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CONGRESS OF THE UNITED STATES.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, JANUARY 21, 1861.

SELECTION ACT.

Mr. Nicholson said, had he been a member of the house at the time when this bill passed, he should have more fully given his opinion that it was unconstitutional and oppressive, and all that he has heard from face that period in the various examinations it had undergone had not contributed to create a doubt in his mind upon the accuracy of that decision. It had ever been his opinion that a vigorous administration, whose actions flowed from good motives, required not the aid of a statute to defend it from the attacks of slander. The spirit of the power, controlled by the people, and not the individual, could alone fear the facts of reproach, and power thus used merited no better fate.

Chief Mr. Nicholson said, were his ideas at the period when the bill passed, it is extraordinary to see evidence of a man at that period, how much more to mult it appear the present time? In order to call this to the view of the committee he would bring to their remembrance the numerous bills that have taken place during the past two years of its existence, from which he could make it plainly appear that the administration of this law was extremely objectionable.

The bill had he noticed was the arraignment, trial and conviction of a member of the house, who was committed under the care of a fever keeper, to an unwholesome and unhealthy situation, and the treatment of that member while in confinement, in all of which were evinced a party spirit highly unworthy the character this country ought to bear. The next was the case of a prince who was to stand on his trial, but notwithstanding he pleaded the necessity of producing evidence, which he needed to material to his defence, time was refused him to procure their attendance. He would not expect that the means of the rights of every man to demand, when brought before a tribunal of justice, time to produce witnesses material for his defence, or of the duty of the court to grant every opportunity to defend himself. A defence trial were too tedious to be defended. Another instance was that of a trial proceeding, when important testimony was asked, but refused, because the person required to give the evidence was an high officer of the government. The accused was told by the judge that he had no right to that testimony.

Another fact had occurred in testimony related to be material to the defence, but because it was at a distance, time was refused to produce it, and the trial and judgment proceeded without it.

Another and more fatal instance was that of a gentleman taken in prison, where he lay confined under the law. From view of all these cases, Mr. N. said he could not conclude that the administration of this law was extremely objectionable. Although many of these persons were foreigners, yet they had not the left claim upon the justice of the country; it mattered not whether they came from the tropics, from the poles, or whether they said live their lives in the country; all men possessed an equal right of demanding a free and impartial trial, and to all men alike it ought to be granted.

It was, and might be further urged, that this act was only aimed at false and malicious libels, tending to defame the governments. He granted it, but who were to be the judges? The laws themselves, they perhaps might be the subjects of an investigation, but if not, were the creation of the person approved. By them the materiality of the testimony, which ought to be given to the jury, was to be judged, and therefore the principle that the truth might be given in evidence was but of little importance, if that truth was not suffered to appear.

The gentleman from Connecticut had addressed parts of this law which he supposed could not be objected to. Mr. Nicholson admitted that the cases of infurrection and unlawful combination against the government ought to be provided for, and if the gentleman had proposed a resolution for the continuance of those parts, he would not have objected. No, the objectionable part was that which the people of the country had said, ought not to have been enacted—that part which flites every investigation into the affairs of government. It was certainly true, that the existence of this law forbade inquiry into the conduct of the government, for who would dare scrutinize the conduct of men in power, when they apprehended that they would be afterwards arraigned by a court and jury to undertake to do anything that would be unpopular. It must prevent men saying what they think, unless left what they know.

What, he asked, had the government to fear from truth? The publication of falsehood must excite the passions of the people, and would undoubtedly meet its just appreciation. The characters of public men, in whom the people of this country had been used to repose confidence, need not shrink at the apprehension of the publication of falsehood.

He concluded by expressing his regret that this subject should again be called up to be introduced by the gentleman who had said any thing that would be unpopular. If such as it had been introduced, he would inform the committee the resolution should have his most decided negatives.

Mr. Bay was said that those who had fallen from gentlemen, who opposed the revival of the Selection law, it became necessary for its former friends to support it in their own justification. He thought from considering the nature of the law and the crimes it was intended to punish, viz. false, scandalous and malicious libels, it was surprising it should meet with any opposition. Is it, he said, the crime falsely and maliciously to defame the government of the country? From the enormity of the offence and the extent of the injury it was necessary to make examples of such offenders in order to deter others. Why, he asked, should the country be so full but little anxiety about this subject, but in this country we find an objection ground. Our government depends much upon the opinion of the people. To mislead or corrupt the people is to sap the pillars which support the government and produce its ruin.

Gentlemen say and pretend to think there is no necessity for a law of this kind; that the good sense of the people will prevent the evils apprehended from false publications. It is however found that the most intelligent are deceived in this view. When falsehoods are stated in newspapers facts which remain uncorrected, what chance is there for their not being believed? The gentleman from Maryland, (Mr. Nicholson) was himself so far deceived and deceived that he ventured to state to the committee one of those assertions of fact. This is added to there is a strong point of light the necessity for such a law. Mr. B. had as much confidence as other gentlemen in the good sense, integrity and patriotism of the people, but he called to mind to prevent this is the object of the law; that newspapers may thus be made the channels of truth, punishment is only to be inflicted when known falsehood is maliciously published. He said he called to mind to prevent this is the object of the law; that newspapers may thus be made the channels of truth, punishment is only to be inflicted when known falsehood is maliciously published. He said he called to mind to prevent this is the object of the law; that newspapers may thus be made the channels of truth, punishment is only to be inflicted when known falsehood is maliciously published.

It is allowed that government has power to punish infurrection and even combinations to prevent the execution of the laws. If this may be done should not the infractions of infurrection and illegal combinations also be punished? May we not bring to the root of the evil? May not false publications produce infurrection? In his opinion, there would have been no infurrection in this country, had it not been for the publication of the false and malicious and seditious libels. Unless provided against, the time may come, when the country will be deluged with evils occasioned by such falsehood.

The gentleman from Virginia, (Mr. Nicholson) opposed the law as essentially wrong both in theory and practice. Mr. B. then entered on a review of the case in which it had been carried into practice. Reflecting Callender's trial he knew but little. The doctrine advanced by the law was a very alarming one in the opinion of the gentleman from Virginia. The jury had a right to decide upon the law and the fact, but not upon the constitutionality of the law. The judge was therefore authorized in prohibiting any argument on that point.

He then took a view of the case, in which, it was said, an honorable gentleman of that house, had been fined in a large sum and confined in a last house dungeon. Who he enquired was the object, in mentioning that case? A libel was published against the government, a jury of the country declared it to be false, scandalous and malicious; and yet the punishment was the same as if it were a libel. As well might we be told of hardship when a felon suffers for his crime; or that it was hardship when a vote was taken for expelling the honorable gentleman from this house.

Will you say that the judge and jury were corrupt? This house by a vote sanctioned their decision. He was convicted by a fair trial, and if the court did wrong, he was not to be blamed. The gentleman who entered his name for into party prejudices do to neglect their duty not to impeach the judges? It is improper to cite their authorities when the judges cannot justify themselves. This is a case of real hardship. Why do not gentlemen come forward and impeach the judges if they have done wrong? They are not above the justice of the country. It would be admitting to have against them. They are said to be under party prejudices. Mr. B. believed that could be treated. He never suspected them of doing wrong, full evidence should be produced to show that they had been wrong. Will gentlemen say there is no chance for an impeachment, because a majority in both houses are biased by the same party prejudices? What is the amount of this confidence of gentlemen? Will they be impartial, those who differ from me are under party prejudice. Mr. B. believed the gentlemen opposed to him sincere in their intentions. He also believed the gentleman who said that they had been correct in their principles. He was warranted in what he said by the charges made against them being groundless.

The charges delivered by the judges have been complained of. The object of the charges has been to incite a law of order and good government. This might be party prejudice in the opinion of some gentlemen, if to be must fill applaud the judges.

It is said, the law is unconstitutional. He thought a found mind might be intuitively convinced of the contrary. If no law is necessary to preserve and continue the confidence of the constitution, it is necessary to defend the government from the attempts of assidues. If you allow the government to be brought into contempt, the constitution will become a hallowed name in time will pass away. The right to make such a law he thought was clearly and expressly given in the 8th section of the 11th article of the constitution, which says Congress shall have power to enforce by law, and to punish, all officers and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the U. States, or in any department or officer thereof. In his opinion the law is so essentially necessary, that without it the government would be paralyzed and deprived of all defence. He thought it unnecessary to trouble the house with further argument as the evidence were sufficient in his opinion, he knew of no stronger one.

Mr. B. was of opinion, that if this law is permitted to expire, the common law will be in force, by which the rights of citizens are unlimited and truth is not allowed to be given in justification. By

some it is denied to be the law of the land. It ought to be remembered that the common law is the parent not only of the liberty of this country but of England and all Europe. How differently, he said, was felt from what our ancestors did who were ready to spill the last drop of their blood in its defence. To the common law we owe the trial by jury and many other rights; it is the repository. Is it not the boast of every Virginia? Was it not objected to the constitution in the Virginia convention that it did not recognize the common law? The constitutions of all the States are predicated on the common law, which is made up of the rules of right reason founded on the experience of ages. If courts are not bound by the common law they must be governed by their own arbitrary will. If common law is not binding there is no law, and gentlemen surely cannot dream of liberty without law. If we were governed without law, it is difficult, whether government be an inheritance, or whether we have we left to the will of our many. We are in a state of anarchy. We should be liable to suffer from caprice, vice, folly and every wickedness. The existence of the common law is a guarantee of justice, without it the constitution would be a skeleton devoid of sinews and nerves and culpable of motion.

Gentlemen seem to suppose they have gained an advantage, by asking what period you will fix on for taking the common law, and with or without the modifications of different States. He would take it as taken by the States, but as it is difficult to do this, he would look to it. He was difficult matter to draw the line. He would take it at the adoption of the constitution as modified by the States of the States. What objection could be made to this? It is a source of alarm as its being adopted by the United States courts than in the courts of the different States, where they were the common law. They cannot surely object to it as it is the law of the land.

To paralyze the general government and confine all power to the State courts is a system invariably pursued by some gentlemen on this floor. It was not therefore surprising that they thought with it the law of the courts of the United States. We must however, have one of two alternatives; take the common law or have no law. The courts must be either dependent on the common law or be independent.

If a government were given to this territory and a judiciary established, it would be under the common law. Whenever a constitution is formed it is bottomed on the idea of the common law being in existence. The ancient opinion was that the common law was the law of the United States. Now judges are called deposed for their opinions, and it is the novel opinion which should be scouted from the doors of the house.

Mr. B. referred gentlemen to the Xth article of the amendments to the constitution. If the amendments to the constitution shall be enforced, a trial by jury shall be allowed without restriction. The court of the United States, than according to the rules of the common law. Here the existence of the common law is recognized, unless the article is without meaning.

Suppose a man convicted of treason and a motion made for a new trial, must not the determination be by the rules of common law?

In the 8th section of the 11th article of the constitution after defining the extent of judgment, it is said, "but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law." It could be only the common law here referred to.

In cases of impeachment how would Senators, from their opinion, the constitution has given no direction, so that the manner of conducting them? The common law only could direct.

Persons can be impeached only for offences against the United States. After conviction they may be punished by law, certainly the common law and that part of which relates to criminal cases.

(Continued on last page.)