IN SENATE OF THE UNITED STATES,

DECEMBER 5, 1820.

MR. BARBOUR, fom the committee to whom was referred the petition of Matthew Lyon, submitted the following

REPORT:

The claim of the petitioner to redress rests on the facts, that he was convicted under the law commonly called the sedition act, and suffered in his body by a long and loathsome confinement in jail, and in his estate by the payment of a large fine. He asserts that the law under which he suffered was unconstitutional; and proceeds to infer that when a citizen has been injured by an unconstitutional stretch of power he is entitled to indemnity.

Although this be the case of an individual, its correct decision involves general principles, so highly important as to claim a profound consideration.

Under this solemn impression a majority of the committee, after the severest investigation, have decided, that the petitioner is entitled to relief.

They owe it to themselves and to the occasion to present succinctly to the Senate some of the prominent reasons which have produced this determination. The first question that naturally presents itself in the investigation is, Was the law constitutional? The committee have no hesitation in pronouncing in their opinion it was not. They think it is not necessary at this day to enter into an elaborate disquisition to sustain the correctness of this opinion. They will content themselves by referring to the history of the times in which the law originated, when both its constitutionality and expediency underwent the strictest scrutiny. The opponents of the law challenged its advocates to point out the clause of the constitution which had armed the government with so formidable a power as the control of, or interference with, the press. A government, said they, of limited powers, and authorized to execute such only as are expressly given by the constitution, or such as are properly incident to an express power, and necessary to its execution, has exercised an authority over a most important subject, which, so far from having been delegated, has been

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expressly withheld. That the patriots contemporary with the adoption of the constitution, not content with the universally received opinion, that all power not granted had been withheld, to obviate all doubt on a point of such moment, insisted that an amendment to that effect should be inserted in the constitution; and still jealous of that propensity, incident to all governments, no matter what may be the form of its organization, or by whom administered, to enlarge the sphere of its authority, they, by express provisions, guarded from violation some of the cardinal principles of liberty; among these, as most important, they placed the liberty of conscience and of the press. Profoundly versed in the history of human affairs, whose every page made known that all governments had seized on the altar and the press, and prostituted them into the most formidable engines against the liberty of mankind, they resolved, and most wost wisely so, as the sequel has evinced, to surround these great, natural, and unalienable rights by impassable barriers: and, to that end, have expressly declared, that Congress should have no power to legislate on them; and, notwithstanding these great obstacles, you have passed this act. The advocates of the law vainly endeavored to defend themselves by a technical discrimination between the liberty and licentiousness of the press. The American people, by overwhelming majorities, approaching, indeed, unanimity, denounced the law as a palpable and an alarming infraction of the constitution: and, although no official record of that decision can be produced, it is as notorious as a change of their public servants, which took place at that time, and to which this obnoxious measure so essentially contributed. The committee cannot withhold an expression of regret, that, upon the restoration of sound principles, the Congress of the times should have omitted to leave some memorial on their records, of their disapprobation of this unjustifiable assumption of power; and none would have been more satisfactory than an ample indemnity to those who had suffered by its operation. In the fluctuating conflicts between power and liberty, which exist every where, in a greater or lesser degree, where any portion of liberty is to be found, it is believed, by the committee, to be a most solemn duty imposed on the defenders of the latter, in every triumph it may acquire over the encroachments of the former, to make certain every doubtful point, to which resort had been had as a pretext for such encroachment; to repair every breach made in the constitution; and, if practicable, to surround liberty with new ramparts. That having been omitted by our predecessors, in the instance of the sedition act, the task devolves on us. And although it has been long delayed, the regret arising therefrom is, in some degree, lessened by the reflection, that the decision now to be pronounced, when the angry passions of party have subsided, will be dictated by an exclusive regard to the intrinsic merits of the question, and the interesting considerations it involves.

The committee are aware, that, in opposition to this view of the subject, the decision of some of the judges of the supreme court, sustaining the constitutionality of the law, has been frequently referred to, as sovereign and conclusive of the question.

The committee entertain a high respect for the purity and intelligence of the judiciary. But it is a rational respect, limited by a knowledge of the frailty of human nature, and the theory of the constitution, which declares not only that judges may err in opinion, but also may commit crimes, and hence has provided a tribunal for the trial of offenders.

In times of violent party excitement, agitating a whole nation, to expect that judges will be entirely exempt from its influence, argues a profound ignorance of mankind. Although clothed with the ermine, they are still men, and carry into the judgment seat the passions and motives common to their kind. Their decisions, on party questions, reflect their individual feelings, which frequently betray them unconsciously into error. To balance the judgment of a whole people, by that of two or three men, no matter what may be their official elevation, is to exalt the creature of the constitution above its creator, and to assail the foundation of our political fabric, which is, that the decision of the people is infallible, from which there is no appeal, but to Heaven.

Taking it, therefore, as granted, that the law was unconstitutional, we are led to the next question, growing out of the inquiry, is the petitioner entitled to relief. This question, as a general one, is not susceptible of that precise answer, which might establish a uniform rule, applying equally to all times, and to all occasions. On the contrary, it must be decided by the peculiar circumstances of every case to which its application is attempted.

The committee, for instance, would themselves decide, that relief was impracticable, where, from a long course of tyranny, attended with a rapacity far and wide, society had become so impoverished, that the attempt to relieve might blight every prospect of future prosperity. Nor could they advocate relief where the authority exercised admitted of a *rational* doubt, as to its constitutionality, upon powers not expressly inhibited, nor in cases, perhaps, where the amount of the injuries complained of could not be ascertained with a reasonable precision. None of these difficulties, however, present themselves in this case. The law, under which the petitioner suffered, as has been previously asserted, and attempted to be shown, was palpably unconstitutional, as being directly in opposition to an express clause of the constitution. The amount of the injury sustained, in so far as relates to the fine paid by the petitioner, is fixed and certain, and the sum equal to a reimbursement is insignificant to the nation. In this case, therefore, the committee think the government is under a moral obligation to indemnify the petitioner. An indemnity as consistent with policy, as with justice, inculcating an instructive lesson to the oppressor, and to the oppressed. Successful usurpation yields indeed to but few checks: among the few is the justice of posterity, who take cognizance equally of the crimes of the usurper, and of the sufferings and the virtue of his victim—condemning the former, and administering relief to the latter. And what more consolatory to the suffering patriot, what better calculated to inspire constancy and courage,

than a conviction, founded on fact, that his wrongs, on the restoration of sound principles, will attract the regard of the successful assertors of freedom, and who will cheerfully indemnify him for the injuries he has sustained? Such examples are not wanting in governments less beneficent than ours—that of England is replete with instances of this kind. Acts of Parliament, passed in times of heat and excitement, are frequently reversed, and the individuals, on whom they had operated, are restored to the rights of which they had been deprived. Succeeding Parliaments do not hesitate to indemnify the victims of oppression, because they had suffered under the forms of law. Acts of their legislature, whose power is omnipotent, form no obstacle with those to whom their injustice is made manifest in granting relief. An American Congress will not suffer itself to be exceeded by any government in acts of justice or beneficence.

The committee have only further to remark, that the Executive interposed its authority in various cases, and granted a full pardon to those convicted under the act in question, by which their fines were either remitted, or restored: relief, therefore, to the petitioner, would be only a common measure of justice. According to the information received from the Department of State, no money has ever been paid into the Treasury by the officers who received the fines imposed under the sedition act. It is submitted to the discretion of the Senate whether provision shall be made by law to indemnify the petitioner, by directing the amount of his fine to be paid out of the Treasury, or to reclaim it from the delinquent officer, or officers; and, in the latter event, to be at liberty to use the name of the United States in any prosecution to which resort may be had, with a view to that end.

Inasmuch, however, as the relief proposed to be given in this case is on general principles, the committee are of opinion it should be afforded also to every sufferer under the law.

They therefore beg leave to submit the following resolutions:

Resolved, That so much of the act, entitled an act for the punishment of certain crimes against the United States, approved the 14th of July, 1798, as pretends to prescribe and punish libels, is unconstitutional.

Resolved, That the fines collected under that act, ought to be restored to those from whom they were exacted; and that these resolutions be recommitted to the committee who brought them in, with instructions to report a bill to that effect.