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MONDAY, MARCH 3, 1866

Congress.

HOUSE OF REPRESENTATIVES.

MONDAY, Feb. 24.

Mr. J. Randolph observed that some time had elapsed since he gave notice that he should call up his resolution for amending the constitution of the United States. The state of his health had not admitted of his taking his seat before this day. He, therefore, availed himself of the first opportunity to move that the House should resolve itself into a committee of the whole on the state of the union, with the view of taking that resolution into consideration.

Mr. Masters moved a postponement. The Speaker said, there could be no postponement of a subject referred to a committee of the whole on the state of the union, as it was in order every day to take up business so referred.

Mr. J. Randolph said, if gentlemen were unprepared, he had no objection to waive his call until to-morrow.

The Speaker remarked that there could be no debate on the priority of business.

Mr. Conrad moved to discharge the committee of the whole from the further consideration of the resolution. He said he would briefly assign his reasons for this motion. The session had progressed, and the season was fast approaching when every man of agricultural pursuits would be anxious to attend to them, unless detained by important business. He did not believe the proposed amendment to the constitution so important, as to require immediate attention. He hoped therefore, that it would be postponed until the next session, and that the way would thereby be paved for transacting the important national business that claimed the earliest attention.

The Speaker said the first question was on the House resolving itself into a committee of the whole.

The question was taken on this motion, and carried—Ayes 61.

Mr. Gregg was called to the chair of the committee.

The resolution having been read as follows:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, That the following articles be submitted to the legislatures of the several states, which, when ratified and confirmed by the legislatures of three fourths of the said states, shall be valid and binding as a part of the constitution of the U. States.

The judges of the supreme and all other courts of the United States shall be removed from office by the President, on the joint address of both Houses of Congress requesting the same.

The committee divided on agreeing to it, without debate—Ayes 51 Noes 55.

The committee then rose, and reported their disagreement to the resolution.

The House, having agreed to consider the report,

Mr. J. Randolph called for the taking the yeas and nays on the question of concurrence.

Mr. Clark moved a postponement of the consideration of the report to the 3rd Monday of March, merely with the view of making it give place to more important business which he said must be attended to. He said he had voted against the resolution, not because he was inimical to the principle involved in it. With a small modification, he should be in favor of it; and he hoped the period was not distant, when with such a modification, it would become a part of the constitution.

Mr. J. Randolph hoped a postponement so distant a day would not prevail. He was himself desirous that it should be postponed for a few days, in order to give notice to the House, that there might be a full vote on what he considered a most important measure. He appeared in this instance, as in many others, to be in a state of profound error. The amendment, or deterioration of the constitution, he had always considered to be a point of the greatest importance. But now, judging by the opinions of gentlemen, it seemed to be of lesser importance than the laying a duty of one or two per cent. to continue but for two or three years. It has, said Mr. R., been a subject of extreme concern to me, though not myself able to attend to the public business, to find, on enquiring daily of my colleagues that the House has refused to do any business, because on a future day they expected some important business to come before them.

I understand that a very important resolution of a gentleman from Pennsylvania, on a business so generally denominated the Yazoo, as to require no other name, was postponed on the same ground that my colleague now wishes the resolution under consideration postponed. If there is such important business to transact,

in God's name why not progress in it. But notwithstanding this immensely important business, which serves as an excuse for doing nothing, we make no progress in it; by it I am to understand the state of our foreign relations. I have no wish, nor do I intend to allude to anything, which passed while we were sitting in conclave. But I did hope, when one or two members, who were represented as the only hindrances to the dispatch of business, were withdrawn from the House for one or two weeks, every thing would have been completed.

I expect the adoption of very efficient measures towards Great Britain. Instead of this I find nothing done. And now, when an amendment to the constitution is brought forward, which is allowed to be very important, and when the resolution of the gentleman from Pennsylvania is called up, we are told by gentlemen, we cannot attend to these subjects; there is important business which we expect to have at some future day before us, and therefore we are determined in the interim to do nothing. One word as to the remark of the gentleman on my left (Mr. Conrad.) He belongs to a class of men which I highly respect, for the plain reason, that I belong to it myself. He says the time is approaching when every man engaged in agricultural pursuits must be anxious to go home, and therefore he does not wish at present to act on the resolution I have laid on your table. True; but when men, be they agricultural, mechanical, or of any other profession, undertake any business, it is their duty to go through with it at every hazard. I do not know a man in the House who has suffered more than the individual who now addresses you by his attendance here, and if I could have found an apology in my own mind, I should long since have been gone. If the situation of affairs warranted it, I should be willing to adjourn for two or three months. But I never can agree to adjourn in the present perilous state of affairs, and leave the country to a blind and fortuitous destiny. I must first see something like land, some foothold, something like certainty, instead of apolitical chaos, without form or body. Before I consent to go home, I must see something like a safe and honorable issue to our differences with foreign powers; and I must see—I hope, another thing—something like an attempt to bring the constitution of this people back to the principles on which this administration came into power. I take this proposition, and that of the gentleman from Maryland (Mr. Nicholson) to be two important means of bringing that administration back to those principles. My friend from Virginia says he expects at a future period to obtain this reform. I fear, if delay be permitted, that we shall get into the situation of another deliberate assembly, of which every member agrees that reform is necessary, but that the present is not the accepted time. I am afraid that we are in this situation already. I believe it, because I see it. It is a most fortunate circumstance that we made hay while the sun shone; that we got in the harvest at the first session of the seventh Congress; that we did away the midnight judiciary and the internal taxes. If those institutions were now standing, I believe they would be as impregnable as any part of the system around which gentlemen effect to rally. I believe it, because I believe appointments would have their effect. It is but too true, that patriots in opposition are as apt to become courtiers in power, as courtiers in power are fond of becoming patriots in opposition. So far then from wishing to postpone this measure, I believe that delay will only serve to enhance the difficulty of obtaining it. It is a maxim laid down by every man that has written on national policy, that those abuses which are left untouched in the period of a revolution, are sanctified by time, and remain as the nest-eggs of future corruption, until they compel a nation, to sweep them away, or to sink beneath them. This, without any exception, is the history of all corruptions; and those corruptions and abuses, not reformed at the first session of the seventh Congress, what has become of them? Have they been suffered to sleep? If they have, is it not to be apprehended that they will rise refreshed from their slumbers with gigantic strength? Fortunately it was that at the first session of the seventh Congress the mid-night judiciary and the internal taxes were done away; and it would likewise have been fortunate, if another measure had been attended to at the same time. It would have been, in my firm persuasion, very different in its issue from that which it has been. If the great culprit, whose judicial crimes or incapacity had called for legislative punishment under the constitution, and which have given rise to the motion now before us, had been accused at the first session of the seventh Congress, that accusation would have had a very different issue. And why? Because it is perfectly immaterial what a man's crimes are. Every day that elapses between their commission, and the time he is called to answer, lessens the detestation and horror felt for them, and, of course, enhances the value of his chance of an escape from punishment. I am persuaded that in the remarks I have offered I have been hurried into some observations that do not strictly belong to it. Yet these remarks furnish a sound reason for not deferring the proposition until the time moved by my colleague. I hope, therefore, the House will reject the postponement till the 3d Monday of March

and that a postponement will take place to some time, when the House shall be fuller, when a decision can be made after mature reflection. For truly as to the provision under the constitution, can any man be so mad or foolish as to think of again trying it. I consider the decision of the last session as having established this principle—that an officer of the U. S. may act in as corrupt a manner as he pleases, without there being any constitutional provision to call him to an account.

Mr. GREGG.—I feel but little concerned as to the fate of this motion. I am ready at any time to give my vote on the resolution. As it now stands I shall vote against it, but modified, as I have seen it in the hands of a gentleman from Virginia, I shall vote for it. But my principal reason for rising, is to say that a great part of the censure cast on the House by the gentleman from Virginia for not meeting the national business is proper and applicable; and I regret that it is so. But if the gentleman reflects on the subject, he will acknowledge that a great part of the delay which has occurred attaches to himself. I four weeks ago submitted a resolution to the House on some point of dispute between one of the belligerent nations and the United States. I was anxious that it should be taken up, and promptly decided one way or other. The gentleman from Virginia then called for certain statements from the treasury, which he considered as having a bearing on the subject. Under that impression the consideration of the resolution was deferred from day to day; and the statements have not yet been received. I stated at the time, that these statements could have no influence on my vote; but other gentlemen said they would influence theirs. I regret that we have not been able to go on with it is business. I do not know how long we are to be kept in this paralytic state. If the gentlemen, who has called for these statements, and other gentlemen will agree, I am prepared at once to go into an examination of the subject. But as the gentleman from Virginia was the first to embark the House in this call, I hope he will take a part of the censure to himself.

Mr. SMILIE.—I am sorry the motion of postponement has been made. I do not know any other time better than the present for the discussion of this subject. It is a subject of the last importance to the peace and happiness of the U. States. I am a friend to an amendment to the constitution relative to the judiciary department. Whether that offered is the best that can be made, or whether it is going too far, I cannot determine until the subject shall have been investigated in this House. For my part, I am so sensible that that part of the constitution which relates to the power of impeachment is nullity, that I see the utmost necessity for an amendment. From what we have seen, I do religiously believe that we cannot convict any man on an impeachment. The resolution before you goes to place the judges of the United States on the same independent footing with those of Great-Britain. Whether our situation requires that they should stand upon higher ground is a proper subject for discussion. I am rather inclined to think they ought not. It is contended, it is true, that as they have according to the opinions of some gentlemen, the right of sitting in judgement on our laws, they ought to be placed beyond the reach of a majority of Congress. This subject must, at one time or other, be considered, and some amendment in the constitution must take place. When the delays and various vexations, attendant on an impeachment, are considered, it will be evident that they will generally discourage the House from taking this step; and when it is likewise considered that a conviction can only take place on the votes of two thirds of the Senate, let gentlemen say whether there is any chance of making the constitutional provision effectual. I despair of it. With regard to the particular modification, which may be given to this resolution, that is another thing. I sincerely wish the House would take it up, and consider it without any great delay.

Mr. CLARK.—I hope my colleague will do me the justice to believe that I have not made this motion from hostility to his resolution. With a small modification I am decidedly for it. I assure him, it did not require the remarks he has made to day, to show the insufficiency of the present system. Of that I had satisfactory proof the last year. But I doubt whether the resolution, in its present state, is correct. I do hope that my colleague will give it a little more consideration, and I assure him I shall be happy to harmonize with him. In the decision by a mere majority, the scales of justice are so near an equilibrium, that it is doubtful often to which side justice inclines. I therefore think there ought to be some modification of the principle contained in the resolution. But I principally wish the postponement to prevail, that the House may act on resolutions which I conceive all important to the whole country, and peculiarly so to that part of the community represented by my colleague and myself. Every day's delay increases the difficulty and urges on the ruin that menace them. It is well known that there is not the best harmony between the merchants and planters. It is at all times the interest of the former to buy produce as cheap as they can, and never was there a better scheme for speculation to them than that furnished by the resolutions on our table. How easy is it for them to convince the

planter that there will be a suppression of intercourse, and that his produce will be soon worth nothing. These are the effects that I wish to prevent. My colleague will do me the justice to believe that I have had no hand in the procrastination. I have offered no project. With regard to the proposed amendment to the constitution, I repeat it, I am in favor of it with a small modification. Nor do I wish it postponed for any great length of time. I have no idea of leaving that to be done by our children, which we ought to do ourselves. But let us, in the first instance, proceed to the most important business. Let not my colleague authorize gentlemen to say that to prevent an attention to it, he interposed his favorite scheme. I have another reason for this postponement. There is no occasion for acting on an amendment to the constitution instantaneously. Most of the state legislatures, before whom it must be carried before it is a part of the constitution, have broken up and will not meet again till the fall. If, therefore, an amendment be passed at any time during the session, it will answer.

Mr. Masters moved a postponement of the resolution indefinitely, for which he concisely assigned his reasons; but which from his position we were unable to hear.

Mr. Bedinger called for the yeas and nays on this motion.

Mr. Findley said he was against the indefinite postponement of the subject, though in favor of its being postponed a short time. He thought it was a subject which ought to be fully investigated. He was decidedly in favor of the object of the resolution, but in a different form.

Mr. Conrad was in favor of the indefinite postponement of the resolution. He did not think the subject ought to be acted upon this session. He was not unfriendly to the principle, but he never could consent that a bare majority of congress should have the power to remove a judge. If the amendment were so framed as to give the president a discretionary power to remove a judge on the address of a majority of the two houses, and to make the removal imperative on the vote of two thirds, he might be for it. At any rate he thought it best to postpone the subject until the next session.

Mr. Clark said he had no objection. The question was then put, and the postponement to Monday next carried.

Mr. J. Randolph. I beg leave to submit a motion to the House; a very important motion which at present I only mean to lay on the table. The constitution of the United States has provided that no person holding an office under the government of the United States, shall be capable of holding a seat in either House of Congress. But as the best things are liable to corruption, and as we are told the corruption of the best things is always the worst, so the constitution of the United States has received in practice a construction which in my judgment, the text never did, and does not now warrant; but which if warranted by the text, is totally repugnant to the spirit of that instrument, which, composed of the varying interests of the different states, and settled on the basis of compromise, gave birth to a government of responsibility, without influence, without patronage, without abuse, without privileges attached to any individual class or order of men. It could not have been the object of such an instrument, that while a man, holding an office not exceeding the value of fifty dollars, should be excluded from a seat in this House, a contractor, living on the fat of the land, should be capable under the constitution of holding one. Look through the whole of the constitution, and say where such a privilege is to be found? You find there the single principle of republicanism; that he who has the influence derived from power and money shall not have a place in the councils of the nation; that place-men and pensioners shall not come on this floor. While this principle so vigorously excludes men, holding responsible offices, men known to the whole world, shall it be considered as permitting contractors to creep in through the crevices of the constitution, and devour the goods of the people? Such a departure from the spirit, if not from the letter of the constitution, such a gross evasion of principle calls aloud for remedy. Can a man, who holds a contract for fifty or an hundred thousand dollars give an independent vote on this floor? If so, why not admit the chief justice, and other high officers under the government to a seat here? Is it for any other reason, but that the constitution will not permit the influence derived from office to operate here.

The constitution may be tried by another test. It was made for the good of the people under it, and not for those who administer it. It was never intended to be made a job of, and I hope it never will be suffered by the people to be made a job of. I think it is contrary to the tenor of the constitution to hold a plurality of offices. We sometimes receive a petition from a learned institution to exempt books imported by them from duty. What did we say on that occasion? We said, no—we cannot exempt your books from duty. All must conform to the laws. There is no man too high or too low for them. The same measure must be meted to all. To my extreme surprise, I see a practice even more repugnant to the spirit of the constitution than a contractor sitting in Congress; and that is an union of civil and military authority in one person; a union more fatal to a free nation than the union of executive, legislative and judicial powers.

Having made these remarks, Mr. J. Randolph offered the resolutions inserted in our last paper.

But I am told this amendment comes forward in a very questionable shape; that indeed it is no amendment to the constitution. But this is the first time I ever knew a legislative body refuse to act on a proposition barely because it may require some amendment. If there are any parts of the proposition exceptional, while the principle is correct, why not amend them? I confess this thing is beyond my depth. I cannot see into it. As gentlemen have stated the substance of the resolution as a reason for its postponement, I will state its substance as a reason for not postponing it. One gentleman says he will not consent that the judges shall hold their offices subject to the will of a bare majority of the two houses. But does not every thing of importance depend on them? Do they not appropriate millions? Do they not hold the purse and the sword? Or do gentlemen think the wool sack more important? This is most indubitably the case; and I wish to hear any reasoning against giving efficiency to the will of a majority that does not approximate the doctrine of the Polish veto. There can be no reason for this distinction. And so far from there being danger of this power being abused, the experience of all governments holds me out in saying that there is greater danger that the power will not be exercised than that it will be abused. For this plain reason:

It would require some overt act of notorious misconduct, or an equally notorious imbecility of mind or body to justify any man in giving such a vote. It is a point of extreme delicacy to give it, and though some men might, I trust a majority of both branches never would give such a vote for light and frivolous reasons. But it may be thought that, as in all free governments there are parties, a triumphant party would turn out the judges to get into their places. This would be a most humiliating effect. But on what is the probability of such an effect founded? How are the turners out to be turned in? Have they the power to appoint themselves to office? No. And from

our experience heretofore, no such inference can be drawn. There is no probability of a triumphant faction putting down another to get their office. Because a triumphant faction could not rise to power but at the will of a majority; and although they might take offices away from others, they could not stow them on themselves. But suppose they did. It would be for the first time the last time. It would be a struggle between office hunters and the people; and I believe all the experience we have heretofore had, shews that this description of men are too prone to union for the public to sustain either profit or loss from their divisions. But if in this opinion I am in error, I would recur back to my first principle to suppress it. Is the power to remove a judge more important, than the power of declaring war, of laying taxes, and of effecting various other national objects? This is a doctrine to me totally unintelligible.

Mr. Smilie observed that he regretted that the motion for an indefinite postponement had been made, as it was equivalent to a rejection of the resolution.

The question was then taken, by Yeas and Nays, on an indefinite postponement, and passed in the negative—Yeas 42—Nays 61.

Mr. Clark then varied his motion, so as to postpone the resolution to the second Monday in March.

Mr. J. Clay said he wished the gentleman would withdraw his motion, and move a postponement till next Monday. He was very sensible of the importance of the subject, and was only sorry that there was not a prospect of obtaining a constitutional majority in favor of the resolution. Mr. C. said they had been told by his colleague (Mr. Conrad) that he was ready to vest the President with a discretionary power to remove a judge on the address of the two Houses. But if his colleague had attended to the politics of his own state, he would have seen the impropriety of such authority, the consequence of which was that a judge, whose removal had been requested by the two branches of the legislature, actually held his place at the discretion of the governor. The other alternative, his colleague had suggested, was worse than the present provision, as it present a majority of one branch and two thirds of the other were sufficient to remove a judge. Mr. C. concluded by expressing a hope that the gentleman from Virginia would agree to a postponement till next Monday.

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NEW-YORK, Feb. 27.
Captain Whiting, of the brig Farmer, arrived last night in 14 days from St. Thomas, states, that on the 11th of February, a French fleet consisting of 10 sail of the line and 10 frigates, arrived at the city of St. Domingo. And on the 10th, admiral Duckworth, with 7 sail of the line and 2 frigates passed St. Thomas bound to leeward; two sail of the line followed the next day.
Captain Matthews, of the Hannah Bartley, in the night of the 7th inst. 5 leagues to leeward of St. Domingo, fell in with a British squadron of 8 or 9 sail.
By the schooner Two Brothers, in 17 days from St. Kitts, we have received St. Kitts papers to the 7th inst.

Baltimore, Feb. 7.
On Saturday last, his majesty's fleet, under admiral Duckworth, sailed from this road to leeward in search of the enemy, his majesty's sloop King Fisher having arrived that day, and communicated the important intelligence that a French fleet of 7 sail of the line, and 4 frigates, had been seen on the 25th ult. in the Mo-