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APRIL 4.

IMPEACHMENT.

It was not our intention to make any remarks on the grounds of the impeachment of Judge Chaſe. That meaſure, in its initiation, having been amply and ably inveſtigated on the floor of congreſs, and the debate, on that occaſion, having been given to the public, our opinion was, that a newſpaper diſcuſſion, previous to the trial by the conſtitutional tribunal, would be unneceſſary, and premature, and might in its operation, be injurious, particularly to the accuſed. We do not, by theſe remarks, wiſh it to be underſtood as our opinion, that the preſs is not free to examine judicial as well as legiſlative meaſures. On the contrary, we do believe that wherever a great public good may reſult from an examination of any caſe before any judicial body, it is not only the right but the duty of a free preſs fearleſsly to enter upon it. But in caſes where ſuch benefit is not likely to ariſe from the examination, we conſider it good policy and ſtrict juſtice to wave it. In the inſtance under conſideration, this was the deliberate dictate of our judgements. Confiding in the exalted tribunal aſſigned by the Conſtitution for the trial of great ſtate offenders, and in the purity of public opinion, we meant that our ſilence ſhould be conſidered as concluſive evidence of our reſpect for the one, and our reliance on the other. Well acquainted with the virulence of party ſpirit, and the diſpoſition of guilt to cover itſelf under its accomodating mantle, it was our hope that the republican prints of the country would not provoke a conflict of prejudice and paſſion, which might tend, in ſome meaſure, to wreſt the ſolemn meaſure of an impeachment from that diſpaſſionate inveſtigation which its importance eminently demands.

From this purpoſe, we have been reluctantly drawn by Judge Chaſe himſelf. He, who of the whole community, ought to have maintained the dignified attitude of compoſure, and ſhould have been the laſt to excite the public feeling, has come forward in a manner, unprecedented, with an addreſs to the people, connected with a requeſt "to the Editors of *all* the newſpapers in the United States, to inſert his letter and memorial, and the articles of impeachment reported by the committee." To decline publiſhing theſe productions, would be denounced as partial or puſillanimous They are therefore ſubjoined, excepting the articles of impeachment, already inſerted in the National Intelligencer. Having given them, we ſhall add ſome remarks, ſtill avoiding, as much as poſſible, any implication of the grounds of impeachment, & confining ourſelves to the extraordinary ſtrictures of the judge upon the conduct of the Houſe of Repreſentatives in their collective capacity, and of ſeveral individuals of that body in the diſcharge of delegated powers.

The *Letter* is addreſſed,

TO THE EDITORS OF THE FEDERAL GAZETTE.

GENTLEMEN,

AS ſoon as there appeared reaſon for believing, that the houſe of repreſentatives intending to adjourn, without prefering articles before the ſenate, in ſupport of the impeachment voted againſt me, the incloſed memorial was prepared, and tranſmitted (on Saturday laſt) to a member, with a requeſt, that he would preſent it, if ſuch an intention ſhould be aſcertained to exiſt. On laſt Monday, the morning of the day previouſly fixed for adjournment by a joint reſolution of both Houſes, articles of impeachment were reported by the committee; but it was clearly impoſſible for the Houſe to act upon them; nor does the time until which they were kept back, leave the leaſt room for ſuppoſing, that the committee, who made the report, intended that they ſhould be acted upon before adjournment.

But whatever may have been the intention with which they were reported, at ſuch a time, the effect undoubtedly will be, that they will paſs into the public prints, under the ſanction of a committee of congreſs, and even under the apparent ſanction of the Houſe itſelf; and that as they contain the moſt aggravated and inflamed conſtruction, which it was poſſible for paſſion and party ſpirit to put on the ex-parte evidence, whereon the vote of impeachment was founded, they will become a very powerful engine in the hands of calumniators and party zealots, for heightening to the utmoſt the prejudices and odium which all the former proceedings in this caſe are ſo well calculated to excite.

The report of theſe articles prevented the memorial from being preſented; the member to whom it was ſent having been of opinion, that the caſe, in which it was my wiſh to have it preſented did no longer exiſt. But as theſe articles have not been adopted by the Houſe, or even conſidered; as they muſt be taken up at next ſeſſion, and may then be rejected, or wholly varied; as the charges which I am to anſwer, and againſt which I ought to have been placed in a ſituation to prepare for defending myſelf, are thus left in the ſame ſtate of uncertainty as before the report; and as this report, far from accompliſhing the object which the memorial ſeeks, can have no other effect than to encreaſe and aggravate the injuries whereof it complains; I deem it proper now to make it public, as an appeal to my county, to the world and to poſterity, againſt the injuſtice and illegality of the proceedings in this caſe, and as a ſolemn proteſt againſt the principles on which they are founded. I therefore requeſt that you will pleaſe to inſert it, with this letter, in your uſeful and reſpectable paper.

That it may be ſeen that my impreſſion of the articles reported by the committee is not erroneous, I encloſe a copy of them, and requeſt that you will inſert them after the memorial. It is proper to ſtate that four (I believe) of the five members of the committee, who reported the articles, were the ſame members who collected and reported the teſtimony; and that fourteen days elapſed between the time when this committee was ordered to report articles, and the time when the report was actually made. This fact will aſſiſt in forming a judgment, as to the views, with which it was kept back until the laſt day of the ſeſſion. Had the report been made ſooner, as it might eaſily have been, the articles might have been rejected by the Houſe; or might at leaſt have been deprived, by amendments, of part of their wanton venom and abuſe.

I am, gentlemen,
Your obedient ſervant,
SAMUEL CHASE.

Baltimore, March 29, 1804.

☞ Judge Chaſe requeſts the editors of all the newſpapers in the United States to inſert his letter and memorial, and the articles of impeachment reported by the committee.

To the honorable the House of Representatives of the United States.

The Memorial of Samuel Chaſe, one of the Aſſociate Juſtices of the Supreme Court of the United States.

With the reſpect due to a branch of the government of his country; but with the frankneſs which conſcious and injured innocence has a right to aſſume, and which an early, zealous, and conſtant ſupporter of American liberty ought to uſe; your memorialiſt approaches your honorable body, to lay his complaints at your feet, and to call on your juſtice for redreſs.

He has delayed this ſtep until ſo late a period of the ſeſſion, becauſe he ſtill indulged the hope, that your honorable body would not adjourn, without reducing the charges againſt him to ſome ſpecific form; ſo that he might be enabled to know of what he is accuſed, and to direct his attention immediately to the means neceſſary for proving his innocence, and vindicating his character. But finding, at laſt, that an adjournment is about to take place, without any thing of this kind being done; that a vote of impeachment, reſting on no preciſe or ſpecific charges or facts, and ſupported only by ex parte teſtimony, is about to be left hanging, for a whole year, over his head; and that the publication of this teſtimony is permitted, in ſuch a way as to render it moſt injurious to his reputation, without leaving to him the poſſibility of combating it by counter-proof; his duty to that character, which he has ſupported unimpeached during a period of forty years, through all the troubles, difficulties, and dangers of the American revolution; to his family, whoſe happineſs, reſpectability, and eſtabliſhment in life, are materially implicated in whatever concerns his good name; to his country, which has honored him with many high and important truſts; to his office, which requires a reputation not only unſpotted but unſuſpected; and to himſelf—forbids him to remain longer in ſilence.

He therefore reſpectfully ſolicits and intreats, that your honorable body will not ſuffer an adjournment to take place, until articles of impeachment ſhall have been preferred againſt him. Thus, although an immediate trial, which his feelings would lead him to prefer, may not be poſſible at this protracted period of the ſeſſion, ſtill he will be enabled, knowing the preciſe charges againſt him, to make vigorous, ſpeedy and effectual preparations for his defence, to repel the malignant calumnies by which he is induſtriouſly and unceaſingly aſſailed, and fully to vindicate that innocence, for which he ſolemnly appeals to the Almighty Searcher of hearts, to the teſtimony of his own conſcience, to his country, and to an impartial poſterity. He is far from arrogating to himſelf an exemption from the uſual portion of human frailty. But for the purity of his intentions, for the uprightneſs of his conduct, and for the faithful and conſcientious diſcharge of his official duties, on all occaſions, according to the beſt lights of his underſtanding; he confidently appeals to that dread Tribunal where he and his accuſers muſt one day appear, where the inmoſt receſſes of all hearts ſhall be laid open, the moſt hidden motives of conduct ſhall be revealed, and calumny, malice, and party rage, ſhall for ever be put to ſilence.

He is the more ſtrongly induced to urge this requeſt, and to expreſs his earneſt hope that it will not be refuſed, by thoſe reflections which it has not been in his power to avoid making, on the courſe hitherto purſued in this proſecution.

That charges ſo weighty as to render a judge of the ſupreme court a fit object of impeachment for high crimes and miſdemeanors, ſhould have been ſuffered to reſt in oblivion for four years; although they are founded on facts perfectly notorious in their nature, and perfectly well known to the perſons who, after ſo great a lapſe of time, have at length made them the ground of a proſecution the moſt ſolemn known to our laws; that this proſecution, ſo long delayed, ſhould be commenced preciſely at the moment when a political change ſuppoſed by many, though he hopes unjuſtly, to be favorable to its ſucceſs, had taken place: are circumſtances but little calculated to impart confidence to the heart of innocence, or to quiet thoſe alarms which ſhe may feel when oppoſed to uncontrolled power.

Nor is the manner of commencing this proſecution, more conſoling than the time. A formal enquiry into the official conduct of a judge, muſt always be to him a matter of very ſerious moment. It muſt always expoſe him to very great uneaſineſs, and may render him obnoxious to the moſt unjuſt and injurious ſuſpicions It is wholly inconſiſtent with the humane and juſt principles of our laws, to ſubject a citizen to evils of this kind, without ſome ſpecific accuſation, reſting on facts preciſely ſtated, and ſupported by ſuch proof on oath, as renders their exiſtence at leaſt probable. No man, however mean his condition, or however infamous his character, can be bound over to undergo the enquiry of a grand jury, without ſuch an accuſation, and ſuch proof. A grand jury cannot liſten to any accuſation againſt a man, nor enquire into his conduct, much leſs put him upon his trial by finding a preſentment againſt him, unleſs ſuch an accuſation ſo ſupported be firſt adduced; and the perſon maliciouſly inſtigating the enquiry is liable, in caſe it ſhould be rejected, to a ſuit for reparation by the accuſed party. All theſe juſt and humane proviſions are eſtabliſhed by our laws, for the protection of innocence, not merely from puniſhment, but alſo from unfounded and vexatious enquiry. Every principle of reaſon, of juſtice, and of law, and every precedent, that deſerves or has received the weight of authority, concur in requiring the full application of theſe proviſions to the caſe of impeachment.

And yet in this proſecution all theſe proviſions have been completely diſregarded. An enquiry has been inſtituted, of the moſt ſerious import to the party accuſed, on the mere ſuggeſtion of a member in his place, unſupported by oath, or by any ſpecific ſtatement of facts, which if ſupported by oath would have juſtified an enquiry. This enquiry, thus inſtituted, in a manner the moſt unprecedented and alarming, far from being confined to any ſpecific charge or fact, is extended to the whole official conduct of a judge who has been above eight years in office, and authorizes the moſt minute inquiſition of his moſt unguarded and moſt inconſiderable words and actions, throughout the whole period. It cannot eſcape your honorable body, how formidable an engine of oppreſſion ſuch an enquiry muſt be, in the hands of perſons diſpoſed to abuſe it. Your memorialiſt is far from inſinuating that ſuch has been the caſe in the preſent inſtance. This inſinuation he could not make, or even ſuſpect to be well founded, without derogating from the reſpect that ought to be inſpired by ſo elevated a body: but the ſoundneſs of principles is in no manner ſo well teſted as by the conſequences to which they lead. And although it cannot be ſuſpected that this honorable body is under the influence of party ſpirit, party views, or individual malice, yet it is a melancholy truth that free governments are liable to the influence of party ſpirit, and that when this fatal paſſion takes full poſſeſſion of the mind, it completely ſtifles every ſentiment of juſtice and humanity, all regard for law and right. Should the time ever arrive, which God avert! when a majority of Congreſs, inflamed by party ſpirit, and ſeeking the deſtruction of its opponents, ſhall deſire to criminate a judge, in order to heap odium on the party with which he is connected; when a Preſident, at the head of this majority, and guiding its paſſions, ſhall deſire, from motives of private reſentment, the ruin of any judge; when the ſchemes of the dominant party, or of its leaders, may require the removal of all firm upright and independent judges, and the ſubſtitution of others more complying or more timid; when the neceſſities of a favorite partizan may require the removal of a judge, in order to create a vacancy in office; ſhould ſuch a diſaſtrous period ever arrive, as the hiſtory of other free governments informs us it may, in what manner will the devoted victim, however innocent, be able to ſhield himſelf againſt the thruſts of ſuch a weapon, as this ſpecies of enquiry, inſtituted in ſuch a manner, and on ſuch principles, cannot fail to furniſh? Your memorialiſt trembles for the honor of his country, and for the ſucceſs of republican government in this her laſt and faireſt experiment, much more than for his own ſafety, when he reflects on the exceſſes that under ſuch a cloak may be committed.

Does the manner in which this enquiry has been conducted, preſent any conſiderations calculated to remove or diminiſh the alarm excited by its commencement? Far otherwiſe! A great maſs of teſtimony has been taken, which though calculated to affect your memorialiſt in the moſt material manner, he has had no opportunity of confronting, croſs-examining or explaining. This teſtimony, in the taking of which ſome individuals were allowed to indulge themſelves in the moſt rancorous invectives againſt your memorialiſt, and to cloath with the formalities and ſanction of an oath, the malicious effuſions of their unprovoked and implacable reſentment; this teſtimony, thus tarniſhed with the deep ſtain of partiality, hatred and revenge, was printed piece-meal, in the progreſs of the enquiry, and though not immediately publiſhed, was placed in a condition to be extenſively circulated, and thus to be employed as a mean of deeply wounding the reputation of your memorialiſt, of exciting univerſal odium againſt him, and of preparing the way for a certain condemnation, when a clamour ſhall have been excited, ſtrong enough to drown the voice of reaſon, truth and juſtice.

Your memorialiſt by no means wiſhes to be underſtood as inſinuating that ſuch was the intention wherewith this ſtep was taken, his reſpect for the body by which it was authoriſed, forbids him to harbour ſuch a ſuſpicion. But ſuch may be the effect, and ſuch it muſt be, in his apprehenſion, unleſs your honorable body, by preferring ſpecific charges againſt him immediately, ſhall enable him to prepare ſpeedily and efficaciouſly for juſtifying his conduct and defending his character, againſt the unjuſt and wanton aſperſions with which this teſtimony abounds.

The recent publication of this teſtimony, in a Gazette underſtood to be the official organ of the government, and thence communicating an official character and ſanction to whatever of this nature appears in it, is a circumſtance calculated to increaſe, in a very great degree, the miſchievous effects of the teſtimony itſelf, and renders ſtill more important the meaſure which your memorialiſt ſo earneſtly ſolicits. From this Gazette, the publication will paſs into others; and thus the moſt virulent miſrepreſentations of his conduct, and ſlanders on his character, ſanctioned too, in ſome degree, by the vote of impeachment, will be ſpread throughout the United States; and will even extend to foreign countries; while the opportunity of refuting them, muſt, of neceſſity, be delayed for a conſiderable time, and, if articles of impeachment are not immediately exhibited, may be poſtponed to a very diſtant period.

He is ſtill more ſtrongly impreſſed with the neceſſity of demanding, as a ſacred right, this immediate exhibition of articles, when he reflects on the manner in which the impeachment was voted. It is in vain that he has looked, in this vote and in the report of the committee on which it is founded, for a ſtatement or even a hint of the offences with which he ſtands charged. He is impeached of "high crimes and miſdemeanors;" but in what theſe high crimes and miſdemeanors conſiſt, when, how and where they were committed, is no where declared. The teſtimony collected by the committee, does indeed ſtate a variety of facts, which may conſtitute the grounds of accuſation. The principles of juſtice and law, and the uniform courſe of practice, united in requiring, that each of theſe facts, or each that it is intended to rely on, ſhould be put by the committee into the form of a ſpecific charge, and made the ſubject of a diſtinct reſolution. The ſenſe of the Houſe would then have been expreſſed on every charge ſeparately, and each would have been ſupported or rejected, according to the opinion entertained by the majority reſpecting its truth and its ſufficiency.—Your memorialiſt would then have known, even without articles, what it is, of which he ſtands accuſed, and to what points to direct his preparations for defence. His family, his friends, his country, and the world, would have known what it is that has been called, "high crimes and miſdemeanors;" and would have been enabled to judge how far the accuſation is ſupported by the facts, and the facts by the proof.

There is another point of view in which your memorialiſt deems it his ſacred duty, a duty to his country more then to himſelf, a duty which no conſideration ſhall prevent him from performing, to enter his moſt ſolemn proteſt againſt this part of the proceeding. His proteſt may not now be heard. The paſſions and prejudices of the moment may drown his voice. But it will one day be heard and ſeriouſly liſtened to.—The American people will hear it, poſterity will hear it—and the lovers of liberty, in every age and country, will unite in aſſerting the juſtice of his complaint.

He complains that by the method purſued in voting this impeachment, a majority has been obtained in favor of the general vote, while it is poſſible and even probable, that there is not a majority in favor of any one of the ſeparate charges on which the vote is founded. The accuſations againſt him, ſo far as can be collected from the teſtimony and from the ſpeeches of members, are very various. Let it be ſuppoſed that four charges are chiefly relied on, viz. the trial of Fries, the trial of Callender, the proceedings at Newcaſtle, and the charge to the grand jury in Baltimore. It is perfectly manifeſt that theſe charges are wholly diſtinct, and cannot ſupport or ſtrengthen each other. Each is a miſdemeanor in itſelf, or it is not. Therefore there ought to be a majority in favor of each ſeparately, before it can be made the ground of impeachment.

Let it then be ſuppoſed, which is not only poſſible but highly probable, that thirty members and no more, conſidered the conduct of your memorialiſt in the trial of Fries, as a proper ground of impeachment. In that caſe it is manifeſt that your memorialiſt ought not to be impeached on that charge, there not being a majority in favor of it. In like manner there may have been but thirty members in favor of impeaching him, on account of Calender's trial; and ſo of the other two charges. Thus although there might be but thirty members in favor of impeaching, on any one of the four charges, in which caſe it is manifeſt that there ought to be no impeachment, yet, when all the charges are blended into one general queſtion, every member who conſiders any one charge as a proper ground of impeachment, and all the others as not proper grounds, muſt vote in the affirmative; and thus there will appear a majority graet in favor of a meaſure, which is actually diſapproved by a great majority. This is an innovation ſo ſtriking, ſo alarming, ſo repugnant to all former practice, and to all ideas of juſtice and law, that it may be ſafely pronounced to furniſh, eſpecially when combined with the principle of indefinite enquiry without previous ſpecific allegations, and of ex parte teſtimony, the moſt formidable, the moſt irreſiſtible engine of oppreſſion, under the forms of law, that ever was placed in the hands of power: and if the time ſhould ever arrive, which Heaven in its mercy avert! when this engine ſhall be