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CONGRESS.

HOUSE OF REPRESENTATIVES.

FRIDAY, Jan. 9.

Further debate on the bill providing for the punishment of certain CRIMES against the U. S.

MR. EPPES said that in his opinion an amendment was requisite, in the first section. In the constitution of the U. S. great pains, said he, have been taken to define treason, that our citizens may be secured from being harrassed for acts which can by no fair construction be considered as treasonable. But, if under the denomination of misdemeanors, we undertake to punish acts which scarcely admit of definition, and which are not criminal in themselves, this constitutional restriction will be of but little avail. A party in power, in order to accomplish its vindictive purposes, will under a different name create the same crime, and thus evade the constitutional provision. For this reason, Mr. Eppes said, he objected to the last part of the section.

Mr. E. said this part of the section was altogether unnecessary. He wished gentlemen to attend to the powers with which the government would be armed even if the latter words were struck out. They possessed the whole force of the nation, and could compel every man to march to maintain the public peace. If therefore treason should exist, they had ample power to crush it. Why then go farther? Will gentlemen introduce into our code a law that shall give to the courts the power of oppressing the citizen by defining, as they may see fit, the offences of conspiracy, or of counselling and advising a conspiracy? In free countries the greatest blessing of the citizen was that crimes were designated by law, and that every man knew when he committed an act that was punishable. But who can tell what will be meant by conspiring, counselling and advising? Look at England, behold the danger of constructive treason, and dread giving to your courts the power of defining crimes. For these reasons Mr. Eppes moved to strike out the following words—

"Or with intent, in any other manner, of levying war against the U. S. or of adhering to the enemies of the said states; or who, with intent as aforesaid, shall combine or conspire together, or shall counsel, advise or attempt to set on foot, provide, or prepare the means for any such military expedition or enterprize, or to procure any insurrection, unlawful assembly, or combination, for such purpose, although such expedition or enterprize shall not be carried into effect; and whether such conspiracy, counsel, advice, or attempt, shall have the proposed effect or not."

Mr. E. also moved to strike out the subsequent words in the same section.

"And further at the discretion of the court, be holden to find sureties for his or their good behavior, in such sum and for such term, as the said court may direct: *Provided always*, That nothing herein contained shall be construed so as to prevent the trial or punishment of any person or persons guilty of treason, murder, or any other offence punishable by any law or laws of the U. S."

Mr. E. said he was in favor of striking out the proviso, that the crime of treason might stand solely on constitutional ground, and that no attempt should be made by statute to put a construction upon it. He was also in favor of striking out the preceding provision, giving the court the power of binding over for good behaviour, as he thought it just that when a man had suffered the punishment affixed to his crimes, he ought to be discharged, and as under it there was nothing which inhibited a court from requiring sureties in so large a sum as would confine a man for life.

MR. BIDWELL observed that the gentleman from Virginia, (Mr. Eppes) had founded his motion for striking out a part of this section upon an alledged uncertainty in the description of the offences rendered punishable by it. The maxim, he agreed, was a sound one, that crimes ought to be defined with such certainty, as to be easily known, in order that they might be avoided by well disposed citizens; and if committed, that they might be capable of being distinctly stated, in the prosecution, and proved or disproved on trial. If the descriptive words, now moved to be struck out, would not bear the test of this rule, undoubtedly the motion ought to prevail. That was the point to be decided. The general object of the bill was to prevent any treasonable expedition or enterprize, by punishing certain preparatory steps leading to such acts of treason, but not in themselves amounting to that crime. The gentleman from Virginia did not object to the first clause, rendering it criminal to begin or set on foot, or provide or prepare the means for such a treasonable expedition or enterprize, which words were borrowed from an existing statute. His objection was directed against the words *combine*, *conspire*, *counsel* and *advise*, as not sufficiently definite. He had asked what is combining or conspiring, counselling or advising? And had answered, that it was just what a court should please to make it. On the contrary, Mr. B. said he thought those terms had, in common use, as well as in technical style, a settled and known signification. A combination or conspiracy was well understood to be an act of two or more persons associating together for some object. If that object was a lawful one, the combination was innocent. If it was criminal, the combination, whether its object was effected or not, was at common law a crime well defined and well understood as an indictable conspiracy. The words *counsel* and *advise*, also, were explicit and unequivocal. To counsel or advise the doing of any thing, was an overt act, which might be known, stated, proved and tried with as much certainty as any other act whatever. And when its object was a treasonable expedition or enterprise, it was in its nature criminal, and merited punishment, as much as any act short of treason itself. For it might be a cause, and perhaps the principal cause of the whole mischief. A man, by his advice, without any further agency, might induce others to set on foot or provide and prepare means for such an enterprize, as was intended to be guarded against by this bill; and ought to be punishable for it, if any preparatory step towards treason was a proper ground of punishment. As these descriptive terms, to which the gentleman from Virginia had objected, did not appear to him to be liable to the objection of uncertainty, in their meaning, Mr. B. said he should not, without some further reason for it, vote in favor of the proposed amendment.

MR. EPPES said the gentleman from Massachusetts had virtually admitted every objection which he had taken to the section. He says that a conspiracy is a thing which every court and jury may easily decide upon. This was precisely his objection, that they would be obliged to leave the decision to the court and jury. The terms were incapable of legal definition. The gentleman says, suppose there should be a conspiracy or a counselling towards it—will you let those concerned in it go clear? Why not? What great injury will flow from it? You will be precluded from punishing words or intentions; but will that be an evil? Do gentlemen recollect the length to which constructive treasons have been carried in another country? Do they remember that a man was convicted of treason in England for wishing a buck's horns in the belly of the king. To show gentlemen how far courts have gone even in our own country, Mr. E. said he would refer them to the case of Luther Baldwin; and as he had the indictment in his hand, he would read it in illustration of his argument.

Mr. Eppes here read the indictment as follows:

"*New-Jersey District—U. S. Court.*

"INDICTMENT OF LUTHER BALDWIN FOR SEDITION.

"*District of New Jersey, ss.*

"The jurors in behalf of the United States of America, for the body of New Jersey, district of the middle circuit, upon their respective oaths present, that Luther Baldwin, late of the township of Newark, in the county of Essex and district of New Jersey, Waterman, being a pernicious and seditious man, and contriving, and maliciously intending the faithful citizens of the United States to excite, and move to hatred and dislike of the person of the President of the United States and the government established within these U. S. on the 27th day of July, in the year of our Lord, 1798, in the township within the county and district aforesaid, and within the jurisdiction of this court in the presence and hearing of divers faithful citizens of the U. S. with whom the said Luther Baldwin was then and there talking of and concerning the President of the U. S. (the President of the U. S. being then and there passing on the high way, through the township within the county and district aforesaid, and divers faithful citizens of the U. S. in testimony of their respect and affection for and towards the President of U. S. being then and there firing a cannon) unlawfully, maliciously, and wickedly did publish, utter and declare with a loud voice these English words: "the President" (meaning the President of the U. S.) "is a *damned rascal*, and ought to have his" (meaning the President of the U. S.) "*a*** kicked*. I wish one of the charges" (meaning then and there firing and discharging as aforesaid from the cannon as aforesaid) "would pass though his" (meaning the President of the U. S.) "a——"—and the said Luther Baldwin in further prosecution of his malice towards the said President of the U. S. before had, afterwards, to wit: on the same day and year aforesaid, at the township in the county aforesaid, and within the jurisdiction of this court, maliciously, diabolically, seditiously, wickedly and scandalously, in the presence and hearing of divers faithful citizens of the U. S. then and there present did utter, and with a loud voice pronounce, assert and affirm, that the President (meaning the President of the U. S.) "was a *damned rascal* and ought to have his a—— kicked, and one of the cannon shot through it" (meaning that the President of the U. S. ought to have his a—— kicked, and ought to have one of the cannon then and there firing as aforesaid shot through his a——) to the great scandal and contempt of the President of the U. S. and government thereof, to the evil example of all others in the like case offending, and against the peace of the U. S. and the government and dignity of the same.

"LUCIUS HORATIO STOCKTON,

"Attorney of the United States for the New Jersey district."

I have called the attention of the House, said Mr. Eppes, to this paper to shew that all courts are alike; that if you give them power they will abuse it; and that there is no safety for man but in a clear definition of crimes by law. In free countries there ought to be no crimes not defined by law. The gentleman tells us conspiracy and counselling are plain terms easy of apprehension. But I wish to trust to nothing short of the law of the land. Let them be defined.

Mr. ELLIOT hoped the motion of the gentleman from Virginia would prevail. A part of the words in this section ought certainly to be erased; and he believed it would be better to erase the whole. On the subject of constructive treasons sufficient had been said. But it appeared to him that the provisions in the bill were such as led to another species of construction which was more objectionable than the doctrine of constructive treasons. He meant that doctrine which had prevailed at an early period of the British history—the doctrine of accumulative treasons—which consisted in making a number of offences, neither of which in itself amounted to treason, or any other crime of magnitude, collectively amount to treason. Under this doctrine the celebrated Earl of Strafford, and other distinguished men had suffered. Mr. Elliot said he was of opinion that every valuable purpose of the bill would be better answered without than with these words, without introducing a provision of the most dangerous tendency. After illustrating this idea, Mr. E. added. If you once say that a person who shall counsel or advise the setting on foot a military expedition shall be liable to punishment for a misdemeanor, you create a new system of jurisprudence. How liable will the individual accused be to be misunderstood and misrepresented. I hope never to see this doctrine recognised—that mere words, the impulse of the moment, without any definite object and uttered without reflection, shall be tortured into a misdemeanor.

After a few remarks from Mr. Jackson, Mr. Pitken, and Mr. Alexander in favor of the motion, and from Mr. G. W. Campbell against it, the question was put and the motion to strike out carried—Ayes 68.

Mr. EPPES then moved to amend the second section by striking out the following words in *Italic*.

"*Sec. 2. And be it further enacted*, That the trial of the abovementioned offences may be had in any of the districts, or territories, where any of the acts constituting the offence shall have been committed, *and all the acts constituting the offence may be brought in evidence on such trial, in whatever part of the United States, or the territories thereof, they may have been committed.*"

Mr. Eppes said, on examining the provisions of the constitution, this part of the clause appeared to him a clear and open violation of it. He would invite the attention of the House to the several provisions that bore on this point. In the 2d section of the 3rd art. are the following words:

"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed."

In the seventh amendment we find; "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger."

And in the next amendment the following provision:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

From these provisions, it appears to me, said Mr. E. that every man, charged with an offence, is secured in the right of not being tried except on the previous presentment or indictment of a grand jury; and on the known principle of a grand jury they are incapable of finding except for acts committed in the state where they meet. Suppose a man commits acts in Maryland, in Delaware and Pennsylvania—that they are criminal acts, and that he is arraigned in Pennsylvania for the act committed in that state. On that arraignment can the acts committed in Delaware and Maryland be given in evidence? No. Why? because the constitution of the U. S. declares he shall not be made to answer but on a presentment of a grand jury, who cannot wander out of the state in which they sit. If he should be tried in Pennsylvania for acts committed in Delaware and Maryland, I ask if he can be said to be tried on the presentment or indictment of a grand jury of those states? I know when part of an act constituting an offence is committed in one state and part in another, the quo animo may be shewn in one state by acts committed in the other. But the constitution expressly provides that a man shall be arraigned and tried in the state where the offence shall be committed. I know the answer that will be given to these remarks. Gentlemen will talk of convenience, and say that without such a provision as this persons cannot be tried. But in these cases we are not to legislate on the principle of convenience. This is a government of delegated powers, and we have no powers that are not given. I pretend not to professional knowledge on this subject. If the provision can be so modified and arranged as to steer clear of a violation of the constitution, I will agree to it; but in its present form it appears to me unconstitutional.

MR. ELLIOT seconded the motion. The arguments offered by the mover appeared to him unanswerable, and it was not necessary to repeat them. He would, however, offer one or two additional observations. The words proposed to be stricken out in this section had a close relation to those already stricken out in the first section. Had the latter been retained they would have been an argument for retaining the former. But since the first section was thus amended, they appeared to him perfectly useless. How could it be necessary to provide that all the acts committed in different states should be given in evidence, when as the bill stood the offences enumerated embraced entire and individual acts?

MR. EARLY said he differed in opinion essentially from the mover and seconder of the amendment; both of whom, he apprehended, had fallen into error from confounding two things which were in their nature essentially distinct. He understood the section as meaning neither more nor less than this—that different acts constituting one and the same offence may all be given in evidence on the trial of that offence; not that different acts constituting different offences shall all be given in evidence on the same trial. The term in the section, *the offence*, can only allude to one offence. This he considered perfectly constitutional and correspondent with every day's practice. He would put a familiar case. Suppose a murder committed in the state of Virginia, and that the person who committed it shall have previously purchased a gun and loaded it in Maryland. The purchasing and loading the gun are preparatory to the act of shooting. And yet according to the doctrine of gentlemen, these are distinct facts and cannot be given in evidence in Virginia. Mr. E. said he was willing to rest the provision on this ground; as proof that all the acts constituting one and the same offence could be given in evidence.

MR. ELLIOT replied that the gentleman from Georgia had not steered clear of the error he had ascribed to the mover and seconder of the motion. He says the purchasing and loading the gun are distinct acts from that of shooting. True—but they are in themselves no part of the offence. The act of shooting alone constituted the crime, and must have been committed within the jurisdiction of the tribunal trying it.

MR. G. W. CAMPBELL said the amendment was principally founded on the constitution of the grand jury, inasmuch as that body did not possess the power of making presentments, except for offences committed within their jurisdiction. When the amendment to the constitution was attended to, it would be found that it did not bear on this point. It secures to the individual the right of not being tried by a petit jury until a grand jury shall have found a bill against him. Now, the question is, what evidence may be given of the offence. I entertain no doubt, said Mr. C. but that any evidence may be given to the grand jury to ascertain the offence, if part of it has been committed within the district, and that this will give them jurisdiction. If this were not the case, the most palpable absurdity would follow. Complete evidence of the commission of a crime cannot be collected without shewing the steps to its consummation. The consequence therefore would be that many crimes would escape unpunished.

Suppose a man to steal a horse in one state, and to be taken up with him in another. It has been decided that he may be indicted in the last, although the crime was committed in the first state. Would not the grand jury be allowed to receive evidence of the stealing of the horse in another state? Mr. C. said he had seen such evidence frequently admitted; indeed he had never heard it questioned. For these reasons he thought the words ought not to be stricken out. He would add that, although he was against striking them out, he did not believe them absolutely necessary, as he believed the same power would exist without the provision.

MR. ALSTON said if the remarks of the gentleman from Tennessee were correct there was no necessity whatever for the words proposed to be stricken out. He would ask if these offences could be tried in the same manner without this provision, whether the bill would not be better without it? If such a provision were now required, it would go a great way to prove all the similar practice heretofore adopted illegal. For these reasons he was willing to strike it out.

MR. EPPES said he believed from several of the arguments urged he had not been correctly understood. He had not said that the commencement of such an act as murder could not be given in evidence. But was such a crime divisible? What, on the contrary, were the acts specified in the bill? They were the beginning or setting on foot, or providing or preparing the means for a military expedition. These might be divided. For instance, take one of them—suppose a military expedition set on foot in Maryland—the preparations for carrying it on made in Delaware, and the attack made in Pennsylvania. Here were three acts; and if a man is indicted for one of them in Pennsylvania, I say he cannot be indicted for the same offence in Delaware or Maryland, because they are distinct offences, and the constitution says a man shall not be subject for the same offence to be twice put in jeopardy of life or limb. I ask then whether if a crime be committed in Pennsylvania, the giving in evidence an act committed in Maryland would not be a violation of the plain principles of the constitution.

Take an offence as a whole, one-sixteenth part of which is committed in one place, and fifteen-sixteenths in another, all of which are required to constitute it. I ask gentlemen whether they mean to introduce the doctrine of crimes made up of such fractional parts, or whether they are in favor of establishing a principle under which the party in power may hunt up circumstances committed in this state and in that state, neither of which in itself would constitute a crime. This is the first time I ever heard of the doctrine of the fractional parts of a crime; by which a man, who, although he has committed no crime in any one state, yet by adding together the fractional parts committed in this state, and the fractional parts committed in that state, may be convicted and punished.

MR. HASTINGS spoke in favor of the amendment, but in so low a voice that we could not collect his arguments.

MR. ALEXANDER was opposed to striking out these words, as he feared without them the bill would be perfectly nugatory. It might, perhaps, be safe to say that the courts had the power assigned them by the section; but the provision seemed necessary to put the point beyond all question. The reasoning of the gentleman from Virginia, (Mr. Eppes) went to prove that the acts enumerated in the bill consisted of several things from the combination of which the crime was constituted. He would ask, whether on a trial of any crime whatever it was not usual to receive evidence of every thing constituting the offence, provided jurisdiction over it was given to the tribunal before which the trial was had? In state prosecutions if the offence was begun in one county and consummated in another, it was competent to the court to try an individual wherever he was arrested. If a man should take a horse from Tennessee to N. Carolina, it was questionable whether he could be arrested and tried in N. Carolina; because in every such offence we find the charges in the indictment consist in stealing and carrying away; and, notwithstanding what had been observed by the gentleman from Tennessee, Mr. A. said he recollected a case in which a man, who had taken a horse from Tennessee to N. Carolina had got clear on this ground. Mr. A. however said that the making the law clear on this point was a sufficient reason for the section. If the doctrine contended for by gentlemen obtained, it would be impossible for these offences to be punished at all. Suppose a combination should take place in Virginia, and in Pennsylvania the means should be prepared for effecting it. The offence would be punishable in neither state. The mere bringing was an innocent act. It was, therefore, necessary to prove the intention with which they were brought. Would not this evidence be received? If not the culprit would go clear altogether.