NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

Vol. V. | WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. | NO. DCLI.

FIVE DOLLARS PER ANNUM. | FRIDAY, DECEMBER 7th, 1804. | PAID IN ADVANCE.

CONGRESS.

HOUSE OF REPRESENTATIVES.

Debate in Committee of the whole.

ON THE

IMPEACHMENT

OF

JUDGE CHASE.

MONDAY, December 3, 1804.

Mr. Varnum in the Chair.

The reported articles were read.

Mr. Elliot. It will be recollected, Mr. Chairman, by every member of the committee who was present at the close of the last session, that upon the report of the committee of inquiry, recommending the impeachment of Judge Chase, no member but myself thought proper to deliver his sentiments. I feel no inclination to retravel the ground which I then occupied in solitude; especially as the opinions which I then advanced remain unaltered. Nor have I a disposition to embarrass the proceedings. I wish, indeed, to simplify them. But I feel it my duty to suggest that course of proceeding, and that mode of decision, which I believe to be demanded equally by our duty to the person accused, to our own consciences, and to our country; and I shall suggest them with confidence rather than with diffidence, because they are so extremely obvious. I believe it to be our duty deliberately to investigate the principles involved in the report, some of which are certainly novel, and to take distinct questions upon each general head of accusation. Because I think Mr. Chase ought to be impeached for two or three misdemeanors, I cannot give my vote in favor of articles accusing him of eight high crimes and thirty or forty misdemeanors. If I should be so fortunate as to be seconded in the opinions which I entertain upon this subject, I will move to amend the report upon the table by striking out that part which relates to the conduct of judge Chase on the trial of John Fries, and which is now comprised in the first article.

The motion being seconded,

Mr. Smilie asked if the motion was in order, observing that the report consisted of a number of distinct propositions which he conceived were to be considered in the usual way article by article and the question would be, either to concur or non-concur. The gentleman (Mr. E.) might gratify his zeal in this way as well as in the mode he had proposed for striking out, and the result would be the same—It would furnish an opportunity for every member to speak for or against each article, as well as to amend any.

Mr. Elliot replied that he was not tenacious of form. His only object was to obtain distinct questions. If the committee of the whole were disposed to pursue the course pointed out by the gentleman from Pennsylvania, he would withdraw his motion.

The Chairman gave it as his opinion that the proper mode of proceeding would be to take the report up by articles.

On the first article being read,

Mr. Elliot moved to strike it out.

The Chairman said the motion to strike out the first section was in order, and was usual in the case of a bill in order to decide upon its merits—but in independent articles like the present it would be preferable to take the question on concurring, so that the opinion of the committee might be ascertained on each article.

Mr. Smilie expressed an indifference as to the mode of decision, but he believed what he had suggested was conformable to all former rules and practices.

Mr. J. Randolph, after a short pause, said that the question of concurrence with the select committee in his opinion ought to be taken on each article, separately, and for his part he had no objection to take it upon each separate member of each article, if any gentleman wished it to be taken in that way.

Mr. Nicholson observing that there was no question before the committee, conceived that one ought to be presented for their decision. He therefore moved that the committee of the whole concur with the select committee & agree to the first article. Which being seconded the question was put by the Chairman, a division was called for, and 78 Members rising in the affirmative, it was carried without reversing the question—78 being more than a majority of the whole House had all the Members been present.

The 2d article under consideration.

Mr. Dawson. This mode of proceeding incurs some difficulty which might be prevented by the motion to strike out, as in the latter case the principle upon which the article is grounded would be tested, and if the principle was adopted the phraseology might be varied and amended as might be thought proper.

Chairman. The committee has already determined to proceed in a different manner, it therefore does not rest upon the discretion of the Chair.

Mr. Smilie suggested the propriety of reading the evidence in support of each article, as there were many gentlemen here who were not present at the last session when the testimony was both read and printed.

Mr. Findley seconded the motion.

Mr. Nicholson. Reading the testimony will occupy the whole day, it constitutes the volume in my hand (a volume of apparently 200 pages.)

Mr. Smilie would not call for its reading on his own account; he had already perused the testimony, but there were several Gentlemen now present who were not here at the last session, who perhaps have not had an opportunity of seeing the documents, and he believed gentlemen generally voted with more satisfaction on subjects with which they are well acquainted than on those where doubts or apprehensions are entertained. Besides he deemed it more safe and dignified to proceed with caution and due deliberation on so serious a question as that of impeaching a person holding one of the most important stations in the government.

Mr. Nicholson. The manner of proceeding in the business of impeachment at the last session, was, to read such parts of the testimony upon the call of a Member as related to the particular article under consideration. He recollected upon the impeachment of Judge Pickering that the gentleman on the other side of the House from New Hampshire called for reading the particular part of the testimony, most likely to extricate the officer impeached, or produce a conviction in the minds of others such as he felt himself—he hoped the same course of proceeding would be adopted by the committee, and such portions would from time to time be read as Members required.

The Chairman put the question on reading the testimony generally, which was lost on the division, being only 40 in the affirmative, and 56 in the negative.

The second article being under consideration.

Mr. Boyle moved to amend the latter part of the article by striking out the words in Italic and inserting those in a parenthesis—"John Basset one of the Jury who wished to be excused from serving on the said trial because he had made up his *as to* (that) the publication from which the words charged to be libellous in the indictment *were extracted* (was within the statute of the United States upon which the said Callender was indicted) &c." Making the allegation in this way you will find it fully supported by the testimony, for they are the words of the testimony itself; it is said the 8th Juror acknowledged that he had formed an unequivocal opinion that such a book as "the Prospect Before Us" came within the sedition law.

Mr. —— supposed that the rule adopted by the committee against the reading of the general testimony would not prevent particular parts as they apply to particular points from being read, he therefore called for reading so much of the evidence as related to the Juror mentioned in the 2d article.

Mr. Nicholson mentioned page 133 of the depositions of the witnesses on the part of the United States as the place where the clerk would find what the gentlemen wanted.

Which being read as follows:

"Perhaps it is not improper here to observe, that the eighth juror answered when the previous question was put to him, that though he had never read or heard the charges in the indictment, and knew not what the traverser had published, yet he had formed an unequivocal opinion, that such a book as "*The Prospect Before Us*," was, came within the sedition law: But no objection was made to him, and he was sworn like the rest."

Mr. *J. Randolph* referred to page 56 near the top for other corroborative evidence.

The clerk read the following:

"One of the jury, John Basset, stated that he was unwilling to serve, having made up his mind as to the book called "The Prospect, &c." but as he acknowledged that he had not formed and delivered an opinion concerning the charges in the indictment, because in fact, he knew not what they were, *his* objection was over-ruled."

And also from page 61, as follows;

"It is to be observed that Mr. Bassett who had been summoned on the jury, seemed to have considerable scruples at serving, and stated that he had expressed some opinion as to the "Prospect Before Us." Judge Chase however declared Mr. Bassett a good juror, and he was sworn and acted as a juror."

Mr. J. Randolph thanked his friend from Kentucky for every suggestion tending to improve the report of the committee, confident that his motives were highly commendable. The report has been referred by the House to a committee of the whole for the purpose of obtaining by a full, fair and free, discussion, two objects; first, to determine whether the charges exhibited are such as the House are willing to prefer against the person impeached, and in order if they be found incorrect to make them as perfect as possible. On both these points I invite discussion in the name of the select committee, who brought in this report. At the same time I wish to suggest to my friend (Mr. Boyle) the propriety of re-examining his idea, and ascertaining whether the eighth juror alluded to in the account of Callendar's trial is the juror mentioned in the testimony of Mr. Hay, and of Mr. Nicholas. These gentlemen mention the juror by name. Mr. Robinson's account of the trial mentions him by number. Now if it should appear that the eighth juror was not Mr. Basset, must not the article fall to the ground if the proposed alteration should take place. I think it one of the strongest circumstances in this article that a juror was compelled to serve after stating that he had made up his mind as to the criminal offence on the question he was about being sworn well and truly to try. The committee will perceive a considerable variation between the testimony in page 133 & 56. In the first the writer introduces "with a perhaps it is not improper here to observe," that the eighth juror answered when the previous question was put to him, that though he had never read the indictment, yet he had formed an opinion that such a book as the "Prospect before us" came within the sedition law. This I believe is the amount of what is said in that page, and it appears from this to be an incidental circumstance only; whereas if you turn to page 56 it is there stated with the clearest precision, that he was unwilling to serve because he had made up his mind on the book called the Prospect. It does not appear to be drawn from him by the previous question, but it does appear fully and unequivocally to be of his own mere motion, a conscientious scruple to try what he had already past judgment upon. In my opinion the report is better as it stands than it would be with the alteration, and I submit to my friend from Kentucky (Mr. Boyle) whether it would not be better to let the article stand, rather than fail before the senate, if it should turn out the 8th juror and Mr. Basset are different persons.

Mr. *Boyle* had heard no objection but which might be obviated by another amendment, that was to strike out the name of John Basset, and then it would apply to the juryman who had used the expression; in that case the House might rely in sustaining their impeachment before the Senate upon the evidence as well of page 133 as on that of 56. He moved to strike out "John Basset."

Mr. *Nicholson* did not think it necessary that the words proposed to be stricken out should be struck out. He thought that under the words contained in this article as it stood it would be perfectly regular and proper even on a trial proceeding before the Senate to give in evidence the testimony alluded to in page 133. And he had no doubt but the Senate would admit all evidence of this kind to have its proper weight, because it seems to be universally admitted and has been long understood, that in proceedings by way of impeachment that technical precision is not required, which is required by our courts of law on indictment. If however gentlemen are embarrassed, about having this testimony directly pointed, this may be easily come at. They can add it to the article as another count is added to a bill of indictment. This mode is very well known, and may be adopted by those who think it necessary; for his part he did not think it necessary.

Mr. Boyle withdrew his motion for the present.

The question was now taken on the second article and carried, eighty members rising in the affirmative.

The third article before the committee.

Mr. J. Randolph read the following testimony in support of this article, viz.

"When the trial commenced, Col. John Taylor, of Caroline, was introduced as a witness for the prisoner. I believe he was sworn. The counsel wished to interrogate him. This they were not permitted to do, until they had stated the points to which his evidence related. They were then obliged by Mr. Chase, to reduce the questions, which they wished to propound to Col. Taylor, to writing, and then to submit them to his inspection, that he might determine, whether they should be propounded or not.

"Col. Taylor's evidence was rejected.

"The ground of this opinion as stated by Mr. Chase was this, that col. Taylor could not prove the whole of one charge. The charge was, the judge (Chase) said, "that the President was a professed aristocrat—that he had proved faithful and serviceable to the British interest." Proving half, he said, was doing nothing; both facts must be proved. It was contended, on the part of the prisoner that if it was necessary to prove both facts by the same witness, the charge in both points would be proved by the testimony of col. Taylor. He would prove that Mr. Adams had professed aristocratical opinions; and that he had proved faithful and serviceable to the British interest, in the way meant by "the Prospect, &c." by voting against the sequestration law, and the law suspending all intercourse with Great Britain. The judge (Chase) repeated that the evidence was inadmissible, that the counsel knew it to be so, and that they only wanted to deceive and to mislead the populace."

And afterwards he added the following, viz.

"*Interrogatory 4th.* Did Mr. Chase refuse to the prisoner the testimony of a witness, because he, the said witness, could not prove the truth of all the facts set forth, and upon which the indictment was grounded?

"*Answer.* After the jury in Callender's case were sworn, Col. Taylor, of Caroline, who attended as a witness, in consequence of a subpœna served upon him on behalf of Callender, was called to the book and sworn in the usual form. Judge Chase at this moment asked, with considerable haste and eagerness of manner, what the counsel expected to prove by the witness? He was informed that they meant to ask him whether Mr. Adams had not avowed in his presence, sentiments inimical to a republican form of government, and whether he did not, whilst Vice-President, give the casting vote in the Senate against the sequestration of British debts, and against the suspension of intercourse with Great Britain. Judge Chase demanded that the counsel should state in writing the questions meant to be asked. The counsel for the defendant opposed this, because, although a number of witnesses had been examined on the part of the United States, no similar requisition had been made with respect to them, because it was contrary to the practice in the state courts, and because also it was unreasonable in itself, & calculated to subject every question of fact to the controul of the court. Judge Chase, however, insisted that the questions should be submitted to his previous decision. They were accordingly put in writing, and were as follow, to wit:

"1. Did you ever hear Mr. Adams express any sentiments favorable to monarchy or aristocracy—and what were they?

2. Did you ever hear Mr. Adams, whilst Vice-President, express his disapprobation of the funding system?

"3. Do you know whether Mr. Adams did in the year 1794, vote against the sequestration of British debts, and for stopping all intercourse with Great Britain?

"After having examined the questions, judge Chase declared that Col. Taylor's evidence was inadmissible. He declared that no evidence could be received that did not justify the whole charge. The charge, said he, is, that the traverser said of the President, he is a professed aristocrat and has proved faithful to the British interest;—now you must prove both points, or you prove nothing; and as your evidence relates to one only, it cannot be received—you must prove all or none. This was in substance, and it is believed the precise words in which Judge Chase stated his objection to Col. Taylor's evidence. The counsel asked the judge whether they could not be allowed to prove part of a charge by one witness and part by another? To this judge Chase replied, that if the counsel could prove the whole of any one charge by Col. Taylor, they might do it, otherwise they should not examine him. The counsel contended that Col. Taylor's evidence applied to the whole of the charge which the judge had stated in his opinion.—That they meant to prove by him, that the President had professed anti-republican sentiments, and had proved faithful and serviceable to the British interest, in the sense in which those expressions were used in the Prospect. The judge, however, adhered to his determination to exclude the evidence; and Col. Taylor retired from the court with evident marks of astonishment."

The question was taken upon the third article without a division, and carried.

The fourth article being before the committee, it was considered by paragraphs.

Mr. *J. Randolph.* The testimony in support of the first paragraph has been read on the preceding article; in is that part of Mr. Nicholas's testimony stating the demand of judge Chase that the counsel should state in writing the questions meant to be asked.

The chairman proceeded to read the second paragraph and

Mr. *J. Randolph* read in its support, the following affidavit:

City of Richmond, to wit:

This day James Thomson Callender, made oath before me, a magistrate for the said city, that William Gardner, Tench Coxe, Judge Bee, Timothy Pickering, William B. Giles, Stevens Thomson Mason, and General Blackburn, he believes to be material witnesses in his defence, against an indictment found against him during the present term of the circuit court of the United States for the middle circuit Virginia district;—That William Gardner, aforesaid, resides, he believes, in *Portsmouth*, in the state of New-Hampshire;—That Tench Coxe, aforesaid, resides in Philadelphia, in the state of Pennsylvania;—That judge Bee resides, the deponent hath understood, in South-Carolina, but in what part of the state he knows not;—That Timothy Pickering, aforesaid, resided of late in Philadelphia, in the state of Pennsylvania, but where he resides at this time the deponent doth not know;—That William B. Giles, aforesaid, he hath understood, since he hath been furnished with a copy of the indictment, and since the said Giles hath left town, resides in the county of Amelia, and that General Blackburn resides in the county of Bath.

"The said James Thomson Callender further declares, that he expects to prove by the said Wm. Gardner, and that he verily believes that he shall prove by the said William Gardner, that the said William Gardner was commissioner of loans for the state of New-Hampshire, under the government of the United States, and that he was turned out of the said office of commissioner of loans, because he the said Gardner refused to subscribe an address circulated in the town of Portsmouth, in New-Hampshire, and presented to the President of the United States, in the year 1798, at the instance of several inhabitants of the said town; in which address unequivocal approbation of the conduct of the said President in the administration of the United States is expressed.

"2d. The said James Thompson Callendar also declares on oath;—That he verily believes that he shall prove by the evidence of Tench Coxe aforesaid, that he, the said Tench Coxe, in the year 1798, held an important office under the government of the United States, to wit, commissioner of the revenue, from which office the said Coxe was ejected by the present President of the United States; because he did not approve the measures of his, the said President's administration, or the principles on which it was conducted.

"That he verily believes he shall be able to prove by the evidence of Judge Bee, that he did receive from the President of the United States in the year 1799, a letter in which he the said President did advise and request the said Judge Bee, then acting in his judicial character, to deliver to the Consul of the British nation in Charleston, Jonathan Robbins alias Thomas Nash, who had been apprehended and carried before the said Judge on a charge of murder committed on the high seas on board the British frigate Hermione.

"He further deposes on oath, that he verily believes that he shall be able to prove by the evidence of Timothy Pickering, that the President of the United States was in possession of dispatches from Mr. Vans Murray, American minister in Holland, containing assurances