guilty. He held himself bound by the judicial decisions and laws of the country, though as an individual, he might differ from some of them. The United States might, in case a person acquitted on an impeachment is compelled to pay his witnesses, multiply charges embracing the whole life of the accused, and tracing him from the district of Main to Georgia, so as to compel him, in order to refute the charges, to adduce ten times as many witnesses as would otherwise be necessary. The true rule is, that the court shall decide what witnesses are proper to be taxed in the costs, and what are not. The Senate, who in this instance are the court, have decided that all shall be taxed. They were perfectly competent to decide, whether any witnesses of the accused were brought forward without sufficient cause, or whether they were essential to the defence. It is manifest by the bill under consideration, that they have made the latter decision. The gentleman from North-Carolina is correct in his statement of precedent. The uniform course in Virginia is to tax the attendance of witnesses, who are paid out of the public treasury—and those on the part of the defendant in the same way as those on the part of the prosecution. This practice has been extended so far as to embrace the payment of witnesses from another state. In a late case, altho' as far as the opinion of the court could go, a man was declared guilty of the crime with which he was charged, yet the jury having pronounced him innocent, a witness on his part, brought from Kentucky, was paid out of the public treasury. This is not the case where an individual is convicted. If he possess sufficient property, that is answerable for the expenses.

The Senate undoubtedly possess the right to say whether the witnesses adduced are necessary; and if in any future case, improper witnesses shall be brought forward, they may refuse to tax them. This bill does not provide for all cases of impeachment, but is confined to the case of Samuel Chase. Mr. J. said he would submit whether it was proper or just to compel men at a great expense to attend at the seat of government in an inclement season of the year, without giving them a compensation. If a law had been previously passed, prescribing that the witnesses of the accused should be paid by him, they would have required some assurance from him. But as no discrimination had been made between the witnesses, they came forward in full faith that the government would allow them a liberal compensation.

MR. NICHOLSON said he had but few observations to make on this subject. Indeed indisposition disabled him from making many. He considered this bill as calculated to establish a great principle; a principle whether in all cases of impeachment the United States are to bear the burthen. It was not in reference to an individual that he was induced to advocate the amendment of his honourable friend, the Speaker, but because its effect would be to establish a principle that would hereafter govern in similar cases. If the principle were established that in all cases of impeachment the government is to bear the whole expence, it will put it in the power of the individual impeached, to increase the burthen to any extent he pleases. And whenever a man shall be impeached, base enough to hate the government under which he lives and holds an office, in a case which requires but two witnesses, he may summon two hundred. This bill will establish such a principle, and we shall in all future cases be told, that the witnesses of the accused were paid in the case of Chase. It was for this reason, Mr. Nicholson said, he advocated the amendment, and to convince the individual that subjected himself to an impeachment, that he must suffer some pains and penalties. For it was not to be presumed that the House of Representatives would impeach any man unless there was some colour for it, some reason to induce the nation at large to believe him guilty. An impeachment speaks the language of the nation, expressed through their representatives; and whenever a man in office so conducts himself as to make the nation believe him guilty, it was not desirable to offer the protection held out in the bill, particularly when a majority in the other branch also believed him guilty.

But gentlemen say, this is not the practice in the state courts; and we are told in Virginia when a man is acquitted, the state pays the expence of his witnesses. Mr. N. said this might be so, though he did not know that it was—it was not so, however, in the courts of the United States. Any gentleman who doubted this, had only to refer to the treasurer's accounts since the government had been in operation, and he called upon any such gentlemen to shew a single charge for witnesses in cases of acquittal. It is not the practice in England, nor could it be made to appear by any document extant, that the witnesses summoned by Warren Hastings, though he was acquitted, had been paid by the government. But admitting, for argument sake, the practice to be such in the United States as it is represented to be in the courts of Virginia, would that meet the present case? No. In Virginia there was a reciprocity. There if a man was convicted, he paid all the costs, and if acquitted the state pays them. But in the United States do we make the convicted pay the costs? Had the accused judge been convicted, would gentlemen advocate his paying all the costs? No. In that case, he would have been Scot free, as to the payment of money, though he might have sunk in reputation. In Virginia there is a reciprocity. The convicted either pays the expences of the prosecution, or goes to gaol. Whereas in this case the United States are called upon to bear the whole burthen. When Judge Pickering was convicted, was he called on to pay the charges? Such a thing was not then dreamt of. It was then considered proper that the United States should pay their own witnesses. The argument, therefore, fails. The only objection of any weight is that raised by the gentlemen from North Carolina. It is said to be impossible to discriminate the witnesses. The gentlemen says that he has examined the journals of the Senate, and cannot find any discrimination. But has he looked at the journal of impeachment; where it appears that such witnesses were sworn on the part of the United States, and such on the part of the accused. Besides if this evidence were not on the journal, it could be got from the parties themselves, who could swear they were summoned on the part of the United States or the defendant. This was a common thing in the courts of Maryland, and Mr. N. supposed it was likewise so in other courts. He concluded by expressing a hope that the amendment would be adopted.

MR. EARLY said it was his misfortune the last session to differ from a majority of the House, and his present opinion was what it then was. His opinion was not founded either on general principles, or on the practice of the several states or U. S. courts. It was founded on the peculiar circumstances of this case.—Some of these circumstances had already been stated by gentlemen; but there were some important points of view in which they might be considered, which had not been noticed. It was true, as had been stated by the gentlemen from N. Carolina, that it could not be distinguished which witnesses were summoned on the part of the prosecution, and which on the part of the respondent, from an omission by the Senate, when they prescribed the form of the Subpœna, to distinguish, as it is usual, for which party it was issued. This fact was abundantly proved by the form of the subpœna. How, then, were witnesses to know that they were summoned on the part of the U. S. or the respondent? They could not know. There were no circumstances by which they could acquire such knowledge. The party did not serve his subpœnas in person, but they were all sent to the marshal of a given state. A number of them were taken out in blank, and sent to the marshals by post. The gentleman from Maryland has endeavored to obviate the force of this fact, by informing us that a discrimination may be made, by the circumstance of the fact on which side the witnesses were sworn. True; but no gentleman knows better than himself that the witnesses summoned on one side were in some instances sworn on the other; and he would call his recollection to the testimony given by Messrs. Tilghman and Rawle.

(*Mr. Nicholson* here explained, and contested the fact. Mr. Early agreed that these two witnesses had been summoned both on the part of the prosecution and the respondent.)

Mr. Early said whether he was correct or not as to the particular cases he had alluded to, he was not mistaken as to the general fact. The gentleman from Maryland, he said, had endeavored to obviate the force of this argument in another way, by representing that the witnesses might be called on to swear on which side they were sworn. But this could not be done, but by the passage of some law on the subject.—There was no authority which would justify the secretary of the Senate in demanding such an oath, and if the circumstance could be proved, there was no power, under any existing law, by which the witnesses could recover a compensation for their attendance. They were compelled to attend—By whom? By a branch of this legislature, on pain of imprisonment in case of disobedience. Whence shall they be indemnified? Will any gentleman say they can recover from the respondent? If so, let them point to the law which authorises such a recovery. Will they say it can be had under the common law? A majority of this House will not bear them out in the argument. For it is a standing principle with us, that the common law is not in force in the courts of the U. S. But put this objection aside; how much shall they recover? Where is the law fixing their per diem allowance? There is a perfect chasm on the subject.

Mr. E. repeated that his opinion was governed by the peculiar circumstances of the case; by the omission of the Senate to insert in the subpœna, on whose side the witnesses was summoned, or to provide for making any recovery from the accused; or how much, and where the recovery should be made. He considered the witnesses summoned, owing to this omission, as being without a remedy, from which resulted the obligation on the part of the government as they made the omission, to provide a remedy. The gentleman from Maryland, in noticing the observations relative to the practice of Virg. stated that if a similar reciprocity existed on impeachments, his objection to this bill in whole or in part would be done away. Mr. E. said, in his opinion, this observation fortified the ground he had taken. If there were no reciprocity in this case, it was for want of a general provision. Let us then pass a law making this provision, and let it operate in all future cases. This would be equitable. But the want of reciprocity, which arose with themselves, was no ground for omiting to make the only provision for the witnesses which the case allowed. When at the last session, in consequence of the disagreeing votes of the two houses, a committee of conference had been appointed, Mr. E. said he recollected that a distinguished member of the other branch, now absent in consequence of an unfortunate accident took this ground—that the subpoena did not distinguish on which side the witnesses were summoned, and made a proposition that the bill should be so modified as to place the allowance made to the witnesses of the respondent on this peculiar ground. This proposition did not then obtain, but Mr. Early said he was still for taking such a course. He hoped the amendment of the hon. Speaker would not prevail, in which case he would move, by way of preamble to the