son, Jno. Morrow, Mumford, Nelson, Newbold, Newton, Nicholas, Pugh, Rea (Penn.) Rhea (Tenn.) J. Richards, M. Richards, Riker, Sawyer, Seaver, Sloan, Smelt, Smilie, J. K. Smith, S. Smith, Jno. Smith, Southard, Stanford, Storer, Swart, Taylor, Thompson, Trigg, Troup, Van Allen, Van Horn, Verplanck, Wharton, Whitehill, Wilbour, D. R. Williams, M. Williams, Wilson, Winn, Witherell—97.

NAYS—Messrs. Champion, Chittenden, Culpepper, Dana, Davenport, Elliot, Ely, Gardenier, Goldsborough, Harris, Livermore, Lyon, Pitken, Quincy, Rowan, Stedman, Sturges, Taggart Upham, Van Dyke, Van Rensselaer—22.

DEBATE

On the bill concerning courts martial and courts of enquiry.

THURSDAY, MARCH 3.

In committee of the whole, Mr. STONER in the chair.

The first section of the bill having been read as follows:

"That in every case where the attendance of any person, not in the military or naval service of the United States, shall be necessary as a witness before a military or naval court martial, a summons may be issued out of any court of the United States, and the clerk of any such court shall be, and he is hereby authorized and required, upon due application in writing by the judge advocate, or party officiating as such, or by the party accused, to issue such summons, requiring such witness to appear, and give evidence before such court martial or court of enquiry, and upon good and sufficient cause shewn verified by affidavit before any judge of any court of the United States, and the same being certified by such judge, and produced to the clerk to whom application as aforesaid, shall be made for any summons, the said witness in such summons may be farther directed and required to exhibit in evidence before such court martial or court of inquiry, any paper, document or record in his possession, power or controul: and in every summons to be issued in virtue of this act, some certain day shall be appointed for the same to be returned to the proper court martial or court of enquiry, and for the appearance of the witness. And every summons as aforesaid shall be directed to the marshal of the district in which such witness may reside or may happen to be, and for every fault in not duly serving and returning any summons as aforesaid, the marshal shall be liable to the same penalties, and to be proceeded against in like manner, as if he had made such default in not serving or returning any summons or citation in causes depending in the district court of the United States holden in the district or territory whereof he may be marshall."

Mr. J. MONTGOMERY moved a verbal amendment to the section.

Mr. J. CLAY could not see what necessity there could be for investing military courts with such extraordinary powers. In order to produce a discussion which might throw some light on the subject, he moved to strike out the first section of the bill.

Mr. J. MONTGOMERY said he could only state the reasons which influenced him to give his assent to the introduction of the bill. A letter from the President of the United States on the subject of the powers given to courts of enquiry had been referred to a committee of which he was a member. When the subject was before the committee, said Mr. M. they examined the present existing laws with respect to the manner of obtaining evidence in courts of this description. It was found upon examination of the existing laws for the regulation of the army and navy, that in all instances which do not affect life or limb, depositions may be taken before a civil magistrate; but there are no regulations by which in a case affecting life or limb to permit the person accused to obtain testimony of persons who are not in the military or naval service. It was discovered that an officer or soldier, who certainly does not cease to be a citizen by entering into the army, cannot obtain the benefit of evidence other than of persons in the military or naval service. For that reason, and from the representations of officers on the subject, it was found necessary to report this bill for the regulation of all courts martial and courts of enquiry. Every person charged with any offence before any court is entitled to a trial and to a proper defence; but under the present laws there is no power to compel testimony, so that a military man is liable to lose his life, although perfectly innocent, because he cannot obtain evidence. In civil cases the laws have provided compulsory process. In suits for property between A. and B. where the amount is not perhaps more than 10 l. or from the value of one shilling to millions of money, the parties have the benefit of compulsory process to obtain evidence, while in cases affecting the life of a soldier or officer, there is no power to compel testimony. It was therefore thought proper not only that the case alluded to in the President's message should be provided for, but that a bill should be introduced making a general provision in like cases.

Mr. ROWAN was opposed to this bill, and hoped that the time would never come when it should be necessary to keep a standing army organized for the internal defence of the U. States; till that time did arrive there was no necessity to pass a law of this kind. By turning to the history of that government, from which we borrow our laws, said he, we find that it existed some centuries before the mutiny act from which the present law is in a great measure extracted, was passed. In a monarchical government, which existed so long before it became necessary to pass it, this law was passed to secure the citizens against the disorders of the soldiery, and to preserve order amongst them. Our government has existed but 30 years, a government too in which a standing army is not contemplated as necessary; a small army has been submitted to as the least of two evils, and is contemplated but as temporary. To incorporate then in our system a law which was not found necessary in Great Britain till after so long a time, seems rather premature; it is going upon the principle of adopting into our government the principles of a government different from ours—of a government not in its early and simple state, but in its aged and corrupt state. If gentlemen examine this bill, they will find that it goes to make the military communicate too intimately with the civil authority of the country; it gives the military an importance from which we should endeavor to preserve them, authorizing them to call upon the judges to punish witnesses, &c. This is no inconsiderable blending. The military is, I hope, incidental in this government; the force we have is small, and I hope it is temporary. I hope it is not contemplated that the military are to form a permanent establishment in this government.

I wish gentlemen to look at this bill and see if the evil is not greater than that which it is intended to guard against. Persons summoned as evidence by a military court refuse to attend; the summons cannot be enforced. This is somewhat of an evil, but what is it compared with that which would accrue from mixing the civil and military institutions? There is in the very nature and complexion of our government an abhorrence to military institutions; they are but permitted to exist as an evil. Let us not then incorporate them into our general system; let us not even suppose the present military establishment to be a lasting or permanent institution.

What peculiar case calls for this law? The case of a soldier cannot present itself as making it necessary; for if a private commits an offence, it must be in the ranks. If he steps out of the ranks the civil law takes hold of him for any offence he commits. Wherever he commits an offence out of the ranks, it is cognizable by the civil jurisprudence. He is punishable by military law for the violation of military rules. For instance, if a soldier goes to sleep at his post, you cannot expect a civil witness of the offence. A case then cannot occur in which a civil evidence can be necessary on a trial of a private for a military offence. If he makes an inroad on society, he is immediately taken hold of by the civil jurisprudence. So in case of offences triable only by a military court, in 99 cases out of an hundred, testimony must be confined to military evidence, if the charge be confined exclusively to military conduct. A file of men is sent for the witness; the testimony of the soldier or officer is compelled, so that there is no deficiency of process in exclusively civil or military offences. The very law from which the present bill is substantially borrowed, if I understand it right, was not enacted for the benefit of the officer or soldier but for the security of society. The mutiny act of England was intended to protect the citizen; the only provisions in that country on this subject are contained in that act. Even in that country the parliament never chose to lend to the military that sanction which is contemplated by this bill; their law on the subject is to protect the citizen from the soldier or officer, while the bill under consideration grants a privilege to the military; this principle therefore has not been recognized in England.

I should consider it extremely unfortunate, if at this early period of our government with our small standing force and great abhorrence of a standing army, this bill should pass. It will be found to be a truth that men *en masse* are worked upon by their feelings. Whenever then these two institutions, civil and military, become familiar by their connection with each other, in the same proportion our abhorrence of military and respect for civil institutions will diminish. It is therefore contrary to the policy of our government to render the military institution familiar with the civil.

The particular circumstance which has given rise to the present bill we all know. It does not seem to me that this case will justify the passage of a law which in its consequences may be so mischievous. So far as society is interested, there is a mode in which it can be tried; so far as respects the citizen there is a mode; for I deplore the day in which an American military officer cannot confide his conduct or character to the scrutiny of the great body of the people. There is no occasion then for this bill in relation to any officer of ours. Our officers must have a reverence for our civil institutions, and confide in their competence to do them justice in any case.

We have had this army for many years. Is it not extraordinary that this deficiency has never been discovered before? Has any soldier lost his life or officer received an injury in consequence of the omission? None, I believe. It is dangerous in my opinion to legislate generally on special cases. I believe that our military rules are competent to the purposes of justice, as relates to the soldier or the officer. I hope we shall not long have a standing army as it is only on our frontiers that we require a regular force; in ordinary cases the militia being competent. As no evil then can arise in so short a time, and in so small a force from the want of such a law as this, I hope the section will be struck out and thus destroy the bill.

MR. TAYLOR said if they had indeed been so many years without having found a rule of action and a law for the government of the army the arguments which had been adduced by the gentleman from Kentucky would be at least sufficient to induce him to enquire; but when he found that the legislature of his country had already establish rules and regulations for the government of the army, and that, from the tenor of the law, those regulations are binding as well upon the militia when in service as upon the standing army, he felt it necessary to legislate not on any particular case occurring now or heretofore but generally, for the safety of the individual. The power of obtaining testimony so essential, so indispensable to every tribunal for the attainment of justice, was the object to be attained by this bill. On a former occasion, said he, I have expressd my ideas on the subject of the articles of war. If they were not in existence, the gentleman and I would upon comparing notes be nearer on principle than we are on the present amendatory law. What are these articles of war? Sixteen articles out of an hundred create capital offences; and is your army walled around, pent up so that no man can see them but he who wears an epaulet or regimental livery? No. The actions of these men alike with those of other men come under the eyes of every bye stander. For establishing the innocence of a person accused it is necessary that he should have the power to call upon these bye-standers whether in civil or military life for evidence in his favor.

I hope gentlemen will look at the articles of war and see how far they go to abridge the privileges of a military man, and assist me in an endeavor to draw a parallel between a civil tribunal and a court martial. In the first place, decisions of a court martial do not require unanimity of judgement of those who sit as inquisitors. Nine out of thirteen are sufficient for a decision pro or con; whilst in a civil case before a jury of twelve good and lawful men, an unanimity of the whole is required. The party in a court martial or court of enquiry has not the privilege of counsel for the purpose of annotating and making observations upon testimony. True, it is, that by special favor a person is sometimes allowed to come into court to assist the accused in asking questions necessary for his defence, and in cross examining the testimony; but as to the privilege of counsel to explain or argue the case, to collate and digest the testimony, no such thing is allowed. The deliberations of military courts are private. The judge-advocate who is like the state-attorney may urge home the points against the prisoner and there is no one to urge the points in his favor—in courts of law although the jury retire to make up the verdict, the discussion before them is public. A more important inconvenience to the accused is, that crimes against military law are not specially defined. I will read an article or two out of the many, which struck my mind as going fully to establish this point: the 6th art. makes it a crime to behave with contempt or disrespect towards his commanding officer (without defining what constitutes disrespect or contempt.) In another article, ungentlemanlike conduct and such as is unbecoming an officer is made a crime—the specification of his crime must be diversified with the relaxed or nice notions of honor of the judges or members of the court. In a great majority of the articles, the extent of the punishment is left discretionary with the court. In proportion then to the immense extent of the powers of these courts in condemning and punishing—so should the facilities of obtaining defensive testimony be amplified to the accused.

It is necessary that this body of the community, when collected together, should be governed by rules more rigorous than those imposed on men in other situations of society; it has been found in all ages and nations that these rules are necessary for the government of men with arms in their hands, and that nothing but rigid discipline can make them useful or indeed prevent them from being dangerous to the country—yet, had these rules been less severe, the Legislature might have found their ample apology in the freedom to which the citizens of the United States are accustomed. For in proportion to the freedom of the citizens of the state, in that proportion must be the rigor in order to keep them in subordination.

I trust I have explained that military crimes are not specially defined, as crimes are defined in courts of law. I might have noticed another peculiarity of these courts, that punishments are more rigorous.

When it is fully understood in the House with how much severity this class of the community are ruled, and I call upon gentlemen to remember that the militia too are subject to these rules when called into actual service, when it is found that a person charged with a crime may have a witness competent to prove his innocence but who is not in military service at the time, shall we shut the door upon truth, and say that a man when innocent shall be punished as guilty because the witness in his favor does not wear a cockade? If we did, we should merit more reproaches than some of us are disposed to heap on those who passed and enacted the sanguinary system I have been speaking of, excusable only from the necessity of the case—they have enacted the punishment and we should be chargeable, in refusing the culprit the power of defending himself from it. I do aver that this law does not alter the system at all, barely affording a relief to the soldier in an evil for which unless this bill pass he has no remedy. As to the allegation that a civil witness can never be necessary in a military trial, you must either shut your eyes to the light or suppose that all mankind instinctively shut theirs when the soldiery are in their presence; neither of these cases can be supposed. I hope it is and will be the habit of this nation to look the more astutely where the army or its soldiers are near, that the citizens may never be excused from testifying to the guilt or innocence of a soldier, however low or however high.

There is a clause of the constitution, which indeed applies to courts of law, which guarentees to the accussed the right of compulsory process for obtaining witnesses in his favor. Surely the spirit of the constitution, even rigid justice herself, would not exclude men, merely from their change of clothes, from that right considered so sacred as to be guaranteed to the people by the constitution.

Let us consider this law as respects the witness. Is there a mighty inconvenience to a witness summoned and paid for his attendance in court to substantiate the innocence (I have not yet touched upon the guilt) of a person accused? He is paid for his attendance, liable only to the same impositions as he would be subject to if summoned by a neighbor in a civil cause. He is not under as much disadvantage; for it is *the law of the land* in the state which I have the honor in part to represent, that when a person is committed to jail or bound over, the witness against him unless he can give sufficient security for his appearance to prosecute on behalf of the state is sent to jail, there to lie until the course of time comes round in which the trial is to be had. Here then the innocent witness on the part of the accuser is carried to jail; I have known them incarcerated thus because they were unknown to the justice and to the neighbors, and had not friends who would sign their recognizance. I acknowledge this seldom happens, perhaps never, but where there are suspicions of the witness; but it always rests with the magistrate, to require it if he chuses. The witness by this law is only put on the same footing as if summoned to a court of common pleas, he is not recognized, he only incurs the same penalties he would do if he made default as a witness in a cause of 21 dollars dispute between individuals—so that the objection as to the hardship on the witness cannot be valid.

(*Mr. TAYLOR's Speech to be concluded.*)

WASHINGTON CITY.

MONDAY, MARCH 7.

FOR THE NATIONAL INTELLIGENCER.

TO THE PEOPLE OF THE UNITED STATES.

FELLOW CITIZENS,

In the course of the events which have marked the conduct and characters of those, to whom you have, at different periods, intrusted by your suffrages, the power of making laws for your government, few measures have occurred, since the adoption of the present constitution, more extraordinary, than the meeting lately held for the purpose of nominating a President and Vice President of the United States.

Our alarm is equally excited, whether we advert to the mode in which the meeting was summoned, or to the proceedings after it was convened. The Senator who assumed the power of calling together the members of Congress, did it under the pretext of that power being vested in him, by a former convention; this pretext, whether it be true or not, implies an assertion of a right in the Congress of 1804, to direct their successors in the mode of choosing the chief magistrate; an assertion which no man has ever before had the hardihood to advance. The notices were private; not general to all the members of the two Houses; nor confined to the republican party; a delegate from one of the territories was invited and attended, a man who in elections has no suffrage, and in legislation no vote. The persons, who met in pursuance of this unprecedented summons, proceeded without discussion or debate, to determine by ballot the candidates for the highest offices in the union. The characters of different men, and their pretensions to the public favor, were not suffered to be canvassed, and all responsibility was avoided by the mode of selection. The determination of this conclave has been published as the act of the republican party; and with as much exultation as the result of a solemn election by the nation. Attempts are making to impress upon the public mind, that these proceedings ought to be binding upon all the republicans, and those who refused to attend, or disapproved of the meeting, are denounced as enemies of liberty, and as apostates from the cause of the people. In this state of things, we think it our duty to address you, and we deem ourselves called upon to enter our most solemn protest against these proceedings.

It is true that at former periods, when the election of a President and Vice President approached, it was customary to hold meetings of the members of Congress, for the purpose of recommending candidates to the public. But these meetings, if not justified, were palliated by the necessity of union. The federalists presented a formidable phalanx; and either to succeed at all, or to prevent them from placing the candidate for the Vice Presidency in the Presidential chair, it was necessary to exert the combined efforts of the whole republican party. But it is equally true that in those instances, the nominations for the Presidency were mere matters of course. In the first and second elections under the constitution, the eyes of all were turned upon General Washington, and since the expiration of the two periods, during which he filled the supreme executive office, there has not until now been any difference of opinion among the republicans, as to the candidate for the first magistracy. The real object of all former meetings, was to produce such a co-operation as would secure the election of a republican Vice President.

The circumstances, which might be urged in extenuation of such a measure heretofore, do not now exist. The federalists are comparatively few in number, and form but a feeble party; they cannot give to any one candidate, more than sixteen or seventeen votes out of one hundred and seventy six; no federalist can therefore be elected by the Electors; and should no person have a majority of all the electoral votes, the choice of the President will devolve on the members of the present House of Representatives, in which the federalists have the votes of only two states, Connecticut and Delaware. The alteration of the constitution prevents the danger of any intrigue, by which the intended Vice-President might be elected President. No good reason can therefore now be assigned, why an union of the republicans in favor of any particular person, should be attempted by a measure in itself so exceptionable, as a no-