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## *Congressional Register.*

*HOUSE OF REPRESENTATIVES.*

WEDNESDAY, DECEMBER 12.

*Debate on the bill to regulate the clearance of armed merchant vessels.* (*Concluded.*)

*Mr. Eustis* did not consider the capacity of committing a crime as enlarged in proportion to the value of the cargo, perhaps it was the reverse. But he would observe that if a captain with a very valuable cargo on board was to commit even a trifling misdemeanor against this act, the owner would lose his all, both vessel and cargo; under such impressions he imagined it would be extremely difficult to obtain the requisite security. Where is the man that can find security to the amount of a million of dollars, that the captain of his ship, his officers or crew, shall not commit some small degree of violence even upon friends, for enemies may often assume the garb of friends and thereby render even friends suspected. The law of 1798 required bonds only to the amount of the value of the vessel, tackle, and apparel, and did not even extend to the number of guns she might carry.

*Mr. R. Griswold* again declared that commercial enterprise would be greatly diminished if a bond was required for, both vessel and cargo. The consequence would be that these merchants only who possess large capitals and independent fortunes could give bond. And while the young and small traders would be incapable of sending a single ship to sea, the large speculatist would be enriching himself with the total profits of a very advantageous commerce.

Mr. *J. Clay* said the observations of the two gentlemen who preceded him applied against striking out the proviso. But he did not see that the position of the gentleman from Connecticut (Mr. R. Griswold) was of such great weight as he seemed to assign to it. For his part he did not see the ill consequence of regulations which might prevent rash speculations on the part of young traders upon small capitals in engaging in voyages that might overstrain their credit, and prove their ruin. As it respected the trade to the West Indies, he hoped the House would agree to the amendment as it stood, and non-concur the amendment for striking out the proviso. He would agree with them to retain the proviso if the present amendment was adopted.

On the question to agree to that part of the report extending the bond to double the value of the vessel, "*her tackle, apparel, furniture and cargo.*" The amendment being the words in italic, was negatived.—Ayes 53—Noes 55.

YEAS—Messrs. Archer, Bard, Bedinger, Blackledge, Brown, Bryan, G. W. Campbell, Casey, Claiborne, Clark, J. Clay, M. Clay, Conrad, Dickson, Earle, Early, Eppes, Gillespie, Goodwyn, Gregg, Griffin, Hasbrouck, Heister, Holland, Holmes, Jackson, Kennedy, Leib, Lucas, M'Cord, Meriwether, N. R. Moore, T. Moore, Morrow, Newton, Olin, Palmer, J. Rea, (of Pen.) J. Rhea, (of Ten.) Rodney, Root, Sammons, Sandford, Seaver, Sloan, Smilie, J. Smith, Stanford, Stewart, Trigg, Van Horne, Whitehill, Wilson—53.

NAYS.—Messrs. Alston, Alexander, Anderson, Baldwin, Betton, Boyd, Boyle, Butler, Chamberlin, Chittenden, Clagett, Crowninshield, Cutler, Cutts, Dana, Davenport, Dwight, Elliot, Elmer, Eustis, Findley, Goddard, Gray, G. Griswold, R. Griswold, Hanna, Hastings, Helms, Hoge, Hough, Huger, Larned, Lewis, Livingston, Lowndes, Lyon, M'Creery, Mitchell, Mott, Plater, Riker, J. C. Smith, Stanton, Stedman, Stephenson, Taggart, Tenney, Thatcher, Tibbits, Varnum, Verplanck, Wadsworth, M. Williams, Winston, Wynns—55.

*The new section before the House as reported by the committee of the whole.*

Mr. *Elliot* hoped the House would not agree to this amendment. The gentleman who had moved it apprehended gentlemen had not well understood it when in the committee of the whole, he questioned whether the mover had paid that close attention to its effects, as to insure its being proper and beneficial. He said it created a new class of crimes, & if that measure was proper, it was proper also to define the punishment of each crime. The section refers to certain laws of the United States establishing the enumerated offences, and directs that the punishment shall be conformable to the punishment inflicted for similar offences committed on shore. It is true the constitution provides that Congress shall have power to define and punish Piracies and felonies committed on the high seas; that power had been exercised, the crimes defined and the punishments annexed (Mr. Elliot here read an extract from the law on that subject.) A misdemeanor was a crime, but under the terms of the constitution he did not see how Congress could legislate upon it unless they defined it a felony; and were gentlemen prepared to say that every depredation, every species of outrage or violence was a felony; he was persuaded it was not the intention of the mover.—If a misdemeanor, however, be considered a crime, it ought to be defined, and the punishment decreed, for none of the laws of the United States had hitherto done it.—On this view of the subject, he considered the new section totally unnecessary, or if necessary it was so imperfect that it would not reach the case for which it was intended.

*Mr. Eppes* said the remark he had made in committee of the whole had no allusion to the gentleman last up—He should however detain the House but a moment in making one observation in reply. The law quoted by the gentleman was the one defining and punishing piracies and felonies committed on the high seas, and was confined to cases arising on board our unarmed vessels. Acts committed by persons legally commissioned to carry arms, are not termed acts of piracy; in order to constitute piracy it is essential that the vessel has no legal sanction to bear arms.—That is a case that cannot arise under the present measure, which is to give a legal sanction to our merchantmen to arm, only restraining them by a penalty and corporal punishment, if they abuse their trust. It was necessary in order to embrace this offence, that the definition and punishment should both be declared in the bill; he had endeavoured so to do.—As to the perfection or imperfection of the section in its present form, he should say nothing more than it appeared to his mind adequate to the end proposed. If however the gentleman from Vermont thought otherwise, he should be happy to hear him point out the mode of improvement.

Mr. *R. Griswold* said that whether the effects to be produced by this section, so far as related to murder and felony, were really provided for under the existing laws, he would not assert positively; but he believed that neither the existing laws nor this section made any provision for the punishment of misdemeanors. The offences defined and punished were provided for many years ago, in 1790. By that law murder was punishable with death, the same crime and punishment were revived in this section, and so it is in case of felony. Why then pass a new law on this subject? Or does the gentleman mean to infer that because murder or felony may be committed by armed vessels which are to be punished, that therefore murder or felony committed by unarmed vessels shall pass with impunity. He presumed in both cases they were murder or felony, and in both cases they were to be punished under the existing laws. He saw no occasion to multiply our statutes unnecessarily. With respect to the punishment of misdemeanors, he should remark that the constitution gave to Congress the power to define and punish piracies and felonies committed on the high seas, and violations of the law of nations. Those who acted on this subject before us, he presumed acted under an impression that they had gone to the extent of their powers in defining piracies and felonies, and that a definition of misdemeanors was not in their power. But suppose the constitution gave this power to Congress, does the section provide for it; it certainly does not. What says the section, that persons guilty of misdemeanors shall be punished as other misdemeanors are punishable under the laws of the United States. He could not find any statute in the books defining these misdemeanors, or inflicting a punishment. How then was the offender to be punished, if there was no general law on this point, and from the cursory view he had given the statutes, he had found none; the section would be altogether nugatory so far as it related to misdemeanors.

Mr. *Eppes* could not refrain from expressing the surprise he felt that gentlemen should contend, that misdemeanor was a term unknown in the statutes of Congress. He had just dipped into a volume of the laws, and he found it in almost every one which respected the criminal jurisprudence of the United States. Sometimes an offence is defined a high misdemeanor; at other times a simple misdemeanor. Under the act of June 1794, there were several misdemeanors, particularly expressed; accepting the command of an armed foreign vessel was a misdemeanor—encreasing the armament of such vessel within the United States was a misdemeanor, and others to which punishments are annexed. He believed the wording of the section to be correct, but as gentlemen doubted it, he should not wish to press the adoption of a correct principle in incorrect language—and to give time for the required alteration, he moved an adjournment.

And the House thereupon adjourned.

FRIDAY, DECEMBER 14.

*The new section before the House.*

Mr. *Eppes* admitted that the objection taken yesterday by the gentleman from Connecticut, (Mr. R. Griswold) was in part correct; the offence of misdemeanor contemplated by the proposed section was not mentioned in the law of 1794, the offence of misdemeanor defined in that law was that of fitting out or arming any vessel within the United States for the purpose of cruising against nations in amity with the United States. He moved therefore to strike out the words, "or misdemeanor," as often as they occur, in order to separate them from those of "murder and felony" and to form a distinct and subsequent period in the section in relation to that subject, by saying, "and if the offence be of a less degree, it shall be a high misdemeanor punishable by fine not exceeding dollars, and imprisonment not exceeding years."

Mr. *R. Griswold* agreed that it was proper to strike out the words alluded to, but he had doubts of the propriety of inserting all those which were proposed. It was plain that there was no general law of the United States, declaring the nature of the crime of misdemeanor or its punishment. It is true, that there are several of our statutes, which prohibit certain specified things, and the persons guilty of committing them are deemed guilty of a high misdemeanor. But the terms used in the section reported by the committee of the whole, have no reference to any of the class of crimes designated in our statutes. It refers merely to the general common law under the head misdemeanor. The gentlemen bring in a common law definition of misdemeanor, and give it a range over all that class of offences which it reaches in England. He wished the gentleman however to meet the other objection, and answer whether the offences of murder and felony are not already provided for by the laws of the United States. He believed still that the law of 1790, embraced the very case now intended to be provided for by the amendment. If the section is adopted, are offenders to suffer death under the law of 1790, and again under the one of 1804. Can they suffer death twice; he thought if they suffered once, it would be sufficient for an atonement of the crime. If a misdemeanor is to be defined and punished by the section, let the gentleman confine his amendment to that crime alone, and so modify it that it does not re-enact an old law still in existence. If the gentleman did this, though he doubted the necessity of the measure, he should not object.

Mr. *Jackson* said there had been two objections made by the gentleman from Connecticut and the gentleman from Vermont (Mr. R. Griswold and Mr. Elliot.) If they were attentively examined and compared with the constitution and laws of the United States, they would be found not tenable. One of the objections was that the constitution of the United States did not authorise Congress to legislate on any other crimes committed on the high seas than those of piracy and felony. He would ask them whether all other offences were to go unpunished. But he reminded them that the words of the constitution extended further than what had been quoted: it declared in the same paragraph that Congress had power to define and punish offences against the law of nations. Is not a misdemeanor committed on board a vessel cognizable by the courts of the union? For instance, if a gun is discharged at another vessel belonging to a nation in amity with the United States, and does considerable damage though it may not amount to piracy or felony, is there no remedy? Surely by the constitution Congress have the power of declaring it a misdemeanor, and of punishing it accordingly. If they have this power, and he believed it would no longer be denied that they had it, then the question would resolve itself into the expediency of exercising it at this time; and enquiry might be proper to ascertain whether the existing laws provided for the case. The act of 1790, upon which the gentleman from Connecticut (Mr. R Griswold) relied, would be found on examination not to embrace it. Suppose in firing into a foreign vessel, a mayhem is committed, or a leg or an arm shot off, is this case provided for by the law of 1790? It is not a felony, nor is it piracy, the only two cases provided for by that act. If indeed the case was provided for by the act of 1790, it could not operate as an objection to insert it in this bill, because the bill was intended to draw into itself all the regulations on this head. That Congress had the power of legislation on this point, he trusted would no longer be disputed; and having the power, the necessity of the case required its exercise. If nothing further was added to the bill than what was contained in the first section, nine tenths of the offences committed at sea would go unpunished.

*Mr. Elliot* did not mean to give the force to the extract from the constitution quoted by him all that range which the gentleman just sat down had chosen to extend; he however admitted that being a constitutional question it deserved serious and solemn deliberation. It had been often said that the constitution of the United States is a limited grant of power and that the powers not therein granted are reserved to the states or to the people. Admitted. By the constitution then Congress are authorised to define and punish piracies or felonies committed on the high seas; they are also authorised to punish offences against the law of nations as stated by the gentleman from Virginia (Mr. Jackson) but where is the power given them by the constitution to punish misdemeanors? It is, however, contended that a misdemeanor may be an offence against the law of nations. Misdemeanor means literally ill behavior. He would not however deny that misdemeanor in certain cases might amount to an offence against the law of nations, and in such an event might be punishable as an offence against those laws.

By the law of 1790 in its 8th section the crimes of murder and piracy are punishable. Does not that law go further, and punish what this law does not provide for. One thing further contended for, which he did not think tenable, the same crimes that are punishable by the existing laws are again to be punished by this. This was clearly shewn by the gentleman from Connecticut, and he would add nothing more.

*Mr. Clark* thanked the gentleman from Connecticut for the light he had thrown on the subject; but he was not convinced that the crimes attempted to be defined by the amendment of his colleague were punishable by the existing laws of the United States, and he thought if the gentleman would re-examine his argument he would discover his mistake. The law of 1790 had relation to a different crime. But he would not decide positively what might be the opinion of the judiciary on that head; they might entertain a construction different from that of the legislature. Yet his own opinion was that no provision could be found in the law of 1790 to restrain and punish the offence of an armed vessel of the United States on the commission of outrage and violence. Was the provision made in this law which his colleague had moved, he should not object to merchant vessels arming themselves; should it be refused, he never would consent to trust them with arms.

*Mr. Eppes* after having troubled the House so often on the present question, would have remained silent at this period but such a variety of objections had been made and many of them so foreign to the subject, that he could not avoid adding one concluding word. It might perhaps be considered as a reiteration of his first sentiment. He was decidedly opposed to trusting merchant vessels with public arms, the improper use of which might commit the peace of the nation. If however the sense of the committee was against him, in that particular, he would submit; but then it must be under such a provision as had been introduced in the section now before the committee.

Upon this the committee rose and referred the bill and amendments to the select committee to incorporate the same, and the bill as amended was reported subsequently, and passed in the shape following:

AN ACT,

*To regulate the clearance of armed merchant vessels.*

*Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled,* That after due notice of this act, at the several custom houses, no vessel owned in whole or in part, by any citizen or citizens of the United States, or by any person or persons residing within the same, or the territories thereof, and armed, or provided with the means of being armed at sea, shall receive a clearance, or be permitted to leave the port where she may be so armed, or provided, without bond, with two sufficient sureties, being given by the owner or owners, agent or agents, together with the master or commander, to the use of the United States, in a sum equal to double the value of said vessel, her arms, ammunition, tackle, apparel, and future, conditioned that such vessel shall not make or commit any depredation, outrage, unlawful assault or violence, nor make any other unlawful use of her arms against the vessels, citizens, subjects, or territory of any nation in amity with the United States; and that the guns, arms, and ammunition of such vessel shall be returned within the United States, or otherwise accounted for, and shall not be sold or disposed of in any port or place in the West Indies.

Sec. 2. *And be it further enacted* That if any armed merchant vessel shall make or commit any depredation, outrage, unlawful assault or violence, against any vessel or territory of a nation in amity with the United States, or against any of the citizens or subjects of such nation, or make any other unlawful use of the arms on board such vessel; if such depredation, outrage, unlawful assault or violence, shall be made or committed, as if made and committed in any place under the exclusive jurisdiction of the United States, would be murder or felony; the same shall be murder or felony, as the case shall be: and the principals and accessaries concerned therein, shall be punished as they would respectively be in other cases of murder or felony, by the laws of the United States; and if the offence be of less degree, it shall be a high misdemeanor, punishable by fine, not exceeding three thousand dollars and imprisonment, not exceeding three years.

Sec. 3. *And be it further enacted,* That if any armed vessel, as aforesaid, shall proceed to sea without a clearance, contrary to the provision of this act, such vessel, with her arms, ammunition, tackle, apparel, and furniture, or the value thereof, shall be forfeited to the use of the United States.

*The committee of Commerce and Manufactures, having maturely considered the petition of Benjamin Bailey, and James Bogert, jun. trading under the firm of Bailey and Bogert, Joshua Jones, and John A. Robertson, all of the city of New York, merchants, which was referred to them on the second instant; thereon submit the following*

REPORT—.

The petitioners have been sufferers to a large amount by a late distressing fire in the city of New York. They represent that they imported into the district of New York, various goods and merchandize to a great value, and while they were still owners of such property, a conflagration took place and destroyed their stores, with all or nearly all their contents, including the merchandize on which the duties were secured to be paid. They pray that Congress will authorise the collector of New-York to deliver up or cancel all bonds or other securities given by them for duties upon such part of the said goods and merchandize as were destroyed by fire.

Repeated decisions on similar applications leave no doubt on the minds of the committee that it would be improper to grant the prayer of the petition. When any article is imported into the United States, and the duties thereon are ascertained at the custom house, the amount forms a part of the actual value and is an insurable interest. If it is afterwards destroyed by fire or lost in the transportation coastwise (from port to port) or in any manner injured or damaged, it has never yet been considered that the United States were bound to cancel the bonds entered into by the importers for the duties. *The United States can in no respect be considered in the light of underwriters.* When the duties have at any time accrued they ought to be paid, and the importing merchant can have no greater right to