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CONGRESS.

HOUSE OF REPRESENTATIVES.

DEBATE
ON THE
IMPEACHMENT
OF
JUDGE CHASE.

TUESDAY, December 4.

The House proceeded to consider the report of the committee of the whole made yesterday, on the articles of impeachment against *Samuel Chase.*

Mr. Rodney had not been convinced of the necessity or propriety of the amendments adopted yesterday in committee of the whole. For his part he was inclined to believe the articles for every material purpose correct as they first stood. It will be remembered that in cases of impeachment by a legislative body we are not tied down to those forms and that technical precision, which in courts of law are so essential. The maxim is that they may express themselves in the common language of the country, in common parlance, or *loquendum ut Vulgus* as it is stated in the books. Therefore the words on the trial of a person include every relative to the trial, it is so laid down by lord Hale, and he is followed in the opinion by all the able writers who have treated on this subject to the present day. All arrangements previous to the testimony, and argument, are as much a part of the trial as the arguments of counsel. So that were even technical phraseology required on this occasion, the language of the articles comes up to it in this particular. He hoped the House would refuse its concurrence to the amendments reported from the committee of the whole.

On the question for concurring with the committee, it passed in the negative, so that article the first remains unaltered, and the like fate attended the amendment proposed to article 4th.

Mr. *Nicholson* meant to require that the yeas and nays be taken upon each article separately.

Mr. R. *Griswold* would cheerfully join in the call as he wished to record his vote against every part of this very extraordinary proceeding.

The first article before the House.

Mr. Lucas wished to ask it it would be at this time in order to propose an amendment to the first article. He was informed by the Speaker that such a motion was in order. He thereupon proceeded to move to strike out what related to the conduct of judge Chase in saying "to the disgrace of the character of the American bench." He moved this amendment from an impression that the improper conduct of one judge could not be a reflection upon the proper conduct of another judge. If he was one he should not consider himself disgraced because his colleague had acted improperly—if then one cannot be disgraced by another, much less can the whole be disgraced by the improper conduct of one. The word bench extends to the whole courts of the United States. He did not like either to use a figurative word for a legal one, such as the word bench for court; he did not rely much upon this, but he thought so serious a matter as that of impeachment ought to be cautiously express'd. Should judge Chase be convicted on this impeachment, he will be disgraced, but that disgrace will entirely rest upon his own head. He trusted that if his motion succeeded, there would still remain enough in the charge to make him highly reprehensible, if found guilty; for it is stated that his conduct was in manifest violation of law and justice, and in open contempt of the rights of juries.

Mr. *Elliot* was pleased with the ingenuity of the gentleman, but he hoped the motion would not prevail, and observed that if they were to have a discussion on every rhetorical flourish, on every trope or figure introduced in the report, they would not get through the business in an age. But the objection against the word bench did not apply, for he considered it one of the most chaste in the whole composition.

On the question the amendment was not carried.

The question on agreeing to the first articles was taken by Ayes and Noes, which are as follow:

Yeas.—Messrs. Alston, jun. Anderson, Archer, Bard, Beninger, Bishop, Blackledge, Boyd, Bayle, Brown, Bryan, Butler, G. W. Campbell, Casey, Claiborne, Clark, J. Clay, M. Clay, Conrad, Crowninshield, Cutts, Dawson, Earle, Early, Elmer, Eppes, Findley, Gillespie, Goodwin, Gray, Gregg, Hasbrouck, Heister, Holland, Holmes, Jackson, Jones, Kennedy, Knight, Larned, Leib, Lucas, M'Cord, M'Greery, Meriwether, N. R. Moore, T. Moore, Morrow, Mott, Nelson, New, Newton, jun. Nicholson, Olin, Palmer, Patterson, J. Randolph, T. M. Randolph, J. Rea, of Pen. J. Rhea, of Ten. Riker, Rodney, Root, Sammons, Sandford, Seaver, Sloan, Smilie, Southard, Stanford, Stanton, Thomas, Thompson, Trigg, Van Horne, Varnum, Whitehill, Williams, Wilson, Winn, Winston, and Wynns. 82.

Nays.—Messrs. Baldwin, Betton, J. Campbell, Chamberlain, Chittenden, Clagett, Cutler, Dana, Davenport, Dwight, Elliot, Goddard, Griffin, G. Griswold, R. Griwold, Hastings, Hough, Hunt, Lewis, jun. Livingston, Lowndes, Mitchell, Plater, Purviance, J. C. Smith, J. Smith, Stedman, Stephenson, Taggart, Tallmage, Tenney, Thatcher, Tibbits, and Wadsworth. 34.

The question on agreeing to the second article was taken by Ayes and Noes, and are as follow:

Yeas.—Messrs. Alston, jun. Anderson, Archer, Bard, Bedinger, Bishop, Blackledge, Boyd, Boyle, Brown, Bryan, Butler, G. W. Campbell, Casey, Claiborne, Clark, J. Clay, M. Clay, Conrad, Crowninshield, Cutts, Dawson, Dickson, Earle, Early, Elmer, Eppes, Findley, Gillespie, Goodwin, Gray, Gregg, Hasbrouck, Heister, Holland, Helmes, Jackson, Jones, Kennedy, Knight, Larned, Leib, Lucas, M'Cord, M'Creery, Meriwether, N. R. Moore, T. Moore, Morrow, Nelson, New, Newton, jun. Nicholson, Olin, Palmer, Patterson, J Randolph, T. M. Randolph, J. Rea, of Pen. J. Rhea, of Ten. Riker, Rodney, Root, Sammons, Sandford, Seaver, Sloan, Smilie, Southard, Stanford, Stanton, Steward, Thomas, Thompson, Trigg, Van Horne, Varnum, Whitehill, Williams, Wilson, Winn, Winston, and Wynns. 83.

Nays.—Messrs. Baldwin, Betton, J. Campbell, Chamberlin, Chittenden, Clagett, Cutler, Dana, Davenport, Dwight, Elliot, Goddard, Griffin, G. Griswold, R. Griswold, Hastings, Hough, Hunt, Lewis, jun. Livingston, Lowndes, Mitchell, Mott, Plater, Purviance, J. C. Smith, J. Smith, Stedman, Stephenson, Taggart, Tallmage, Tenney, Thatcher, Tibbits, and Wadsworth. 35.

The question on agreeing to the third article was taken by Ayes and Noes, and are as follow, viz.

YEAS—Messrs. Alston, jun. Anderson, Archer, Bard, Bedinger, Bishop, Blackledge, Boyd, Boyle, Brown, Bryan, Butler, G. W. Campbell, Casey, Claiborne, Clark, J. Clay, M. Clay, Conrad, Crowninshield, Cutts, Dawson, Dickson, Earle, Early, Elmer, Eppes, Findley, Gellespie, Goodwyn, Gray, Gregg, Hasbrouck, Heister, Holland, Holmes, Jackson, Jones, Kennedy, Knight, Larned, Leib, Lucas, M'Cord, M'Creery, Meriwether, N. R. Moore, T. Moore, Morrow, Mott, Nelson, New, Newton, jun. Nicholson, Olin, Palmer, J. Randolph, T. M. Randolph, J. Rea (of Pennsylvania) J. Rhea (of Tennessee) Riker, Rodney, Root, Sammons, Sandford, Seaver, Sloan, Smilie, Southard, Stanford, Stanton, Stewart, Thomas, Thompson, Trigg, Van Horne, Varnum, Whitehill, Williams, Wilson, Winn, Winston, Wynns. 83.

NAYS—Messrs. Baldwin, Betton, J. Campbell, Chamberlin, Chittenden, Clagett, Cutler, Dana, Davenport, Dwight, Elliott, Goddard, Griffin. G. Griswold, R. Griswold, Hastings, Hough, Hunt, Lewis, jun. Livingston, Lowndes, Mitchell, Plater, Purviance, J. C. Smith, J. Smith, Stedman, Stepenson, Taggart, Tallmage, Tenney, Thatcker, Tibbitts, Wadsworth. 34

The fourth article being under consideration.

Mr. Elmer was not satisfied with that part of the article which charges the judge with criminal conduct in his choice of words in conflicting with the prisoners' counsel; the expressions on both sides might have been unusual and rude, for from the statement of the trial it appears that there was some considerable altercation, and he could not see from the evidence how far the conduct of the counsel for the prisoner was correct; perhaps they might have furnished some cause for reprehension or have excited such a sentiment in the mind of the judge. The other parts of the article he considered of the highest moment, and should give them his hearty approbation.

Mr. J. Randolph observed to the gentleman that he might attain his object by moving to strike out the parts he disliked.

Mr. Elmer believed he could reach his object in that way, and thereupon moved to strike out the third and 4th sections of the article.

Mr. Jackson hoped the gentleman would not persist in his motion, and requested him to cast his eye over the 6th article of the amendment to the constitution, where he would find that the accused person has a right secured to him on his trial to be assisted by counsel in his defence.—If the counsel are deterred from rendering that assistance by the rude and insolent conduct of a judge, such judge may say peremptorily that counsel shall not be heard. It is the same thing in the end, and whatever way it is brought about it is a heinous crime on the part of the judge, who may in this way become paramount to both the law and the constitution if such things are permitted with impunity. In the present case he deemed the third and fourth sections to be of importance, and trusted that if the mover persisted, he would be defeated.

Mr. Elmer acknowledged that indubitably every man had a right to be heard by counsel in his defence, but a constitutional declaration on that point did not go to authorise counsel to insult the court; he did not say what was the aggravation or who gave it, but he observed in the testimony that much altercation had taken place between them.

Mr. *Jackson* called for the reading of Mr. Hay's testimony already quoted in committee of the whole—It was read again.

Mr. *J. Randolph* hoped the House would not agree to strike out the paragraphs in question. To those gentlemen of the House who have the pleasure of knowing Mr. Hay, it will be deemed sufficient that he had made the statement just read, in order to be fully impress'd with its truth. To those gentlemen who are not acquainted with him, an additional reason may be given for its truth. The fact is, that the conduct of the judge on the occasion stated in the article, was such as to excite universal indignation throughout Virginia, and it is believed throughout the United States. To allay this irritation and defend the judge's conduct, it has been supposed that the trial of Callender was published, but be the motives for publication what they may, it is a matter of great notoriety, that the gentleman who reported it, was a violent political partizan for the party then in power—and it was generally understood that the printed report of the cause tended to soften the public feelings, which had been excited against the judge by the relation of those who had been present at the trial; and on the point of treating the counsel rudely and contemptuously, it ought to be noticed that the reporter acknowledges he was not present on the first days of the trial. That it was not an unfavorable detail of judge Chase's conduct might be inferred from this circumstance, that the committee sent for this testimony, on the suggestion of a gentleman from Connecticut—But even this report of the trial establishes beyond a doubt all the allegations in the part moved to be stricken out; and when you recollect the time it was published, and the appearances at that time it cannot be supposed it was meant to criminate him. No; it was meant to rescue him from popular odium. Mr. Wirt, one of the counsel, on addressing the court, was interrupted by judge Chase in these words, "take your seat, sir, if you please." Is this the usual language from the bench to the bar? Let the clerk read that account of the trial, and you will find it a tissue of damning evidence of every fact set forth in the article.

The question on the amendment was taken and lost.

The question was taken on the fourth article by yeas and nays, and are as follow:

YEAS—Messrs. Alston, jun. Anderson, Archer, Bard, Bedinger, Bishop, Blackledge, Boyd, Boyle, Brown, Bryan, Butler, G. W. Campbell, Casey, Claiborne, Clark, J. Clay, M. Clay, Conrad, Crowninshield, Cutts, Dawson, Dickson, Earle, Early, Elmer, Eppes, Findley, Gillespie, Goodwyn, Gray, Gregg, Hasbrouck, Heister, Holland, Holmes, Jackson, Jones, Kennedy, Knight, Larned, Leib, Lucas, M'Cord, M'Creery, Meriwether, N. R. Moore, T. Moore, Morrow, Mott, Nelson, New, Newton, jun. Nicholson, Olin, Palmer, Patterson, J. Randolph, T. M. Randolph, J. Rea (of Pennsylvania) J. Rhea (of Tennessee) Riker, Rodney, Root, Sammons, Sandford, Seaver, Sloan, Smilie, Southard, Stanford, Stanton, Stewart, Thomas, Thompson, Trigg, Van Horne, Varnum, Whitehill, Williams, Wilson, Winn, Winston, Wynns. 84

NAYS—Messrs. Baldwin, Betton, J. Campbell, Chamberlin, Chittenden, Clagett, Cutler, Dana, Davenport, Dwight, Elliott, Goddard, Griffin, G. Griswold, R. Griswold, Hastings, Hough, Hunt, Lewis, jun. Livingston, Lowndes, Mitchell, Plater, Purviance, J. C. Smith, J. Smith, Stedman, Stephenson, Taggart, Tallmage, Tenney, Thatcher, Tibbits, Wadsworth—34.

The fifth article under consideration.

Mr. *Kennedy* declared himself opposed to this article, and asserted that the testimony did not support it. He had read and investigated the act of the assembly of Virginia, and found that the section relied upon was susceptible of another construction. He quoted the words of the act, and added, here we find that the court may order the clerk to issue a summons, *or other proper process.* These words are suppressed in the article under consideration. It is a known maxim in courts of conscience, that the suppression of a truth, or the suggestion of a falsehood are equally weak and wicked. And it ought to be deemed equally improper for us to suppress a truth, or alledge a falsehood, in so solemn a transaction as that of an impeachment. If after the word summons in the article we were to insert the words *or other proper process,* it might go a great way towards altering the opinion of members.——What other process can issue besides a summons? If you will not trust a summons you will take the body; this is a capias. If there be no other than these two writs, it was in the discretion of the judge to order a capias. If a person commits a great crime, though not capital, a capias may be the proper process; for a summons will only be a notice to the party to run off. He therefore could not agree to the first part of the article, and the latter part was left unsupported, if the other failed. If the court had a right to award a capias, it necessarily followed that the party must be arrested if found, and if arrested, he must be committed to close custody, or give bail for his appearance; there is no other mode of avoiding imprisonment upon arrest. Has there appeared any proof that Callender made an application to be bailed? If he did not, he could not be refused by the judge. Nothing of this kind has been heard in proof, and until then we ought to withhold our assent to the latter part of the article.

Mr. *Nicholson.* The laws of Virginia relative to this point, if he recollected rightly, were that in capital cases a capias is ordered to issue for the apprehension of the offender; but in cases of crimes less than capital a summons, or other proper process shall issue. What is the practice in that state? He had never understood that it was the practice there to issue a capias for the apprehension of small offences, but a summons to answer at the next court after the presentment.

Mr. *J. Randolph.* My friend (Mr. N.) is not mistaken in the law, and the practice so far as he knew it was what every reasonable man would suppose it ought to be, that is consonant with the law itself. There are two distinct species of crimes, one capital, the other not capital. The first species is divided into treasons and felonies—The second contains all other lesser crimes. For the first it is mentioned in the law itself, that a capias is the proper process; but in the second it is to be by summons, or other proper process to the next court.——By confining the writ of capias to capital cases it also infers that a capias is not a proper process in cases under capital.—If the court awarded a capias then in Callender's case, they did what the law did not authorise them to do, and which the practice in our state courts did not warrant. Instead of this defence of the judge, he suspected the defence would be exonerating the judge at the expence of the clerk, who issued the writ; that being the act of the clerk, they would not hold the judge responsible therefor. It will be recollected that the capias issued after the indictment was found, and that the prisoner was tried in the same term. Mr. Hay in his testimony sets this matter in a very clear point of view. The capias was issued by the clerk on the award of the court, at the instance of the prosecuting officer. If, concluded Mr. R. there is one article I put more reliance on than another, this is the very article.

Mr. Beckley (the Clerk) read extracts from the laws of Virginia on these two points—

Mr. Kennedy agreed that the conduct of the judge in ruling the part to trial at the same term he was presen

y

ed was a high handed arbitrary proceeding; but that is the charge contained in the 6th article which he much approved of, and should certainly vote for.—But he had not been influenced by any thing said to change his opinion; he should therefore vote against the 5th article.

Mr. Alston observed that the laws of Virginia spoke only of presentment, "that upon *presentment* by any grand jury of an offence not capital the court shall order the Clerk to issue a summons for the party to appear and answer such *presentment* at the next court." Callender was indicted and there being a difference between presentment and indictment, it appears that the court had a discretion as to the time of trial; this however seemed to him to be the case.

Mr. J. Randolph replied by reading the warrant, annexed to the articles of impeachment, in which are the words "to answer a certain presentment found against him (Callender) by the grand jury."

The question on agreeing to the 5th article under consideration was carried, the yeas were 72, and nays 45, and are as follow, viz.

Yeas.—Messrs. Anderson, Archer, Bard, Bedinger, Bishop, Boyd, Boyle, Brown, Bryan, Butler, Casey, Claiborne, Clark, J. Clay, M. Clay, Conrad, Crowninshield, Cutts, Dawson, Dickson, Earle, Eppes, Findley, Gillespie, Goodwyn, Gray, Gregg, Hasbrouck, Heister, Holmes, Jones Knight, Larned, Leib, Lucas, M'Cord, Meriwether, R. Moore, T. Moore, Morrow, Nelson, New, Newton, jun. Nicholson, Olin, Palmer, Patterson, J. Randolph, T. M. Randolph, J. Rea, (of Pennsylvania) J. Rea, (of Tennessee.) Riker, Sammons, Sandford, Seaver, Sloan, Smilie, Southard, Stanford, Stewart, Thomas, Thompson, Trigg, Van Horne, Varnum, Whitehill, Wilson, Winn, Winston, Wynns—70.

Nays. Mess. Alston, Betton, Blackledge, Campbell, Chamberlin, Chittenden, Clagett, Cutler, Dana, Davenport, Dwight, Elliot, Elmer, Goddard, Griffin, G. Griswold, R. Griswold, Hastings, Holland, Hough, Hunt, Jackson, Kennedy, Lewis, junior, Livingston, Lowndes, M'Creery, Mitchell, Mott, Plater, Purviance, Rodney, Root, J. C. Smith, J. Smith, Stanton, Stedman, Stephenson, Taggart, Tallmage, Tenny, Thatcher, Tibbits, Wadsworth, Williams—45.

The sixth article under consideration,

Mr. Rodney. As I intend to vote against this article of impeachment, I mean to assign my reasons in as few words as will enable me to be clearly understood. It has been admitted on all sides that such interesting proceeding as that in which we are engaged should be conducted with calmness and temper, void of every sensation arising from hostile passions; but particularly when we consider all the circumstances connected with the object of this impeachment, a man of talents placed in an eminent elevation of office, qualified to ascertain the bearing of your evidence and testimony, too much caution cannot be used, and gentlemen are justified in their minute examination into the relation between the charges and testimony upon which they are erected.

I consider this article objectionable because there is concealed within it a principle pregnant with mischief to this country; if it be adopted, it will go to establish a principle most dangerous and oppressive. It goes so far as to say that the courts of the United States have criminal jurisdiction at common law. If gentlemen will attend to the article they will observe that it cites the act of Congress establishing the judicial courts of the United States so far as relates to the regulations of the several states, & they are enacted to be the rules of decision of those courts in trials at common law—and then it goes on to charge judge Chase with violating this very act. It is the act of Congress which gives life to the act of Virginia in the United States courts, and it says that the statute shall be enforced as on trials at common law. The first enquiry will be what was the meaning of the legislature in using the expressions "in trials at common law;" and to ascertain whether Callender was tried by the common law or under the sedition act. Law writers are not more clear, precise, or correct, on any subject, than they are in their definition of the common law; it is the unwritten law, as contradistinguished from statute law. A gentleman suggests to me that the common law mentioned in our statute is merely to mark the difference between our Admiralty and Maritime jurisdiction. We usually refer to English authorities for an explanation of the technical words we borrow