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CONGRESS.

HOUSE OF REPRESENTATIVES.

Thursday, May 25.

DOCTRINE OF LIBELS.

Randolph said that among the various of difference between the two great con- parties in the United States, during istence of the administration of Mr. s, there had been none perhaps of great- nitude in the public estimation than a ted act commonly called the sedition nd there had been none perhaps which ore tended to the downfall and over- of the administration under which it acted. The question then made by ple of the United States was not r that law contained a good law of r not, but whether Congress had power t any law of libel or not; whether that of the constitution contained in one of endments, declaring that Congress make no law respecting an establish- f religion, or prohibiting the free exer- hereof, or abridging the freedom of or of the press, did not completely e Congress, and preclude them from ing on the subject at all. And (said a very great body of the American as I understand, a verdict has been hat Congress do not possess the right ing any act on this subject whatever; rust and believe that there will never nother Congress which will have the y and hardihood to meddle with the of the people and states on this point- are some of us sir, who were in the the House of Representatives at the at the law in question expired. I well ct, and probably you do also, Mr. r, the very splendid and beautiful de on with which a member at that time outh Carolina, (Mr. Harper) exhorted jority of this House to re-enact that the ground that it would be a shield ection to them, as going out of power, their adversaries, into whose hands was about to be transferred, as the law would allow them to give the evidence, and the common law does And he then foretold, what I confess I to with the most perfect incredulity, rosecutions for libel would be com- and carried on in the courts of the States at common law. Sir, I was incredulous myself at that moment, the uncharitableness to think that the man himself did not believe in the which he advanced. I believed it ible for an administration coming into on the terms on which the last did, sanction a prosecution at common a libel where the truth could not be in evidence. The doctrine contended the federal party, and ably supported ember (Mr. Bayard) who is now trans- o the other House, that the common England is the law of the United States, doctrine more abhorrent, if possible, feelings of the republican party in the ates, than the sedition law itself. For sedition law was objectionable because blished a law of libel which permitted th to be given in evidence, *a fortiori*, mmon law doctrine, was more so, which established a law of libel the more s, because the truth was not permitted given in evidence, but established the system of penal laws in the British which might be found in relation to bject. Accordingly, the best pens and est minds in the party to which you had the honor to belong, were employ- ttempting to refute the heresy and a the sedition law. It is unnecessary to your recollection the writings of Hor- , the resolution of Col John Taylor, oline, and the still more illustrious re- the present chief magistrate, going to e the doctrine by irresistible arguments. succeeded a tract by a gentleman of cure fame, who has rendered himself hat conspicuous as a law character, by mmentaries on that great commentator m. Blackstone, still going to shew that mmon law of England was not the law United States, that although it has dopted by the several states with vari- ifications, it is no further law than have adopted it, and under limitations to it by each state—but that as a law United States in their federal capacity, no validity. Since, if it had, of the t common laws in the United States, should we adopt? Or should we take mmon law of England, of a monarchy, upon an hereditary nobility and a ierarchy, unsuited to the genius of a can government? But, sir, such un- is the difference between men out of and men in power, that, if we are to the representations made at the last of Congress, by a member from Con- (Mr. Dana) the correctness of which me no man would have the hardihood , prosecutions for libels at common e been entertained in the courts of the United States against citizens, and consequently have been carried on by the attorneys for the districts wherein such prosecutions commenced. Yes, sir, such is the difference between men in power and men out of power; such the difference between profession and practice: and yet, to my infinite surprise, this awful truth, this fact, which never came to my knowledge before, appeared scarcely to excite a sensation either in this assembly or the public, in the men who were most clamorous against the sedition law. Yes, Sir, we did execrate, and most justly execrate, the sedition law. I for one had as thorough a contempt for some of those who fell under its penalties, as the judge who inflicted them. The question was not whether James Thompson Callender was not an infamous libeller, any more than the famous Middlesex question was whether John Wilkes was an infamous character; but it was a question as to the deprivation of the birthright of the citizen in one case, and the subject in the other—and the people wisely discriminated between the persons who were the subjects of prosecution and their own best and dearest interests. We said that Congress had no right to pass any law at all on the subject. It cannot be denied, that if we are to have a federal law of libel, that which permits the truth to be given in evidence is as good as any. It was not to the nature of the law that we objected, but to the having a federal law of libel at all; though indeed, sir, the permission to give the truth in evidence is but an idle mockery when we consider that the officer, whose duty it is to provide an impartial jury, is but the breath of the nostrils of the prosecutor. You ought to recollect that in all cases where the government becomes a party, whether *pro* or *con*, you too often have an administration of politics, instead of an administration of law and justice. It is true, that the constitution does declare that Congress shall make no law abridging the freedom of speech or of the press; but if Congress, or the courts below, can at once saddle us with the common law of England, there is no necessity for prohibiting the abridgement of the freedom of speech, or of the press. We know what the common law is—an unlimited license to punish. This restriction of the constitution therefore is wholly nugatory, if the courts are permitted to entertain prosecutions for libels. Sir, that the present chief magistrate of the United States should permit an attorney of the United States to hold his office one second after having commenced a prosecution in a court of common law for a libel, is what I will not believe—for he could not do it without libelling, by that act of omission, the fairest page of the history of his own life, to wit, his celebrated report made in the session of the Virginia assembly, which commenced in December, 1799. But I am willing to have some better security than the disposition of any Executive, for what I conceive one of the highest, proudest attributes of American freemen. I know it may be said, as it once was, when the writ of habeas corpus was set at defiance, that for as much as the right is contained in the constitution and supported by it, all legislative provision on that subject would be mere work of supererogation—and yet, sir, who has heard of any recovery under the constitution for the violation of the best, dearest, most invaluable right of a citizen? In fact, take away the writ of habeas corpus to-morrow, and I would not give a pinch of snuff for our constitution; for without it, every man may be imprisoned at pleasure. Government might possibly demand a forced loan, with which, if the citizen did not comply, he might be carried to jail.—There is no free government where this wonderful contrivance, this best hope of man, this sheet-anchor of freedom, the writ of habeas corpus, is not found. And yet we may be told that, as the freedom of the speech and press is secured by the constitution, all legislative provision on the subject is not merely superfluity, but not respectful to the constitution: And so our citizens are to go on to be prosecuted at common law; and when they get no remedy, they are told their rights are guaranteed by the constitution—but receive no satisfaction. I therefore think it would be a very wise provision on our part, at this time, to prevent a recurrence of similar cases, guarding against the future by woeful experience, a school in which it is said a fool himself must learn, although he will learn in no other—and, as far as that epithet may be considered as applying to myself, I do most candidly confess that I have been compelled to learn from this school—for when the gentleman from South Carolina uttered that brilliant declamation in order to induce this House to re-enact the sedition law, and hang it over their heads as a shield from prosecution, I really thought it a mere speech for the people, for I had no conception that a court of the United States would ever entertain a prosection for libel at common law. I therefore submit to you the following resolution, premising, before I conclude, that my object will be, finding the constitution inert on this subject, as it only contains an acknowledgment of the right, to administer wholesome fine and imprisonment to those who shall hereafter undertake to carry on such prosecutions.

"*Resolved*, That a committee be appointed to enquire whether any and what prosecutions have been entertained by the courts of the United States for libels at common law and to report such provisions as in their opinion may be necessary for securing the freedom of speech and of the press."

Mr. Dana said perhaps that the resolution, as now expressed, did not go to the whole extent to which the gentleman intended. That prosecutions had been instituted for supposed slanders or for supposed seditious words, was unquestionable. For two, three or four years past, prosecutions of this character had been pending in the circuit court of the United States in the district of Connecticut. That some of the prosecutions attempted to establish the imputation of crime against individuals, and in cases not comprehended under the provisions of the statute so much reprobated under the name of the sedition act, was unquestionable. Prior to the institution of these prosecutions, however, from an apprehension of what might be done by men who had professed much zeal for liberty, but not in practice given stronger instances of regard for it than those who professed less, in the state of Connecticut a bill was introduced into the legislature for securing the freedom of the press. That bill consisted of one section, which was copied from the reprobated sedition act—that very section which provided that the truth should be given in evidence; and it was called an act for securing the freedom of the press. And before any prosecutions were instituted, when only a district judge presided in the court, that judge declared that he should consider the act of the state of Connecticut relative to giving the truth in evidence, as binding on the federal court in that state. This was the opinion of one judge; there was some question how it would be ultimately decided before a full court. Such a law formed a more abundant protection against any persecution which might be directed against individuals under the form of a prosecution, than any professions whatever. In the state of Connecticut (said Mr Dana) there is one further security—that our jurors are designated by lot. The names of freeholders selected by certain officers in the towns are put into a box, and then selected by lot. There have been seven or eight prosecutions commenced, I scarcely know for what, whether for libellous or seditious words—against clergymen, and public preachers, for words uttered by them; and very considerable expences have been incurred by them. But I cannot say that any man ever suffered any farther than this; that they were at a very great expence in defending themselves. They had a great security in one respect: that the talents of the bar were against these prosecutions; and there was such a peculiar talent of going backwards in the prosecution, that the suits generally went out of court with a *nolle prosequi*, from some error in the indictment, some defect in professional skill, or some error in clerkship. The only case in which there seemed to be any possibility of conviction, was one in which a question was made as to the power of the court to take cognizance of the subject. The question was on the prosecution of a printer there for publishing what had appeared with perfect safety in another state. The judges declared themselves divided in opinion on the question of jurisdiction. That diversity of opinion was certified and the question expected to be brought before the supreme court last February. On applying to the judge I found that the clerk of the circuit court had not forwarded the certificate, and of course the case did not come up here as expected. I suppose that the whole thing will die without any noise. Another reason why the persons in Connecticut were not disposed to make very much noise about it while prosecutions were depending, was, that the state was not a large one; that it could not be supposed to be in great favor at the palace. It was supposed, sir, (whether correctly or not I will not undertake to say, but I rather incline to the opinion that it was an erroneous supposition) considering the manner in which appointments were made in that state, and under the belief that it was through the means of certain influential characters that the district attorney did institute those prosecutions with the approbation of the administration of the United States. This was an opinion in the state; and, supposing the influence of the Executive to be exerted, they felt that it would be in vain to make much clamor, and rather chose to contend alone against it. As the prosecutions are now at an end, I think it very desirable that the subject should be investigated. As respects the district attorney's not being removed, I do not think that he is much to be censured in this case. I am not certain that he acted altogether on his own opinion. I rather suppose that he was impelled by the influence of certain persons who are generally supposed to have the chief weight in appointments under the United States in that state and who are therefore by some called the *council of appointment*; and I suppose that the district attorney could scarcely oppose the will and pleasure of these gentlemen. I very much question, therefore, whether any particular degree of fault is to be attributed to him, except his putting the United States to so much expence without ever bringing the question to a decision. This, sir, is about the general state of [redacted] business. As it cannot be said that the [redacted] has in fact *entertained* the prosecutions [redacted] some of them have been dismissed, the substitution of the word *institute* instead of entertained, may accomplish the gentlemen's wishes.

Mr. Randolph consented to the amendment.

Mr. Randolph's resolution having been agreed to without opposition, he laid on the table the following:

"*Resolved*, That provision ought to be made by law to secure the right to an impartial jury, in all cases, civil and criminal, maintained in the courts of the U. States."

Saturday, May 27.

Mr. Burwell submitted the following resolution: *Resolved*, That the president of the United States, be requested to cause the Secretary at War to lay before this house an estimate of the several sums necessary for fortifications, and a statement of the deficiency of former appropiations towards that object. Agreed to.

Mr. Randolph called for the consideration of his resolution of yesterday (VOTE OF APPROBATION;) but the house refused to take it up, yeas 54, nays 54—the Speaker voting in the negative.

Mr. Sanford, after some introductory remarks, submitted the following resolution:

Resolved, That the committee appointed to enquire what prosecutions for LIBELS at common law have been instituted in the courts of the United States, be instructed to inquire what prosecutions for libels were instituted under the act in addition to the act for the punishment of certain crimes against the U. State, (sedition law) passed on the 14th day July, 1798. and into the expediency of remunerating the sufferers under the same.

Mr. Sawyer moved to amend the resolution, by adding the following words;—"and that the committee be instructed to inquire whether any and what private compensation was made to such suffering persons."

Mr. Dana said it might be very amusing to know who had contributed to the relief of persons who had been punished for libels under the sedition law; he should have no objection, for instance, to know *who had assisted* JAMES THOMPSON CALLENDER. But he did not see how this inquiry could be made.

Mr. Quincy said, if the object of the gentleman who proposed the amendment, was, that those who had contributed to the relief of persons who had suffered under the sedition law, should receive back their money, he thought the best way would be for them to bring their claims before the house.

Mr. Sawyer's amendment was lost

Mr. Ross moved to amend the resolution, by adding the following words—"and also, that the committee be instructed to inquire whether any and what compensation to persons who have suffered in consequence of *opposing* the act for laying and collecting a direct tax," (in Northampton county, Pennsylvania.)

Mr. Dana said that, if it would be in order, he should probably, if that amendment were adopted, move further to amend the resolution, by inserting a provision to remunerate those persons who had suffered in consequence of their *submission* to the several embargo laws, as he considered this the most meritorious kind of suffering.

Mr. Gardenier suggested to the gentleman from Pennsylvania (Mr. Ross) whether it would not be proper to enlarge his amendment, so as to provide for the remuneration of all those who had quietly paid those taxes. This would be no more than fair—unless it was admitted that there was something peculiarly honorable and praiseworthy in resisting the laws of the union.

Mr. Ross insisted that his constituents (Northampton county) were as much entitled to remuneration for their sufferings as any of those who had suffered under the sedition law; since they, he said, had presented an irresistable phalanx to the high handed measures of government, and had greatly aided the cause of democracy.

Mr. Potter inquired whether the house was sitting as legislators, or as offering premiums for breaking the very laws which they were making. If this precedent be once established, the government would never know when to stop: Persons who had suffered for breaches of the embargo laws would have an equal claim to remuneration.

Mr. Rhea moved that the further consideration of the resolution be postponed indefi-