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CONGRESS.

HOUSE OF REPRESENTATIVES.

Debate on the passage of the bill conferring courts martial and courts of enquiry.—Concluded.

Mr. RANDOLPH said, that after the very able and learned argument of the gentleman from Connecticut (Mr. Pitkin) who certainly had proven to his entire satisfaction, that he was the only person of those who had to speak upon this subject, that possessed any thing like a correct knowledge of that law, which had been said to be the model of the one, which it appeared they were now about to enact—he should felt ashamed at again obtruding himself upon the attention of the House; and he did feel most thoroughly ashamed for the framers of the bill in question. I do blush, said he, for gentlemen who have brought a bill into this House, modelled, as they say, upon the British law, who have been present, to my unlearned judgement, (for really, sir, I stand as a juror before them and the gentleman from Connecticut) not only ignorant of the law of England—surely a very pardonable fault, if they had not pretended to understand it—but so totally unfamiliar with respect to the law of their own country, and with respect to the operation of this instrument, which after successive recommitments they have presented to the House. If I were friently to the principle of the bill, I should have arisen immediately after the gentleman from Connecticut had resumed his seat and moved its recommitment, in the hope that the committee would not fail to avail themselves of the extensive knowledge, which, with so much credit to himself, he has displayed upon this occasion. For myself I have not the sense conceit to blush at the exposure of my information on the subject. In the first place I am not a professional man—either was it a matter concerning mind by the House to my especial care, and on which it was my peculiar bounden duty to make myself acquainted; and for another reason, because finding in the first section a principle so totally abhorrent to my mind that no inducement whatever could have brought me to sanction it, I passed over the remainder of the bill in rather a hurried way—for it will be remembered that the printed copy, as amended, was not laid on our tables until yesterday morning, when we were called upon to vote on the final passage of the bill. I therefore did not scrutinize its details.

I have brought these prefatory remarks proper, because, as a friend of this House, I feel obliged to the gentleman from Connecticut for having made himself master of his subject, and for the light which he has diffused upon it; and it issued of intending to other affairs, gentlemen had attended to his argument, we should have had the benefit of that, for which they have lately been at pains which is seldom experienced within our walls—the benefit of deliberation and discussion. For what the members of the House are busily engaged in counting money, signing receipts, writing receipts, writing letters, sealing and folding pamphlets—I pretend to no personal and exclusive exemption) it is impossible that they can give the benefit of discussion—in fact, persons so employed constitute any thing rather than a deliberative assembly. But if time had permitted an attentive examination of the bill, ignorant as I profess myself of the law to have been of the law on this subject, both at home and abroad, even my unpliability, even my acknowledged defects, which I am ashamed should have excaped any man, I may be supposed, would have discovered, that to my mind nothing no more idea, no proposition more definite, than to many words combined by chance out of a dice box—sentences which one would suppose must have been written by the celebrated Mr. Allbright, a special attorney, who himself tells us that he could read three skins of parchment without once drawing breath. It may be from defect of comprehension—but I will read one proviso, as distinctly as I can, and appeal to the minds of those who use words, *attaching definitation to them*, whether any definite meaning can be extracted from it.

"*And provided also*, That no such decision shall be made or recd in evidence unless reasonable notice of the time and place of taking the same be given to the adverse party, by the party at whose instance the same may be taken, nor unless the witness shall reside, sick as well as the time of taking the deposition as of offering the same in evidence, at a greater distance than twelve miles from the place of holding such court martial or court of enquiry, or the same shall have been taken by commissioners as aforesaid; nor if the same be taken before commissioners as aforesaid, unless the party at whose instance such commission may be issued, shall have given reasonable notice to the adverse party, of the time and place of applying for such commission, and of the name and residence of the judge to whom such application may be made; nor unless such commission be duly issued under the hand and seal of such judge, and attested and countersigned by the clerk of the court to which such judge shall belong, with the seal of the court annexed. And the probate or certificate annexed to all such depositions, by the territorial or state judge, before whom the same may be taken, may be authenticated as to its being under the seal of such judge, and as to the authority of such, by the certificate of the clerk, under the seal of the court to which such judge may belong."

Surely the words composing this clause must be needlessly confused in the mind—it is heathen Greek—and six rule of action (which every law maker is bound to be) for me, it would be inscribed in Chaldean characters.

I forgot to state, as I intended when I rose, that the circumstance, which induced me to overcome the sense of shame, which I felt at the exposure of the gentleman from Connecticut, was my having outlined some points, which might to have been passed when I yesterday claimed the indulgence of the House, and which would have had great weight upon, if the difficulty of speaking in this room, the elegant cartoons in the contrary direction, which I had not exhausted my strengths—and further, that I thought some of the observations of the gentleman entitled to notice, or entitled, I am compelled to say, not from their intrinsic weight, but from the weight of influence, in this House, of the person from whom they fell. I, for my unfortunate analogy, the gentleman has likened courts of enquiry to grand juries, and therefore (sir, I speak) irrevocably follows that the powers proposed to be conferred on them are indispensably necessary to the proper discharge of their functions. Have grand juries the power contained in this bill—to compel the attendance of distant witnesses—to issue commissions throughout the U. S. to take depositions, upon which indictments, perhaps, may be found? How long since they acquired it? But to pursue this analogy: the only parties, besides his witnesses, to be examined in his behalf, although the finding of a grand jury may have an effect on his reputation and life, are the prosecutor, the jury, and the sheriff. The party accused is completely precluded from the benefit of a single witness examined in his behalf, although the finding of a grand jury may have an effect on his reputation and life. The proceedings before the grand jury being, then, altogether *ex parte*, by the prosecutor, the only judicial part of the bill which relates to courts of enquiry is totally inadmissible; because the bill would assimilate our civil institutions to this famous bill—except he wishes our free system of jurisprudence to be purged of from its very foundations and reduced to the standard of this inhuman monstrous thing—he cannot, the gentleman must give up one of the most important provisions. I may say the vital principle of this bill—the provision which enables the indicted party to compel the attendance of witnesses in his behalf, before this new military grand jury—without which on his solicitude for the bill would pass he at an end. So much for the unlucky analogy.

You are told, sir, with a most imposing solemnity of voice and countenance, that this bill does not enlarge the powers of courts martial. Do you mean proof? *Dare ideit*—that gentleman says so, and surely you will not be so unreasonable as to doubt his word. I am most sensible of the weight of the mere *ipse dixit* person who uttered this and quite sensible of the little weight that my opinion would have in this House opposed to his judgement—but that gentleman did not condescend to tell us, *how* the bill does not enlarge the powers of military courts? I know that it *does*;—and as I feel myself under the necessity (from which that gentleman is happilie exempt) of adopting my opinions in this House by *reason*—or, perhaps as the gentleman himself would choose rather to style it—by "*cla'ver*," I will proceed to state why. I am extremely happy, if the opinion was intended for me, that I am able to *clamor* sound enough to be heard in this spacious hall, and to say that this bill does increase the power of the military court, inasmuch as it subjects to its cognizance the person of the citizen, heretofore exempt from them, by giving the military authority not merely the power of compelling the civil authority as it were, into its custody. The civil authority may be called upon to use the military court in bringing the witness before it—and this was one of my principal objections to the bill yesterday—one which has since been illustrated and enforced much more powerfully by the gentleman. This bill was brought in for the express purpose of providing for an indefinite number of power in military courts; and shall we be told, by those too who have presented it as a remedy for such evils, that it does not enlarge their power? But this clamor that we are to remedy evils by such measures, and against this bill as one of them, is totally lost upon me. It is a clamor, sir, which I, for one, shall the charge, not within the walls, but within the walls of Congress. I remember a very learned and very honest man himself recollects it—we then sat in Philadelphia—when, on an occasion, which I shall never forget, a gentleman who now presides up stairs in the other House (Mr. Marshall) accused of "clamoring against a bill, that went to enlarge the privileges of the military at the expense of the citizen. He said, he always been the fashion with those, who *feel power and forget right*, to call the exercise of their rights, their lawful measures as a mere popular catch; and if the gentleman should ever get out of the way, (he said, indeed, hardly supposed) he will find this military turned against himself—in a fortnight he said, he was ready, by those who have gained possession, against those excluded from it. It is a common method, which the most clamoring may yield. But, it seems, that these "clamors" are of a kind, which other—not some opposed the bill on this ground, some on that. And the gentleman (Mr. Nicholas) asks how are these contradictory arguments to be reconciled? I thought, sir, although I am not a lawyer and proscribed state, that measures may be opposed on different grounds, without the opposers being thereby guilty and proscribed state, that measures may be opposed on different grounds, without the opposers being thereby guilty of inconsistent state. I have often heard it said by my worthy friend at the fire (Mr. Macon) in former times, when canvasses were upon the topic, and enforced by the necessity of contrary, "if there is no occasion for bread each man act upon his own ground." And yet this alleged inconsistency in opposition to a proposition, which I think in this opposition ought to be made, it is expected, it seems, that those, who wish to see the proposition carried, make proselytes from the majority, should at least convert each other, sometimes from the opposition to the same. For if one gentleman opposes the bill for one reason and I for another, we are considered by the gentleman must give up one of the most important provisions. I may say the vital principle of this bill—the provision which enables the indicted party to compel the attendance of witnesses in his behalf, before this new military grand jury—without which on his solicitude for the bill would pass he at an end. So much for the unlucky analogy.

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